

Cary Town Council Minutes
Thursday, August 14, 2008
6:30 PM
Council Chambers
316 N. Academy Street, Cary, N.C.

Present: Mayor Harold Weinbrecht, Mayor Pro Tem Julie Robison, Council Members Gale Adcock, Don Frantz, Ervin Portman, Jennifer Robinson and Jack Smith

A. COMMENCEMENT

1. Call to Order (Mayor Weinbrecht)

Mayor Weinbrecht called the meeting to order at 6:30 p.m.

2. Ceremonial Opening (Mr. Portman)

Mr. Portman provided the ceremonial opening.

3. Adoption of agenda (Town Council)

The mayor announced that the council members who have sponsored and co-sponsored agenda item H.3. regarding the occupancy tax and food and beverage tax have requested to remove it from this agenda and place it on the next council meeting agenda.

ACTION: Mrs. Robinson moved to approve the amended agenda (including the removal of item H.3.). Mrs. Adcock provided the second, and council granted unanimous approval.

B. CONSENT AGENDA

1. Regular Consent Agenda (*any regular consent agenda item pulled for discussion will be discussed at the end of the old/new business portion of the agenda, which is item H on this agenda*)

- a. Consideration of approval of the minutes of the regular town council meeting held on July 24, 2008 and the minutes of the town council work session held on July 22, 2008. (Town Council)**

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

- b. Consideration of approval of the July 2008 tax report. (Mr. Bill Coleman)**

July 23, 2008

The Wake County Board of Commissioners, in regular session on July 9, 2008, approved and accepted the enclosed tax report for the Town of Cary.

It is hereby submitted for your approval.

Refunds of taxes, interest and penalties	\$1248.59
Relief of late list penalty	13
Relief of late filed application	0
Non-cash rebates	200

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

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- c. Consideration of ratifying the appointments to the Citizen Issue Review Commission.
(Mrs. Sue Rowland)

STAFF REPORT

Town Council, August 14, 2008

Appointment to the Citizen Issue Review Commission (TC09-001)
Consideration of appointments to the Citizen Issue Review Commission
Speaker: Sue Rowland

From: Sue Rowland
Prepared by: Karen Gray
Approved by: William B. Coleman, Jr., Town Manager
Approved by: Benjamin T. Shivar, Assistant Town Manager

Background:

On May 8, 2008, based on the work and recommendations of the Issue Advisory Group Task Force, council approved the creation of the Citizen Issue Review Commission (CIRC). The CIRC is to be comprised of seven citizen volunteers, randomly selected by staff, who have completed the Town of Cary School of Government. The CIRC will serve as the first step for citizens to form an official citizen issue advisory group and be sanctioned as such by the Town of Cary. The CIRC will review citizen applications and determine if a project qualifies for recommendation to the Town Council. More information on the CIRC is available at <http://www.townofcary.org/boards/circ/circ.htm>.

Applications for the commission were sent to all school of government graduates, with an application deadline of July 31, 2008. Eighteen graduates applied for the CIRC and the following seven were randomly selected to serve as members:

Mark Crispi, term expires February 1, 2010
Arvind Shah, term expires February 1, 2010
Graciela Abbate de Gillette, term expires February 1, 2010
Pearl McAdaragh, term expires February 1, 2011
Louis Eldridge, term expires February 1, 2011
Henry Fernandez, term expires February 1, 2012
Lori Crossland, term expires February 1, 2012

Mayor Pro Tem Julie Robison is the council liaison to the CIRC. She has recommended that Lori Crossland serve as chair for this commission.

Training for CIRC members will occur at the end of August, and their first organizational meeting will take place during the first part of September. Applications for citizen issue advisory groups will be accepted beginning October 1, 2008.

Fiscal Impact: None

Staff Recommendation: Staff recommends that council approve the suggested slate of appointments.

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

2. Land Development Consent Agenda (*any land development consent agenda item pulled for discussion will be discussed at the end of the land development discussion portion of the agenda, which is item F on this agenda*)

a. **REZONING 08-REZ-05, KERA GARDENS**

Location: 917 Reedy Creek Road

Current Zoning: Residential 40 (R-40)

Proposed Zoning: Residential 12 Conditional Use (R-12 CU)

Acreage: 8.0 ±

Speaker: Mrs. Debra Grannan

Comprehensive Plan Consistency: *In accordance with N.C.G.S. 160A-383, and based upon the recommendations and detailed information developed by staff and/or the Planning & Zoning Board contained in the case report, approval of this case by the Cary Town Council will officially adopt the individual rezoning report as evidence that consistency with the Comprehensive Plan has been thoroughly evaluated and that this is a reasonable action to further the community's public interest in carrying out the Comprehensive Plan.*

Planning and Zoning Board Recommendation: Unanimous recommendation to approve

Proposed council action: Council may take action

REQUEST

The applicant is requesting Town Council approve an Ordinance to amend the official zoning map of the Town of Cary from Residential 40 (R-40) to Residential 12 Conditional Use (R-12 CU) for approximately 7.33 acres, located at 917 Reedy Creek Road, from Residential 40 (R-40) to Residential 12 Conditional Use (R-12 CU). The applicant has submitted the following proposed zoning conditions:

1. Development shall be limited to a maximum of 12 single-family dwelling units.
2. The property will have a minimum of one (1) acre of common open space, centrally located on the property and maintained by the homeowner's association.

The purpose of a rezoning is to evaluate the appropriateness of a proposed land use for the subject parcel(s) of land. Specific development requirements related to the technical aspects of land development, such as access, stormwater management, road improvements, utility line placement, road connectivity and landscape plantings, are not considered during the rezoning process. However, all of these development issues must be addressed for compliance with existing requirements specified in the Land Development Ordinance (LDO) when the site or subdivision plan is submitted.

BACKGROUND INFORMATION

Applicant	Philip Abraham 310 Homestead Drive Cary, NC 27513 (919) 469-3912		
Agent	Jon Frazier Crowley, Crisp & Associates 1906 S. Main Street, Suite 122 Wake Forest, NC 27587 (919) 562-8860		
Acreage	7.33 ±		
General Location	917 Reedy Creek Road		
Hearings / Meetings	Public Hearing May 8, 2008	Planning & Zoning July 21, 2008	Town Council August 14
Land Use Designation	Low Density Residential		
Town Limits	Subject property is located inside Cary's ETJ but outside the corporate limits.		
Annexation	Will be required at the time of site plan review		
Valid Protest	None		
P&Z Recommendation	Recommended 9-0 for approval		
Existing Use	Vacant		
Proposed Use	Single-family Residential		
Final Council Action	To be provided after the Town Council Meeting		
Staff Contact	Debra Grannan, Senior Planner 316 N. Academy St. Cary, NC 27513 (919) 460-4980 debra.grannan@townofcary.org		

Notification

On April 22, 2008 notices were mailed to property owners within 400 feet of the subject property. In addition, notification consistent with General Statutes was present in the Cary News on April 23, 2008 and April 30, 2008. Notification of a second public hearing, to be held at the Planning and Zoning Board Meeting, was sent to the Cary News to be published on July 9, 2008 and July 16, 2008.

Feedback at the Public Hearing

Staff presented the request and noted there were no protest petitions. The applicant, Jon Frazier, reported that a neighborhood meeting had been conducted and the owners of the subject property were seeking to create a development that would be compatible with the existing neighborhoods. Two citizens spoke about the importance of preserving natural features on the subject property, especially the existing pond. Staff reported that the applicant was interested in offering a zoning condition that would protect the pond, but that based on feedback from the Cary's Stormwater Management Division, felt the feasibility of preserving the pond was best addressed during the site plan review process. One citizen spoke about the potential traffic impacts on Reedy Creek Road. Council asked if a determination of road alignment had been made. Staff advised that a site plan had not been submitted for review, and that road location would be evaluated at that time.

Changes Since the Public Hearing

The applicant submitted one additional zoning condition to propose a minimum of one acre of open space, centrally located on the property and maintained by the home owners' association.

Feedback at the Planning and Zoning Board Meeting

Staff explained that a new zoning condition had been introduced by the applicant to provide for a minimum of one acre of common open space. The applicant remarked that this condition was in response to a request from the neighbors to preserve natural resources on the subject property. One citizen spoke at the public hearing about her concerns regarding the traffic on Reedy Creek Road.

Engineering staff advised that this road was being evaluated for future improvements by the town. The Planning and Zoning Board commented that the proposed increase in trips was minor based on the zoning condition to limit use to 12 lots.

PLANNING AND ZONING BOARD RECOMMENDATION

As required by G.S. 160A-328, a P&Z recommendation addressing plan consistency and other matters as deemed appropriate by the Board follows: The Planning and Zoning Board met on July 21, 2008 and voted 9-0 to forward this case to the Town Council with a recommendation for approval because the proposed amendment is consistent with the Comprehensive Plan and is reasonable and in the public interest as indicated on the staff report.

Changes Since the Planning and Zoning Board Meeting:

None

SUMMARY

As described below in the Consistency with the Comprehensive Plan and Consistency with the Land Development Ordinance sections, Staff has reviewed the application and information provided prior to this meeting, and the analysis by Staff is that the application is consistent with the Goals and Objectives of the Comprehensive Plan, the Land Development Ordinance, and is reasonable and in the public interest.

CONSISTENCY WITH THE COMPREHENSIVE PLAN

A. Land Use Plan:

The requested zoning for the subject parcels is Residential 12 Conditional Use. R-12 is a residential single-family zoning district with a minimum lot area of 12,000 square feet and a maximum allowed density of 3.63 units per acre, but the applicant is placing a condition on the zoning that restricts the number of dwelling units to a maximum of 12, with a total density of 1.64 dwelling units/acre. The Town-wide Land Use Plan recommends these parcels for low density, single-family residential development at one to three units per acre. This rezoning request conforms to the adopted Land Use Plan.

B. Growth Management Plan:

The Growth Management Plan includes the following Guiding Principle which is relevant to this case:

1. R1 Guiding Principle: Ensure that adequate infrastructure and services are available concurrently with new development.
2. L1 Guiding Principle: Concentrate growth near existing and planned employment centers and available and planned infrastructure to minimize costly service-area extensions.

C. Affordable Housing Plan:

Based upon the proposed use, the Affordable Housing Plan is not applicable.

D. Comprehensive Transportation Plan:

Reedy Creek Rd.

Existing Section: Approximately 60' ROW, 2 lane minor thoroughfare

Future Section: Two-lane with paved median, minor thoroughfare

Road Improvements: Survey and base map design have been completed for future roadway project by the Town of Cary and may be considered for funding in the 2013/2014 budget

Sidewalk Requirements: Sidewalk required on both sides

Bicycle Requirements: 14' wide outside lanes required

Transit Requirements: None

E. Parks & Greenways Master Plan:

According to the approved Parks, Recreation and Cultural Resources Facilities Master Plan there are no issues related to this site. A recreation payment-in-lieu will be required for residential development in accordance with the Land Development Ordinance. According to the Open Space and Historical Resources Plan (OSHRP), this site was not proposed for open space conservation and no historic structures have been identified on this site.

CONSISTENCY WITH THE LAND DEVELOPMENT ORDINANCE

F. Traffic Analysis: The current R-40 zoning would generate six AM peak hour trips and eight PM peak hour trips. The proposed rezoning with the conditions of 12 single family lots would only generate 13 AM and 13 PM peak hour trips. The difference does not meet the 50 peak hour trip threshold requirement for a traffic study.

G. Environmental:

According to the Town of Cary GIS maps, there is a stream buffer impacting the subject property. The project will be required to comply with all buffer requirements of the Land Development Ordinance during the site plan review process.

H. Buffers:

According to Chapter 7 of the Land Development Ordinance, at the time of site plan review, the applicant will be required to provide a 20' wide landscape area planted to a Type B (semi-opaque) Buffer standard between the subject property and adjacent single family developments.

I. Streetscape:

According to Chapter 7 of the Land Development Ordinance, a 50' wide streetscape is required along Reedy Creek Road. Within this streetscape, existing healthy vegetation shall be maintained and supplemented, if necessary, to achieve a Type A (opaque) standard.

The proposed project is in the rezoning stage and, therefore, preliminary engineering of the site has not been submitted to staff for review. Prior to Site Plan or Subdivision Plan approval, the application will be required to demonstrate consistency with the Land Development Ordinance with respect to specific development requirements, such as access, stormwater management, road improvements, utility line placement, road connectivity and landscape plantings.

Existing and Requested Zoning District Comparison:

District Regulations	Existing Zoning (R40)	Requested Zoning (R12 CU)
Maximum Gross Density (du/ac)	1.08	3.63*
Minimum Lot Size (square feet)	40,000	12,000
Minimum Lot Width at Building Line	150' with septic tank & well (160' for corner lot) 125' with public sewer (135' for corner lot)	80' (90' for corner lot)
Side Yard Setback	15' With septic tank & well 10' with sewer	10'
Front Setback	From thoroughfare: 50' From collector: 30' From other streets: 20'	From thoroughfare: 50' From collector: 30' From other streets: 20'
Rear Yard Setback	30'	25'
Maximum Building Height	35'	35'

* The LDO sets a density limit of 3.63 for R-12 Zoning. A zoning condition proposed by the applicant limits the maximum number of dwelling units to 12 on the subject property, which consists of approximately 7.33 ± acres. This would yield a density of 1.63 dwelling units per acre.

TOWN COUNCIL CRITERIA FOR CONSIDERATION IN REVIEWING REZONINGS:

Section 3.4.1(E) of the Land Development Ordinance sets forth the following criteria that the Town Council should consider in reviewing rezonings:

1. The proposed rezoning corrects an error or meets the challenge of some changing condition, trend or fact;
2. The proposed rezoning is consistent with the Comprehensive Plan set forth in Section 1.3 (LDO);
3. The Town and other service providers will be able to provide sufficient public safety, educational, recreational, transportation and utility facilities and services to the subject property while maintaining sufficient levels of service to existing development;
4. The proposed rezoning is unlikely to have significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife and vegetation;
5. The proposed rezoning will not have significant adverse impacts on property in the vicinity of the subject tract;
6. The proposed zoning classification is suitable for the subject property;

School Information				
Assigned Schools	20 th Day Enrollment*	Permanent Seat Capacity	Average Percent Occupied	Projected Range of Additional Students**
Reedy Creek Elementary	682	816	84%	4 to 5
Reedy Creek Middle	778	885	88	1 to 2
Panther Creek High School	1496	1663	90%	1 to 3
Total Projected range of additional students**				6 to 10

* *Current Enrollment and Building Capacity* is based on the 20th day of the school year for 2007-2008 as supplied by the Wake County Public School System. School assignment will be determined at the time of development.

** The *Projected Number of Additional Students* is a rough approximation. The actual number of students will vary depending on variables, such as the number of bedrooms, dwelling size, and other factors. For example: a site with 12 three-bedroom homes could yield six additional students, while 12 homes with greater than three bedroom units could yield 10 students. The basis for making this calculation is based on multipliers provide from Wake County Schools Office of Student Assignment. At rezoning, student yield can not be accurately determined due to unknown variables.

Applicant's Justification Statement Submitted (March 27, 2008) Part 6A:

The following statements are provided by the applicant (shown below in italics) in response to the criteria established in the application (shown below in bold) and does not necessarily represent the views or opinions of the Town of Cary. Any statements as to the type, quality or physical features are at the direction of the applicant and may be formulated into a condition:

1. Any issues with the size of the tract? *There are no issues with the size of the tract. At 8.0 acres the tract is conducive to R-12 zoning, and at a maximum of 12 dwelling units the total density will be 1.5 units/acre, which is below the maximum density of 3.63 units/acre as required by the Town Code.*

2. How is the request compatible with the comprehensive plan (i.e. Land Use, Transportation, Open Space and Historic Resources)?

The Land Use Plan calls for Low Density Residential development, so the request of a Rezoning to R-12 CU with a maximum of 12 dwelling units is compatible.

3. What are the benefits and detriments to the owner, neighbors and the community?

The benefits to the owner are an opportunity to enjoy a beautiful piece of property in which the owners intend to live themselves, while generating enough lots to offset the costs of roadway improvements and access into the property.

The neighbors and community will be benefited by a property of like-zoning and compatibility with the Town's Land Use Plan. The property will provide a transition between the traditional homes of the adjacent R-12 zoned tracts to the larger estates of the adjacent R-40 zoned tracts. The limit on dwelling units will allow minimal impacts to existing traffic and the environment, while the development of the property itself will aim to improve existing stormwater and soil erosion problems on downstream properties.

4. How are the allowable uses with the proposed rezoning compatible with, or how do they relate to, the uses currently present on adjacent tracts? *The adjacent tracts to the west and north are zoned R-12, and the adjacent tracts to the east and south are zoned R-40. While the proposed R-12 zoning is the same as the adjacent tracts to the west and north, the limit on dwelling units will provide a low density transition from the existing R-12 zoned tracts to the existing R-40 zoned tracts.*

**Ordinance for Consideration
08-REZ-05 Kera Gardens**

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE TOWN OF CARY TO CHANGE THE ZONING OF APPROXIMATELY 7.33 ACRES LOCATED AT 917 REEDY CREEK ROAD OWNED BY PHILIP ABRAHAM BY REZONING FROM RESIDENTIAL 40 (R40) TO RESIDENTIAL 12 CONDITIONAL USE (R12 CU).

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CARY:

Section 1: The Official Zoning Map is hereby amended by rezoning the area described as follows:

PARCEL & OWNER INFORMATION			
Property Owner(s)	County Parcel Number(s) (10 digit)	Real Estate ID(s)	Area ± (Acres)
Philip Abraham Kera Gardens, LLC 310 Homestead Drive Cary, NC 27513	0765609209	0065985	7.33 ±
Total Acres			7.33 ±

Section 2: That this Property is rezoned from Residential 40 (R40) to Residential 12 Conditional Use (R12- CU) subject to the individualized development conditions set forth herein, and all the requirements of the Cary Land Development Ordinance (LDO) and other applicable laws, standards, polices and guidelines.

Section 3: The conditions mutually approved by the Town and the applicant for promoting public health, safety and the general welfare are:

1. Development shall be limited to a maximum of 12 single family dwelling units.
2. The property shall have a minimum of one (1) acre of common open space, centrally located on the property and maintained by the home owners' association.

These conditions address conformance of the development and use of the Property to ordinances and officially adopted plans and address impacts reasonably expected to be generated by the development and use of the Property.

Section 4: This ordinance shall be effective on the date of adoption.

Adopted and effective: August 14, 2008

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

(Ordinance O-2008-35 is also on file in the town clerk's office.)

b. REZONING 08-REZ-03, Highcroft Village and Fryar Planned Development District (PDD) Amendments

Location: north of Green Hope School Road, east of Fryars Frontier Trail and west of NC Highway 55

Request: transfer approximately 4.28 acres of land from Fryar PDD to Highcroft Village PDD, reduce unit count in Fryar PDD and increase density and revise maximum number of units in Tracts 4 and 5 of Highcroft Village PDD

Acreage: approximately 49.38

Speaker: Mrs. Debra Grannan

Comprehensive Plan Consistency: *In accordance with N.C.G.S. 160A-383, and based upon the recommendations and detailed information developed by staff and/or the Planning & Zoning Board contained in the case report, approval of this case by the Cary Town Council will officially adopt the individual rezoning report as evidence that consistency with the Comprehensive Plan has been thoroughly evaluated and that this is a reasonable action to further the community's public interest in carrying out the Comprehensive Plan.*

Planning and Zoning Board Recommendation: Unanimous recommendation to approve

Proposed council action: Council may take action

**Town of Cary, North Carolina
Rezoning Staff Report to the Town Council
08-REZ-03 Highcroft Village Planned Development District (PDD) and Fryar PDD
Amendments**

REQUEST

The applicant is requesting Town Council approve an Ordinance to amend the official zoning map of the Town of Cary for approximately 49.38 acres, located north of Green Hope School Road, east of Fryars Frontier Trail and west of NC 55 Highway, by amending the previously approved Highcroft Village and Fryar PDDs. The proposal is to remove approximately 4.28 acres from the Fryar PDD and add it to the Highcroft Village PDD. The result is a reduction in the number of dwelling units in Tract R-2 of the Fryar PDD, and a density increase in Tract 4 and a decrease in Tract 5 of the Highcroft Village PDD. The density in the R-2 Tract of the Fryar PDD will remain as previously approved.

The purpose of a rezoning is to evaluate the appropriateness of a proposed land use for the subject parcel(s) of land. Specific development requirements related to the technical aspects of land development, such as access, stormwater management, road improvements, utility line placement, road connectivity and landscape plantings, are not considered during the rezoning process. However, all of these development issues must be addressed for compliance with existing requirements specified in the Land Development Ordinance (LDO) when the site or subdivision plan is submitted.

BACKGROUND INFORMATION

Applicant	Jerry Turner and Associates, Inc.		
Agent	Glenda Toppe Jerry Turner and Associates, Inc. 905 Jones Franklin Road Raleigh, NC 27606		
Acreage	49.38 ±		
General Location	North of Green Hope School Road, east of Fryars Frontier Trail and west of NC 55 Highway		
Hearings / Meetings	Public Hearing March 13, 2008	Planning & Zoning May 19, 2008	Town Council August 14, 2009
Land Use Designation	Medium Density Residential (MDR)		
Town Limits	In the Town of Cary's Corporate Limits		
Annexation	Not required since it is already within the Town Limits		
Valid Protest	No protests were received regarding this case; therefore, no supermajority vote is required.		
P&Z Recommendation	Recommended 9-0 for approval.		
Existing Use	Vacant		
Proposed Use	Residential		
Final Council Action	To be provided after the Town Council Meeting		
Staff Contact	Debra Grannan, Senior Planner E-mail: debra.grannan@townofcary.org Phone: (919) 460-4980 Mailing Address: P.O. Box 8005, Cary, NC 27512		

The applicant has proposed to remove approximately 4.28 acres from the Fryar PDD and add it to the Highcroft Village PDD. This request increases the density in Tract 4 and reduces the density in Tract 5 of the Highcroft Village PDD. There would be a reduction of dwelling units in Tract R-2 of the Fryar PDD from 268 dwelling units to 251 dwelling units so that the density of that tract will remain as previously approved. The applicant is not proposing any conditions outside the proposed Highcroft Village and Fryar PDD.

Public Notification:

On February 26, 2008, notices were mailed to property owners within 400 feet of the subject property. In addition, notification consistent with General Statutes was present in the Cary News on February 27 and March 5, 2008.

Feedback at the Town Council Public Hearing: The applicant, Mrs. Glenda Toppe of Jerry Turner and Associates, stated the request is to remove 4.2 acres from the Fryar PDD and include it in the Highcroft Village PDD, and this swap is proposed to utilize an existing stream buffer as a physical boundary between the two approved PDDs. She stated the parcel in question is best suited for development within Highcroft Village, and it is cut-off from the majority of the R-2 tract in the Fryar PDD due to an existing stream buffer, which makes it difficult to access the property. The applicant stated by locating this parcel in the Highcroft PDD, the property can be integrated into Tract 4 of that PDD, and the existing stream buffer can serve as the buffer between the two PDDs and that there is no impact to the stream. Mrs. Toppe stated Tract R-2 is the only part of the Fryar PDD impacted by this request, and there is no unit change in the Fryar PDD. She stated Tracts 4 and 5 are impacted in the Highcroft PDD with density increased in one tract and lowered in the other for no net increase in the overall number of units. They are requesting a reduction to the required 50 foot streetscape along Morrisville Parkway. She stated there is a 30 foot streetscape on the Fryar PDD, and they request that the streetscape adjacent to the Fryar PDD be 30 feet as well. The applicant stated they are willing to add additional plant material over and above code requirements. Mrs. Toppe pointed out that no homes will front onto Morrisville Parkway, and access will be off Morrisville Parkway. She stated they notified property owners within 400 feet, and they did not hear any opposition to this request at the meetings they conducted.

No one spoke at the public hearing.

A Council member stated the particular area in the Fryar PDD with a 30 foot streetscape was due to the fairly low density and that there is a higher density in the area where they propose to reduce the streetscape to 30 feet. The Council member stated that a higher density calls for a larger streetscape. Council also wanted to make sure that both neighborhoods have access to the greenway trail. Clarification as to the net effect on the open space calculations between the two projects was requested before the issues comes back to Council.

Changes Since the Town Council Public Hearing: The applicant has increased the proposed streetscape along Morrisville Parkway in the Highcroft Village PDD from 30 feet to 50 feet. The applicant has also agreed to add a note to the PDD document stating that there will be uniform street tree plantings adjacent to the residential collector running through Tracts 3 and 4 in Highcroft Village. Also, the initial PDD submittal proposed BMPs to be located within open space. The applicant has revised the PDD text to state that BMPs are permitted in open space if they become a feature that will enhance the development as an amenity.

The Highcroft Village PDD master plan in the PDD amendment application only proposed a total of 32.34 acres of open space. Since the public hearing, the applicant has increased the total acreage of open space provided to 33.87 acres through removing the request to reduce the streetscape buffer and increasing the amount of open space provided.

Highcroft Village PDD Total Open Space Acreage Calculations*				
	Current PDD	PDD Amendment Application	April Revised PDD Amendment	Net Gain/Loss From Current PDD
Streetscape	3.04 ±	2.72 ±	3.49 ±	+0.45 ±
Stream Buffer	21.25 ±	21.06 ±	21.06 ±	-0.19 ±
Open Space	2.97 ±	3.65 ±	4.44 ±	+1.47 ±
Buffers	5.08 ±	4.91 ±	4.88 ±	-0.20 ±
Total	32.34 ±	32.34 ±	33.87±	+1.53 ±

* Also, there are 2.73 acres of Urban Transition Buffers not included in the overall total open space acreage. This 2.73 acres of UTB is located within the Highcroft Village PDD, but was recently used as land for off-site mitigation in associate with the Parkside Variance approval.

The open space in the Fryar PDD amendment has also been increased since the public hearing from 22.86 acres to 23.86 acres.

Fryar PDD Total Open Space Acreage Calculations*				
	Current PDD	PDD Amendment Application	April Revised PDD Amendment	Net Gain/Loss From Current PDD
Pond & Stream Buffer	21.41 ±	18.88 ±	19.88 ±	-1.53 ±
Streetscape & Landscape Strips	3.98 ±	3.98 ±	3.98 ±	0
Total	25.39 ±	22.86 ±	23.86 ±	-1.53 ±

Since the public hearing, there are now no net gains or losses in open space totals between the original Fryar and Highcroft Village PDD approvals and what is currently being proposed by the applicants.

Feedback at the Planning and Zoning Board

The Board confirmed with the applicant that the total amount of open space was not being reduced.

Changes Since the Planning and Zoning Board Meeting

The Fryar PDD Document has been amended to show a reduction in the number of dwelling units proposed in Tract R-2 from 268 to 251, so that the density of this tract is consistent with the previously approved limit of 4.1 dwelling units per acre. The use table in the Highcroft Village PDD was modified to require a Special Use Permit for Large Day Care Homes and Religious Assembly which is consistent with current LDO standards. The Highcroft Village PDD document has been amended to reflect that Tracts 4 and 5 will comply with current LDO standards for Urban Transition Buffers.

Planning and Zoning Board Recommendation

The Planning and Zoning Board recommended the PDD Amendment unanimously for approval, with the understanding that the amended documents be revised prior to Town Council action to reflect current Urban Transition Buffer regulations for the portions of the PDDs that are proposed to be modified.

SUMMARY

As described below in the Consistency with the Comprehensive Plan and Consistency with the Land Development Ordinance sections, Staff has reviewed the application and information provided prior to this meeting, and the analysis by Staff is that the application is generally

consistent with the Goals and Objectives of the Comprehensive Plan, the Land Development Ordinance, and is reasonable and in the public interest.

CONSISTENCY WITH THE COMPREHENSIVE PLAN

A. Land Use Plan: This rezoning request conforms to the adopted Land Use Plan. This rezoning request involves the swap of land between the Fryar PDD and the Highcroft Village PDD to utilize an existing stream buffer as the physical boundary between the two planned developments. The designated land use on the portion of land being swapped is mostly Medium Density Residential (MDR) with some High Density Residential (HDR), and the proposed use of the parcels matches the existing land use. Thus, the proposal is in conformance with the Land Use Plan.

B. Growth Management Plan:

The Growth Management Plan includes the following Guiding Principles which are relevant to this case:

1. L2 Guiding Principle: Ensure that future growth protects sensitive natural resources and protects open space. The transfer of land between the Fryar PDD and the Highcroft Village PDD allows better utilization of this land with less impact to an intervening stream buffer.

C. Affordable Housing Plan:

The Affordable Housing Plan includes the following Guiding Principles which are relevant to this case:

1. Provide for a full range of housing choices for all income groups, families of various sizes, seniors, and persons with special challenges.
2. Encourage the location of high density housing within walking and convenient commuting distance of employment, shopping, and other activities, or within a short walk of a bus or transit stop, through "mixed use" developments, residences created on the upper floors of nonresidential downtown buildings, and other creative strategies.
3. Assure a quality living environment and access to public amenities for all residents, present and future, of the Town of Cary, regardless of income.

D. Comprehensive Transportation Plan:

Morrisville Pkwy.

Existing Section: Not built

Future Section: 100' right-of-way 4-lane median divided

Road Improvements: Design completed by the Town

Sidewalks Requirements: Required on both sides of the road

Bicycle Requirements: 14' wide outside lane required

Transit Requirements: None

E. Parks & Greenways Master Plan:

According to the approved Parks, Recreation and Cultural Resources Facilities Master Plan there are no issues associated with the proposed relocation of the approximately 4.28 acres from the Fryar PDD to the Highcroft Village PDD. All PRCR conditions previously approved for each of these PDDs shall remain in place. According to the Open Space and Historic Resources Plan (OSHRP) these 4.28 ± acres were originally proposed for conservation as part of a larger parcel due to the riparian buffers on site.

CONSISTENCY WITH THE LAND DEVELOPMENT ORDINANCE

The proposed project is in the rezoning stage and therefore preliminary engineering of the site has not been provided to Staff for review. Prior to site plan or subdivision plan approval, the application will be required to demonstrate consistency with the Land Development Ordinance

with respect to specific development requirements, such as access, stormwater management, road improvements, utility line placement, road connectivity and landscape plantings.

F. Environmental:

According to the Town of Cary GIS maps, there is a stream buffer impacting the subject properties included in the Fryar PDD and Highcroft Village PDD Amendments. The previously approved PDD documents permitted certain allowable encroachments into the riparian buffers, which was consistent with the LDO at the time of approval. However, the LDO regulations have been amended by Council, which requires no encroachments into the Urban Transition Buffers, unless it is a permitted encroachment allowed by the Ordinance. Since the Land Development Ordinance does not permit modifications to the urban transition buffers, the applicant was required to amend the text for the portions of the Highcroft Village PDD document, which were modified by this request, to show that Tracts 4 & 5 of this PDD would now be in compliance with the LDO.

G. Buffers:

The approximate 4.28 acres, proposed to be removed from the Fryar PDD and added to the Highcroft Village PDD, utilizes an existing stream buffer as the physical boundary between the two planned developments. In Highcroft Village Tract 4, a 30-foot buffer is proposed to the east and a stream buffer provides separation with Tract 3 to the south and with Tract 5 to the north. Highcroft Village Tract 5 is divided by Morrisville Parkway. The southern portion of Tract 5 proposes a 30-foot buffer to the north and has a stream buffer to the east and south, providing separation to the adjacent Tracts or parcels. The northern portion of Tract 5 proposed a 30-foot buffer to the east and is surrounded by stream buffers to the north and west. These proposed buffers are similar to buffers approved for the original Fryar and Highcroft Village PDDs.

H. Streetscape:

According to Chapter 7 (LDO), a 50' Streetscape would be required along the future portion of Morrisville Parkway, which is designated as a thoroughfare. The Fryar PDD was originally approved with a 30-foot streetscape along this future extension of Morrisville Parkway. All other streetscapes will be in accordance with the LDO requirements.

I. Traffic Analysis:

Originally, for the Highcroft Village Property residential portion, a traffic study (05-TAR-182) was conducted by HNTB which analyzed 350 single-family homes and 80,000 SF of office. This development generated 391 AM and 477 PM Peak hour trips. At a later time, the office portion of the development was dropped and the single-family home units were increased to 427 units. For the Highcroft Village PDD amendment, the only two tracts affected are Tracts 4 and 5. Both Tract 4 and Tract 5 are approved for mixed-residential. Tract 4 currently is approved for 97 units. The amendment proposes 116 units. Tract 5 is currently approved for 80 units. The amendment proposes 61 units. So, in theory, 19 units are being shifted from Tract 5 to Tract 4 which would not yield an increase in traffic. The built out year for this traffic study is 2009.

The Fryar PUD traffic study (06-TAR-202) was completed by HNTB and analyzed 332 single-family homes and 30,000 SF of retail. This proposal simply decreases the acreage of 268 of the single-family homes of the 332 single-family homes by 4 acres. The built out year for this traffic study is 2010.

Therefore, neither of the Highcroft Village PDD or Fryar PDD traffic studies will need to be updated at this time to reflect these changes.

Existing PDD and Requested PDD Amendment Comparison:

The applicant is requesting to amend the previously approved Highcroft Village and Fryar PDDs by removing approximately 4.28 acres from the Fryar PDD and including it in the Highcroft Village PDD.

The R-2 Tract in the Fryar PDD was previously approved for 268 dwelling units with a maximum overall density of 4.1 dwelling units per acre. The applicant is proposing to reduce the maximum number of units from 268 to 251 so that the overall density will remain as previously approved.

The approved open space consisted of a pond, stream buffer, streetscapes and landscape strips. With the proposed removal of the 4.28 acres, which includes a portion of a stream buffer, the total open space provided will be reduced to 23.86 acres with the amendment.

The request proposes changes to the densities and unit counts in the Highcroft Village PDD as indicated in the chart below. There is no proposed overall increase in unit count. In the Highcroft Village PDD Amendment request, the applicant is proposing to permit BMPs in open space if they become a feature that will enhance the development as an amenity.

A total of 32.34 acres of open space were approved in the Highcroft Village PDD. The Highcroft Village PDD Amendment proposes 33.87 acres of open space as well. Although the acreage of streetscapes, perimeter buffers and stream buffers decreases slightly with the amendment, the non-regulatory open space acreage increases from 2.97 acres in the approved Highcroft Village PDD to 4.44 acres in the proposed amendment. Also, there are 2.73 acres of Urban Transition Buffers not included in the overall total open space acreage. This 2.73 acres of UTB is located within the Highcroft Village PDD, but was recently used as land for off-site mitigation in associate with the Parkside Variance approval.

Fryar PDD Proposed Amendment				
	Approved PDD	Proposed at Public Hearing	Current Proposal	Net Gain/Loss
Tract R-2 Maximum Dwelling Units	268	268	251	-17 dwelling units
Tract R-2 Area (Acres)	65.4±	61.12±	61.12	-4.28
Tract R-2 Density	4.1 du/ac	4.4 du/ac	4.1 du/ac	No change
Overall PDD Open Space	25.39±	22.86±	23.86±	-1.53

Highcroft Village PDD Amendment				
	Approved PDD	Proposed at Public Hearing	Current Proposal	Net Gain/Loss
Tract 4 Maximum Dwelling Units	97	116	116	+19
Tract 4 Area (Acres)	22.42	23.63	23.63	-1.21
Tract 4 Density	4.33 du/ac	4.91 du/ac	4.91	+0.58
Tract 5 Dwelling Units	80	61	61	-19
Tract 5 Area (Acres)	3.86 ±	5.30±	5.30±	+1.44
Tract 5 Density	20.72	11.51	12.68	-8.04
Overall PDD Open Space	32.34	33.87	33.87	+1.53

TOWN COUNCIL CRITERIA FOR CONSIDERATION IN REVIEWING REZONINGS AND PDD'S:

Section 3.4.1(E) of the Land Development Ordinance sets forth the following criteria that the Town Council shall consider in reviewing rezonings:

1. The proposed rezoning corrects an error or meets the challenge of some changing condition, trend or fact;
2. The proposed rezoning is consistent with the Comprehensive Plan set forth in Section 1.3 (LDO);
3. The Town and other service providers will be able to provide sufficient public safety, educational, recreational, transportation and utility facilities and services to the subject property while maintaining sufficient levels of service to existing development;
4. The proposed rezoning is unlikely to have significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife and vegetation;
5. The proposed rezoning will not have significant adverse impacts on property in the vicinity of the subject tract;
6. The proposed zoning classification is suitable for the subject property;
7. The PDD designation is necessary to address a unique situation or represents a substantial benefit to the Town, compared to what could have been accomplished through strict application of otherwise applicable zoning district standards; and
8. The request complies with the standards and intent of a PDD, as outlined in Section 4.2.3 (LDO).

OTHER REFERENCE INFORMATION

Schools

The proposed PDD amendments for Fryar and Highcroft Village do not increase the total number of previously approved dwelling units. The projected number of children potentially attending Wake County Public Schools does not increase with the proposed amendments. The school information is being provided for your reference only and includes the projected number of children potentially attending the schools for both the Highcroft Village (Tracts 4 and 5) and Fryar (R-2) PDDs; however, the Wake County Board of Education controls capital projects for school capacities.

School Information				
Assigned Schools	20th Day Enrollment*	Permanent Seat Capacity	Average Percent Occupied	Projected Range of Additional Students** & ***
Highcroft Drive Elementary	964	1072	90%	128-185 9-155
Salem Middle	1101	1206	91%	25-69 0-100
Panther Creek High School	1496	1663	90%	32-82 0-82
Total Projected range of additional students				185-336 9-337

* *Current Enrollment and Building Capacity* is based on the 20th day of the school year for 2007-2008 as supplied by the Wake County Public School System. School assignment will be determined at the time of development.

** The *Projected Number of Additional Students* is only a rough approximation. The actual number of students will vary depending on several variables, such as dwelling unit type, number of bedrooms, dwelling size, and other factors. The basis for making this calculation is based on multipliers provide from Wake County Schools Office of Student Assignment. At rezoning, student yield can not be accurately determined due to unknown variables.

*** The first numerical range listed is if the maximum number of units permitted in Highcroft Village Tracts 4 and 5 and Fryar Tract R-2 developed solely as single-family. The second numerical range provided is if the maximum number of units permitted in Highcroft Village Tracts 4 and 5 and Fryar Tract R-2 developed completely as Townhouses, etc.

Applicant's Justification Statement Submitted (January 24, 2008) Part 6A:

The following statements are provided by the applicant (shown below in italics) in response to the criteria established in the application (shown below in bold) and does not necessarily represent the views or opinions of the Town of Cary. Any statements as to the type, quality or physical features are at the direction of the applicant and may be formulated into a condition:

1. Any issues with the size of the tract?

Response from Highcroft Village PDD Amendment Application: *The size of the tract is conducive to the use being proposed.*

Response from Fryar PDD Amendment Application: *The size of the tract is conducive to the use being proposed.*

2. How is the request compatible with the comprehensive plan (i.e. Land Use, Transportation, Open Space and Historic Resources)?

Response from Highcroft Village PDD Amendment Application: *The proposed PDD amendments are compatible with the comprehensive plan. Tract 4 in Highcroft Village where the additional acreage is being added is also designated for MDR and will remain MDR. Tract 5 in Highcroft Village is HDR and with proposed change will remain HDR.*

Response from Fryar PDD Amendment Application: *The proposed PDD amendment is compatible with the comprehensive plan. The Fryar PDD identified the R-2 parcel for medium density residential. With the removal of the acreage the parcel will still be MDR.*

3. What are the benefits and detriments to the owner, neighbors and the community?

Response from Highcroft Village PDD Amendment Application: *Given the location of the parcel within the Fryar PDD, the parcel is best suited to be located within the Highcroft Village PDD. The parcel is cut off from the majority of the R-2 Tract in the Fryar PDD because of the existing stream buffer thereby making it difficult to access the property. BY locating the parcel in the Highcroft Village PDD, the property can be integrated into Tract 4 of Highcroft Village and the existing stream buffer can act as the buffer between the Fryar PDD and Highcroft Village PDD. We do not see any detriments to the owners, neighbors or community since the uses are not changing. The center of the stream becomes the boundary between the two PDDs. Additional units are being added to tract 4 in Highcroft Village however units are being taken away from Tract 5 in Highcroft Village, thus causing no net increase in units for Highcroft Village.*

Response from Fryar PDD Amendment Application: *Given the locations of the parcel within the Fryar PDD, the parcel is best suited to be located within the Highcroft Village PDD. The parcel is cut off from the majority of the R-2 Tract in the Fryar PDD because of the existing stream buffer thereby making it difficult to access the property. By locating the parcel in the Highcroft Village PDD, the property can be integrated into the Tract 4 of Highcroft Village and the existing stream buffer can act as the buffer between the Fryar PDD and Highcroft Village PDD. We do not see any detriments to the owners, neighbors or community since the uses are not changing. The center of the stream becomes the boundary between the two PDDs.*

4. How are the allowable uses with the proposed rezoning compatible with, or how do they relate to, the uses currently present on adjacent tracts?

Response from Highcroft Village PDD Amendment Application: *All uses are compatible with the proposed zoning and can be found currently on neighboring parcels.*

Response from Fryar PDD Amendment Application: *All uses are compatible with the proposed zoning and can be found currently on neighboring parcels.*

5. What reductions/amendments and/or modifications to the development standards of the LDO are being requested and how are they justified? (PDD, new or amended) Applicants must list these items and/or clearly highlight them within the Planned Development document.

Response from Highcroft Village PDD Amendment Application: *30-foot streetscape Morrisville Parkway. This is consistent with the Fryar PDD. No homes will front onto Morrisville Parkway. The 30-foot streetscape will give adequate protection to any development that might occur adjacent to Morrisville Parkway. The streetscape will be planted the same as a 50-foot streetscape.*

Response from Fryar PDD Amendment Application: *None listed.*

**Ordinance for Consideration
08-REZ-03 Highcroft Village Planned Development District (PDD) and Fryar PDD
Amendments**

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE TOWN OF CARY TO CHANGE THE ZONING OF APPROXIMATELY 49.38 ACRES LOCATED NORTH OF GREEN HOPE SCHOOL ROAD, EAST OF FRYARS FRONTIER TRAIL AND WEST OF NC 55 HIGHWAY OWNED BY D. ROSCOE FRYAR AND HIGHCROFT INVESTORS LLC BY AMENDING THE PREVIOUSLY APPROVED HIGHCROFT VILLAGE AND FRYAR PDDS (PLANNED DEVELOPMENT DISTRICTS) BY: REMOVING APPROXIMATELY 4.28 ACRES FROM THE FRYAR PDD AND INCLUDING IT IN THE HIGHCROFT VILLAGE PDD; INCREASING DENSITY IN TRACT 4 AND DECREASING DENSITY IN TRACT 5 OF THE HIGHCROFT VILLAGE PDD, REDUCING THE NUMBER OF DWELLING UNITS IN TRACT R-2 OF THE FRYAR PDD AND REVISING THE NUMBER OF DWELLING UNITS IN TRACT 4 AND 5 OF THE HIGHCROFT VILLAGE PDD, AND BY APPLYING CARY'S LDO STANDARDS FOR URBAN TRANSITION BUFFERS TO TRACTS 4 AND 5 OF THE HIGHCROFT VILLAGE PDD.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CARY:

Section 1: The Official Zoning Map is hereby amended by rezoning the area described as follows:

PARCEL & OWNER INFORMATION			
Property Owner(s)	County Parcel Number(s) (10 digit)	Real Estate ID(s)	Area ± (Acres)
Highcroft Investors LLC PO Box 3557 Cary NC 27519-3557	0735501486 (portion) 0734681762 (portion)	0084273 (portion) 0185234 (portion)	12.70 ± (portion) 32.40 ± (portion)
D Roscoe Fryar 7210 Green Hope School Road Cary, NC 27519-8890	0734497294 (portion)	0030966 (portion)	4.28 ± (portion)
Total Acres			49.38 ±

Section 2: That this Property is rezoned from Highcroft Village and Fryar PDDs to Highcroft Village and Fryar PDD Amendments subject to the individualized development conditions set forth within the Highcroft Village and Fryar PDD Amendments, which includes removing approximately 4.28 acres from the Fryar PDD and adding it to the Highcroft Village PDD; increasing density in Tract 4 and decreasing density in Tract 5 of the Highcroft Village PDD, reducing the number of dwelling units in Tract R-2 of the Fryar PDD, revising the number of dwelling units in Tract 4 and 5 of the Highcroft Village PDD, applying Cary's LDO standards for Urban Transition Buffers to Tracts 4 and 5 of the Highcroft Village PDD, and all the requirements of the Cary Land Development Ordinance (LDO) and other applicable laws, standards, polices and guidelines.

Section 3: The conditions mutually approved by the Town and the applicant for promoting public health, safety and the general welfare are set forth within the Highcroft Village and Fryar PDD Amendments. These conditions address conformance of the development and use of the Property to ordinances and officially adopted plans and address impacts reasonably expected to be generated by the development and use of the Property.

Section 4: This ordinance shall be effective on the date of adoption.

Adopted and effective: August 14, 2008

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

(Ordinance O-2008-36 is also on file in the town clerk's office.)

c. SITE PLAN 07-SP-038, Chatham Pointe

Location: 901 West Chatham Street

Request: The applicant, T.O.W., Inc., represented by Horvath Associates, has requested approval of a development plan to construct 10 townhouses and 14 patio homes

Speaker: Mr. Greg Barnes

Planning and Zoning Board Recommendation: Unanimous recommendation to approve

Proposed council action: Council may take action

**Town of Cary, North Carolina
Development Plan Staff Report to the Town Council
07-SP-038, Chatham Pointe
Greg Barnes, Case Manager**

REQUEST

The applicant, T.O.W., Inc., represented by Horvath Associates, has requested approval of a development plan to construct 10 townhouses and 14 patio homes at 901 West Chatham Street.

BACKGROUND INFORMATION

Applicant	T.O.W., Inc. 105 W. Main Street Durham, NC 27701
Agent	Horvath Associates, PA 16 Consultant Place Durham, NC 27707
Acreeage	8.32 acres (approximate)

General Location	South of West Chatham Street, approximately 1,200 feet southwest of the intersection of West Chatham Street and High House Road. The property's address is 901 West Chatham Street.		
Hearings / Meetings	Public Hearing N/A	Planning and Zoning Board 07/21/2008	Town Council 08/14/2008
Land Use Designations Land Use Map	High-Density Residential (HDR) for portions of the property that are approximately 480 feet from West Chatham Street. Medium-Density Residential (MDR) for portions of the property that exceed approximately 480 feet in distance from West Chatham Street.		
Zoning District Zoning Map	Residential Multi-Family Conditional Use (RMF-CU)		
Town Limits	In the Town of Cary's Corporate Limits		
Existing Use	Vacant		
Proposed Use	Residential		

The site plan layout and landscaping plan is attached to and incorporated herein as **Exhibit A**.

Public Notification: In accordance with Town policy, on April 28, 2008, staff mailed notification of the proposed development plan to all property owners within 400' of the subject property. At the time of this report, staff had received 5 inquiries from adjoining property owners pertaining to this development plan. The nature of the calls was to learn more about the proposed development. None of the callers expressed opposition to the plan.

Project Summary:

The applicant, T.O.W., Inc., represented by Horvath Associates, has requested approval of a development plan to construct 10 townhouses and 14 patio homes on approximately 8.32 acres located at 901 West Chatham Street. The plans propose 14 patio homes in the northeast portion of the development that would be surrounded by Urban Transition Buffers on three sides: east, south, and west. Both the townhouses and the patio homes would be two-story and would utilize front-loaded garages.

The plan is being reviewed by the Town Council as a result of a zoning condition that requires review of the site plan with respect to approximate placement of building(s), parking areas, and measures to ensure overall compatibility of the development's architecture with the surrounding area. No modifications from the provisions of the Land Development Ordinance (LDO) are requested.

CONSISTENCY WITH THE LAND DEVELOPMENT ORDINANCE AND DESIGN STANDARDS

A. Transportation:

Existing Section: 2-lane minor thoroughfare, Variable Right-of-way

Future Section: 3-lane collector (45'B-B), 67' Right-of-way

Road Improvements: None scheduled by the Town

Sidewalks Requirements: Sidewalks required on both sides

Bicycle Requirements: 14' wide outside lanes

Transit Requirements: None

Traffic Analysis: A traffic study (07-TAR-256) was conducted by HNTB. This study evaluated 19 single-family homes (land use code 210) and 10 condominiums/ townhomes (land use code 230). The trip generation is 25 PM trips, which exceeded the LDO threshold at the time the study was undertaken. The traffic study identified the following mitigations:

- Move the curb line to the east and construct additional pavement along the site frontage and immediately upstream and downstream of the proposed site driveway to

allow enough pavement width to make West Chatham Street a three-lane cross section consistent with existing laneage upstream and downstream of the proposed site driveway.

B. Parks & Greenways:

In accordance with the Parks, Recreation and Cultural Resources Facilities Master Plan, a public greenway trail is proposed along the riparian buffers crossing the southern and eastern portions of the property. The developer has agreed to dedicate to the Town a conservation and greenway easement over approximately 4.2 acres of designated open space in these areas. A recreation payment-in-lieu would be required for the residential development in accordance with the LDO.

C. Environmental:

Applicant needs to secure a Federal 404 permit and a State 401 permit for stream crossing before initiating any construction related activity. Once the plan is approved, this requirement would be addressed as a staff-initiated condition of acceptance of the master plan set submitted for staff signatures.

D. Buffers:

In accordance with the LDO, a 30-foot buffer is provided along portions of the property adjacent to multi-family dwellings, a 40-foot buffer is provided along portions of the property adjacent to single-family dwellings, a 20-foot buffer is provided along portions of the property adjacent to residentially-zoned vacant parcels, and a 10-foot buffer is provided along portions of the property adjacent to land designated as open space. A 40-foot wide buffer is required along portions of the site that adjoin existing commercial property. However, the buffer is proposed to vary in width from 10 feet -40 feet. LDO Section 7.2.10(D), Allowable Modifications and Reductions, provides flexibility in meeting buffer standards by allowing for the preservation of existing healthy vegetation within the site to be credited towards meeting required perimeter buffers at a rate of 1.5 times. The square footage of buffer area required adjacent to the commercial property is 12,477 square feet. The amount of buffer area actually provided is 4,718 square feet, leaving 7,759 square feet of the perimeter buffer not provided. The plans propose to permanently set aside an additional 6,378 square feet of existing native forest area to compensate for the reduced buffer area adjacent to the commercial property. This proposal exceeds the preservation requirement (7,759 square feet divided by a rate of 1.5) by approximately 1,205 square feet and represents an allowable alternative to strict compliance of providing a 40-wide wide buffer.

E. Streetscape:

As required, a 50-foot opaque streetscape is proposed along portions of the property that adjoin West Chatham Street.

ADDITIONAL REFERENCE INFORMATION

Staff Recommendation:

The plan complies with all requirements and with staff recommendations. Staff recommends approval of the plan.

Planning and Zoning Board Action

Date: July 21, 2008

Action: The Planning & Zoning Board unanimously approved Chatham Pointe by a vote of 9-0.

Town Council Action

Date: August 14, 2008

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

d. SITE PLAN 07-SP-115, McDonald's

Location: 1299 Kildaire Farm Road

Request: The applicant, McDonald's USA, LLC, represented by Commercial Site Design, PLLC, has requested approval of a development plan to demolish and rebuild a restaurant with drive-through services. The plans propose to reduce the required amount of parking from 42 to 35 parking spaces, representing a 17% reduction in the required parking.

Speaker: Mr. Greg Barnes

Planning and Zoning Board Recommendation: Unanimous recommendation to approve

Proposed council action: Council may take action

**Town of Cary, North Carolina
Development Plan Staff Report to the Town Council
07-SP-115, McDonald's
Greg Barnes, Case Manager**

REQUEST

The applicant, McDonald's USA, LLC, represented by Commercial Site Design, PLLC, has requested approval of a development plan to demolish and rebuild a restaurant with drive-through services at 1299 Kildaire Farm Road. The plans propose to reduce the required amount of parking from 42 to 35 parking spaces, representing a 17% reduction in the required parking.

BACKGROUND INFORMATION

Applicant	McDonald's USA, LLC 4601 Six Forks Road, Ste. # 200 Raleigh, NC 27609		
Agent	Commercial Site Design, PLLC 8312 Creedmoor Road Raleigh, NC 27613		
Acreage	0.96 acres (approximate)		
General Location	Northeast corner of High Meadow Drive and Kildaire Farm Road. The property's address is 1299 Kildaire Farm Road.		
Hearings / Meetings	Public Hearing N/A	Planning and Zoning Board 07/21/2008	Town Council 08/14/2008
Land Use Designations	Commercial (COM)		
Zoning District	PDD Major. Located within Kildaire Farm Planned Development District, with a Zoning Equivalent of General Commercial.		
Town Limits	In the Town of Cary's Corporate Limits		
Existing and Proposed Use	Restaurant with drive-through facility		

The site plan layout, landscaping plan and front building elevations are all attached to and incorporated herein as **Exhibit B**.

Public Notification: In accordance with Town policy, on May 12, 2008, staff mailed notification of the proposed development to all property owners within 400 feet of the subject property. At the

time of this report, staff has received no inquiries from adjoining property owners pertaining to this development plan.

Project Summary: The applicant, McDonald's USA, LLC, represented by Commercial Site Design, PLLC, has requested approval to replace the existing restaurant with drive-through, originally approved and constructed in 1985, with a new restaurant with drive-through on approximately 0.96 acres. The new restaurant would contain 4,026 square feet (approximately 100 square feet less than the existing restaurant building) and is located at the northeast corner of the intersection of High Meadow Drive and Kildaire Farm Road. The new building would be certified as a Leadership in Energy and Environmental Design (LEED) building.

The plans propose to reduce the required amount of parking from 42 spaces to 35 parking spaces, resulting in a 16% reduction in required parking. Plans proposing to reduce the required amount of parking by more than 10% must be reviewed by the Planning and Zoning Board and must be approved by the Town Council.

Applicant's Justification for Approval:

The following statements (shown below offset in italics) are provided by the applicant in response to the criteria listed in the LDO to be considered by Town Council when reviewing a request for a reduction in parking. These statements do not necessarily represent the views or opinions of the Town of Cary. Any statements as to the type, quality or physical features are at the discretion of the applicant:

McDonald's USA, LLC hereby requests that the Town of Cary consider and accept the proposed buffer width reductions for the above noted proposed redevelopment. Configuring the redevelopment plan of this site was a challenge, as the existing site is non-conforming with many current code requirements, including the buffer widths. The proposed site redesign, however, provides for the required plantings in the buffer yards and is requesting a reduction only in the required widths. The proposed redevelopment increases the total amount of landscape buffering, while preserving a large amount of the existing mature trees. Therefore, we believe this reduction would provide for the intent of the buffers while also allowing for a successful redevelopment of a dated property.

The following is a listing of items that this redevelopment project provides, thus requiring the need for the requested buffer allowances:

- 1) The parking along Kildaire Farm Road has been eliminated and the building has been positioned closer to the road to provide for more street presence. This generates an increased width of the buffer yard in this area by approximately four feet.*
- 2) The existing dumpster facility has been relocated to the interior of the site and away from its current location at the entrance to High Meadow Drive. This provides increased buffering of the service facilities and affords better access. The buffer yard along High Meadows Drive near the rear access drive has been increased by approximately 10'.*
- 3) The foundation planting around and within the interior of the site has been increased. This allows for additional landscaping and for shading of the parking lot and the drive-thru facilities.*
- 4) The existing 13 mature maple, oak and crepe myrtle trees ranging from 12 inches in caliber to 25 inches in caliber have been preserved around the project. In most instances, the landscape areas around these trees have been increased. Additional plantings have been added to all buffer yards to comply with the quantities necessary for the Type "C" buffer yards.*
- 5) In addition to the above, McDonald's, LLC is requesting a 7 space or 17% reduction to the required parking. Considering the size of the existing site and the zoning requirements, it is not possible to provide for the required parking. In fact, some of the*

same items noted in the buffer request could not be provided if the full parking quantity had to be reached. The property is an out-parcel of Saltbox Village. With this use and with the close proximity of compatible uses it can be expected that there will be shared trips between the properties thus reducing the need for the full amount of code-required parking. The redesign of pedestrian access and the availability of bicycle parking encourage customers to visit the business without a vehicle. Additionally, the LEED design and theme would attract customers that would consider alternative travel modules. The current use of the property provides for quick service, thus reducing the amount of time cars occupy the parking spaces. A large part of the business is to service customers while they remain in their vehicles, thus reducing the need for parking spaces.

CONSISTENCY WITH THE LAND DEVELOPMENT ORDINANCE AND DESIGN STANDARDS

A. Transportation:

Existing Section: 5-lane undivided major thoroughfare, approximately 90 feet of R/W

Future Section: 4-lane divided landscaped median, 100 feet R/W

Road Improvements: None scheduled by the Town

Sidewalks Requirements: Sidewalks required on both sides

Bicycle Requirements: 14-foot wide outside lanes

Transit Requirements: None

Traffic Analysis: A traffic study was not required since the square footage and land use remained essentially the same and does not generate in excess of 20 peak hour trips.

Twenty trips was the ordinance threshold at the time of the original site plan submittal.

Though the number has since increased to 50 peak hour trips, no study would be required under the new threshold.

B. Parks & Greenways:

According to the Parks, Recreation & Cultural Resources Facilities Master Plan, no issues are related to this site.

C. Environmental:

No issues.

D. Buffers:

The original approved plans provided a 10-foot wide intermittent buffer along the northern side of the site and a variable width buffer 6-foot to 10-foot wide along the eastern side of the site. The overall buffer width provided between the proposed site and the adjoining Saltbox Village Shopping Center varies from 15 feet to 20 feet along the northern side of the site and would vary from 10 feet to 15 feet along the eastern side of the site. The proposed plan would maintain similar buffer widths by providing 10-foot wide buffers along the northern and eastern sides of the site, as generally provided for in the plan as originally approved. The resulting buffers would be enhanced with additional landscaping exceeding the typical intermittent buffer standard.

Based on current LDO requirements, a 20-foot wide buffer would be required between two adjoining commercial developments. However, LDO Section 4.2.3(D)(6)(a) states:

"Landscaping shall comply with the standards of Section 7.2, except that variations from these standards may be permitted where it is demonstrated that the proposed landscaping sufficiently buffers uses from each other, ensures compatibility with land uses on surrounding properties, creates attractive streetscapes and parking areas, and is consistent with the urban design objectives and/or character of the area."

The proposed northern and eastern 10-foot wide buffers would sufficiently buffer the adjoining commercial development and is consistent with urban design objectives and with enhancing the overall character of the area.

E. Streetscape:

The plans, as originally approved, provided a streetscape that varied in width from eight feet to 22 feet along Kildaire Farm Road and High Meadows Drive. The proposed plan would provide a 10-foot wide streetscape along both Kildaire Farm Road and High Meadow Drive. The new streetscape would contain a combination of street trees, ornamental trees, and a parking area with screening hedge. The proposed streetscapes exceed Cary's streetscape planting requirements.

Based on current LDO requirements, the streetscape along Kildaire Farm Road would be 30-foot wide and would be 15-foot wide along High Meadow Drive. However, as mentioned in the previous Buffer Section of this report, LDO Section 4.2.3(D)(6)(a) states: "*Landscaping shall comply with the standards of Section 7.2, except that variations from these standards may be permitted where it is demonstrated that the proposed landscaping sufficiently buffers uses from each other, ensures compatibility with land uses on surrounding properties, creates attractive streetscapes and parking areas, and is consistent with the urban design objectives and/or character of the area.*"

The reduced streetscape width is preferred in urban areas if it allows buildings to be located closer to adjoining roadways, thus encouraging pedestrian interaction. Therefore, the reduced streetscape width would be sufficiently landscaped creating an attractive streetscape, and is consistent with urban design objectives.

F. Additional Landscape Observations:

Through corresponding with the applicant during the site plan review process, staff advised the applicant that foundation plantings would be required along the side of the building containing the drive-through. The drive-through window should be designed to project out from the building's façade a distance sufficient to allow for the installation of foundation plantings for at least 50% of the length of the building.

Staff has also advised the applicant that additional screening would be required at areas along both adjoining streetscapes where no vehicular use area screen is proposed. Staff further advised the applicant that the plantings used to screen the vehicular use area needed to be of a size and/or variety that could obtain a height of three feet in three years.

As of this report, staff has received no confirmation from the applicant that the above requirements would be addressed in the plan. The following LDO Sections support the above statements:

- a) LDO Section 7.2.6(D) requires a semi-opaque barrier between an adjoining roadway right-of-way and a proposed vehicular use area and requires landscape screening material be at least two feet high at the time of installation.
- b) LDO Section 7.2.6(A) states that all vehicular use areas utilized for parking be screened from off site views by evergreen plantings that will attain a height of three feet within three years of planting.
- c) LDO Section 7.2.9(B) states that foundation plantings are required on all non-loading and non-service sides of non-residential buildings.

G. Parking:

Cary's LDO requires one parking space for every 150 square feet, or per three occupants (whichever is greater), for a restaurant use. The existing restaurant provides 45 parking spaces. The new restaurant would require 42 parking spaces. The plans propose 35 parking spaces, which is a 17% reduction in the amount of parking required by the LDO.

LDO Section 7.8.2(H) allows the Town Council to consider reductions of up to 25 percent in the number of designated parking spaces upon finding that such a reduced number would be sufficient to satisfy the demand for parking expected for the use based on: the nature of the use; the number of trips generated; the times of day when the use generates the most trips;

and the extent to which other establishments are located on the same property, thereby reducing the number of vehicle trips required between different establishments.

It is anticipated that some patrons from adjoining shopping centers would walk to the restaurant thus compensating for the proposed reduction in parking by seven parking spaces. Based on the availability of parking in the area and the need to preserve the proposed 10-foot buffers along the northern and eastern sides of the site, staff supports the proposed 17% reduction in parking

H. Architecture:

The proposed building would utilize the same exterior color and the same brick as currently used on the Saltbox Village Shopping Center. The proposed building would also utilize yellow standing seam metal roof components, as well as metal awnings. Following the Planning and Zoning Board meeting, the awning color was agreed to be changed from two-tone yellow to a green color consistent with the green awnings currently in use in the shopping center.

ADDITIONAL REFERENCE INFORMATION

Staff Recommendation:

The new building design and the enhanced landscaped areas represent significant improvements over the current site and building design. Staff recommends approval of the plan with the following conditions:

- a) That 10-foot wide buffers be provided along the northern and eastern sides of the site;
- b) That 10-foot wide streetscapes be provided along both adjoining roadways;
- c) That the amount of parking be reduced from 42 parking spaces to 35 parking spaces.
- d) That foundation plantings be installed along all sides of the building;
- e) That the vehicular use area screen located in the streetscape be continuous and utilize a variety of plant materials capable of obtaining a height of three feet in three years; and,
- f) That the proposed metal awnings be a shade of green to match the existing awning color found in the Saltbox Village Shopping Center.
- g) That the high-intensity yellow roof color be changed to a color that has similar levels of lightness as the colors found in the Saltbox Village Shopping Center.

Planning and Zoning Board Action

Date: July 21, 2008

Action: The Planning & Zoning Board unanimously (9-0) recommended approval of the proposed site plan as presented by staff.

Following the Planning and Zoning Board meeting the applicant revised the plan to address the vehicular screen requirement (item e above) and agreed to change the awning color from two-tone yellow to green as currently used in the shopping center and install foundation plantings on all sides of the building (items d and f above).

Town Council Action

Date: August 14, 2008

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

3. Operations Committee, August 7, 2008 *(any committee consent agenda item pulled for discussion will be discussed at the end of the committee discussion portion of the agenda, which is item G on this agenda)* **(Mr. Smith)**

- a. **Recommendations Regarding the Council Directed Reduction to the FY2009 General Fund Budget (AD09-001)**

Committee unanimously recommended approval of the identified list of reductions to the general fund operating budget totaling \$3,506,378 and the associated detailed budget ordinance and general ledger account adjustments necessary to implement these changes.

STAFF REPORT

Operations Committee, August 7, 2008

Recommendations Regarding the Council Directed Reduction to the FY2009 General Fund Budget (AD09-001)

Consideration of specific items identified to achieve the reduction directed by Council at its last FY2009 budget work session on June 24, 2008

Speaker: Mr. William Coleman

From: William B. Coleman, Jr., Town Manager

Prepared by: Scott Fogleman, Budget Director

Approved by: William B. Coleman, Jr., Town Manager

Approved by: Benjamin T. Shivar, Assistant Town Manager

The Cary Town Council directed at its budget work session on June 24 for the staff to research opportunities for reducing the fiscal year 2009 general fund operating budget. The budget adoption vote at the regular Town Council meeting on June 26, 2008 consisted of approving the Town Manager's Recommended Budget along with a list of changes. Item 12 on the adopted list of changes as shown below addressed the reduction:

"12. The recommended general fund operating budget for FY 2009 reflected an increase of 7.8% compared to the FY 2008 adopted budget. At Council's direction to review the budget for reduction possibilities, this percentage increase has been reduced from 7.8% to 4.5%. This will result in a reduction to the general fund recommended operating budget of \$3,506,378. For budget ordinance purposes and Council adoption, the net impact including all other changes noted herein, will be reflected as an adjustment to the "Department Allocation Accounts" line item in the general fund budget. This will result in an FY 2009 adopted general fund operating budget that is 4.5% higher than the FY 2008 adopted general fund operating budget. Specific areas resulting in budget reductions are being examined by staff for those areas that will least impact direct service provision to citizens in FY 2009. The specific list of changes and resulting specific budget ordinance amendments will be presented to the Town Council for approval at a later date.

Below is a summary of the items chosen for reduction in the FY2009 budget. The shaded items were already specifically identified in the list of changes approved as part of budget adoption. The remaining items have been identified to achieve the total reduction required:

Elimination of additional staff & truck request in Recycling due to automated recycling program	(640,471)
Reduction of class & pay impact - actual versus budgeted in recommended	(38,530)
Change scope of tennis court fences from replacing to maintenance	(26,000)
Additional reimbursement for price increase for jet truck in utility fund	(20,000)
Add dues & membership in Council budget to join ICLEI	1,750
Additional travel and training in Council budget for Sister Cities	2,000
Add contract services for review of Time Warner Cable request by the Public Information Office	10,000
Add wireless connection charges for Police laptops	12,600
Increase C-Tran subsidy due to change in fare increase proposal	15,313
Price increase to purchase jet trucks in Operations	20,000
Price increase to purchase automated trucks in Solid Waste	25,000
Salary and benefits for Council appointed positions	32,081
Delay of base vehicle replacements (net of \$125K for potential additional maintenance costs)	(1,194,863)
Delay hiring of 11.75 new positions until January 1, 2009	(296,460)
1.00 Accountant I	
1.00 Database Analyst Position	
0.50 Safety Technician	
1.00 Police Officer I	
2.00 Emergency Communications Officer I's (These savings would be realized even without this budget reduction effort. Due to the current number of ECO positions already in the hiring process, our anticipated capacity to hire and train ECOs through the end of calendar 2008 is currently full as there are a limited number of call answering stations in the 911 center to perform the very thorough training process.)	
0.50 Police Support Services Technician	
1.00 Police Corporal (School Resource Team)	
1.00 Parks Planner	
0.25 Senior Park Operations Technician	
0.25 Parks Operations Technician	
1.00 Athletics Program Specialist	
0.50 PWUT Data Control Technician	
0.75 PWUT Administrative Assistant	
1.00 Facility Maintenance Worker II	
Move vehicle purchase to related capital project Class 8 Refuse-Truck (33000+ GVW)	(235,500)
Delay median plantings (High House Road - \$54,000 & Chapel Hill Road - \$126,000)	(180,000)
Move vehicle purchase to related capital project Class 8 Refuse-Truck (33000+ GVW)	(175,000)
Move vehicle purchase to related capital project Class 8 Refuse-Truck (33000+ GVW)	(175,000)

Delay athletic field turf renovation (renovate fields 4/5 and add drainage improvements)	(150,000)
Reduce traffic signal cabinet replacement	(90,250)
Delay parking lot resurfacing projects (Cary Depot and Fire Station 5)	(79,300)
Reduce picnic table replacement project at Bond Park (replace only severely damaged tables)	(66,000)
Delay force main discharge manhole covering	(63,800)
Delay athletic field fencing replacement (Middle Creek and Annie Jones)	(63,500)
Reduce merchant fee budget from \$425,000 to \$375,000	(50,000)
Delay encryption software for laptop computers	(40,000)
SUV Vehicle Capabilities (4X4) (Removed due to delay of replacement vehicles)	(24,060)
Revised pricing on "body removal" services	(12,000)
Revised pricing on BMW Motorcycle lease	(9,000)
Carpet replacement at the Department of Motor Vehicles building	(7,700)
Removed equipment for spare vehicle reallocation due to delay of replacement vehicles	(6,724)
Herb Young Community Center cinder block wall screening	(3,500)
Total	(3,528,914)

Fiscal Impact: The items in the list above were chosen to minimize the FY2009 operating impact to the organization and the citizens we serve. The net result of these changes is a reduction to the general fund operating budget of \$3,528,914. This exceeds the targeted reduction amount of \$3,506,378 by \$22,536.

Staff Recommendation: Staff recommends approval of the identified list of reductions to the general fund operating budget totaling \$3,506,378 and the associated detailed budget ordinance and general ledger account adjustments necessary to implement these changes

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

b. Request for Additional Funding – White Oak and Bachelor Branch Interceptor and Pump Station Elimination Projects (EN09-005)

Committee unanimously recommended additional funding in the amount of \$75,200 be transferred from the Green Level Interceptor Project (SW1130), which currently has a budget of \$5,775,000, to the White Oak and Bachelor Branch Interceptor and Pump Station Elimination Project (SW1098).

STAFF REPORT

Operations Committee, August 7, 2008

Request for Additional Funding – White Oak and Bachelor Branch Interceptor and Pump Station Elimination Projects (EN09-005)

Request for additional funding to complete the White Oak Interceptor Project
Speaker: Mr. Tim Bailey

From: Tim Bailey, PE, Engineering Director
Prepared by: Jarrod A. Buchanan, PE, Engineer
Approved by: William B. Coleman, Jr., Town Manager
Approved by: Benjamin T. Shivar, Assistant Town Manager

Staff requests additional funding for additional work to the White Oak and Bachelor Branch Interceptor and Pump Station Elimination Projects. The Engineering Department prepared the design plans and contract specifications for the additional work, and will conduct construction administration and inspections throughout construction.

Remaining work includes the addition of a sluice gate manhole and modifications to the White Oak Pump Station, which will allow the Town's Public Works Department to direct the wastewater to either the new White Oak Interceptor or the White Oak Pump Station. This capability will allow the Public Works Department to regulate the amount of flow between the two river basins, meeting the Town's Inter-Basin Transfer requirements, while also ensuring that the amount of wastewater going to the Durham County Triangle WWTP does not surpass the amount specified in the contract.

Fiscal Impact: A total of \$4,468,107 has been appropriated to date to Project SW1098. At present, there are not sufficient funds in the construction account to complete the project. An additional \$75,200 is needed to complete the project.

Staff Recommendation: Staff recommends funds in the amount of \$75,200 be transferred from the Green Level Interceptor Project (SW1130), which currently has a budget of \$5,775,000, to the White Oak and Bachelor Branch Interceptor and Pump Station Elimination Project (SW1098). The scope of the Green Level Interceptor Project (SW1130) has been reduced by various other projects in the area. The remaining balance after the requested transfer will be sufficient for the current remaining scope.

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

c. PSNC Easement Request (EN09-011)

Committee unanimously recommended approval of a request from PSNC for an easement across Town property located to install a gas line on Kildaire Farm Road.

STAFF REPORT

Operations Committee, August 7, 2008

PSNC Easement Request (EN09-011)

Consideration of a request from PSNC for an easement across Town property located on Kildaire Farm Road

Speaker: Mr. Tim Bailey

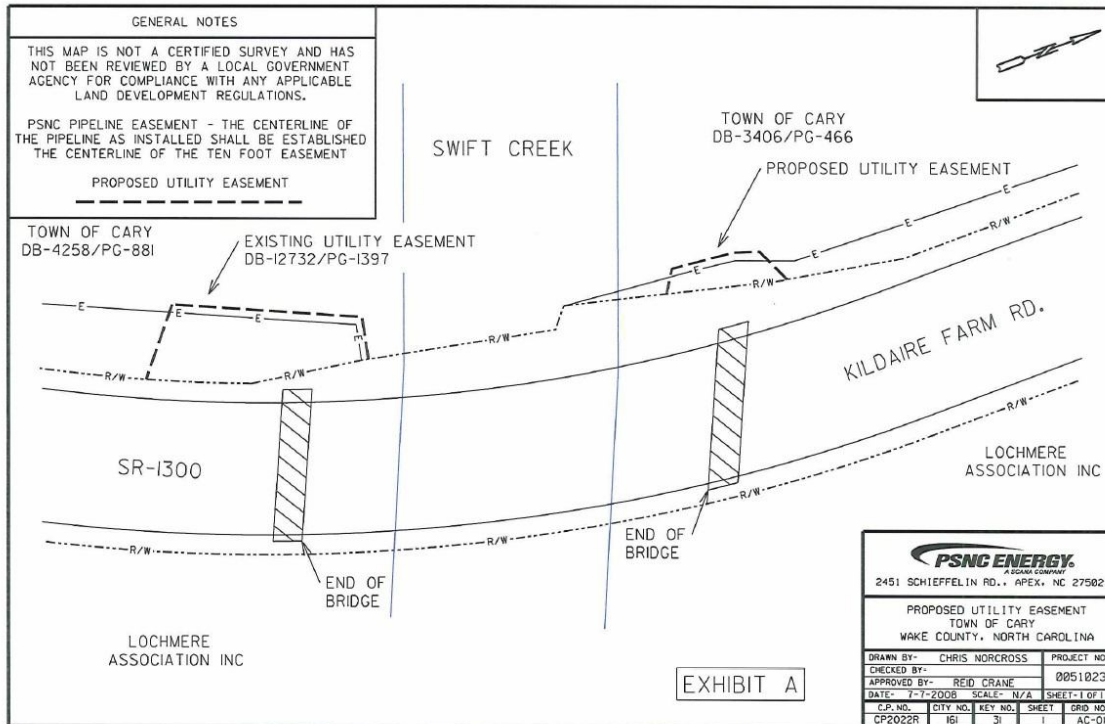
From: Tim Bailey, P.E., Engineering Director

Prepared by: Yulonda Moore, Real Estate Specialist

Approved by: William B. Coleman, Jr., Town Manager

Approved by: Benjamin T. Shivar, Assistant Town Manager

Based on a request from NCDOT, PSNC is requesting an additional easement from the Town to install a gas line on Kildaire Farm Road. PSNC has an existing gas line currently on Town property located at the existing bridge over Swift Creek. The new easement is needed due to NCDOT's request that the gas line not be placed under the new bridge being constructed as part of the Kildaire Farm Road Widening Project. PSNC will retain access to the existing easement. The proposed easement is shown on the map below.



Fiscal Impact: There will be no fiscal impact to the Town due to this easement.

Staff Recommendation: Staff recommends approval and execution of this request.

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

d. Contract Award – Professional Services for the Kit Creek Pump Station Phase 2 Expansion Project (EN09-013)

Committee unanimously recommended awarding a contract to Brown and Caldwell for professional engineering design and construction administration services related to the Kit Creek Pump Station Phase 2 Expansion project with a not-to-exceed value of \$98,800 and an additive alternative contract to Brown and Caldwell for potential permitting work on SEPA EA/EIS, stream buffer, and floodplain associated with this project with a value of \$10,200.

STAFF REPORT

Operations Committee, August 7, 2008

Contract Award – Professional Services for the Kit Creek Pump Station Phase 2 Expansion Project (EN09-013)

Consideration of awarding a contract for design and construction phase services for the Kit Creek Pump Station Phase 2 Expansion Project

Speaker: Mr. Tim Bailey

From: Tim Bailey, PE, Engineering Director

Prepared by: Shuyan Tian, PE

Approved by: William B. Coleman, Jr., Town Manager
 Approved by: Benjamin T. Shivar, Assistant Town Manager

Background

The Town has received proposals from consulting engineering firms for professional engineering design and construction administration services related to the design and construction of the Kit Creek Pump Station Phase 2 Expansion project.

Kit Creek Pump Station Phase 2 Expansion project was funded in the FY2009 budget. Kit Creek pump station is an 8.2 mgd sewage pump station. It provides service to the developing areas of NW Cary, part of RTP, and part of Morrisville. Proposed future development in the pump station's service area coupled with the anticipated schedule for availability of the Western Wake Regional Water Reclamation Facility has generated the need to expand the existing pump station.

This project will include three different options to expand Kit Creek pump station. Option 1 is to maximize the capacity of existing major equipment and building with minor mechanical upgrades. Option 2 will increase the pumping capacity to 10 mgd. Option 3 will increase the capacity to 12 mgd. Options 2 and 3 will require major equipment and piping upgrades. We asked proposing consultants to discuss their approaches and fee proposal for each option, since effort for design and construction management will be different for each option.

We have received proposals from three consulting firms. The three proposing firms and their corresponding price proposals are summarized as follows:

<u>Firm</u>	Option 1 Maximize existing capacity	Option 2 Increase to 10 mgd	Option 3 Increase to 12 mgd
	Total Fee	Total Fee	Total Fee
Brown and Caldwell	\$98,800	\$98,800	\$98,800
URS	\$94,630	\$218,664	\$268,780
Arcadis*	\$81,000	\$387,490	\$440,030
*Note: Arcadis did not summarize total fee for each option. Arcadis' fee for Option 1 listed in the table includes final design fee only. The fees for Option 2 and Option 3 include fees for final design, bidding service, construction file transfer, construction administration, and record drawing transfer.			

Staff from the Town's Administration Department, Engineering Department, and Public Works and Utilities Department formed a selection committee. The selection committee reviewed the proposals for relevant experience of the firm and its personnel assigned to this project, project approach, proposed schedule, and cost. The Town of Cary has exempted this project from the provisions of North Carolina General Statute 143-64.31 as it is in the best interest of its citizens to procure these services through a process of open competition. Therefore, cost proposals were considered in making the final selection.

All three firms proposed qualified teams of consultants to perform this work. After a thorough review of the proposals, the selection committee recommends in favor of awarding the engineering services contract for this project to Brown and Caldwell. Brown and Caldwell demonstrated that they understand the pump station expansion is to bridge the short term sewer service requirements with the anticipated schedule of Western Wake Regional Water Reclamation Facility. They proposed a unique and cost effective project approach accordingly.

Fiscal Impact: Project SW1183 Kit Creek Pump Station Phase 2 Expansion in the amount of \$2,000,000 has been established which is sufficient for professional services and construction costs of the project. Short-term personnel impacts include providing project administration. It is expected that the project will be complete in October 2009. Long-term operating impacts include operating and maintaining the expanded pump station by Public Works and Utilities staff.

Staff Recommendation: Staff recommends awarding a base contract to Brown and Caldwell for professional engineering design and construction administration services related to the Kit Creek Pump Station Phase 2 Expansion project with a not-to-exceed value of \$98,800. Staff also recommends awarding an additive alternative contract to Brown and Caldwell for potential permitting work on SEPA EA/EIS, stream buffer, and floodplain associated with this project with a value of \$10,200.

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

e. Contract Award – Professional Services for the Wastewater Pump Station Improvements Project (EN09-014)

Committee unanimously recommended awarding a contract to Stearns and Wheler for professional engineering design and construction administration services related to the Wastewater Pump Station Improvements project with a not-to-exceed value of \$102,680.

STAFF REPORT

Operations Committee, August 7, 2008

Contract Award – Professional Services for the Wastewater Pump Station Improvements Project (EN09-014)

Consideration of awarding a contract for design and construction phase services for the Wastewater Pump Station Improvements project

Speaker: Mr. Tim Bailey

From: Tim Bailey, PE, Engineering Director

Prepared by: Shuyan Tian, PE

Approved by: William B. Coleman, Jr., Town Manager

Approved by: Benjamin T. Shivar, Assistant Town Manager

Background

The Town has received proposals from consulting engineering firms for professional engineering design and construction administration services related to the design and construction of the Wastewater Pump Station Improvements project. This project will provide flood proofing and bypass pump connections at four existing wastewater pump stations.

The Wastewater Pump Station Improvements project was funded in the FY2009 budget.

We have received proposals from five consulting firms. The five proposing firms and their corresponding price proposals are summarized as follows:

Firm	Total Fee
Stearns & Wheler	\$102,680
URS	\$357,865
KCI	\$122,500
Coulter Jewell Thames	\$255,440
Wetherill Engineering	\$68,570

Staff from the Town's Administration Department, Engineering Department, and Public Works and Utilities Department formed a selection committee. The selection committee reviewed the proposals for relevant experience of the firm and its personnel assigned to this project, project approach, proposed schedule, and cost. The Town of Cary has exempted this project from the provisions of North Carolina General Statute 143-64.31 as it is in the best interest of its citizens to procure these services through a process of open competition. Therefore, cost proposals were considered in making the final selection.

After a thorough review of the proposals, the selection committee recommends in favor of awarding the engineering services contract for this project to Stearns and Wheler. The proposal from Stearns and Wheler includes well researched information on the existing pump stations and presents specific and sound approaches on the improvements for each of the pump stations.

Fiscal Impact: Project SW1175 Wastewater Pump Station Improvements was established in the amount of \$800,000 which is sufficient for professional service and construction cost of the project. Short term personnel impacts include providing project administration. It is expected that the project will be complete in October 2009. Long term operating impacts is minimal and the pump stations will continue to be operated and maintained by Public Works and Utilities staff.

Staff Recommendation: Staff recommends awarding a contract to Stearns and Wheler for professional engineering design and construction administration services related to the Wastewater Pump Station Improvements project with a not-to-exceed value of \$102,680.

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

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- f. **Condemnation Resolutions – Campbell Road Gravity Interceptor Project (EN09-015)**
Committee unanimously recommended approval of condemnation resolutions to secure necessary easements for the Campbell Road Gravity Interceptor Project.

STAFF REPORT

Operations Committee, August 7, 2008

Condemnation Resolutions – Campbell Road Gravity Interceptor Project (EN09-015)
Consideration of approval of condemnation resolutions to securing necessary easements for the Campbell Road Gravity Interceptor Project
Speaker: Mr. Tim Bailey

From: Tim Bailey, P.E., Engineering Director
Prepared by: Yulonda Moore, Real Estate Specialist
Approved by: William B. Coleman, Jr., Town Manager
Approved by: Benjamin T. Shivar, Assistant Town Manager

Staff has been working with property owners to secure easements necessary for the construction of Campbell Road Gravity Interceptor Project. Negotiations are ongoing and progress has been made toward making amicable settlements. Staff has been working with affected owners on this project and has reached settlement with numerous owners.

In order to meet the construction schedule, Staff proposes approval of condemnation resolutions. Staff will continue to negotiate with property owners in an effort to reach an amicable and mutual settlement.

Fiscal Impact: The Town will incur the cost of eminent domain proceedings which are estimated to be initially between \$1,600 and \$5,000 and will be paid from existing and available funding within the Campbell Road Gravity Interceptor Project (SW1129).

Staff Recommendation: Staff recommends approval and execution of the resolutions authorizing condemnation.

A RESOLUTION AUTHORIZING CONDEMNATION TO ACQUIRE CERTAIN PROPERTY OF
JOHN THOMAS COSTON & ELIZABETH S. COSTON

WHEREAS, the governing body of the Town of Cary hereby determines that it is necessary and in the public interest to acquire certain property owned by John Thomas Coston and Elizabeth S. Coston for the following public purposes:

To protect the public health, to provide the public with an adequate and sound wastewater system, and to improve such system to meet the need for expanded or upgraded services, the Town of Cary is condemning the herein described easement interests, specifically, to construct and maintain the Campbell Road Gravity Interceptor Project.

WHEREAS, the proper officials or representatives of the Town of Cary have been unable to acquire the needed interest in this property by negotiated conveyance.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE TOWN OF CARY, THAT:

1. The Town of Cary shall acquire by condemnation, for the purposes stated above, the property and easement interest in a portion of certain tracts described in Deed Book 5207, page 890, Wake County Registry.

The easement area taken is more particularly described as follows:

UTILITY AND PIPELINE EASEMENT:

COMMENCING at a point on the common property line of the Grantors and Tricia York & Christopher Garrett, now or formerly, said point being the northwestern property corner of the Grantors, said point also being an existing iron pipe with NCGS Grid Coordinates North = 722538.59 and East = 2076794.00; proceeding thence along said property line N 87°13'21" W 6.45' to the true **POINT AND PLACE OF BEGINNING**, thence proceeding N 87°13'21" W, 23.06', thence N 32°36'50" E, 75.32', thence N 57°23'10" W, 2.50', thence N 32°36'50" E, 188.87', thence N 44°46'47" W, 34.43', N 45°13'13" E, 2.50', thence N 44°46'47" W, 205.00', thence S 45°13'13" W, 5.00', N 44°46'47" W, 37.10', thence N 20°08'58" E, 91.28', thence S 87°20'10" E, 31.45', thence S 20°08'58" W, 81.65', thence S 44°46'47" E, 18.01', thence S 45°13'13" W, 5.00', thence S 44°46'47" E, 205.00', thence N 45°13'13" E, 2.50', thence S 44°46'47" E, 54.46', thence S 32°36'50" W, 208.90', thence N 57°23'10" W, 2.50', thence S 32°36'50" W, 63.85' to the **POINT AND PLACE OF BEGINNING**, containing 14,996 square feet, more or less according to a map by the Town of Cary Engineering Department entitled "Campbell Road Interceptor Easement Map for the Property of Dillard, Brenda, T. Trustee, Tricia e. York & Christopher S. Garrett, Coston, John Thomas & Elizabeth S., Pritchett, Rildia J. Trustee", dated 4/10/2008.

2. The attorneys representing the Town of Cary are directed to institute the necessary proceedings under NCGS § 40A-1, et. Seq. as authorized by NCGS § 40A-3(b)(4) and/or other appropriate statutory provisions and local acts to acquire the property herein described.

A RESOLUTION AUTHORIZING CONDEMNATION TO ACQUIRE CERTAIN PROPERTY OF
BRENDA T. DILLARD, TRUSTEE, OR SUCCESSOR TRUSTEE UNDER THE BRENDA T.
DILLARD REVOCABLE TRUST

WHEREAS, the governing body of the Town of Cary hereby determines that it is necessary and in the public interest to acquire certain property owned by Brenda T. Dillard, Trustee, or successor trustee, under the Brenda T. Dillard Revocable Trust for the following public purposes:

To protect the public health, to provide the public with an adequate and sound wastewater system, and to improve such system to meet the need for expanded or upgraded services, the Town of Cary is condemning the herein described easement interests, specifically, to construct and maintain the Campbell Road Gravity Interceptor Project.

WHEREAS, the proper officials or representatives of the Town of Cary have been unable to acquire the needed interest in this property by negotiated conveyance.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE TOWN OF CARY, THAT:

2. The Town of Cary shall acquire by condemnation, for the purposes stated above, the property and easement interest in a portion of certain tracts described in Deed Book 12534, page 779, Wake County Registry.

The easement area taken is more particularly described as follows:

UTILITY AND PIPELINE EASEMENT:

COMMENCING at a point on the common property line of Tricia York and Christopher Garrett, now or formerly and John and Elizabeth Costin, now or formerly, said point being the northwestern property corner of Tricia York and Christopher Garrett and a southern property corner of John and Elizabeth Costin, said point also being an existing iron pipe; thence along the said common property line N 87° 13' 21" W, 6.45' to the true **POINT AND PLACE OF BEGINNING**, proceeding thence S 32°36'50" W, 100.71', thence S 08°42'41" E, 107.14', thence S 42°15'44" E, 54.31', thence S 01°58'46" W, 27.57', thence S 87°26'19" E, 27.12', thence S 42°15'44" E, 53.55', thence N 47°44'16" E, 5.00', thence S 42°15'44" E, 38.27', thence S 09°53'18" W, 77.67', thence N 80°06'42" W, 2.50', thence S 09°53'18" W, 46.42', thence S 09°56'46" E, 64.82', thence N 86°37'03" W, 25.69', thence N 09°56'46" W, 63.27', thence N 09°53'18" E, 50.79', thence N 80°06'42" W, 2.50', thence N 09°53'18" E, 62.99', thence N 42°15'44" W, 23.59', thence N 47°44'16" E, 5.00', thence N 42°15'44" W, 152.75', thence N 08°42'41" W, 120.71', thence N 32°36'50" E, 96.79', thence S 87°13'21" E, 23.06' to the **POINT AND PLACE OF BEGINNING**, containing 12, 729 square feet, more or less, according to a map by the Town of Cary Engineering Department entitled "Campbell Road Interceptor Easement Map for the Property of Dillard, Brenda T. Trustee, Tricia E. York & Christopher S. Garrett, Coston, John Thomas & Elizabeth S., Pritchett, Rildia J. Trustee", Sheet 1 of 3, dated 2/15/2008.

2. The attorneys representing the Town of Cary are directed to institute the necessary proceedings under NCGS § 40A-1, et. Seq. as authorized by NCGS § 40A-3(b)(4) and/or other appropriate statutory provisions and local acts to acquire the property herein described.

A RESOLUTION AUTHORIZING CONDEMNATION TO ACQUIRE CERTAIN PROPERTY OF
TRICIA E. YORK AND CHRISTOPHER S. GARRETT

WHEREAS, the governing body of the Town of Cary hereby determines that it is necessary and in the public interest to acquire certain property owned by Tricia E. York and Christopher S. Garrett for the following public purposes:

To protect the public health, to provide the public with an adequate and sound wastewater system, and to improve such system to meet the need for expanded or upgraded services, the Town of Cary is condemning the herein described easement interests, specifically, to construct and maintain the Campbell Road Gravity Interceptor Project.

WHEREAS, the proper officials or representatives of the Town of Cary have been unable to acquire the needed interest in this property by negotiated conveyance.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE TOWN OF CARY, THAT:

3. The Town of Cary shall acquire by condemnation, for the purposes stated above, the property and easement interest in a portion of certain tracts described in Deed Book 9626, page 2067, Wake County Registry.

The easement area taken is more particularly described as follows:

UTILITY AND PIPELINE EASEMENT:

COMMENCING at a point on the common property line of the Grantors and John & Elizabeth Coston, now or formerly, said point being the northwestern property corner of the Grantors, said point also being an existing iron pipe with NAD 83 NCGC North = 722538.59 and East = 2076794.00, thence proceeding south along the western property line of the Grantors to the true **POINT AND PLACE OF BEGINNING**, thence S 42°15'44" E, 38.87', thence N 87°26'19" W, 27.12', thence N 01°58'46" E, 27.57' to the **POINT AND PLACE OF BEGINNING**, containing 374 square feet, more or less according to a map by the Town of Cary Engineering Department entitled "Campbell Road Interceptor Easement Map for the Property of Dillard, Brenda T. Trustee, Tricia E. York & Christopher S. Garrett, Coston, John Thomas & Elizabeth S., Pritchett, Rildia J. Trustee", Sheet 1 of 3, dated 4/10/2008.

2. The attorneys representing the Town of Cary are directed to institute the necessary proceedings under NCGS § 40A-1, et. Seq. as authorized by NCGS § 40A-3(b)(4) and/or other appropriate statutory provisions and local acts to acquire the property herein described.

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

(Resolutions 2008-42, 2008-43 and 2008-44 are also on file in the town clerk's office.)

g. Requests for Assistance with Street Storm Drainage System Rehabilitation

(EN09-016)

Committee unanimously recommended approval of requests for assistance with street storm drainage system rehabilitation as part of the Town's annual storm drainage improvements.

STAFF REPORT

Operations Committee, August 7, 2008

Requests for Assistance with Street Storm Drainage System Rehabilitation (EN09-016)

Consideration of Requests for Assistance with Street Storm Drainage System Rehabilitation

Speaker: Mr. Dan Clinton

From: Tim Bailey, P.E., Director of Engineering

Prepared by: Dan Clinton, P.E.

Approved by: William B. Coleman, Jr., Town Manager

Approved by: Benjamin T. Shivar, Assistant Town Manager

Beginning in Fiscal Year 2007, council adopted a program to conduct annual storm drainage improvements to Cary's streets. Problem areas such as those where water stands at the curb, pipes fail and/or freezing water remains on the road surface are examples of the types of maintenance issues intended to be addressed by this project.

This type of routine maintenance of the Town's storm drainage system prevents failures and alleviates safety hazards. Town staff annually evaluates the storm drainage system and ranks problem areas from highest to lowest priority. Annual funding is applied to those projects ranked as highest priority first.

Summary of Street Storm Drainage Rehabilitation Projects

The following table summarizes staff's recommendation and cost estimate for 11 projects identified this year.

Table for Street Storm Drainage Rehabilitation Projects

Location	Identified Problem	Work Plan	Rating (maximum 40 points)	Estimated Cost*	Cumulative Estimated Costs
Woodland Dr and Lake Dr	Standing water at intersection	Add Curb/Gutter and Flume	24	\$9,000	\$9,000
Orion Ct	Seep coming up at road and flowing across cul-de-sac	New Catch Basin and French Drain	23	\$12,000	\$21,000
813 Roanoke Dr	Gutter misaligned	Redo curb and add catch basin	23	\$10,000	\$31,000
Ralph Dr and Penny Ln	Standing water at intersection	Rework road and curb	22	\$9,000	\$40,000
424 Farmington Woods	Holding water in the radius	Replacement of the curb and re-working of the roadway	22	\$9,000	\$49,000
115 Leeward Ct	Standing water in cul-de-sac	New Catch Basin and Curb	20	\$12,000	\$61,000
717 Madison Ave	Water jumping curb causing property damage	2 catch basins to improve drainage	19	\$32,000	\$93,000
211 Swiss Lake	Severe settlements in the curb as well as the roadway	Replace curb and some extensive road work	14	\$37,000	\$130,000
McDuff and	Standing water	Catch basin and	14	\$17,000	\$147,000

Location	Identified Problem	Work Plan	Rating (maximum 40 points)	Estimated Cost*	Cumulative Estimated Costs
Laughridge Cir	at intersection	curb			
1005 Vickie Rd	Standing water at intersection	catch basins and curb work	13	\$47,000	\$194,000
Fox View Place	Low road with standing water in cul-de-sac	Overlay road, redo multiple driveway entrances and add catch basin	12	\$95,000	\$289,000
* Prices listed are very preliminary. Sub-surface utility investigation has not yet been conducted, and utilities are assumed not be in conflict.					

Projects are ranked according to degree of impact to the surrounding roadway/private property, safety risk, engineering complexity, and overall cost.

Fiscal Impact: The Street Storm Drainage Rehabilitation Project (ST1172) has been funded in the amount of \$500,000. All eleven projects identified within this report can be completed within existing funding. Any remaining funding will either be utilized to fund future such efforts this year or returned to General Capital Reserve at the end of the fiscal year for other capital project needs.

Staff Recommendation: Staff recommends approval of the listed storm drainage system rehabilitation projects.

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

h. Installment Purchase Contract Resolution (FN09-001)

Committee unanimously recommended approval of a resolution accepting a proposal by RBC Bank for a ten-year term installment purchase agreement at a fixed rate of 3.56% to finance the purchase of two fire trucks.

STAFF REPORT

Operations Committee, August 7, 2008

Installment Purchase Contract Resolution (FN09-01)

Consideration of a resolution to enter into a lease purchase contract with RBC Bank to finance the purchase of two fire trucks

Speaker: Ms. Karen Mills

From: Karen A. Mills, Finance Director

Prepared by: Pat Liguori, Deputy Treasurer

Approved by: William B. Coleman, Jr., Town Manager

Approved by: Benjamin T. Shivar, Assistant Town Manager

REVIEW: A service ladder truck replacement and an aerial service ladder truck in the existing capital budget were included for a total of \$1,554,000. These trucks have been received and final equipment for these trucks should be in place by September 1. Both of these trucks were budgeted to be funded with installment financing through lease purchase agreements. A request for proposal to provide financing for the fire trucks was issued to ten institutions. Eight institutions

responded. The request specified the Town's interest in a financing contract with a ten-year or fifteen-year term at a fixed rate of interest. A summary of the proposal results is as follows:

Bidder	10 Year Interest Rate Fixed	10 Year Estimated Total Financing Cost (a)	15 Year Interest Rate Fixed	15 Year Estimated Total Financing Cost (a)
RBC Bank	3.560%	\$247,492	3.890%	\$418,608
BB&T	3.670%	255,406	3.810%	409,250
Bank of America	3.553%	268,938	n/a	n/a
Wachovia Bank	3.930%	274,265	4.420%	310,429
Sun Trust Leasing	4.000%	279,213	4.270%	462,512
First-Citizens Bank	3.990%	279,495	n/a	n/a
Koch Financial	4.730%	333,314	5.000%	549,141
Fifth Third Bank (b)	n/a	n/a	n/a	n/a

(a) estimated total cost includes total projected interest plus other fees, such as attorney fees and documentation fees as provided in the response to the RFP

(b) Fifth Third Bank provided a response based on a balloon repayment term that was not requested in the RFP and was not beneficial to the Town

Both 10 and 15 year financings were requested in the bid to evaluate the necessity of a 15 year repayment in case the 10 year financing repayment exceeded budget. RBC Bank proposed the lowest total estimated financing cost of \$247,492 for a 10 year repayment term that is within budgeted debt service for this purpose. RBC Bank requires Council approval of a resolution that authorizes the Town to enter into a lease with RBC Bank and that authorizes certain Town officials to execute the necessary documents. The proposed resolution is attached. The resolution refers to the contract document, which is included below.

Fiscal Impact: Annual debt service is estimated to be \$156,239 per year for ten years. The forecasted debt service on the fire trucks was included in the committed debt service budget for \$170,299 in the General Fund as discussed in FY 2009 budget work sessions and included in the FY 2009 proposed and adopted budget.

Staff Recommendation: Staff recommends that Council accept the RBC Bank proposal for a ten-year term installment purchase agreement at a fixed rate of 3.56% and approve the attached resolution.

The Town Council of the Town of Cary, North Carolina, held a regular meeting in the Council Chambers at the Town Hall located at 316 N. Academy Street in Cary, North Carolina, the regular place of meeting, at 6:30 p.m. on August 14, 2008.

Present: Mayor Harold Weinbrecht Jr., presiding, and Council Members Gale Adcock, Don Frantz, Ervin Portman, Jennifer Robinson, Julie Robison and Jack Smith

* * * * *

Mayor Weinbrecht introduced the following resolution, the title of which was read and copies of which had been distributed to each Council Member:

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN
INSTALLMENT FINANCING CONTRACT, AN ESCROW DEPOSIT
AGREEMENT AND RELATED DOCUMENTS IN CONNECTION WITH THE
FINANCING OF EQUIPMENT FOR THE TOWN**

BE IT RESOLVED by the Town Council (the "Town Council") of the Town of Cary, North Carolina (the "Town") as follows:

Section 1. The Town Council does hereby find and determine as follows:

(a) There exists in the Town a need for the acquisition of an aerial fire truck and fire rescue truck for use by the Town in carrying out its governmental functions (collectively, the "Equipment").

(b) The Town has solicited proposals from banks and other financial institutions to provide the financing for such Equipment and, upon careful review and consideration of the proposals submitted by banks to provide such financing, the Town desires to accept the proposal of RBC Bank (USA) (the "Lender").

(c) The Town Council has determined that the most efficient manner of financing the Equipment will be through the entering of an Installment Financing Contract (the "Contract") with the Lender pursuant Section 160A-20 of the General Statutes of North Carolina, as amended. Pursuant to the Contract, the Lender will advance moneys to the Town in an amount sufficient to pay the cost of the Equipment, and the Town will repay the advancement in installments, with interest (the "Installment Payments").

(d) In order to secure the repayment pursuant to the terms of the Contract by the Town of the advance of moneys for acquisition of the Equipment, the Town will grant to the Lender a security interest in the Equipment pursuant to the Contract.

(e) In order to provide for the operation of the Escrow Account (as defined in the Contract), into which the advancement will be deposited, the Town will enter into an Escrow Deposit Agreement (the "Escrow Deposit Agreement") with the Lender.

(f) There has been presented to the Town Council at this meeting drafts of the Contract and the Escrow Deposit Agreement.

Section 2. The proposal of the Lender to provide financing through the Contract for the purpose of providing funds to pay the cost of the Equipment is hereby accepted, subject to further approval of the particular documentation related thereto by the Town Council, and all actions of the Town Manager, Assistant Town Manager and the Finance Director of the Town accepting the proposal of the Lender are hereby ratified, authorized and approved.

Section 3. In order to provide for the financing of the Equipment, the Town is hereby authorized to enter into the Contract and receive an advancement pursuant thereto in a principal amount not to exceed \$1,315,000. The Town shall repay the advancement in installments due in the amounts and at the times set forth in the Contract. The payments of the installment payments shall be designated as principal and interest as provided in the Contract.

Section 4. The Town Council hereby approves the Contract and the Escrow Deposit Agreement in substantially the forms presented at this meeting. The Mayor, the Town Manager, the Assistant Town Manager and the Finance Director of the Town are each hereby authorized to execute and deliver on behalf of the Town said documents in substantially the forms presented at this meeting, containing such insertions, deletions and filling in of blanks as the person executing such documents shall approve, such execution to be conclusive evidence of approval by the Town Council of any such changes. The Town Clerk or any Deputy or Assistant Town Clerk of the Town is hereby authorized and directed to affix the official seal of the Town to said documents and to attest the same.

Section 5. No deficiency judgment may be rendered against the Town in any action for breach of any contractual obligation authorized pursuant to this resolution and the taxing power of the Town is not and may not be pledged directly or indirectly to secure any moneys due under any contract herein authorized.

Section 6. The Mayor, the Town Manager, the Assistant Town Manager, the Finance Director and the Town Clerk of the Town, and any other officers, agents and employees of the Town, are hereby authorized and directed to execute and deliver such closing certificates, opinions and other items of evidence as shall be deemed necessary to consummate the transactions described above.

Section 7. The Town hereby represents that it reasonably expects that it, all subordinate entities thereof and all issuers issuing obligations on behalf of the Town will not issue in the aggregate more than \$10,000,000 of tax-exempt obligations (not counting private-activity bonds except for qualified 501(c)(3) bonds as defined in the Code) during calendar year 2008. In addition, the Town hereby designates each of the installment payments under the Agreement as a "qualified tax-exempt obligation" for the purposes of the Code.

Section 8. This resolution shall take effect immediately upon its passage.

Upon motion of Council Member Portman, seconded by Council Member Frantz, the foregoing resolution entitled "RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AN INSTALLMENT FINANCING CONTRACT, AN ESCROW DEPOSIT AGREEMENT AND

RELATED DOCUMENTS IN CONNECTION WITH THE FINANCING OF EQUIPMENT FOR THE TOWN" was passed by unanimous vote.

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

(Resolution 2008-45 is also on file in the town clerk's office.)

The installment financing contract is attached to and incorporated herein as **Exhibit C**.

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- i. **Town Center Park PARTF Grant Conversion** (PR09-004)
Committee unanimously recommended approval of conducting a public hearing regarding conversion of a PARTF grant from Town Center Park property to a replacement park property.

STAFF REPORT

Operations Committee, August 7, 2008

Town Center Park PARTF Grant Conversion (PR09-04)

Consideration of conducting a public hearing regarding conversion of a PARTF grant from Town Center Park property to a replacement park property

Speaker: Ms. Mary Henderson

From: Mary Henderson, Director, PRCR

Prepared by: Sandi Bailey, Parks Planner

Approved by: William B. Coleman, Jr., Town Manager

Approved by: Benjamin T. Shivar, Assistant Town Manager

At its April 24, 2008 meeting Council approved staff's pursuit of a conversion of a grant from the North Carolina Park and Recreation Trust Fund (PARTF) from property in the Town Center Park to a park site at the southeast corner of Louis Stephens Road and Morrisville Carpenter Road (Staff Report PR08-023). In order to complete this conversion PARTF requires that the Town conduct a public hearing on the matter. Staff proposes that a public hearing be held at the August 28, 2008 meeting of the Town Council. Following the public hearing PARTF requires that the Town Council adopt a resolution approving the conversion which staff anticipates presenting to Council for adoption at its September 11, 2008 meeting.

This conversion will remove the deed restrictions from the original parcel (325 S. Academy Street) for which the funds were granted thereby freeing that parcel for construction of the vehicular square as approved per the Downtown Streetscape Plan. This conversion will also require that deed restrictions be placed on the replacement property indicating that the parcel will be used for public park purposes in perpetuity.

Since Council's approval of staff report PR08-023, staff has advertised the conversion in the Cary News and posted notices on both sites requesting public comments, in accordance with PARTF requirements. A public meeting regarding the conversion process was held at the regularly scheduled meeting of the Parks, Recreation and Cultural Resources Advisory Board on July 7, 2008 and notification was mailed to residents surrounding both sites. Public comments received to date have primarily questioned whether a park would still be located in downtown, and whether there would be opportunity for public input on the design of the new park site at Louis Stephens Road and Morrisville Carpenter Road. No comments opposing the conversion have been received.

Fiscal Impact: The fiscal impact will be staff time required to prepare for the public hearing, as well as the costs of advertising the public hearing.

Staff Recommendation: Staff recommends approval of the public hearing schedule outlined above for the PARTF grant conversion.

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

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- j. **Merging Teen Advisory Committee and Teen Council Executive Board (PR09-006)**
Committee unanimously recommended that responsibilities of the Teen Advisory Committee be merged into the duties of the Teen Council Executive Board and that staff be directed to proceed with the process of removing the Teen Advisory Committee language from the Town Code and related Policy Statements.

STAFF REPORT

Operations Committee, August 7, 2008

Merging Teen Advisory Committee and Teen Council Executive Board (PR09-06)

Consideration of merging Teen Advisory Committee with Teen Council Executive Board

Speaker: Mr. Dwayne Jones

From: Mary G. Henderson, Director, PRCR

Prepared by: Dwayne Jones, Recreation Manager

Approved by: William B. Coleman, Jr., Town Manager

Approved by: Benjamin T. Shivar, Assistant Town Manager

In 2003, a Teen Advisory Committee was established through the Board and Committee appointment process. The Teen Advisory Committee's purpose is to advise Town Council through the PRCR Advisory Board on teen issues. In 2005, the Committee was restructured at the request of the Advisory Board to accommodate more youth participation. The Parks, Recreation and Cultural Resources Advisory Board requested staff merge the responsibilities of the Teen Advisory Committee with the Teen Council Executive Board to avoid duplication of responsibilities.

Background of Cary Teen Council and Teen Advisory Committee

The Teen Council was established in 1989 with a focus on promoting teen programming and volunteerism in the community. In addition, the Teen Council was chartered as a North Carolina State Youth Council under the office of the Governor. Teen Council membership included only 17 participants in 1996, and currently, has grown to over 300. Initiatives and milestones of the Teen Council and Teen Advisory Committee are outlined below.

1997 PRCR staff work team was developed to jointly plan and implement teen programs. The Parks, Recreation and Cultural Resources Advisory Board appointed board member Dr. Tim Swank to serve as a liaison for teen programs and services.

1999 Creating Assets Reaching Youth, a Cary based nonprofit organization was established. C.A.R.Y. focus was based on The Search Institute research on characteristics young people need to grow up healthy, caring and responsible. This initiative was funded through the Duke Endowment. The Town supported C.A.R.Y. through staff involvement and program partnerships (Jamfest). C.A.R.Y. assisted with fundraising efforts for Sk8-Cary.

- 2000 The subcommittee appointed by PRCR Advisory Board to discuss teen programming. Teens begin serving on Advisory Board and Committees as well as the Sister Cities Commission.
- 2001 Teen Scene developed as icon for teen programs and services.
- 2002 Developed and implemented marketing strategies to include supplemental program brochure for teen programs and services.
- 2003 Appointment of the first Teen Advisory Committee consisting of 5 adults and 5 youth from Teen Council. The purpose of the Committee was to advise staff and Council, continue efforts of C.A.R.Y. (which dissolved due to lack of funding), provide program direction and support, develop teen involvement and recognition in the community, empower teens in the decision-making process.
- 2004 The first Cary Teen Forum was held which received the Innovative Program Award via North Carolina Recreation and Park Association. The Teen Advisory Committee developed a mission statement:
The Mission of the Cary Teen Advisory Committee is to provide feedback to the Town Council through the PRCR Advisory Board on quality of life issues for teens in Cary, by increasing youth voice and involvement in the community, fostering youth and adult partnerships, building character traits within youth, and supporting programs established by Teen Council and Teen Scene.
- 2005 Teen Advisory Committee restructured to include 4 adults and 11 youth from Teen Council. Council approved the PRCR Committee Structure Policy #148 that gave voting rights to teens on PRCR Committees.
- 2006 The Teen Advisory Committee adds Town Government presentations to the agenda in order to get feedback on current Town issues. Topics include Water Conservation, Gang Awareness, CTRAN, Town Services in general, and Aquatics.

Since the Teen Advisory Committee was established in 2003, the primary focus has been planning and implementation of the annual Teen Forum. The event centers on addressing teen issues in the community and is planned for teens by teens. Another positive outcome of the Committee has been the continued effort to provide a teen voice via committee appointments, volunteerism, and program development.

For many, the difference between Teen Council and the Teen Advisory Committee has been difficult to distinguish. This is very understandable as the groups share corresponding purposes as identified in the statements below.

Teen Council Purpose: (Per current by-laws)

To provide recreation and service oriented activities for Cary youth and teen residents. This service is offered to students of Middle School and High School age. The organizing and supervising of the programs and projects will be done by the students for the students with advice and guidance from their adult advisors.

To promote the development of leadership and teamwork skills, community awareness, service, education, fundraising, recruitment, social and recreational opportunities, for the members involved in the organization.

To serve as advisor to the Cary Town Council on issues concerning the Middle School and High School students of Cary.

Teen Advisory Committee Purpose: (Per current by-laws)

Develop programs and events that build strong character traits and skills from teen life into adulthood.

Develop and maintain continuing dialog with all teens including private schooled and home schooled students.

Encourage continuing feedback from all teens.

Keep all information avenues up-to-date.

Partnership with existing and on-going teen programs, events and the Teen Council.

There are several issues that challenge the Committee structure in its current configuration. The first is the lack of adult interest in serving on the Committee. Outside of the PRCR Advisory Board involvement, adult participation has been minimal. The Committee does not receive enough applications to fill vacant positions. Typically, half of the adult positions go unfilled with the current Committee consisting of only two adults. In addition, the formal meeting process does not provide an atmosphere for teens to openly discuss their ideas and opinions. As Teen Council has grown, they have developed into a dynamic organization that has led to a duplication of effort with the Teen Advisory Committee. Since the Teen Advisory Committee was established in 2003, Teen Council has grown from 158 to over 300.

Moving Forward

The current structure of the Teen Council Executive Board provides the necessary conduit for teens to communicate to Town Council. The Teen Advisory Committee could be eliminated from the current Boards and Commissions structure. The Executive Board would continue meeting the purpose of the Teen Advisory Committee through advising staff and Council through Teen Council; appointment and participation in PRCR Advisory Board/Committee meetings; providing program direction and support via Teen Council; developing teen involvement and recognition in the community via Teen Council; empowering teens in the decision-making process by appointments to PRCR Advisory Board, PRCR Committees, Sister Cities Commission, and Public Arts Advisory Board; and allocating Teen Forum responsibilities of the Program sub-committee of Teen Council.

PRCR would continue to provide a staff liaison to Teen Council. PRCR Advisory Board would appoint one adult as Teen Council liaison. Teen Council President would attend PRCR Advisory Board meetings. Cary Police would maintain a School Resource Officer liaison via Cary Police Department. Opportunities for input into Town projects and initiatives can be presented to full Teen Council.

The Teen Advisory Committee unanimously voted to merge the two groups at its July 2008 meeting. The PRCR Advisory Board will make a final recommendation on this matter at the August 4, 2008 meeting and staff will report that recommendation at the Operations Committee meeting.

Fiscal Impact: None

Staff Recommendation: Staff recommends that the responsibilities of the Teen Advisory Committee be merged into the duties of Teen Council Executive Board and that staff be directed to proceed with the process of removing the Teen Advisory Committee language from the Town Code and related Policy Statements.

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

k. Cary Depot Municipal Agreement (EN09-012)

Committee unanimously recommended entering into a Municipal Agreement with the North Carolina Department of Transportation for renovations to and expansion of the Cary Depot.

STAFF REPORT

Operations Committee, August 7, 2008

Cary Depot Municipal Agreement (EN09-012)

Consideration of entering into a municipal agreement with the North Carolina Department of Transportation for renovations and expansion of the Cary Depot

Speaker: Mr. Tim Bailey

From: Tim Bailey, PE, Director of Engineering

Prepared by: Susan Parker, Engineer

Approved by: William B. Coleman, Jr., Town Manager

Approved by: Benjamin T. Shivar, Assistant Town Manager

The North Carolina Department of Transportation (NCDOT) has forwarded a municipal agreement for the Town's consideration proposing to renovate and expand the Town owned Cary Depot to accommodate a full service staffed train passenger station at NCDOT's expense. A lease agreement between NCDOT, Amtrak and the Town will be developed prior to construction and brought to Council for approval.

The new Amtrak station will promote mass transit and provide a more convenient ticket office for citizens. Currently, the closest ticket offices are in Raleigh and Durham. It would also benefit Cary by encouraging more people to the downtown area.

Although not related to this agreement, the current tenant, the NCDOT Division of Motor Vehicles, will be relocating to 1387 SE Maynard Road by the end of the year.

Fiscal Impact: According to the terms of the proposed agreement, the Town would be responsible for any utility relocations or adjustments that may be required for the proposed construction. NCDOT has recently initiated the design process so it is unclear at this time if any utility work will be necessary. This project is not currently funded in the Town's budget and any future funding needs would be sent to Council for consideration.

Another import element of the agreement is the lease rate. NCDOT is proposing a lease rate to be negotiated at a below-market rate. The tenant will pay its own utility and janitorial expenses. The tenant is responsible for all service operations; therefore no Town employees would be required.

Staff Recommendation: Staff recommends entering into the Municipal Agreement with the NCDOT for the Cary Depot improvements.

NORTH CAROLINA
WAKE COUNTY

July 14, 2008

NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

MUNICIPAL AGREEMENT

AND

TOWN OF CARY

THIS AGREEMENT is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the "Department" and the Town of Cary, a municipal corporation, hereinafter referred to as the "Municipality".

WITNESSETH:

WHEREAS, the Department has plans to make certain improvements within the Municipality under Project WBS TBA, Wake County, and,

WHEREAS, the Department in accordance with N.C. General Statute § 136-44.35 is authorized to assure the maintenance of safe, adequate, and efficient rail transportation services; and

WHEREAS, the parties to this Agreement have approved the Project with cost participation and responsibilities for the Project as hereinafter set out.

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, as follows:

SCOPE OF THE PROJECT:

1. The Project consists of renovations and expansion of the Cary Depot located at 211 North Academy Street, whereby the entire building facility will be modified to accommodate a full service staffed train passenger station. Site modifications shall include extending the "H-Line" platform approximately 200 feet towards the west.

PLANNING, DESIGN, AND RIGHT OF WAY:

2. The Department shall prepare the environmental and/or planning document and obtain any environmental permits needed to construct the Project, prepare the Project plans and specifications, administer and/or award the construction contract, and supervise Project construction. The Municipality shall assign a staff Project Manager to the Project at no expense to the Project. All work shall be done in accordance with applicable codes and ordinances. The Municipality shall not charge the Department for any and all fees the Municipality typically imposes for similar projects, including but not limited to impact fees, application fees, plan review fees, permitting fees, and inspection fees. Except that the Contractor shall be required to pay any re-inspection fees it incurs.

3. The Department shall be responsible for preparing a lease, sublease or other documents acceptable to the Municipality and for a term mutually agreed to between the Municipality, Department, and Amtrak (Tenant) prior to the beginning of construction. The lease agreement will include provision for C-Tran and Triangle Transit passengers and parking. The Municipality agrees that the lease rate will be an amount which will be negotiated at a below market rate. Tenant will pay its own utility and janitorial expenses.

UTILITIES:

4. The Municipality, without any cost or liability whatsoever to the Department, shall relocate and adjust all municipally-owned utilities in conflict with the Project and shall exercise any rights which it may have under any franchise to effect all necessary changes, adjustments, and relocations of telephone, telegraph, and electric power lines; underground cables, gas lines, and other pipelines or conduits; or any privately-owned or publicly-owned utilities.

CONSTRUCTION AND MAINTENANCE:

5. The Department shall construct, or cause to be constructed, the Project in accordance with the plans and specifications of said Project as filed with, and approved by, the Department and the Municipality. The Department shall administer the construction contract for

said Project. The Department or its contractors shall maintain builders risk, property and liability insurance on the premises during construction and up-fitting in amounts acceptable to the Municipality and naming the Municipality as loss payee. The Department will be responsible for providing the value of all permanent fixtures to the Municipality for valuation purposes to ensure adequate insurance coverage.

6. Upon completion, the Project shall be owned and maintained by the Municipality.

ADDITIONAL PROVISIONS:

7. It is the policy of the Department not to enter into any agreement with another party that has been debarred by any government agency (Federal or State). The Municipality certifies, by execution of this agreement, that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Department or Agency.

8. To the extent authorized by state and federal claims statutes, each party shall be responsible for its respective actions under the terms of this agreement and save harmless the other party from any claims arising as a result of such actions.

9. The Department shall have the right to abandon the Project at any time before construction commences.

10. Subject to paragraph 11, if the Department has not completed the Project within 12 months of the date of this Agreement, the Agreement will terminate unless extended in writing by mutual consent of Department and Municipality.

11. Upon commencing construction, the Department shall complete the project and pay 100% of the Project costs.

12. Subject to paragraph 11, the completion of this project by the Department is dependent on availability of funds.

IT IS UNDERSTOOD AND AGREED upon that the approval of the Project by the Department is subject to the conditions of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed, in duplicate, the day and year heretofore set out, on the part of the Department and the Municipality by authority duly given.

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

I. Specialized Recreation Study Implementation (PR09-005)

Committee unanimously recommended approval of the Specialized Recreation Study and directing staff to implement a phased approach to developing a proposal for a new program area that will initiate a number of the study recommendations for consideration during the FY10 budget process.

STAFF REPORT

Operations Committee, August 7, 2008

Specialized Recreation Study Implementation (PR09-05)

Consideration of Implementation of Specialized Recreation Study

Speaker: Mr. Dwayne Jones

From: Mary G. Henderson, Director, PRCR

Prepared by: Dwayne Jones, Recreation Manager

Approved by: William B. Coleman, Jr., Town Manager

Approved by: Benjamin T. Shivar, Assistant Town Manager

Background

Funds were included in the FY07 budget to conduct a study and needs assessment (attached to and incorporated herein as **Exhibit D**) on specialized recreation services. The initial budget request was submitted due to receiving a number of citizen inquiries regarding programs and services for people with disabilities. The study and needs assessment will help staff better understand the demand for specialized recreation services for the citizens of Cary. Traditionally, staff has included people with disabilities in regular programs or referred participants to the City of Raleigh Parks and Recreation, Special Populations Division. The City of Raleigh has been the main public provider for specialized recreation services as they receive funding from Wake County.

In November 2007, Management Learning Laboratories (MLL) of Winston-Salem was selected from four respondents to a Request for Proposal to conduct the study. The consultant team was comprised of Dr. Ananda Mitra, president of MLL and founder of the Survey and Research Center at Wake Forest University; Dina Trunzo, Certified Recreation Specialist and Manager of Therapeutic Recreation for Somerset County, New Jersey; and Dr. Fran Daly, Certified Recreation Specialist, Associate Professor and Coordinator for Recreation Administration at Kean University. The study was completed in April 2008.

The goals of the study were as follows:

- *Identify and evaluate existing private for profit and nonprofit community resources and government agencies providing services within Cary.*
- *Collection and analysis of demographic information on the general population to include categorizing types of disabilities.*
- *Identify specific recreation programs and services to be considered by the Town to meet the needs of citizens.*
- *Identify partnerships and potential funding sources available to the Town.*
- *Provide a recommendation on how demand for recreation services might be addressed by the Town and prioritize programs and services for consideration.*

Process

The consultant took a two-fold approach in conducting the study and needs assessment. The first element was to gather demographic, interest, attitudes and opinions from potential users. Focus groups were assembled to assist the consultant in developing a user survey instrument. Users are considered as people with a disability that might take advantage of recreation services offered by the Town. The final user survey was mailed to a random sample of 2000 Cary residents that were identified in the Census as disabled.

The second element of the needs assessment was to survey service providers of specialized recreation services. Service providers can be municipal or county agencies, nonprofit groups, and private for profit businesses. The information gathered during the User Focus Group meetings was used to develop the provider survey instrument. The provider survey was sent to 450 agencies across Wake County that provided services or peripheral services for people with disabilities.

Public input was vital to completing the study in order to determine the need for specialized recreation services. The PRCR Advisory Board reviewed and provided input into the survey instrument as well as received monthly updates throughout the study. A web page was created to keep citizens informed on the progress of the study as well as to display public presentations and the final report. A public meeting was held April 21, 2008 in order to review the consultants' recommendations and answer questions about the results of the study.

The study also included researching national and regional trends in therapeutic recreation. Therapeutic recreation is the terminology used by the National Recreation and Park Association (NRPA) as it relates to services for people with disabilities.

Results

Survey Data Analysis

The 2006 Census data indicates that approximately 9% of Cary residents reported having a disability. This statistic equates to 9,317 Cary residents. Users and providers were surveyed in several key areas. Complete analysis and details are included in the study.

Points of emphasis from the results of the user survey are as follows:

1. Administrative - The survey data indicates the greatest need for trained qualified staff, information on what is offered, improved inclusive language, and collaboration with surrounding communities.
2. Programs - In the program area, respondents noted the need for activities such as fitness, skill development programs and performing arts.
3. Facilities - In the facilities area, the emphasis was on access to amenities such as greenways and sidewalks.
4. Personal Opinions - Nearly half of the respondents felt that there was a need for recreation opportunities for people with disabilities.

Service providers were surveyed in three key areas: administrative, programs, and personal opinions. The survey identified existing resources and types of services offered by providers. By comparing the needs from the user results and the resources from the provider results, staff can determine gaps in services. Some examples of local service providers include the Autism Society of North Carolina, Life Experiences, Family Support Services of Wake County, and Special Olympics North Carolina.

Points of emphasis from the results of the provider survey were as follows:

1. Administrative - The provider results indicated a primary strength in providing trained staff.
2. Program – Provider strengths included offering social activities and skill development programs.
3. Personal Opinions - The general consensus from providers was that there is a lack of recreational opportunities for people with special needs.

Based on these areas of emphasis, the consultant has identified six major findings and recommendations derived from the study. These are as follows:

1. Develop a job description and the hire of a qualified Therapeutic Recreation professional.
2. Implement an ongoing staff training program on working with and understanding disabilities.
3. Provide information about what is offered and its importance to develop a local network consisting of program users, providers and caregivers. Providing an outlet for ongoing feedback and advice on services can reinforce Cary's commitment to people with disabilities.
4. Ensure that the Town information resources include language that is inclusive of people with disabilities.
5. Identify opportunities for collaboration, which could also include local municipalities and school leadership to recognize specific needs associated with school age children and develop possible collaborative programs.
6. It is important to note that the Town already provides specialized recreation services and this study is the first step in invigorating the services provided by the Town. This data, along with future studies, should be used to plan for the future.

Trend Analysis

The Americans with Disability Act (ADA) of 1990 provides for equal access to parks and recreation facilities and programs. The initial focus of ADA was physical access to facilities, however; most recently there has been a shift in addressing programmatic access for individuals. The focus has led to increasing services for people with disabilities and inclusion services. Inclusion services means combining non disabled participants with people with disabilities in the same program. Parks and Recreation agencies offering specialized recreation services have generally managed programs in one of the following ways.

1. Defined Units or Separate Division, for example, a Therapeutic Division – This structure establishes a separate division within a department.
2. Personnel assigned by geographic location or program area. In large agencies, Therapeutic Specialists might be assigned to a district or specific program area.
3. Consultant based services. Some agencies have experienced success in providing specialized recreation on a contracted services basis.

According to a 1997 survey conducted by NRPA, most agencies utilized the defined units approach in providing these services.

Locally, the City of Raleigh Parks and Recreation Department is the primary public service provider of specialized recreation in our area. As previously mentioned, Raleigh Parks and Recreation receives some funding from Wake County. At one time as much as 50% of the Special Populations Division budget was funded by Wake County. Currently, the County provides \$76,000 annually to the City of Raleigh for this program. Raleigh's Special Populations Division is comprised of six full-time permanent staff. Both segregated and inclusive programs are offered by Raleigh Parks and Recreation. On a state level, Mecklenburg County is recognized as a major provider of specialized recreation services. The consultant found a unique example of three agencies joining together to offer specialized recreation services. Davidson, Cornelius and Huntersville have collaborated to bring a variety of services to their respective communities.

PRCR Advisory Board Recommendation

The PRCR Advisory Board reviewed the study and consultant recommendations at the June 2008 meeting. The Board unanimously voted to move the study forward to Council for review and approval. In addition, Board members suggested building relationships with other agencies; identifying gaps in services; easing the use of transportation; and the possibility of sharing facilities and instructors.

Implementation Plan

The purpose of the study was to specifically determine if, and at what level, there was a need for specialized recreation services in Cary. The survey data analysis led the consultant team to recommend implementing a new program area to address services for people with disabilities. Staff is presenting two alternatives to consider for implementation.

Alternative 1

This option represents a phased approach to developing a new program area. Initially a certified Therapeutic Recreation Specialist would be contracted (or hired as a temporary employee) to initiate a number of the study recommendations that would not necessitate permanent staffing. However, a plan would also be developed for consideration during next year's budget process to fully implement the program. The scope of services to be accomplished is defined below.

1. Develop inclusion language for all PRCR communication tools including brochures, registration forms, and web pages.
2. Develop a staff training plan and initiate staff training.
3. Investigate contract services opportunities with Raleigh Parks and Recreation to conduct participant assessments.

4. Begin investigating partnership opportunities with agencies identified in the study.
5. Develop program plan, staffing plan, and cost estimates to include for consideration in the FY10 budget.

Fiscal Impact: Alternative 1

No additional funds are required to move forward with this option. The study was funded at \$25,000 however; the cost to complete the study was \$16,750. The remaining \$8,250 from FY08 can be rolled forward to FY09 and be used to complete the scope of services identified above.

Alternative 2

This option would include implementation of a new program that would involve hiring one full-time, permanent Therapeutic Recreation Specialist. The study recommendations would form the basis for the employee's work plan with the initial priorities as follows:

1. Develop a program plan and budget for initiating a full year of services for consideration in the FY10 budget.
2. Implement a pilot program based on interest identified in survey data.
3. Develop opportunities for on-going collaboration with service providers and other community partners.
4. Develop inclusion language for all PRCR communication tools including brochures, registration forms, and web pages.
5. Develop, initiate, and provide staff training.
6. Work with Raleigh Parks and Recreation staff to develop a process for conducting participant assessments.

Fiscal Impact: Alternative 2

In order to fully fund and execute the consultants' recommendations, a budget amendment would be needed in the Recreation Program budget as follows:

Permanent Salaries and Benefits (Grade 23) - \$33,591
Insurance - \$6,987
Personnel Total - \$40,578
Program Supplies - \$2,000
Furniture & Equipment - \$3,579
Operations & Maintenance Total - \$5,579
Total - \$46,157

Staff Recommendation: Acceptance of the study and approval for staff to implement Alternative 1, which is a phased approach that will initiate a number of the study recommendations with the development of a proposal for a new program for consideration during the FY10 budget process. No additional funding is required at this time with this recommendation.

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

m. Solar Photovoltaic Electrical System for the Cary/Apex Water Treatment Plant (PWUT09-002)

Committee unanimously recommended directing staff to complete detailed negotiations and to enter into a contract with a solar energy system supplier associated with Solar Energy Concepts for a pilot project to provide a solar photovoltaic electrical power system at the Cary/Apex Water Treatment Plant, ensuring that all statutory requirements for procurement are met, noting that staff is to

return to council for further consideration if any of the costs or terms deviate materially from those outlined in this staff report.

Revised 8/7/2008

STAFF REPORT

Operations Committee, August 7, 2008

Solar Photovoltaic Electrical System for the Cary/Apex Water Treatment Plant (PWUT09-02)

Consideration of entering into an agreement to provide a solar photovoltaic electrical system at the Cary/Apex Water Treatment Plant

Speaker: Mr. Steve Brown

From: Stephen J. Brown, P.E., Director of Public Works and Utilities

Prepared by: Stephen J. Brown, P.E., Director of Public Works and Utilities

Approved by: William B. Coleman, Jr., Town Manager

Approved by: Benjamin T. Shivar, Assistant Town Manager

Staff has received a proposal from Mr. Bill Jensen of Solar Energy Concepts to provide a solar photovoltaic (PV) electrical power system at the Cary/Apex Water Treatment Plant (CAWTP) to supplement the electrical power needs of this facility. This system will consist of an array of solar panels that produce electricity on the plant site. This electricity is then distributed into Progress Energy's electric distribution grid through a power meter associated with the plant's service connection. The proposal includes entering into an agreement with Progress Energy whereby they will buy the power generated by the PV system at a market rate plus an additional supplement for renewable energy.

PV's best application is to provide power in remote or hard-to-access locations where they compete favorably for cost over other power sources. PV's would be an excellent choice to power remote equipment or facilities that would otherwise require long utility line extensions. For example PV's are used at some remote wilderness National Park sites as part of a hybrid power system that relies on propane powered generators for large loads and to provide power at night and in inclement weather (ref: U. S. Department of Energy). Another good application is the new PV solar powered school flashers recently installed by the Town. These signals require little power and operate in sufficient daylight so it was more cost-effective to utilize solar powered units rather than install conventional power services. Sunlight availability in North Carolina is generally very favorable to PV use. The biggest drawback for PV systems is their high initial cost. They are much more expensive initially where conventional utility power is readily available. Long-term operating cost, however, is better than other forms of electric power such as engine generators or long utility line extensions. The life-cycle cost of the system must be considered for comparison to alternate energy sources.

A considerable number of panels are also required to meet large loads, such as a water treatment plant. The proposed PV system will provide up to 10 kilowatts of power. For comparison, the CAWTP's peak demand is currently around 3,200 kW, so the proposed PV system will offset only about 0.31% of the plant's total demand. The proposed PV system includes about 700 square feet of solar panels. The proposed system will be located on available open area at the CAWTP that will not interfere with current or future plant operations. Over 5 acres of solar panels would be required to power the entire CAWTP with solar power. This much area is not available without impacting future plant expansions. The proposed system will only generate power during daylight hours for sale back to Progress Energy. Batteries would be required to store power for uninterrupted operation at night or in inclement weather. These batteries would be expensive, heavy, and require a lot of space and supporting infrastructure. So at best, in our application, the PV system could provide power for smaller loads and trim our overall power usage, but cannot realistically meet all of our power needs under current conditions. Conventional electric utility connection and existing diesel generators must be

maintained at the CAWTP anyway to meet regulatory requirements for a redundant adequate power source around the clock and through all weather conditions. Staff research did not find any PV installations in North Carolina similar to what is proposed, although other cities are also investigating potential PV applications. However, other North Carolina cities have installed solar hot water systems at municipal buildings such as fire stations.

Federal and state legislation provides considerable tax subsidies for providers of alternative energy, up to 65% of its initial cost. Electric utilities are also required to support renewable energy initiatives with, among other things, supplemental payments. The viability of this proposal depends on these tax subsidies and supplemental payments. As a local government, the Town of Cary is not eligible to receive these subsidies. However in partnership with a private firm the Town can indirectly receive these benefits. In Mr. Jensen's proposal, private investors, through an as-yet-unnamed corporation, will purchase all of the necessary equipment to install the PV system and place it in operation. The corporation will collect federal and state solar energy subsidies to offset their initial costs. A term of 6 years is proposed by Mr. Jensen to ensure that the investors receive a modest return on their investment. The proposal calls for the corporation to own and operate the PV system for the first 6 years, after which the Town would purchase the PV system from the corporation for a lump sum payment for the residual value of the system. The Town will assume ownership and operation responsibility for the system at that time. The corporation will receive revenues from power sales during the first 6 years, and the Town will receive these revenues after that. The Town will need to enter into an agreement with Progress Energy at that time for them to purchase the electricity produced. It is estimated that Progress Energy will pay approximately 8 cents per kilowatt hour (kWH) for power produced by the PV system. Power consumed at the CAWTP currently costs the Town about 4.8 cents per kWH.

There is also much debate, and little consensus, on the overall environmental cost of solar panels. Raw material extraction and processing, manufacture, transportation and installation of the panels and supporting infrastructure consume energy and produce their own environmental impacts. However, once installed, solar panels are a simple, inexpensive, clean and reliable means of producing electricity. Staff recommends approaching this proposed project as a small scale demonstration pilot to evaluate the long-term viability of PV technology for possible larger-scale implementation in the event that improving technology and economics make PV's more attractive and competitive in the future.

~~Solar Energy Concepts is finalizing a~~ Staff will continue to evaluate a proposed detailed design and cost analysis prior to entering into a final agreement for PV service. At this time some of the details are not yet fully resolved. Final costs will be known prior to execution of any agreement with the corporation.

Fiscal Impact: The proposal estimates the total initial cost of the PV system to be \$95,000. Tax credits and deductible depreciation used by the corporation to pay down this initial cost over the 6 year term of the subsidies is estimated to be between \$70,000 and \$80,000. So in year 6, the Town would pay the corporation between \$15,000 and \$25,000 to assume ownership and operation. The final amount will depend on the actual cost of materials, how much subsidy the corporation recovers over the period and how much revenue is received for power sales. The cost of solar panels is dependent upon market conditions at the time of purchase. After the Town assumes ownership, annual revenue from the sale of power is estimated to be \$1,122 per year, or about \$94/month. This results in annual income for the Town of between 4.5% and 7.5% of its cost for the PV system. Without considering the time value of money, this income will pay back the Town's investment in 13 to 22 years. However when the time value of money is considered, the payback period is much longer using any realistic interest rate. This is why staff recommends this project be approached only as a pilot to investigate the feasibility of this technology and gain operating experience at our facilities for possible future larger scale application.

The proposal also asks the Town to consider implementing a voluntary program whereby Cary citizens can donate money to a fund for developing alternate energy projects such as this, such

as through utility bills. Staff does not recommend developing this program because it would compete with Oasis, the Town's voluntary donation program to help those in financial hardship with their Town of Cary utility bills.

Staff is **also working with Mr. Jensen on the final details of this project, to ensure that the Town will be in full compliance with the statutory requirements for procurement of this type of service and technology.** Final costs of the PV system will depend on final design details and the final amounts of the tax benefits, as well as the contract with Progress Energy for purchase of the power generated by the system. At this time, staff requests Council's direction to proceed with final **investigations and** negotiations for entering into this **type of** agreement to provide solar photovoltaic electrical power at the CAWTP **or other suitable utility facility** as a pilot program to establish the long-term benefit of this type of system. Based on this experience, the Town may wish to consider expanding this type of service in the future at ~~the CAWTP and other facilities~~ as appropriate and beneficial.

Staff Recommendation: Staff recommends that Council direct staff to complete detailed **investigations and** negotiations and enter into a contract with a solar energy system supplier ~~associated with similar to that proposed Solar Energy Concepts~~ to provide a solar photovoltaic electrical power system at the Cary/Apex Water Treatment Plant **or other suitable utility facility** within the general terms described in this staff report. **Staff will ensure that all statutory requirements for procurement are met.** Staff will return this item to Council for further consideration if any of the costs or terms deviates materially from those described in this staff report.

ACTION: Mr. Portman moved to approve the consent agenda; Mr. Frantz provided the second; council granted unanimous approval.

C. RECOGNITIONS, REPORTS, AND PRESENTATIONS

1. Special presentation by the Triangle J Capital Trees Program. **(Ms. Lois Nixon, Capital Trees Program Chair)**

Ms. Nixon presented presented the award to Mayor Weinbrecht.

D. PUBLIC SPEAKS OUT (one hour time limit)

Mr. Granger Marley urged council to change the ordinance pertaining to large home daycare facilities. His comments and petitions are attached to and incorporated herein as **Exhibit E.**

Mr. Barry Rosch spoke against daycase businesses in residential areas. He stated the daycare facility across the street from him has caused increased traffic and noise and has detracted from his quality of life.

Mr. David George of Kite Realty Group stated they are developing Parkside Town Commons and are interested in the railroad crossing item. He stated he is available to answer questions if they arise.

Ms. Kelly Commiskey stated she has personally visited about 15 daycares, none of which were open after about 6:30 p.m. She stated in our society, people work different shifts and need flexible daycare hours. She is opposed to changing the laws for all daycares because one daycare caused a problem. She suggested that daycare hours should be stated at the special

use public hearing. She fears that eliminating evening hours may lead to parents leaving their children unsupervised in the homes.

Mr. Craig McCrary distributed materials about a daycare located at 122 East Dynasty Drive (refer to **Exhibit F** attached to and incorporated herein). He has been told the business would close, but they have not closed. He stated the owners have provided false information to the county. He urged council to direct staff to find this business in default instead of continually granting extensions. He stated this business has pick-ups and deliveries at all hours of the day and night. He does not believe the children are getting the care they need.

E. PUBLIC HEARINGS

1. MIXED USE SKETCH PLAN 08-MU-002, Old Apex Townhomes

Location: 1544 Old Apex Road, approximately 1,000 feet northwest of SW Cary Parkway

Current Zoning: Residential 40 (R-40) within the Mixed Use Overlay District

Request: Mixed Use Sketch Plan – 19 townhomes

Acreage: 2.84±

Speaker: Mr. Kevin Hales

Proposed council action: Refer to the November 17, 2008 Planning and Zoning Board meeting

REQUEST

The applicant, Jerry Turner and Associates, Inc., on behalf of the property owner, Lewis Group Properties, LLC, has requested Town Council consideration of a Mixed Use Sketch Plan (MUSP) entitled, "Old Apex Townhomes." The MUSP consists of 19 townhomes located on approximately 2.84 acres, approximately 1,000 feet northwest of the intersection of Old Apex Road and Southwest Cary Parkway. The property is located within the Parkway Pointe Mixed Use Center.

Mixed Use Sketch Plans are located within the Mixed Use Overlay District (MUOD). The MUOD includes areas that are identified as "activity centers" (now referred to as "Mixed Use Centers") on the Land Use Plan and are intended to be developed following the general guidelines of the Comprehensive Plan. The MUOD is intended to promote higher-density, mixed-use developments of varying sizes, as an alternative to lower-density, separate-use suburban sprawl-type development.

Mixed Use Sketch Plans are conceptual documents that address the general density, the mix of uses, and the development patterns within a mixed use center. Less detailed than the plans required for full site plan review, the intent of MUSPs is to provide information sufficient to determine consistency with the Comprehensive Plan and with the Town's Design Guidelines. Specific development issues must be addressed for compliance with existing requirements specified in the Land Development Ordinance (LDO) when the site plan is submitted.

BACKGROUND INFORMATION

Applicant	Jerry Turner Jerry Turner and Associates, Inc. 905 Jones Franklin Road Raleigh, NC 27606 (919) 851-7150 jturner@jerryturnerassoc.com
Agent	Glenda Toppe Jerry Turner and Associates, Inc.

	905 Jones Franklin Road Raleigh, NC 27606 (919) 851-7150 gtoppe@jerryturnerassoc.com		
Staff Contact	Kevin A. Hales, Planner II Town of Cary Planning Department P.O. Box 8005 Cary, NC 27512-8005 (919) 462-3944 kevin.hales@townofcary.org		
Acreage	2.84+/-		
General Location	1544 Old Apex Road, approximately 1,000 feet northwest of the intersection of Old Apex Road and Southwest Cary Parkway		
Hearings / Meetings	Public Hearing August 14, 2008	Planning & Zoning October 20, 2008*	Town Council November 20, 2008*
Land Use Designation	Medium Density Residential (MDR)		
Zoning Districts	Residential 40 within the Mixed Use Overlay District		
Town Limits	Within Corporate Limits		
Valid Protest	Will be determined prior to Public Hearing		
Existing Use	Single-family dwelling		
Proposed Use	19 Townhomes		

* Future meeting dates are tentative

PROPERTY OWNER INFORMATION

PARCEL & OWNER INFORMATION			
Property Owner	County Parcel Number (10 digit)	Real Estate ID	Area (Deeded) Acres
Lewis Group Properties, LLC 109 Topez Lane Cary, NC 27511-6020	0753337038	0009710	2.84
Total Acres:			2.84±

CONSISTENCY WITH THE COMPREHENSIVE PLAN

A. Land Use Plan

This rezoning request conforms to the adopted Land Use Plan. The land use designation for the subject parcel is Medium Density Residential (MDR), which is typically defined as single-family attached or detached housing between 3 and 8 units per acre. This property is located within the Parkway Pointe Neighborhood Mixed Use Center.

B. Growth Management Plan

The Growth Management Plan includes the following three Guiding Principles which are relevant to this case:

1. R1 Guiding Principle: Ensure that adequate infrastructure and services are available concurrently with new development.
2. L1 Guiding Principle: Concentrate growth near existing and planned employment centers and near available and planned infrastructure to minimize costly service-area extensions.
3. A1 Guiding Principle: Increase permitted densities in preferred growth areas to encourage desired forms of development.

C. Affordable Housing Plan

The Affordable Housing Plan includes the following four goals, which may be relevant to this case:

1. Provide a full range of housing choices for all income groups, for families of various sizes, for seniors, and for persons with special challenges.
2. Facilitate the creation of a reasonable proportion of the Town of Cary's housing as affordable units providing additional homeownership opportunities for individuals and families earning between 60% and 80% of area median income and providing affordable apartments for individuals and families earning up to 60% of the area median income.
3. Encourage the location of high density housing within walking and commuting distance convenient to employment, to shopping, and to other activities, or is within a short walk to a bus or transit stop, through "mixed use" developments, through residences created on the upper floors of nonresidential downtown buildings, and through other creative strategies.
4. Assure a quality living environment and access to public amenities for all Town of Cary residents, present and future, regardless of income.

D. Transportation

Existing Section Old Apex Road: 2-lane major thoroughfare, approximately 60' R/W

Future Section Old Apex Road: 5-lane major thoroughfare, 91' R/W

Road Improvements: None scheduled by the Town

Sidewalks Requirements: Sidewalks required on both sides

Bicycle Requirements: 14' wide outside lanes

Transit Requirements: None

E. Parks & Greenways

According to the Parks, Recreation and Cultural Resources Facilities Master Plan, there are no issues related to this site. A recreation payment-in-lieu would be required for residential development, in accordance with the Land Development Ordinance. According to the Open Space and Historic Resources Plan, no significant natural or historic resources were identified on this site.

CONSISTENCY WITH THE LAND DEVELOPMENT ORDINANCE

The proposed project is in the mixed use sketch plan stage and, therefore, only preliminary engineering of the site has been done. At the time of site plan submittal, the applicant would be required to demonstrate consistency with the Land Development Ordinance (LDO) with respect to specific development requirements, such as access, stormwater management, road improvements, utility line placement, road connectivity, and landscape plantings.

A. Environmental

According to Town of Cary GIS maps, there are no Urban Transition Buffers (UTBs) that will impact the detailed portion of the MUSP. A potential UTB is located on the conceptual portion of the MUSP and may impact future development in that portion of the quadrant. At the time of full site plan submittal, the project would be required to meet all applicable stormwater requirements of the LDO.

B. Perimeter Buffers

The LDO recognizes that flexibility in the arrangement of internal buffers is desired within a mixed use center. Therefore, except where property lines may delineate, the perimeter of the mixed use center, properties located within a mixed use center are exempted from the strict application of perimeter buffer requirements established by the LDO. The northern property line, and a portion of the western property line adjacent to The Ranches subdivision, define the perimeter of the Parkway Pointe Mixed Use Center. The applicant is proposing to provide an undisturbed Type A (Opaque) buffer with an average width of 40 feet along these property lines. The applicant has also indicated that in no place shall the 40-foot average buffer be reduced in width to less than 30

feet. According to Section 7.2.3(B) of the LDO, a 40-foot Type A (Opaque) buffer is required where townhouses are located adjacent to detached dwellings. Section 7.2.10(C)(1) of the LDO does, however, allow administrative flexibility to average buffer widths with the caveat that areas reduced in width should have enhanced planting schedules and should potentially include fences or walls in order to enhance the performance of the narrower buffer. Perimeter buffers proposed along property lines internal to the mixed use center would be required to meet the performance criteria of a typical buffer required by the LDO in similar situations, but not to meet the width requirement. The applicant is proposing a 10-foot landscape strip adjacent to the Parkway Pointe Shopping Center, which is also located within the mixed use center.

C. Streetscape

The applicant's proposal provides the 50-foot streetscape that is required of residential development located along a thoroughfare pursuant to Section 7.2.4(C) of the LDO. This streetscape, as proposed, is required to meet a Type A (Opaque) buffer standard.

D. Adequate Public Facilities (Traffic Analysis)

This project is proposing construction of 19 townhomes, which would generate 9 AM and 10 PM trips using the Residential Townhouse Code (230) of the 7th edition of the ITE Trip Generation book. The project would not require a traffic study since it does not meet the 50-trip peak hour threshold.

APPROVAL CRITERIA FOR MIXED USE SKETCH PLANS

Section 4.4.2 (J) of the LDO establishes certain criteria that must be considered in reviewing mixed use sketch plans. Though it may not be practical for some existing or partially-built mixed use centers to achieve certain design standards, proposed MUSPs shall be reviewed for compliance with the following approval criteria where deemed appropriate:

- (1) The mixed use sketch plan has been prepared consistent with the requirements of Section 4.4 of the LDO and the Land Use Plan;
- (2) The mixed use sketch plan includes an appropriate mix of land uses for the overall activity center, including residential, commercial, office, and institutional uses;
- (3) The mixed use sketch plan meets or exceeds Town design guidelines and other established Town standards;
- (4) The mixed use sketch plan includes medium and higher-density housing;
- (5) The mixed use sketch plan includes some formal outdoor space for public use, such as a park, a village green, or a plaza with larger mixed use centers including more such space than smaller centers; and
- (6) The mixed use sketch plan demonstrates participation by residents, by property owners in the surrounding neighborhoods, and by the Town, so that the proposed development responds to the unique conditions of the area.

OTHER REFERENCE INFORMATION

Schools:

The school information is being provided for review; however, the Wake County Board of Education controls capital projects for school capacities.

School Information				
Assigned Schools	20 th Day Enrollment	Permanent Seat Capacity	Average Percent Occupied	Projected Range of Additional Students*
Laurel Park Elementary (Under Construction)	0		0%	0-7
Salem Middle	1,101	1,206	91%	0-5
Cary High	1,890	2,217	85%	0-4
Total Projected range of additional students				0-16

* *Current Enrollment and Building Capacity* is based on the 20th day of the school year for 2007-2008 as supplied by the Wake County Public School System. School assignment will be determined at the time of development.

* The *Projected Number of Additional Students* is only a rough approximation. The actual number of students will vary depending on several variables, such as dwelling unit type, number of bedrooms, dwelling size, and other factors. For example, a site with 134 two-bedroom units could yield 27 additional students, while 134 three-bedroom units could yield 100 students. The basis for making this calculation is based on multipliers provided from Wake County Schools' Office of Student Assignment.

Applicant's Justification Statement, Submitted on June 26, 2008

The following statements are provided by the applicant in response to the criteria established in the application and do not necessarily represent the views or opinions of the Town of Cary. Any statements as to the type, the quality, or the physical features of the plan are at the direction of the applicant and may be formulated into a condition:

1. Any issues with the size of the tract?

The size of the tract is appropriate and conducive to the residential use being proposed.

2. How is the request compatible with the comprehensive plan (i.e., Land Use, Transportation, Open Space and Historic Resources)?

The adopted Land Use Plan designates the parcel for MDR, ALT. HDR. The proposed land use classification is medium residential.

3. What are the benefits and detriments to the owner, the neighbors, and the community?

The Town of Cary has identified this area as a MUOD. Within an MUOD, there is a residential component. There is a minimal amount of residential development currently within the Parkway Pointe MUOD. The proposal would provide additional residential development within MUOD. The residents would have the opportunity to walk or bike to the adjacent commercial center, thus reducing the length of and need for automobile trips. This is one of the main reasons why residential development is encouraged within MUOD. The interest of the residential property owners will be adequately protected by the provisions of the LDO.

4. How are all the allowable uses for the proposed rezoning compatible with, or how do they relate to, the uses currently present on adjacent tracts?

Other property in the vicinity of the proposed rezoning is currently developed for the same type of use proposed. Good land use planning principles typically advocate and support the development of this type of use in this type of location. The proposed development will be compatible with the uses on the nearby properties.

Staff's PowerPoint presentation is attached to and incorporated herein as **Exhibit G**.

Mr. Jerry Turner and Associates, on behalf of the property owner, stated this particular overlay district is almost completely built-out. He stated the residential component is under-represented, and their proposal provides an additional 19 residential units within the district. He stated the plan provides interconnectivity to the adjacent shopping center, which is one of the guiding principles within mixed use centers. He stated they are proposing buffers to protect adjacent properties. Specifically, he stated they proposed a Type A opaque buffer, a minimum of 30 feet in width with an average width of 40 feet along the northern and western boundaries, which adjoins the residential area. He stated they conducted a neighborhood meeting in June, and they notified property owners within a 400 foot radius. He stated about 20 people attended the meeting. He stated no protest petitions were submitted. They believe the proposal is compatible with the existing residential and commercial uses in the area and that it will be an asset to the area.

No one spoke, and the mayor closed the public hearing.

Mrs. Robison asked about connectivity to the shopping center. Mr. Hales of the planning staff stated staff is working with the applicant on connectivity issues. Mrs. Robison asked how many units will exist at build-out. Mrs. Robison stated it appears there is a potential for 38 units. Mr. Hales stated it is conceptual at this point and will be better defined at the time of site plan.

Mrs. Robison is concerned with 19 units on 2.84 acres with no amenities.

ACTION: Referred to the October 20, 2008 planning and zoning board meeting

2. MIXED USE SKETCH PLAN 08-MU-004, Amendments to the Alston Activity Center Concept Plan

Location: Interchange of I-540 and NC Highway 55

Current Zoning: Base zoning varies with Alston Regional Mixed Use Overlay District

Request: Zoning unchanged; amendments are requested to the Alston Activity Center Concept Plan

Acreage: 810.22±

Speaker: Ms. Meredith Chandler

Proposed council action: Refer to the September 15, 2008 Planning and Zoning Board meeting

REQUEST

A. Background

This case is Town-initiated and includes proposed amendments to the Alston Activity Center Concept Plan (ACCP). The Alston ACCP was approved by Town Council on March 23, 2006. (The term ACCP preceded the name Mixed Use Sketch Plan or MUSP.) The plan specifies allowed uses and development limits, and sets design standards including site design requirements, circulation character, streetscape entry features, and public art locations.

In March 2008, Town Council approved the Alston Activity Center Concept Plan Re-Evaluation staff report (PL08-029), and directed staff to proceed with the Alston ACCP review and amendment process. This case has been prepared accordingly.

B. Staff Tracking of Alston ACCP Amendment List

Over the past two years, staff has kept a running list of questions, comments, areas needing clarification, and other amendment requests within the Alston ACCP. This list has been generated based on requests and issues that arose during the course of staff review of the site plans submitted within the Alston area, and through extensive discussion with area developers, consultants, and landowners.

The list of amendment requests includes issues from Chapter II, Allowed Uses and Development Limits, and Chapter III, Design Standards, of the ACCP. Some key topics that require clarification include identification of responsibility for residential unit type mixes, signage, application of circulation type plans, streetscape entry features, and public art. Providing clarification on these items will streamline review of plans within the Alston area.

Mixed Use Sketch Plans are located within the Mixed Use Overlay District (MUOD). The MUOD includes areas that are identified as "activity centers" (now referred to as "Mixed Use Centers") on the Land Use Plan and are intended to be developed following the general guidelines of the Comprehensive Plan. The MUOD is intended to promote higher-density, mixed-use developments of varying sizes, as an alternative to lower-density, separate-use suburban sprawl-type development.

Mixed use sketch plans are conceptual documents that address the general density, the mix of uses, and the development patterns within a mixed use center. They are less detailed than the plans required for full site plan review. The intent is to provide sufficient information to determine consistency with the Comprehensive Plan and with the Town's Design Guidelines. Specific development issues must be addressed for compliance with existing requirements as specified in the Land Development Ordinance (LDO) when the site plan is submitted.

BACKGROUND INFORMATION

Applicant/Agent	Town of Cary Planning Department 316 North Academy Street Cary, NC 27513		
Staff Contact	Meredith Chandler, RLA, AICP 919-460-4983 meredith.chandler@townofcary.org		
Acreage	810.22 +/-		
General Location	Interchange of I-540 and NC Highway 55		
Hearings / Meetings	Public Hearing August 14, 2008	Planning & Zoning September 15, 2008*	Town Council October 16, 2008*
Land Use Designation	Mixed Use (MXD)		
Zoning Districts	Mixed Use Overlay District, Watershed Protection Overlay District, and varied base districts		
Town Limits	Mix of within Town limits and ETJ		
Valid Protest	Will be determined prior to Public Hearing		
P&Z Recommendation	Will be provided after P&Z Meeting		
Existing Use	Mixed use, vacant, residential, rural, light industrial		
Proposed Use	Mixed Use		

* Future meeting dates are tentative.

PROPERTY OWNER INFORMATION

Owner and Parcel Information			
Property Owner(s)	County Parcel Number(s) (10 digit)	Real Estate ID(s)	Area Acres
BRANTLEY, ANNIE S	0736204937	0087541	1.05
BRANTLEY, ANNIE SEAGROVES	0736206807	0168522	0.97
BRANTLEY, ANNIE SEAGROVES	0736212255	0168521	4.65
CARY CREEK LIMITED PARTNERSHIP	0735389731	0319337	87.77
CARY CREEK LTD PTNRP LTD PTNRP	0735582204	0082441	8.01
CARY CREEK LTD PTNRP LTD PTNRP	0736400006	0082498	0.59
CARY CREEK LTD PTNRP LTD PTNRP	0735485345	0082438	4.34
CARY CREEK LTD PTNRP LTD PTNRP	0735285478	0348879	6.86
CLAYTON, LOUISE SEAGROVES	0736117309	0259519	0.92
CLAYTON, LOUISE SEAGROVES	0736118670	0168523	5.71
CLAYTON, PHYLLIS W & LOUISE S	0735591114	0013469	2.09
DAVIS, JOYCE ANN	0735454223 (portion)	0016808	4.04
DAVIS, JOYCE ANN	0735550441 (portion)	0110726	1.93
DEAN, RICHARD GRAY & DOROTHY V	0735557887	0095037	7.40
DISMUKE, DEBORAH HIGH	0736029606	0086291	2.00
EVENSON, JOHN ERIC & DONNA MARTIN	0735578877	0051726	3.02
FISHER, HENRY L JR	0735553829	0097784	8.14
FOREST OAKS INVESTORS LLC	0735655882	0340219	9.01
FOREST OAKS INVESTORS LLC	0735661054	0121629	2.81
FUTRELL, GLENN	0735092668	0334535	10.55
FUTRELL, GLENN	0735192806	0334349	10.00
FUTRELL, GLENN	0735092973	0021211	1.44
FUTRELL, GLENN	0736002178	0334536	10.78
FUTRELL, GLENN	0735192557	0095700	10.00
GOODFRED, MICHAEL D	0736015021	0314175	41.45
H F INVESTORS LLC	0735651636	0095036	2.04
HIGH, JAMES DRAUGHAN III	0736219709	0098159	0.13
HIGHLAND DEVELOPERS INC	0726916235	0314176	0.65
HIGHLAND DEVELOPERS INC	0736019830	0036421	1.53
INTERFACE CARY LLC	0735577241	0082444	3.96
KNOTT, CLEMON W	0736115339	0039757	0.68
KNOTT, JUDY M	0736207852	0039796	1.00
KNOTT, JUDY P	0736204512	0160196	3.01
KRG PRISA II PARKSIDE LLC	0736227527	0351682	2.87
KRG PRISA II PARKSIDE LLC	0736327647	0342428	79.90
KRG PRISA II PARKSIDE LLC	0736147497	0362672	17.09
KRG PRISA II PARKSIDE LLC	0736511799	0342627	0.37
KRG PRISA II PARKSIDE LLC	0736233114	0020203	1.04
KRG PRISA II PARKSIDE LLC	0736233947	0018420	17.63
KRG PRISA II PARKSIDE LLC	0736221835	0054841	0.44
NC DEPARTMENT OF TRANSPORTATION	0736218168	0052346	0.12
NC DEPARTMENT OF TRANSPORTATION	0736310404	0021261	2.08
NUTT, FLOYD DOUGLAS	0735681885	0051725	13.93
PANTHER CREEK APARTMENTS LLC	0735466240	0358573	17.41
PARKER, DANIEL Z	0736207513	0075138	0.60
PENDERGRAFT, GEORGE C JR	0736200689	0141540	2.98

PENDERGRAFT, INEZ W	0735199588 (portion)	0078570	20.51
PENDERGRAFT, INEZ W & GEORGE C	0736205381	0177607	2.75
PETTY, JOHN W	0735584609	0055089	2.85
PHILLIPS, ALLEN R & TERESA E	0735683504	0302182	13.93
PRESSER, KENNETH D & SUSAN L	0735294820	0147791	2.70
REX HOSPITAL INC	0735664450	0355207	2.36
REX HOSPITAL INC	0735567601	0358574	14.47
REX HOSPITAL INC	0735661485	0120865	2.89
ROEBEN INVESTMENTS LLC	0735495878	0289282	5.92
RTP 55 PARTNERSHIP	0736128610	0159210	57.97
SEAGROVES, DONNIE R & SUSAN K	0736111742	0159195	2.00
SEAGROVES, JAMES RAY	0736114075	0101571	2.71
SEAGROVES, JAMES RAY	0736112676	0062977	0.75
SEAGROVES, JAMES RAY	0736210300	0168518	1.26
SEAGROVES, JAMES RAY & CAROLE L	0736116094	0062992	0.83
SEAGROVES, ROBERT ERNEST HEIRS	0736114651	0168519	2.92
SEAGROVES, ROBERT ERNEST HEIRS	0736112236	0168520	2.25
SEAGROVES, ROBERT ERNEST HEIRS	0736224307	0082778	1.46
SEARS, DORIS N	0735478579	0063084	20.73
SLATE, TERRY E	0735675624	0101360	19.28
STRUBLE RALEIGH LOTS LP	0735586323	0087540	2.87
SUN LIFE ASSURANCE CO OF CANADA	0735350908	0304611	40.95
SUN LIFE ASSURANCE CO OF CANADA	0735478031	0011750	12.06
TRIANGLE BRICK CO	0736504838 (portion)	0071196	42.37
TRIANGLE BRICK CO	0736405874	0071197	0.72
TRIANGLE BRICK CO	0735597648 (portion)	0071195	40.47
WAKE COUNTY BOARD OF EDUCATION	0735278154	0304612	71.04
WIMBERLY ASSOC	0736029301	0343091	4.21
Total Acres			810.22

CONSISTENCY WITH THE COMPREHENSIVE PLAN

A. Northwest Area Plan

As per the Northwest Area Plan, the land use designation for the entire Alston ACCP area is Mixed Use (MXD). The proposed amendments have no impact on the Northwest Area Plan.

B. Transportation

The proposed amendments to the Alston ACCP have no impact on the Comprehensive Transportation Plan.

C. Parks & Greenways:

The proposed amendments to the Alston ACCP have no impact on the Parks and Greenways Master Plan.

D. Growth Management Plan

The proposed amendments to the Alston ACCP have no impact on the Growth Management Plan.

E. Affordable Housing Plan

The proposed amendments to the Alston ACCP have no impact on the Affordable Housing Plan.

CONSISTENCY WITH THE LAND DEVELOPMENT ORDINANCE

At the time of site plan submittal, the applicant would be required to demonstrate consistency with the Land Development Ordinance (LDO) with respect to specific development requirements, including by not limited to, access, stormwater management, road improvements, utility line placement, road connectivity, and landscape plantings.

PROPOSED AMENDMENTS TO THE ALSTON ACTIVITY CENTER CONCEPT PLAN

The proposed amendments are items from Chapter II, Allowed Uses and Development Limits, and Chapter III, Design Standards, of the Alston ACCP. Major issues include:

- Ensuring the required residential unit types are provided in each neighborhood, and that the last development plan to be submitted in each neighborhood does not have the sole responsibility of providing any missing residential unit type(s),
- Limiting single-loaded main street segments,
- Providing for guest parking and/or on-street parking in residential developments with narrow lots,
- Adding an artist-designed Alston seal into the Streetscape Entry Features,
- And clarifying public art opportunities in the Alston area.

The table below includes details about the major issues noted above and all other proposed amendments to the Alston ACCP, organized by chapter, section, and page. Use the provided links, found within the table below, to the Town Web site to see each affected chapter in its entirety.

<u>Proposed Amendments to the Alston Activity Center Concept Plan</u>			
Key			
Plain text is existing text in the Alston ACCP.			
Gray strikethrough text is proposed to be eliminated from the Alston ACCP.			
<u>Bold, underlined, and italicized text</u> is proposed to be added to the Alston ACCP.			
Item	Document Section	Explanation	Proposed Text
Chapter II, Allowed Uses and Development Limits, Section 1			
1	Chapter II, Section 1, Use and Limits by Traffic Analysis Zone (TAZ), page 8	Clarification	Provide a minimum mix of residential types. (See allowed residential unit types for each TAZ in Table II.1. <u>Also see design zone information in Chapter III, Design Standards, for complete information on allowed uses.</u>)
2	Chapter II, Section 1, Use and Limits by Traffic Analysis Zone (TAZ), page 8	Proposed solution for ensuring required residential unit types by neighborhood	<u>f) If more than 50% of development, by acreage, has occurred in a neighborhood, and only one of two or two of three residential types are present (built or approved site plan), then the last required residential unit type must be provided in a development plan. Each residential unit type may be no less than 20% of the total by acreage.</u> <u>g) In lieu of item f above, the layout and mix of residential unit types in the Illustrative Diagrams (Figures IV.1 - IV.5) may be followed.</u> <u>h) Residential development sites greater than 40 acres shall include at least two residential unit types. Each type may be no less than 20%</u>

Proposed Amendments to the Alston Activity Center Concept Plan

Key

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Item	Document Section	Explanation	Proposed Text
			of the total by acreage.
3	Chapter II, Section 1, Use and Limits by Traffic Analysis Zone (TAZ), page 10	Clarification	<i>6. Use Table II.1 in conjunction with the appropriate design zone information in Chapter III, Design Standards, for complete information on allowed uses. All residential unit types listed in Table II.1 may not be allowed in the corresponding design zone.</i>
4	Chapter II, Section 1, Use and Limits by Traffic Analysis Zone (TAZ), page 11	Correction for TAZs 3, 5, and 8	All non-residential uses except large and small home day care, <i>and</i> guest house, and park and open space except athletic field
Chapter III, Design Standards, Section 1			
1	Chapter III, Section 1, Design Zones, page 16	New Town policy is more strict than this Alston Plan requirement	10. Where possible, garages shall be accessed from an alley or from the less prominent circulation route. Garages, and especially garage doors, shall be placed to minimize visual impact from the public view. On lots where the garage must be accessed from the front of the lot, the garage shall not be more than 60% of the façade for single family detached homes. All garages shall be set back a minimum of 2 feet from the front façade <i>of the home.</i>
2	Chapter III, Section 1, Design Zones, page 16	Clarification	<i>15. Uniform sign plans will be reviewed by neighborhood (Parkside, Petty Farm, McCrimmon, Evans Farm, and Alston Center). Exceptions may be approved by the Planning Director.</i>
3	Chapter III, Section 1, Design Zones, page 16	Staff suggestion due to pedestrian nature of main streets	<i>16. Only 10% of window space on a main street may be taken up with window signage.</i>
4	Chapter III, Section 1, Design Zones, pages 20, 22, 26	Proposed solution for limiting single-loaded main street segments	<i>a) No more than 10% of a "main street" may be single-loaded; clear hardship, or no practical alternative, must be demonstrated to include a single-loaded section.</i> The length of any single-loaded portions of the "main street" counts 50% towards meeting the required minimum length.
5	Chapter III, Section 1, Design Zones, pages 21, 23-25, 27	Proposed solution for meeting lot width along curved road segments	Residential Lot Widths: 16 to 30 foot wide lots <i>except where road alignment may necessitate a different width</i>
Chapter III, Design Standards, Section 2			
1	Chapter III, Section 2, Circulation Classification and Character, page 29	Clarification	<i>f. Street trees shall be placed a minimum of 3' off the edge of greenways and multi-use trails.</i>
2	Chapter III, Section 2,	Proposed solution for	<i>7. The typical plans for Collector, Street A, and</i>

Proposed Amendments to the Alston Activity Center Concept Plan

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Item	Document Section	Explanation	Proposed Text
	Circulation Classification and Character, page 29	guest/on-street parking issue	<i>Street B circulation types found in this section of Alston ACCP, when applied to residential development, were designed to be used with an alley-loaded housing product. When an alley-loaded product is not used, guest parking in front of homes on more narrow lots becomes a challenge. If the average residential lot is less than 50' wide, condition a or conditions b and c must be met:</i> <i>a) 75% of the dwelling units in a single development must be an alley-loaded product.</i> <i>b) Provide an additional 0.25 parking spaces per dwelling unit in a parking lot or lots centrally located within the residential development. Pedestrian routes from guest parking lots to the units they serve may be no longer than a 500' walk. Multiple parking lots may be necessary.</i> <i>c) 75% of driveways shall share curb cuts with a neighbor. For single family attached housing, driveways shall be immediately adjacent to each other. For single family detached housing, driveways shall be placed as close as possible. A green strip between driveways is necessary to allow for side setbacks and mailboxes.</i>
Chapter III, Design Standards, Section 3			
1	Chapter III, Section 3, Streetscape Entries and Sections, page 43	New information	1. Streetscape Elements <i>and The Alston Seal</i> The consistency in character and quality of the entry features and streetscapes throughout Alston will define the identity of this area as a special destination. The provisions in this chapter will ensure that the quality of each piece of development is upheld and that each piece of development adds to the character of Alston. One of the streetscape elements that will tie the Alston area together as a unified place is the brick pier. It is recommended that t The piers <i>are required</i> used at the entries (as described on the following pages) into neighborhoods or developments <i>and include</i> should use a repeating seal and identifying nameplate of similar <i>unique to the Alston area. Neighborhood nameplates identifying Alston Center, McCrimmon, Evans Farm, Parkside, or Petty Farm shall be included with all Entry B features.</i> For example, the pier could announce entry into the Parkside Neighborhood as shown in

Proposed Amendments to the Alston Activity Center Concept Plan

Key

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Bold, underlined, and italicized text is proposed to be added to the Alston ACCP.

Item	Document Section	Explanation	Proposed Text
			the illustration at right. <i>The repeating seal for Alston has been designed by a local artist, Catherine Parrish. Specifications are available from the Town of Cary Planning Department. The Alston seal shall be included as part of the uniform sign plan for each project. The artist's logo design is an important part of the required streetscape entry features located on Figure III.4.</i>
2	Chapter III, Section 3, Streetscape Entries and Sections, page 43	Clarification	<i>2. Coordination Among Property Owners Streetscape entry feature designs should be coordinated among quadrant property owners. The first property owner to develop in a quadrant, where streetscape entry features are located, must contact the other property owners about the design of the entry features for their quadrant. A statement of architectural compatibility is required for development plans in the second through fourth quadrants for each streetscape entry intersection.</i>
3	Chapter III, Section 3, Streetscape Entries and Sections, page 43	Clarification	<i>3. Signage If part of a required Streetscape Entry Feature, a double-faced sign (see diagram at left) with an interior angle that is 90 degrees or less shall have only one display face measured in computing sign area.</i>
4	Chapter III, Section 3, Streetscape Entries and Sections, page 43	New pictures added	(See link to Chapter III, Section 3 PDF.)
5	Chapter III, Section 3, Streetscape Entries and Sections, pages 45-47	Clarification	Tapered Masonry Pier: 8 <i>to 10</i> feet tall by approximately 3 feet wide (optional light element not included as part of overall height); 3 feet minimum off curb, 1 foot off sidewalk; optional pier-mounted light shall be a lantern fixture, in scale with pier and shall be approved by the Town of Cary Planning Department.
6	Chapter III, Section 3, Streetscape Entries and Sections, pages 45, 47-48	Clarification	Masonry Wingwall: 2.5 to 7 feet tall (depending on entry feature type); overall length varies. <i>May include sign panel with development and/or neighborhood name. Text shall coordinate with existing Alston ACCP development and shall be approved by the Town of Cary Planning Department.</i>
7	Chapter III, Section 3, Streetscape Entries and Sections, pages	Clarification	Street Trees: Shall be set 3 feet minimum off curb <i>and 3 feet minimum off edge of greenways and multi-use trails</i> (refer to the Town of Cary

Proposed Amendments to the Alston Activity Center Concept Plan

Key

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Item	Document Section	Explanation	Proposed Text
	45-47, 49-51		Community Appearance Manual for approved tree species).
8	Chapter III, Section 3, Streetscape Entries and Sections, page 52	Correction	This site section condition may occur in the following Urban Regulation <i>Design</i> Zones: Town Center, Neighborhood Center, Neighborhood General, Neighborhood Edge and Special Districts.
Chapter III, Design Standards, Section 4			
1	Chapter III, Section 4, Public Art, page 53	Clarification	<i>Public Art in Alston</i> <i>Public art is a special element required throughout the Alston area. At the locations noted on the map to the right, Figure II.5, public art shall be integrated on the site of the development. For the Gateway Features, one feature is required per intersection quadrant; more than one may be provided. At least one public art feature is required for each Pedestrian Oriented Feature.</i>
2	Chapter III, Section 4, Public Art, page 53	Clarification	The above text <i>following information about Gateway Features and Pedestrian Oriented Features</i> is from the Town of Cary Public Art Master Plan; please see the Public Art Master Plan for more information and details on public art in Cary.
3	Chapter III, Section 4, Public Art, page 54	Clarification	<i>These</i> artworks <i>are features</i> that engage at a pedestrian scale.
4	Chapter III, Section 4, Public Art, page 55	Clarification and additional information	<i>Public Art Projects</i> <i>Public art is artwork that is integrated on the site of the development. Artwork is best located on any exterior site visible and accessible at all times to the public. Eligible art projects include:</i> <i>a) One of a kind building features and enhancements designed by artists such as gates, benches, and fountains</i> <i>b) Pedestrian elements such as benches, bike racks, lighting, bollards, tree grates, and decorative paving</i> <i>c) Artist-designed landscape art enhancements such as walkways, bridges, or art features with a garden</i> <i>d) Sculpture--freestanding, wall-supported or suspended, kinetic--in durable materials suitable for the site</i> <i>e) Artist-designed entry walls, masonry piers, crosswalks</i> <i>Notes:</i> <i>a) Project developers shall meet with the</i>

Proposed Amendments to the Alston Activity Center Concept Plan			
Key Plain text is existing text in the Alston ACCP. Gray strikethrough text is proposed to be eliminated from the Alston ACCP. <i>Bold, underlined, and italicized text</i> is proposed to be added to the Alston ACCP.			
Item	Document Section	Explanation	Proposed Text
			<i>Town's Public Art Coordinator during the site plan approval process. Public art design will be included as part of site plan review.</i> <i>b) As part of site plan submittal, a statement about art integration and design including photo examples and/or drawings is required for Gateway Features.</i> <i>c) Public art in Alston may be incorporated into the required Streetscape Entry Features defined in Chapter II Section 3 of this document. For example, an artist may design a custom column finial to add to the signature Alston pier as shown in the sketch to the left.</i> <i>d) All art projects must be centrally located and highly public.</i> <i>e) Public art projects will be complete prior to issuance of a certificate of occupancy.</i>
5	Chapter III, Section 4, Public Art, pages 54-55	New pictures added	(See link to Chapter III, Section 4 above.)

APPROVAL CRITERIA FOR MIXED USE SKETCH PLANS

Section 4.4.2 (J) of the Land Development Ordinance establishes certain criteria that must be considered in reviewing mixed use sketch plans. Though it may not be practical for some existing or partially-built mixed use centers to achieve certain design standards, proposed MUSPs shall be reviewed for compliance with the following approval criteria where deemed appropriate:

- (1) The mixed use sketch plan has been prepared consistent with the requirements of Section 4.4 of the LDO and the Land Use Plan;
- (2) The mixed use sketch plan includes an appropriate mix of land uses for the overall activity center, including residential, commercial, office, and institutional uses;
- (3) The mixed use sketch plan meets or exceeds Town design guidelines and other established Town standards;
- (4) The mixed use sketch plan includes medium and higher-density housing;
- (5) The mixed use sketch plan includes some formal outdoor space for public use, such as a park, a village green, or a plaza with larger mixed use centers including more such space than smaller centers; and
- (6) The mixed use sketch plan demonstrates participation by residents, by property owners in the surrounding neighborhoods, and by the Town, so that the proposed development responds to the unique conditions of the area.

OTHER REFERENCE INFORMATION

A. Schools

There is no additional impact to schools from what was noted within the original approved Alston ACCP.

Staff's PowerPoint presentation is attached to and incorporated herein as **Exhibit H**.

Mrs. Glenda Toppe of Jerry Turner and Associates, on behalf of several property owners in the Alston area, stated they need additional time to understand the impacts of this proposal on their properties, and they request that council continue the public hearing at the September 11, 2008 council meeting. She requested that a joint meeting with staff and property owners be held prior the September 11 council meeting.

Mr. Doug Peterson of Kite Realty Group concurred with Mrs. Toppe about continuing the public hearing.

Mr. David Connor of Lincoln Harris, representing Sun Life Insurance Company of Canada, also requested that the public hearing be continued. He thinks a meeting with staff and stakeholders will be beneficial.

The mayor stated the council may choose to either continue the public hearing or instruct the planning and zoning board to conduct a second public hearing.

ACTION: Mrs. Robison moved to continue the public hearing to the September 11, 2008 council meeting and to direct staff to hold at least one stakeholder meeting to work through some of the issues prior to the case going to the planning and zoning board. Mrs. Adcock provided the second.

Mrs. Robison asked how the amendment impacts the single-loaded streets that are part of the Alston Plan that allow the public to see and have access to the open space. Mrs. Chandler stated the amendment states that clear hardship must be demonstrated, and a hardship might be defined as a steep slope greater than 15% or challenging topography. She added that the amendment was proposed based on plans in review that include such types of hardships. Mrs. Robison wants to investigate this issue further, because it was meant to be a key feature of the Alston plan.

Mr. Portman stated item two (refers to different types of home styles) in the proposed changes seems prescriptive. He asked what is not covered with the anti-monotony requirements. Mrs. Chandler stated the requirement to have two to three housing types per neighborhood has always been in the Alston plan. Mrs. Chandler stated most development inquiries in this area have been for apartments, which do not fit the vision of the Alston plan; therefore, staff is seeking a solution to supply those required three types of housing units. She stated staff can review this language and work with the stakeholder groups. Mr. Portman wants to use simple language.

Mrs. Robison and other council members asked to see a prototype of the seal and other potential image variations for the art work. Mrs. Chandler stated she has the actual prototype in her office if council would like to view it.

ACTION: Vote was called for on the motion to continue the public hearing. Council granted unanimous approval.

3. REZONING 08-REZ-08, Green Level Church Road Map Correction

Location: 9625, 9648, 9708, and 9716 Green Level Church Road

Current Zoning: Residential 40 (R-40) and Residential 40 (R-40) within the Conservation Residential Overlay District, Very Low Density Conservation Residential sub-district

Requested/Corrected Zoning: Residential 40 (R-40) within the Conservation Residential Overlay District, Low Density Conservation Residential sub-district and Rural sub-district

Affected Acreage: 41.1 ±
Speaker: Mr. Scott Ramage
Proposed council action: Council may take action.

REQUEST

The Town of Cary Staff is requesting Council approve an Ordinance to amend the official zoning map of the Town of Cary to correct the zoning for two separate areas, totaling approximately 41.10 acres. The first area includes approximately 40.12 acres, and is located north of Green Level Church Road and west of Yates Store Road, where the official zoning map should be changed from Conservation Residential Overlay District with a Very Low Density Conservation Residential (VLCR) sub-district to Conservation Residential Overlay District with a Low Density Conservation Residential (LCR) sub-district. The second area includes approximately 0.98 acres, located west of the American Tobacco Trail and south of Green Level Church Road, where the official zoning map should be amended to include the parcel within the Conservation Residential Overlay District with a Rural sub-district designation.

This zoning map correction does not affect the existing base zoning districts for the subject parcels, nor does it affect any overlay zoning districts other than the Conservation Residential Overlay District.

Section 3.4.1(l) of the Land Development Ordinance allows the Council to correct map errors such as this through a single public hearing, which only requires published notice. Following the public hearing, Council will not need to refer this to the Planning and Zoning Board, but may take action on the Ordinance to correct the map in accordance with the official records.

BACKGROUND INFORMATION

Applicant/Agent	Town of Cary, Planning Department		
Acreage	41.10 +/-		
General Location	Two locations: 40.12 acres located north of Green Level Church Road and west of Yates Store Road; and 0.98 acres located west of the American Tobacco Trail and south of Green Level Church Road.		
Hearings / Meetings	Public Hearing 8/14/2008	Planning & Zoning Not Required	Town Council Not Required
Land Use Designation	Low Density Conservation Residential, Very Low Density Conservation Residential, and Rural (Southwest Area Plan)		
Town Limits and/or ETJ	40.12 acres are located outside the Cary Town Limits but within the Cary ETJ, and 0.98 acres are located within the Cary Town Limits.		
Existing Base District Zoning	Residential 40 (R-40) and Planned Development District, Major (PDD Major).		
Proposed Base District Zoning	No change.		
Existing Overlay District Zoning	(1) Watershed Protection Overlay, Jordan Lake sub-district; (2) Conservation Residential Overlay.		
Proposed Overlay District Zoning	(1) No change to Watershed Protection Overlay. (2) Change 40.12 acres from Very Low Density Conservation Residential sub-district to Low Density Conservation Residential sub-district, within the Conservation Residential Overlay District. (3) Add 0.98 acres to Conservation Residential Overlay, with a Rural sub-district.		
Annexation	Not Required		
Valid Protest	N/A		

P&Z Recommendation	N/A
Existing Use	Mix of agriculture (forestry), vacant, and residential
Proposed Use	N/A
Final Council Action	To be provided after Town Council Meeting
Staff Contact	Scott Ramage, Principal Planner 316 N. Academy Street Cary, NC 27513 scott.ramage@townofcary.org (919) 462-3888

SUMMARY

The Conservation Residential Overlay Zoning District (CROD) was adopted by Town Council via zoning case 05-REZ-17 on September 8, 2005. That case added this new district to the Land Development Ordinance (LDO) and applied the district to the Town's official Zoning Map. In the course of staff's recent work on draft revisions to the CROD, two errors were discovered in the mapping of case 05-REZ-17 on the official Zoning Map.

The first error concerns all or portions of four properties totaling approximately 40.12 acres, located on the west side of Green Level Church Road, just south of the Weldon Ridge Planned Development District (PDD), and designated as "Area A" on the map, which is shown in Exhibit I. This area was erroneously mapped as part of the Very Low Density Conservation Residential (VLCR) sub-district within the CROD, instead of as part of the Low Density Conservation Residential (LCR) sub-district.

Staff reports for case 05-REZ-17 clearly indicated that the boundaries of the sub-districts within the CROD should match those areas designated as LCR or VLCR on the Southwest Area Plan's Future Land Use Map for properties within Cary's zoning jurisdiction. And, the Southwest Area Plan's Future Land Use Map designates this subject area as LCR, not VLCR. Also, all of the presentation materials used at the Council and Planning Board meetings for case 05-REZ-17 clearly depicted the intent to place the subject area within the LCR sub-district.

The second error concerns a 0.98-acre property located on the west side of the American Tobacco Trail (ATT), and designated as "Area B" on the map, which is shown on Exhibit I. The property is the only part of the Copperleaf Planned Development District (PDD) that extends west of the ATT. This parcel was erroneously omitted from the CROD on the official Zoning Map. The parcel should have been included within the overlay district, with the Rural sub-district.

Staff reports for case 05-REZ-17 clearly specified that the subject parcel should be included within the CROD with the Rural sub-district so as to match the designation on the Southwest Area Plan's Future Land Use Map for properties within Cary's zoning jurisdiction. All of the presentation materials used at the Council and Planning Board meetings for case 05-REZ-17 depicted the intent to place the subject parcel within the CROD with a Rural sub-district.

Staff has traced the origin of both map errors to a single erroneous draft "working map" that was included in the project files for case 05-REZ-17. This working map was neither included nor presented as part of the case reports or presentations to Town Council or the Planning and Zoning Board. However, it appears that this working map may have been erroneously used when the official Zoning Map was updated following adoption of case 05-REZ-17.

Zoning Map changes for the 40.12 acres located north of Green Level Church Road, and labeled as "Area A" on the map (refer to Exhibit I):

- Current Zoning Map: Residential 40 (R-40) base zoning, Watershed Protection Overlay District with Jordan Lake sub-district, and Conservation Residential Overlay District with Very Low Density Conservation Residential (VLCR) sub-district.

- Corrected Zoning Map: Residential 40 (R-40) base zoning, Watershed Protection Overlay District with Jordan Lake sub-district, and Conservation Residential Overlay District with Low Density Conservation Residential (LCR) sub-district.

Zoning Map change for the 0.98 acres located south of Green Level Church Road and west of the American Tobacco Trail, and labeled as “Area B” on the map (refer to Exhibit I):

- Current Zoning Map: Planned Development District, Major (PDD Major) base zoning and Watershed Protection Overlay District with Jordan Lake sub-district.
- Corrected Zoning Map: Planned Development District, Major (PDD Major) base zoning, Watershed Protection Overlay District with Jordan Lake sub-district, and Conservation Residential Overlay District with Rural sub-district.

**Ordinance for Consideration
08-REZ-08 Rezoning**

AN ORDINANCE TO CORRECT A MAPPING ERROR ON THE OFFICIAL ZONING MAP OF THE TOWN OF CARY TO CHANGE THE ZONING OF APPROXIMATELY 40.12 ACRES LOCATED ALONG GREEN LEVEL CHURCH ROAD FROM CONSERVATION RESIDENTIAL OVERLAY DISTRICT WITH A VERY LOW DENSITY CONSERVATION RESIDENTIAL SUB-DISTRICT DESIGNATION TO CONSERVATION RESIDENTIAL OVERLAY DISTRICT WITH A LOW DENSITY CONSERVATION RESIDENTIAL SUB-DISTRICT DESIGNATION, AND TO CHANGE THE ZONING OF APPROXIMATELY 0.98 ACRES LOCATED ALONG THE AMERICAN TOBACCO TRAIL SO THAT THE PROPERTY IS PLACED WITHIN THE CONSERVATION RESIDENTIAL OVERLAY DISTRICT WITH A RURAL SUB-DISTRICT DESIGNATION.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CARY:

Section 1: The Official Zoning Map is hereby amended by rezoning the two areas described as follows:

Area To Be Rezoned From Conservation Residential Overlay District with Very Low Density Conservation Residential (VLCR) Sub-district to Conservation Residential Overlay District with Low Density Conservation Residential (LCR) Sub-district			
Property Owner(s)	Wake County Parcel I.D. Number (10-digit)	Wake County Real Estate ID(s)	Est. Affected Area (Acres)
Gooch, Peggy Riggsbee 9708 Green Level Church Rd Cary, NC 27519-9490	0724466092 (portion of)	0025539	0.63
Hancock, Douglas M. 9625 Green Level Church Rd Cary, NC 27519-9489	0724562174 (portion of)	0129608	0.06
Southerland, Sydney D., Jr. 156 Turnberry Dr. Spartanburg, SC 29306-6675 (owner of affected property at 9648 Green Level Church Rd.)	0724462841	0011575	29.04
Southerland, Sydney D. 156 Turnberry Dr. Spartanburg, SC 29306-6675 (owner of affected property at 9716 Green Level Church Rd.)	0724369024 (portion of)	0060054	10.39

Total Affected Acres:	40.12 ±
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and

Area To Be Rezoned To Conservation Residential Overlay District with Rural Sub-district			
Property Owner(s)	Wake County Parcel I.D. Number (10-digit)	Wake County Real Estate ID(s)	Est. Affected Area (Acres)
Derby Downs, LLC 100 Cascade Pointe Ln., Ste. 101 Cary, NC 27513-5775 (owner of affected property at 0 Piershill Ln.)	0724331006	0361914	0.98
Total Affected Acres:			0.98 ±

Section 2: The map correction from Conservation Residential Overlay District with a Very Low Density Conservation Residential (VLCR) sub-district to Conservation Residential Overlay District with a Low Density Conservation Residential (LCR) sub-district, and the map correction to place a parcel in the Conservation Residential Overlay District with a Rural sub-district, are hereby authorized subject to all requirements of the Cary Land Development Ordinance (LDO) and other applicable standards, policies and guidelines.

Section 3: These properties will be perpetually bound to the uses authorized and subject to such zoning, unless subsequently changed or amended as provided for in the Cary Land Development Ordinance.

Section 4: Any violations or failure to accept and abide by the requirements of the Land Development Ordinance shall be subject to the remedies provided in the Cary LDO.

Section 5: This ordinance shall be effective on the date of adoption.

Adopted and effective: August 14, 2008

Staff's PowerPoint presentation is attached to and incorporated herein as **Exhibit I**.

No one spoke, and the mayor closed the public hearing.

Mr. Portman suggested to hold this until the next meeting so the council does not act on the request the same night as the public hearing.

Mr. Frantz asked if the property owners were notified. Mr. Ramage of the planning staff stated no, because it is just a map correction and the land development ordinance does not require property owner notification in such cases.

ACTION: Mr. Portman moved to hold this over to the next meeting for final vote (table). Mrs. Robison provided the second.

Mr. Portman stated this action will allow people who have concerns to contact the council prior to the next council meeting.

Mrs. Robinson stated annexation public hearings are often voted on the same night as the public hearing, and she thinks they are much more impactful than this request. She would prefer to vote at this meeting.

ACTION: Vote was called for on the motion to table. Mayor Weinbrecht, Mr. Portman, Mrs. Robison and Mrs. Adcock voted "aye". Mr. Smith, Mrs. Robinson and Mr. Frantz voted "no". The motion carried by majority vote.

F. LAND DEVELOPMENT DISCUSSION ITEMS (any item pulled from the land development consent agenda for discussion [item B.2. on this agenda] will be discussed during this portion of the agenda)

N/A

G. COMMITTEE REPORTS (discussion items)

Operations Committee, August 7, 2008 (any item pulled from the committee consent agenda for discussion [agenda item B.3.] will be discussed during this portion of the agenda) **(Mr. Smith)**

N/A

H. OLD/NEW BUSINESS (any item pulled from the regular consent agenda for discussion [agenda item B.1.] will be discussed during this portion of the agenda)

1. RAILROAD CROSSING CLOSURES

Subject: Morrisville-Carpenter Road and Carpenter Fire Station Road Railroad at grade crossings are proposed to be closed. Both railroad crossings are located near the intersections with NC 55. The proposal will close the Carpenter Fire Station Road railroad crossing while a new bridge crossing is planned, funded, designed and constructed. Interim improvements to the Morrisville-Carpenter Road crossing will be made to manage traffic flow over the single crossing. After the new railroad crossing bridge is open to traffic the Morrisville-Carpenter Road crossing will be closed. *The council tabled this item after the public hearing conducted on July 24, 2008.*

Speaker: Mr. Tim Bailey

Proposed council action: Council may take action

New information added after the July 24, 2008 council meeting is shown below in bolded and italicized text.

STAFF REPORT

Town Council Committee, August 14, 2008

Railroad Crossings Closure – Public Hearing (EN09-010A)

Consideration of closing two railroad crossings on the CSX S-line at Carpenter Fire Station Road and Morrisville-Carpenter Road.

Speaker: Tim Bailey, P.E., Director of Engineering

From: Tim Bailey, P.E., Director of Engineering

Prepared by: Tim Bailey, P.E., Director of Engineering

Approved by: William B. Coleman, Jr., Town Manager

Approved by: Benjamin T. Shivar, Assistant Town Manager

Staff is seeking feedback on a proposal to close two railroad crossings in the Carpenter area. Morrisville-Carpenter Road and Carpenter Fire Station Road would both be closed at the crossing of the CSX railroad. The plan would provide a bridged crossing of the railroad and road realignment in the vicinity of Carpenter Fire Station Road. Closing would also allow a new crossing at Little Drive extension. These road improvements are indicated on the transportation plan.

Work will occur in phases if the concept moves forward as follows. The first step would close Carpenter Fire Station Road railroad crossing. All traffic would be redirected to Morrisville-Carpenter Road. Turn lane improvements will be added to increase capacity at the single crossing. During this first step a new crossing on Little Drive extension could occur. Design, permitting, and property acquisition of a new bridge over the railroad tracks will occur while Morrisville-Carpenter Road crossing remains open. A draft agreement stipulates that construction must begin with five years of the Carpenter Fire Station Road crossing closure. After construction of the bridge is complete, Morrisville-Carpenter Road crossing will be permanently closed.

Public Hearing was advertised following the normal procedure. Notices were mailed to properties in the vicinity. Signs were posted at both crossings.

This item was tabled at the July 24, 2008 Town Council meeting and Staff was directed to request a delay in the closing of the Carpenter Fire Station Road crossing. Staff met with CSX, NCDOT Rail Division, CSX's Consulting Engineers, and the Developer on August 7, 2008.

CSX was not interested in a delayed closing. They expressed concerns on additional crossings and relayed their goal to reduce the number of crossings to improve safety as soon as possible. Carpenter Fire Station Road is an unsignalized crossing. CSX's goal for new crossings is to close three crossings in exchange for one new crossing. We have already negotiated a deal that is less than the standard and there was no room left to modify the agreement more beneficial to the Town and less beneficial to CSX.

Staff has mapped out a preliminary schedule to better estimate the duration of the Carpenter Fire Station Road crossing closure. We believe the duration of the closure before construction begins on the bridge will be three and one-half years, May 2010 to October 2013. The crossing must close during bridge construction and road work as the locations overlap.

Fiscal Impact: Cary's cost of the project is estimated to be \$17M. Funding is in place for design and permitting in the amount of \$3M. It is anticipated that construction funding must be in place no later than FY2015.

Staff Recommendation: Staff recommends approval to close the crossings. Since the roads are NCDOT maintained, the final approval occurs through a State process. Staff also recommends proceeding with development of appropriate agreements.

Staff's PowerPoint presentation is attached to and incorporated herein as **Exhibit J**. Mr. Bailey of the engineering department stated about one-half mile south of this location the Town will begin construction in calendar year 2008 on a new crossing at the Morrisville Parkway Extension, which will provide a lot of access for this area. He stated it should be closed well in advance of any of these crossings that are subject to tonight's action. He stated the timing of the closing is closely linked to the new crossing at the O'Kelly Chapel Road extension into the Research Triangle Park. He stated he has just learned that this will probably not occur until the fall of 2010 (instead of spring). He stated there is no need to open the rail crossing until the last link is provided. He stated when the new crossing is opened, this crossing will be closed, and road improvements will be made (including turn lanes) to route all the traffic across the single crossing at Morrisville

Carpenter Road. He stated the Town has five years after executing the agreement, and he believes about three years after closing this crossing the Town must begin construction of the Carpenter Fire Station Road realignment extension and the bridge in the vicinity. He stated once the bridge is complete, the Town will close the final crossing of Morrisville Carpenter Road. He stated these actions are in accordance with the transportation plan and support maintaining this area as an historic district and re-routing traffic. He stated the crossing at Carpenter Fire Station Road is unsignalized and ungated, and if the Town does not move forward with this action, then safety improvements may be required at this corridor.

Mrs. Robinson is disappointed that CSX and the Town could not come to a better agreement; however, she is glad to hear that the closing will not be needed until 2010 when the new one opens. Mr. Bailey stated this is staff's estimate, and the agreement ties those two directly so there is no need to close it before then. She stated it is also a good point that Morrisville Parkway will be extended. She stated the opening of the crossing at O'Kelly Chapel is critical for RTP traffic and will be beneficial for the entire community. She does not want to delay this by defending the Carpenter Fire Station Road crossing. She thinks the best option is to move forward as staff has proposed.

Mr. Portman asked about a grade separated crossing to the north of this site. Mr. Bailey replied that Good Hope Church Road turns west and crosses and is about one-half mile north of the current at-grade crossing at Carpenter Fire Station Road. He stated it is right-in/right-out on NC 55 with a median.

ACTION: Mrs. Robinson moved to proceed with the railroad crossing closures as outlined by staff for Morrisville Carpenter Road and Carpenter Fire Station Road. Mr. Frantz provided the second, and council granted unanimous approval.

-
2. Consideration of a council-initiated request from Mayor Weinbrecht and co-sponsored by Mr. Portman to direct staff to review a potential ordinance amendment to limit the hours of operation of daycare centers that are located in residential districts. *The council may take one of the following actions: (1) refer the request to the appropriate committee or council meeting, at which time a staff report with staff recommendation will be prepared, or (2) decide not to pursue the council-initiated request. (Mayor Weinbrecht and Mr. Portman)*

The e-mail information about this issue follows in italics:

I will co sponsor this review.

Erv

Erv Portman

Member at Large

Cary Town Council

-----Original Message-----

From: Harold.Weinbrecht@townofcary.org

[mailto:Harold.Weinbrecht@townofcary.org]

Sent: Wednesday, July 30, 2008 9:40 AM

To: Jeff.Ulma@TownofCary.org; council@CARY.townofcary.org

Cc: Ben.Shivar@TownofCary.org; Bill.Coleman@TownofCary.org;

Brad.Goettee@townofcary.org; Brent.Reck@townofcary.org;

Debra.Grannan@TownofCary.org; Ricky.Barker@TownofCary.org;

Sue.Rowland@TownofCary.org; Wayne.Nicholas@townofcary.org

Subject: Re: Fw: Weinbrecht message copy to clerk

Council members,

I am proposing, based on the problems that has occurred and can potentially occur in the future, that home day cares be limited in hours of operation since they are located in residential districts. I am sure there are legal issues and other issues that staff needs to look into. I would like a cosponsor to direct staff to look into changing the existing ordinance. Any interest in cosponsoring this proposal?

Thanks,

Harold Weinbrecht

Mayor

Town of Cary

PO Box 8005

Cary, North Carolina 27512-8005

919-469-4011

harold.weinbrecht@townofcary.org

Mayor Weinbrecht is concerned that home daycares can result in unresidential type characteristics in residential neighborhoods, which are not in harmony with the neighborhood and may cause harm to current residents. He does not want to put home daycares out of business or propose a solution; rather, he would like staff to undertake a review and provide options to council.

Mr. Portman understands the need for flexible daycare hours, but he agrees that it warrants a review. He is interested in how other communities have dealt with this issue.

Mr. Frantz supports a staff review, and he also understands the need for flexible daycare hours. He thinks there is one daycare causing problems. He stated this particular daycare has indicated they are closing, and staff has allowed them time for parents to find alternate daycare options for their children.

Mrs. Adcock stated there are two issues: (1) making home daycares harmonious with neighborhoods and (2) doing something about the existing daycare that has not followed Town ordinances and handle it as expeditiously as possible.

Mr. Smith supports a staff review of the ordinance.

ACTION: Mr. Portman moved to ask staff to review the issue of home daycare use and hours of operation and come back to council with recommendations to address concerns and ensure we're doing best practices as it relates to the way other communities regulate this type of use. Mr. Frantz provided the second.

Mayor Weinbrecht clarified that a future report will go to the planning and development committee.

Mrs. Robison asked for specific information on the extensions granted by staff. Staff will follow up with additional information to council.

Mrs. Adcock urged staff to work to balance the needs of the daycare owner and the neighboring residences. She thinks the neighbors' needs have not been addressed to the same level as the daycare owner.

ACTION: Vote was called for on the motion, and council granted unanimous approval.

-
- ~~3. Consideration of a council initiated request from Council Member Robinson and co-sponsored by Council Member Frantz to begin the process of having Cary staff assist the council in working with the City of Raleigh, Wake County, and State legislators to redefine the distribution formula for the Food and Beverage tax and the Occupancy tax. The council may take one of the following actions: (1) Discuss the issue and take action at the meeting if no information is required from staff and if council does not seek public input; (2) refer the request to the appropriate council or committee meeting, at which time a staff report with staff recommendation will be prepared; or (3) decide not to pursue the council-initiated request. (Mrs. Robinson and Mr. Frantz)~~

The e-mails from council on this issue follow (in italics):

Jennifer,

I wholeheartedly support this. Can council discuss this at our next meeting?

Don Frantz

Gary Town Council

District B

919-612-6870

To: Council@townofcary.org

Subject: Distribution Formulas for Food and Beverage Tax and Occupancy Tax Revenue

From: Jennifer.Robinson@townofcary.org

Date: Fri, 8 Aug 2008 13:13:23 -0400

Hi all,

I would like to begin the process of having our staff assist the Council in working with the City of Raleigh, Wake County, and our State legislators to redefine the distribution formula for the Food and Beverage tax and the Occupancy tax. I am asking that we initiate this effort at this time because a series of discussions must occur before consideration of this issue is ultimately included in our 2009 Legislative Agenda next Spring. Please let me know if you support having the Council consider this initiative under Old/New Business at one of our upcoming Council meetings.

History

Before 1991, the Town of Cary had its own Occupancy tax. In 1991, when the County sought and was granted authority from the State to levy two separate taxes (a Prepared Food and Beverage Tax and a Room Occupancy Tax), Cary's Occupancy tax was withdrawn and replaced with the new County-wide taxes. To compensate the Town for the lost revenue, a percentage of the revenue from the Occupancy Tax (5%) was designated for Cary. In addition, Cary (as well as all other Wake municipalities), was given the opportunity to apply for a portion of both the Food and Beverage and Occupancy taxes.

Food and Beverage Tax				
<i>Revenue Increments and % of Distribution Received Under Each</i>				
<i>Receiver</i>	<i>Annual Revenue <=\$4,500,00</i>	<i>Annual Revenue >\$4,500,000 and <\$6,500,000</i>	<i>Annual Revenue >\$6,500,000</i>	
Raleigh	3.00%	3.00%	3.00%	Admin Charge for Collecting Tax
Raleigh	47.75%	75.00%	60.00%	Raleigh Portion of Remainder
Cary	-	-	-	Cary Portion of Remainder
County	37.25%	25.00%	40.00%	Wake County Portion of Remainder
Bureau	15.00%	-	-	Bureau Portion of Remainder

-	100.00%	100.00%	100.00%	Total Distributed after Admin Charge
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Occupancy Tax					
<i>Revenue Increments and % of Distribution Received Under Each</i>					
<i>Receiver</i>	<i>Annual Revenue <=\$3,815,000</i>	<i>Annual Revenue >\$3,815,000 & <\$4,000,001</i>	<i>Annual Revenue >\$4,000,001 and <\$4,500,000</i>	<i>Annual Revenue >\$4,500,000</i>	
<i>Raleigh</i>	3.00%	3.00%	3.00%	3.00%	<i>Admin Chrg. for Collecting Tax</i>
<i>Raleigh</i>	45.25%	95.00%	47.50%	35.00%	<i>Raleigh Portion of Remainder</i>
<i>Cary</i>	5.00%	5.00%	5.00%	5.00%	<i>Cary Portion of Remainder</i>
<i>County</i>	34.75%	-	22.50%	35.00%	<i>Wake Cty Portion of Remainder</i>
<i>Bureau</i>	15.00%	-	25.00%	25.00%	<i>Bureau Portion of Remainder</i>
-	100.00%	100.00%	100.00%	100.00%	<i>Total Distrib. after Admin Chrg</i>

As Cary has grown, it has become a greater contributor to the Food and Beverage and Room Occupancy taxes in two ways. First, our citizens pay taxes for their prepared food and beverages. Second, our citizens have paid for large recreation venues (and supporting infrastructure such as roads, water and sewer) that welcome thousands of visitors each year, filling both our hotels and our restaurants. We are pleased to showcase Cary and offer our wonderful amenities to others from around the Country. However, as we establish ourselves as a leader in amateur sports, we also recognize the growing inequity in the distribution of revenue from both the Food and Beverage and Occupancy taxes.

This a snapshot of the contribution that Cary and Morrisville each have in the generation of revenue for the taxes:

Food and Beverage Tax

July 2007 – February 2008 = \$10,567,324

Cary's portion = \$1,868,033 or 18% of the total collected

~~Morrisville portion = \$266,785 or 3% of the total collected~~

~~Occupancy Tax~~

~~July 2007 – March 2008 = \$10,733,492~~

~~Cary's portion = \$2,496,684 or 23% of the total collected~~

~~Morrisville portion = \$1,839,616 or 17% of the total collected~~

~~Because the Town of Morrisville also contributes a significant portion to the taxes, it may want to work with us in having the distribution formula redefined. I hope that the Town of Cary and our fellow leaders in our region can work out an agreement in which distribution is more accurately based on the point of generation of revenue.~~

~~Cary has the opportunity to expand upon our success and add more venues that have regional as well as national draw. Having a revenue stream that correlates with our citizens' and business owners' contribution to the Prepared Food and Beverage and Occupancy tax revenue will enable us to pursue these venues.~~

~~Thank you for your consideration.~~

~~Sincerely,~~

~~Jennifer~~

~~Jennifer B. Robinson~~

~~Cary Town Council~~

~~District A~~

This item was pulled from this agenda and will be placed on the August 28, 2008 council meeting agenda.

I. CLOSED SESSION

ACTION: At 8 p.m. Mrs. Adcock moved to conduct closed session for the following purposes; Mr. Portman provided the second, and council granted unanimous approval.

PURSUANT TO G.S. 143-318.11(A) (3) AND (6), CLOSED SESSION IS CALLED TO:

- 1. CONSULT WITH ATTORNEYS EMPLOYED BY AND/OR RETAINED BY THE TOWN IN ORDER TO PRESERVE THE ATTORNEY-CLIENT PRIVILEGE BETWEEN THE ATTORNEYS AND THE TOWN. AMONG OTHER THINGS, THE COUNCIL EXPECTS TO RECEIVE ADVICE CONCERNING THE FOLLOWING LAWSUIT:**

TOWN OF CARY V. SOUTH HILLS SHOPPING CENTER

- 2. CONSIDER THE QUALIFICATIONS, COMPETENCE, PERFORMANCE, CHARACTER, FITNESS, CONDITIONS OF APPOINTMENT, OR CONDITIONS OF INITIAL EMPLOYMENT OF ONE OR MORE INDIVIDUAL PUBLIC OFFICERS OR EMPLOYEES.**

J. ADJOURNMENT

ACTION: At 9:40 p.m. Mrs. Robinson moved to adjourn. Mrs. Adcock provided the second, and council granted unanimous approval. (Mrs. Robison and Mr. Portman were not present for this vote, and they were not excused from voting; therefore, the record reflects an affirmative vote for them.)