

**DRAFT**

**Cary Town Council  
Thursday, March 22, 2012  
6:30 PM  
Council Chambers  
316 N. Academy Street, Cary, N.C.**

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

**A. COMMENCEMENT**

**1. Call to Order (Mayor Weinbrecht)**

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

---

**2. Ceremonial Opening (Mayor Weinbrecht)**

Weinbrecht provided the ceremonial opening.

---

**3. Adoption of agenda (Town Council)**

The mayor suggested the following changes to the agenda:

- Add Item H.1., Consideration of adoption of the following: (a) the 2012 state legislative agenda; (b) the advocacy principles; and (c) the resolution pertaining to shale gas development.
- Remove Item E.4., Rezoning 12-REZ-03 (Lynch Property); the applicant has withdrawn this request.

**ACTION: Robison moved to adopt the agenda as amended. Adcock provided the second; 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 March 7, 2012. (Town Council)**

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

---

- b. Consideration of approval of a Memorandum of Understanding for a Consolidated Wake County Hazard Mitigation Plan. **(Mr. Jeff Ulma)**

## **STAFF REPORT**

Town Council Meeting, March 22, 2012

### **Consolidated Hazard Mitigation Plan (PL12-022)**

Consideration of opportunity to participate in a grant-funded, consolidated Hazard Mitigation Plan

Speaker: Mary W. Beerman, AICP, Senior Planner

From: Jeffery G. Ulma, AICP, Planning Director

Prepared by: Robert G. Wilson, AICP, Principal Planner

Approved by: Benjamin T. Shivar, Town Manager

Approved by: Michael J. Bajorek, Assistant Town Manager

### **Executive Summary**

Consideration of an invitation to participate in a multi-jurisdictional effort to pursue FEMA grant funding for the preparation of a consolidated Hazard Mitigation Plan for Wake County and its incorporated jurisdictions. Staff recommends that the Town participate in this joint project, assuming that anticipated grant funding is obtained. If grant funding is not obtained, then the Town would continue to independently update its Hazard Mitigation Plan.

### **Background**

As a result of the Disaster Mitigation Act of 2000 and NC Senate Bill 300, each local government is required to have an approved Hazard Mitigation Plan. Plans can be individual or multi-jurisdictional in nature, and once approved, must be updated every five years.

The Central Branch of the North Carolina Division of Emergency Management (NCEM) has recently proposed that Wake County and its incorporated jurisdictions utilize grant funding to develop a multi-jurisdictional hazard mitigation plan. This plan would incorporate Wake County and 12 jurisdictions within the county into a single plan. The deadline to respond is April 5, 2012.

### **Discussion**

If grant funding is obtained, this effort would reduce the amount of work needed on several sections of the plan, and would promote collaboration among the communities involved.

### **Fiscal Impact**

No Town funding is required.

### **Staff Recommendation**

Staff recommends approval of the Agreement (included herein) to pursue grant funding and participate in a multi-jurisdictional Hazard Mitigation Plan.

### **Narrative for Development of a Multi-Jurisdictional Hazard Mitigation Plan For Wake County**

As a result of the Disaster Mitigation Act of 2000 and NC Senate Bill 300 each local government including counties, cities, towns, and villages are required to have an approved Hazard Mitigation Plan. The types of plans throughout North Carolina vary from multi-jurisdictional plans, town plans, city plans, some village plans and several regional plans. North Carolina has approximately 130 hazard mitigation plans that must be updated every five years.

Wake County and its incorporated jurisdictions propose to develop a multi-jurisdictional hazard mitigation plan. This plan would incorporate 13 single-jurisdictional hazard mitigation plans into 1 multi-jurisdictional plan. The participating jurisdictions are as follows:

- Wake County
- Town of Apex
- Town of Cary
- Town of Fuquay-Varina
- Town of Garner
- Town of Holly Springs
- Town of Knightdale
- Town of Morrisville
- City of Raleigh
- Town of Rolesville
- Town of Wake Forest
- Town of Wendell
- Town of Zebulon

GEOGRAPHICAL  
DESCRIPTION/AREA/BRANCH/POPULATION

Wake County, Raleigh, Apex, Cary, Fuquay-Varina, Garner, Holly Springs, Knightdale, Morrisville, Rolesville, Wake Forest, Wendell, and Zebulon are within NC Emergency Management Area 7, which consists of 6 counties. Area 7 is one of 5 areas within the Central Branch of NCEM.

The county itself borders 7 other North Carolina counties which include Johnston, Harnett, Chatham, Durham, Granville, Franklin, and Nash. Wake County is located roughly in the center of the state and is the home to the state's capital of Raleigh.

Because of the relatively recent boom in population in the area, most of the municipalities are at least moderately urbanized with the City of Raleigh boasting the largest population. Despite this, some areas in the county are somewhat rural and contain large areas of undeveloped land. Most of the jurisdictions that are participating in this plan are considered suburban areas of Raleigh and thus are integrated with one another economically and socially.

The geographic and demographic makeup of these areas is very similar and since hazard mitigation planning development evolves from the same types of risks and hazards within each of their boundaries, a multi-jurisdictional approach is logical.

According to the US Census Bureau in 2010, the populations of each jurisdiction are as follows:

Wake County	900,993
Town of Apex	37,476
Town of Cary	135,234
Town of Fuquay-Varina	17,937
Town of Garner	25,745
Town of Holly Springs	24,661
Town of Knightdale	11,401
Town of Morrisville	18,576
City of Raleigh	403,892
Town of Rolesville	3,786
Town of Wake Forest	30,117
Town of Wendell	5,845

Town of Zebulon

4,433

While Raleigh is the engine of the Wake County economy because it is the center of North Carolina government and one of the pillars of the Research Triangle Park, other municipalities thrive in their own right. Both Cary and Apex host annual festivals that are visited by citizens from around the state and local businesses abound in all of the municipalities. The population of the county overall is growing at one of the fastest rates in the country due to the top-rated school system and quality of life that the county provides.

## **PROPOSAL**

### **WHAT:**

### **WHO:**

### **HOW:**

### **WHEN:**

### **GOAL:**

### **LEAD:**

### **SCOPE:**

Consolidate 13 hazard mitigation plans into one multi-jurisdictional plan.

Wake County, Raleigh, Apex, Cary, Fuquay-Varina, Garner, Holly Springs, Knightdale, Morrisville, Rolesville, Wake Forest, Wendell, and Zebulon

Emergency management local coordinators jointly hire a consultant/company to combine each of their multi-jurisdictional plans into a regional plan.

Regional plan completed and approved by November 2015.

Acquire grant monies to proceed with consolidation of 13 hazard mitigation plans.

Wake County would serve as the lead for the project. The grant monies would be subgranted to Wake County who will serve as the lead and point of contact (Subapplicant and Subgrantee) for invoice submittal and cost report reimbursements from the State of NC to the contractor. The grant would be managed by Wake County for all involved parties. A reimbursement method would be utilized. No up-front monies would be issued to Wake County or any other jurisdiction. Actual costs incurred will be all that will be eligible for reimbursement.

Scope of work to be determined by the 13 jurisdictions involved with input and guidance from NC Emergency Management staff.

Under the Hazard Mitigation Grant Program, North Carolina Emergency Management will provide the 25 percent non-federal share.

The Plan will include: Planning Process, Hazard ID and Risk Assessment, Mitigation Strategy, Plan Maintenance Process, and Plan Adoption sections. Appendixes will be included in the Plan to address any differences amongst the jurisdictions. This modular approach to organizing and formatting the plan will support each jurisdiction during the update process. Details on the structure and formatting in the Plan will be integrated into the procurement process for the grant award.

Following plan approval and adoption, the 13 jurisdictions agree to meet annually and following any disaster events that may warrant a re-examination of the risk assessment, and the mitigation actions being implemented or proposed by the participating jurisdictions. This will ensure the Plan is continuously monitored and maintained to reflect changing conditions and needs within Wake County. If determined to be appropriate, or as requested, annual reporting on the Plan will be developed and presented to the local governing bodies of participating jurisdictions in order to provide a status update on the actions identified in the Plan and to provide information on the latest legislative requirements. This reporting may also highlight proposed additions or improvements to the Plan. Wake County will be responsible for coordinating the annual meetings and for the preparation of documents with input from each participating jurisdiction.

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

- 
- c. Consideration of adoption of certificates of sufficiency and resolutions calling for public hearings on the following annexation petitions:

(1) **12-A-01**

**Property Owner(s):** Carolina Power & Light Company

**Location:** 2460 Trenton Road

**Acreage:** 10.1 plus 0.00 adjacent right-of-way = 10.1 total deeded acres

**Zoning:** Office & Institutional (OI)

**Contiguous to Primary Corporate Limits:** No

**Existing Use:** Electric utility substation

**Proposed Use:** Electric utility substation

**Associated Case:** None

**Speaker:** Mr. Wayne Nicholas

**Annexation Petition Number:** 12-A-01

**Property Address:** 2460 Trenton Road

**Wake County Parcel Number:** 0775614276

**Real ID Number:** 0302164

**Petition Date:** 2/8/2012

**OWNER(S)**

Carolina Power and Light Company

P.O. Box 14042

St. Petersburg, FL 22733-4042

**LOCATION**

1,130 feet south of Trenton Road and SAS Campus Drive intersection

**ZONING & PROPOSED USE**

**Current Zoning:** Office & Institutional (OI)

**Acreage:** 10.1 plus 0.00 adjacent right-of-way = 10.1 total deeded acres  
**Contiguous to Primary Corporate Limits:** No  
**Proposed Use:** Electric utility substation  
**Existing Use:** Electric utility substation  
**Associated Case(s):** None

**UTILITIES**

**Water:** 1,130 feet northwest  
**Sewer:** 1,370 feet northwest

**DISTRICTS & TAX VALUE**

**Fire District:** Western Wake #1  
**Voting District:** B  
**Tax Value:** \$2,411,570

**MEETINGS**

**Town Council – Certificate of Sufficiency and Resolution Ordering Public Hearing:**  
**3/22/2012**  
**Staff Recommendation:** Forward to public hearing on 4/19/2012

**The documents that Council will consider for adoption at this meeting follow:**

**CERTIFICATE OF SUFFICIENCY OF ANNEXATION PETITION**

I, the undersigned Town Clerk of the Town of Cary, do hereby certify that I have investigated the sufficiency of Annexation Petition of

**Carolina Power and Light Company;  
Wake County Parcel Identification #0775614276;  
10.1 acres plus 0.00± acres of adjacent right-of-way;**

as directed by the Town Council by resolution, and that my investigation reveals the following:

1. The signers of the Petition are the owners of the real property within the area proposed for annexation.
2. The area is contiguous to the municipal boundaries of the Town of Cary as defined by G.S. 160A-31, or is appropriate for annexation as a non-contiguous area as defined by 160A-58.

This 3/22/2012.

**RESOLUTION ORDERING PUBLICATION OF A NOTICE OF PUBLIC HEARING ON THE QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-58**

WHEREAS, the Town Council of the Town of Cary has received an annexation petition of

**Carolina Power and Light Company;  
Wake County Parcel Identification #0775614276;  
10.1 acres plus 0.00± acres of adjacent right-of-way;**

requesting the annexation of certain lands not contiguous to the municipal boundaries of the Town of Cary; and

WHEREAS, the Town Clerk has certified to the Town Council the sufficiency of said Petition as required by law;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Cary, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held in the Council Chamber of the Town of Cary, 316 N. Academy Street, Cary, NC at 6:30 p.m. on 4/19/2012.

Section 2. The area proposed for annexation is described as follows:

**METES AND BOUNDS DESCRIPTION**

BEING all that lot or parcel of real property located in Cary Township, Wake County, North Carolina and being more particularly described as follows:

BEGINNING at a concrete monument in a southern property line of Carolina Power & Light Company and a northern property line of Reedy Creek Investments, LLC, said Beginning Point being located North 88°49'05"East 619.89 feet from the southwestmost corner of the land conveyed to Carolina Power & Light Company by Reedy Creek Investments, LLC, by a deed dated December 30, 2002, and recorded in Book 9825, page 1920, Wake County Registry, said southwestmost corner being located South 16°18'56" West 2,016.91 feet and South 01°06'58" West 150.04 feet from N.C.G.S. Monument "Alwin", the location of said Monument "Alwin" having North Carolina Coordinates N = 753,404.296 and E = 2,076,142.539; and runs thence from the Beginning Point thus established North 88°49'05 East 250.00 feet to a concrete monument; thence South 00°40'15" West 150.00 feet to a concrete monument; and thence North 59°44'03" West 287.36 feet to the point of BEGINNING, containing 0.43 acre, more or less, as shown on a plat prepared by Davis-Martin-Powell & Associates, Inc., entitled "Recombination Survey For Carolina Power & Light Company, D/B/A Progress Energy Carolinas, Inc., Trenton Road (NCSR 1655), Cary Township, Wake County, North Carolina", dated Dec. 19, 2006, labeled PEC, Inc. Drawing No.

L-C-10115, and recorded in Book of Maps 2006, Page 2658, Wake County Registry.

Section 3. Notice of the public hearing shall be published in The Cary News, a newspaper having general circulation in the Town of Cary, at least 10 days prior to the date of the public hearing.

ADOPTED 3/22/2012.

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

(Resolution No. 2012-23 is also on file in the town clerk's office.)

- 
- (2) **12-A-02**  
**Property Owner(s):** Carolina Power & Light Company  
**Location:** 1651 Piney Plains Road  
**Acreage:** 11.61 plus 0.00 adjacent right-of-way = 11.61 total deeded acres  
**Zoning:** Residential 40 (R-40)  
**Contiguous to Primary Corporate Limits:** Yes  
**Existing Use:** Electric utility substation and wireless communications facility  
**Proposed Use:** Electric utility substation and wireless communications facility  
**Associated Case:** None  
**Speaker:** Mr. Wayne Nicholas

**Annexation Petition Number:** 12-A-02  
**Property Address:** 1651 Piney Plains Road  
**Wake County Parcel Number:** 0773503877  
**Real ID Number:** 0099886  
**Petition Date:** 2/8/2012

**OWNER(S)**

Carolina Power and Light Company  
P.O. Box 14042  
St. Petersburg, FL 22733-4042

**LOCATION**

730 feet northeast of Piney Plains Road and Dillard Drive intersection

**ZONING & PROPOSED USE**

**Current Zoning:** Residential 40 (R-40)  
**Acreage:** 11.61 plus 0.00 adjacent right-of-way = 11.61 total deeded acres  
**Contiguous to Primary Corporate Limits:** Yes  
**% Contiguity (excluding satellite town limits):** 100 percent  
**Existing Use:** Electric utility substation and wireless communications facility  
**Proposed Use:** Electric utility substation and wireless communications facility  
**Active Associated Case(s):** None

**UTILITIES**

**Water:** On site  
**Sewer:** On site

**DISTRICTS & TAX VALUE**

**Fire District:** Swift Creek  
**Voting District:** C  
**Tax Value:** \$782,320

**MEETINGS**

**Town Council – Certificate of Sufficiency and Resolution Ordering Public Hearing:**  
**3/22/2012**  
**Staff Recommendation:** Forward to public hearing on 4/19/2012

**The documents that Council will consider for adoption at this meeting follow:**

**CERTIFICATE OF SUFFICIENCY OF ANNEXATION PETITION**

I, the undersigned Town Clerk of the Town of Cary, do hereby certify that I have investigated the sufficiency of Annexation Petition of

**Carolina Power and Light Company;**  
**Wake County Parcel Identification #0773503877;**  
**11.61 acres plus 0.00± acres of adjacent right-of-way;**

as directed by the Town Council by resolution, and that my investigation reveals the following:

1. The signers of the Petition are the owners of the real property within the area proposed for annexation.
2. The area is contiguous to the municipal boundaries of the Town of Cary as defined by G.S. 160A-31, or is appropriate for annexation as a noncontiguous area as defined by 160A-58.



This 3/22/2012.

**RESOLUTION ORDERING PUBLICATION OF A NOTICE OF  
PUBLIC HEARING ON THE QUESTION OF ANNEXATION  
PURSUANT TO G.S. 160A-31**

WHEREAS, the Town Council of the Town of Cary has received an annexation petition of

**Carolina Power and Light Company;  
Wake County Parcel Identification #0773503877;  
11.61 acres plus 0.00± acres of adjacent right-of-way;**

requesting the annexation of certain lands contiguous to the municipal boundaries of the Town of Cary; and

WHEREAS, the Town Clerk has certified to the Town Council the sufficiency of said Petition as required by law; and

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Cary, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held in the Council Chamber of the Town of Cary, 316 N. Academy Street, Cary, NC at 6:30 p.m. on 4/19/2012 at which time all residents and area owners in said territory and all residents of the Town of Cary will be given an opportunity to be heard.

Section 2. The area proposed for annexation is described as follows:

**LEGAL DESCRIPTION**

**Wake County Parcel Identification #0773503877**

Section 3. Notice of public hearing shall be published in the *Cary News*, a newspaper having general circulation in the Town of Cary, at least 10 days prior to the date of the public hearing.

ADOPTED 3/22/2012.

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

(Resolution No. 2012-24 is also on file in the town clerk's office.)

- 
- (3) **12-A-03**  
**Property Owner(s):** Carolina Power & Light Company  
**Location:** 910 feet east of Cary Glen Boulevard and Carpenter Fire Station Road intersection  
**Acreage:** 23.79 plus 15.20 adjacent right-of-way = 38.99 total deeded acres  
**Zoning:** Residential 40 (R-40)  
**Contiguous to Primary Corporate Limits:** Yes  
**Existing Use:** Electric utility substation  
**Proposed Use:** Electric utility substation  
**Associated Case:** None  
**Speaker:** Mr. Wayne Nicholas

**Annexation Petition Number:** 12-A-03  
**Property Addresses:** 7437 Carpenter Fire Station Road and other unaddressed property  
**Wake County Parcel Numbers:** 0735134272, 0735143097,  
**Real ID Numbers:** 0289284, 0065210  
**Petition Date:** 2/8/2012

**OWNER(S)**

Carolina Power and Light Company  
P.O. Box 14042  
St. Petersburg, FL 22733-4042

**LOCATION**

910 feet east of Cary Glen Boulevard and Carpenter Fire Station Road intersection

**ZONING & PROPOSED USE**

**Current Zoning:** Residential 40 (R-40)  
**Acreage:** 23.79 plus 15.20 adjacent right-of-way = 38.99 total deeded acres  
**Contiguous to Primary Corporate Limits:** Yes  
**% Contiguity (excluding satellite town limits):** 79 percent  
**Existing Use:** Electric utility substation  
**Proposed Use:** Electric utility substation  
**Active Associated Case(s):** None

**UTILITIES**

**Water:** On site  
**Sewer:** On site

**DISTRICTS & TAX VALUE**

**Fire District:** Morrisville #3  
**Voting District:** A  
**Tax Value:** \$2,742,750

**MEETINGS**

**Town Council – Certificate of Sufficiency and Resolution Ordering Public Hearing:**  
**3/22/2012**  
**Staff Recommendation:** Forward to public hearing on 4/19/2012

**The documents that Council will consider for adoption at this meeting follow:**

**CERTIFICATE OF SUFFICIENCY OF ANNEXATION PETITION**

I, the undersigned Town Clerk of the Town of Cary, do hereby certify that I have investigated the sufficiency of Annexation Petition of

**Carolina Power and Light Company;  
Wake County Parcel Identification #'s: 0735134272, 0735143097;  
23.79 acres plus 15.20± acres of adjacent right-of-way;**

as directed by the Town Council by resolution, and that my investigation reveals the following:

1. The signers of the Petition are the owners of the real property within the area proposed for annexation.
2. The area is contiguous to the municipal boundaries of the Town of Cary as defined by G.S. 160A-31, or is appropriate for annexation as a noncontiguous area as defined by 160A-58.

This 3/22/2012.

**RESOLUTION ORDERING PUBLICATION OF A NOTICE OF  
PUBLIC HEARING ON THE QUESTION OF ANNEXATION  
PURSUANT TO G.S. 160A-31**

WHEREAS, the Town Council of the Town of Cary has received an annexation petition of

**Carolina Power and Light Company;  
Wake County Parcel Identification #'s: 0735134272, 0735143097;  
23.79 acres plus 15.20± acres of adjacent right-of-way;**

requesting the annexation of certain lands contiguous to the municipal boundaries of the Town of Cary; and

WHEREAS, the Town Clerk has certified to the Town Council the sufficiency of said Petition as required by law; and

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Cary, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held in the Council Chamber of the Town of Cary, 316 N. Academy Street, Cary, NC at 6:30 p.m. on 4/19/2012 at which time all residents and area owners in said territory and all residents of the Town of Cary will be given an opportunity to be heard.

Section 2. The area proposed for annexation is described as follows:

**LEGAL DESCRIPTION**

**Wake County Parcel Identification #'s: 0735134272, 0735143097,**

Section 3. Notice of public hearing shall be published in The Cary News, a newspaper having general circulation in the Town of Cary, at least 10 days prior to the date of the public hearing.

ADOPTED 3/22/2012.

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

(Resolution No. 2012-25 is also on file in the town clerk's office.)

- 
- (4) **12-A-04**  
**Property Owner(s):** Mangrum Building, LLC  
**Location:** 1344, 1350 Trinity Road  
**Acreage:** 0.79 plus 0.36 adjacent right-of-way = 1.15 total deeded acres  
**Zoning:** Transitional Residential (TR)  
**Contiguous to Primary Corporate Limits:** Yes  
**Existing Use:** Vacant  
**Proposed Use:** Single-family Residential  
**Associated Case:** None  
**Speaker:** Mr. Wayne Nicholas

**Annexation Petition Number:** 12-A-04  
**Property Addresses:** 1344, 1350 Trinity Road

**Wake County Parcel Numbers:** 0774453404, 0774453534  
**Real ID Numbers:** 0017737, 0259549  
**Petition Date:** 2/20/2012

**OWNER(S)**

Mangrum Building, LLC  
1717 Trinity Road  
Raleigh, NC 27607

**LOCATION**

1,140 feet northeast of Chapel Hill Road and Trinity Road intersection

**ZONING & PROPOSED USE**

**Current Zoning:** Transitional Residential (TR)  
**Acreage:** 0.79 plus 0.36 adjacent right-of-way = 1.15 total deeded acres  
**Contiguous to Primary Corporate Limits:** Yes  
**% Contiguity (excluding satellite town limits):** 50 percent  
**Existing Use:** vacant  
**Proposed Use:** Single-family Residential  
**Active Associated Case(s):** None

**UTILITIES**

**Water:** On site  
**Sewer:** 140 feet northwest

**DISTRICTS & TAX VALUE**

**Fire District:** Western Wake #1  
**Voting District:** B  
**Tax Value:** \$102,400

**MEETINGS**

**Town Council – Certificate of Sufficiency and Resolution Ordering Public Hearing:**  
**3/22/2012**  
**Staff Recommendation:** Forward to public hearing on 4/19/2012

**The documents that Council will consider for adoption at this meeting follow:**

**CERTIFICATE OF SUFFICIENCY OF ANNEXATION PETITION**

I, the undersigned Town Clerk of the Town of Cary, do hereby certify that I have investigated the sufficiency of Annexation Petition of

**Mangrum Building, LLC;**  
**Wake County Parcel Identification #'s: 0774453404, 0774453534;**  
**0.79 acres plus 0.36± acres of adjacent right-of-way;**

as directed by the Town Council by resolution, and that my investigation reveals the following:

1. The signers of the Petition are the owners of the real property within the area proposed for annexation.
2. The area is contiguous to the municipal boundaries of the Town of Cary as defined by G.S. 160A-31, or is appropriate for annexation as a noncontiguous area as defined by 160A-58.

This 3/22/2012.

**RESOLUTION ORDERING PUBLICATION OF A NOTICE OF  
PUBLIC HEARING ON THE QUESTION OF ANNEXATION  
PURSUANT TO G.S. 160A-31**

WHEREAS, the Town Council of the Town of Cary has received an annexation petition of

**Mangrum Building, LLC;  
Wake County Parcel Identification #'s: 0774453404, 0774453534;  
0.79 acres plus 0.36± acres of adjacent right-of-way;**

requesting the annexation of certain lands contiguous to the municipal boundaries of the Town of Cary; and

WHEREAS, the Town Clerk has certified to the Town Council the sufficiency of said Petition as required by law; and

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Cary, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held in the Council Chamber of the Town of Cary, 316 N. Academy Street, Cary, NC at 6:30 p.m. on 4/19/2012 at which time all residents and area owners in said territory and all residents of the Town of Cary will be given an opportunity to be heard.

Section 2. The area proposed for annexation is described as follows:

**LEGAL DESCRIPTION**

**Wake County Parcel Identification #'s: 0774453404, 0774453534**

Section 3. Notice of public hearing shall be published in The Cary News, a newspaper having general circulation in the Town of Cary, at least 10 days prior to the date of the public hearing.

ADOPTED 3/22/2012.

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

(Resolution No. 2012-26 is also on file in the town clerk's office.)

- 
- (5) **12-A-05**  
**Property Owner(s):** David L Bunch  
**Location:** 9824, 9830 Morrisville Parkway  
**Acreage:** 17.43 plus 1.35 adjacent right-of-way = 18.78 total deeded acres  
**Zoning:** Residential 40 (R-40)  
**Contiguous to Primary Corporate Limits:** Yes  
**Existing Use:** Single-family Residential; vacant  
**Proposed Use:** Single-family Residential  
**Associated Case:** 12-SB-001 (Bunch Subdivision)  
**Speaker:** Mr. Wayne Nicholas

**Annexation Petition Number:** 12-A-05  
**Property Addresses:** 9824, 9830 Morrisville Parkway  
**Wake County Parcel Numbers:** 0724450295, 0724356012  
**Real ID Numbers:** 0252197, 0179920  
**Petition Date:** 2/20/2012

**OWNER(S)**

David L. Bunch  
9824 Green Level Church Road  
Apex, NC 27523

**LOCATION**

North of intersection of Green Hope School Road, Morrisville Parkway, and Ferson Road

**ZONING & PROPOSED USE**

**Current Zoning:** Residential 40 (R-40)  
**Acreage:** 17.43 plus 1.35 adjacent right-of-way = 18.78 total deeded acres  
**Contiguous to Primary Corporate Limits:** Yes  
**% Contiguity (excluding satellite town limits):** 27 percent  
**Existing Use:** Single-family Residential; vacant  
**Proposed Use:** Single-family Residential  
**Active Associated Case(s):** 12-SB-001 (Bunch Subdivsion)

**UTILITIES**

**Water:** On site  
**Sewer:** On site

**DISTRICTS & TAX VALUE**

**Fire District:** Morrisville #3  
**Voting District:** A  
**Tax Value:** \$1,955,885

**MEETINGS**

**Town Council – Certificate of Sufficiency and Resolution Ordering Public Hearing:**  
**3/22/2012**  
**Staff Recommendation:** Forward to public hearing on 4/19/2012

**The documents that Council will consider for adoption at this meeting follow:**

**CERTIFICATE OF SUFFICIENCY OF ANNEXATION PETITION**

I, the undersigned Town Clerk of the Town of Cary, do hereby certify that I have investigated the sufficiency of Annexation Petition of

**David L. Bunch;**  
**Wake County Parcel Identification #'s: 0724450295, 0724356012;**  
**17.43 acres plus 1.35± acres of adjacent right-of-way;**

as directed by the Town Council by resolution, and that my investigation reveals the following:

- 1. The signers of the Petition are the owners of the real property within the area proposed for annexation.
- 2. The area is contiguous to the municipal boundaries of the Town of Cary as defined by G.S. 160A-31, or is appropriate for annexation as a noncontiguous area as defined by 160A-58.

This 3/22/2012.

**RESOLUTION ORDERING PUBLICATION OF A NOTICE OF  
PUBLIC HEARING ON THE QUESTION OF ANNEXATION  
PURSUANT TO G.S. 160A-31**

WHEREAS, the Town Council of the Town of Cary has received an annexation petition of

**David L. Bunch;**  
**Wake County Parcel Identification #'s: 0724450295, 0724356012;**  
**17.43 acres plus 1.35± acres of adjacent right-of-way;**

requesting the annexation of certain lands contiguous to the municipal boundaries of the Town of Cary; and

WHEREAS, the Town Clerk has certified to the Town Council the sufficiency of said Petition as required by law; and

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Cary, North Carolina that:

Section 1. A public hearing on the question of annexation of the area described herein will be held in the Council Chamber of the Town of Cary, 316 N. Academy Street, Cary, NC at 6:30 p.m. on 4/19/2012 at which time all residents and area owners in said territory and all residents of the Town of Cary will be given an opportunity to be heard.

Section 2. The area proposed for annexation is described as follows:

**LEGAL DESCRIPTION**

**Wake County Parcel Identification #'s: 0724450295, 0724356012**

Section 3. Notice of public hearing shall be published in The Cary News, a newspaper having general circulation in the Town of Cary, at least 10 days prior to the date of the public hearing.

ADOPTED 3/22/2012.

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

(Resolution No. 2012-27 is also on file in the town clerk's office.)

---

**d. Statements of Consistency and Reasonableness**

- (1) **Subject:** Consideration of council approval of a statement of consistency and reasonableness for Rezoning 11-REZ-08 in accordance with N.C.G.S. 160A-383.  
**Recommended Council Action:** Council may take action  
**Speaker:** Mr. Jeff Ulma
- (2) **Subject:** Consideration of council approval of a statement of consistency and reasonableness for Rezoning 11-REZ-09 in accordance with N.C.G.S. 160A-383.  
**Recommended Council Action:** Council may take action  
**Speaker:** Mr. Jeff Ulma
- (3) **Subject:** Consideration of council approval of a statement of consistency and reasonableness for Rezoning 11-REZ-10 in accordance with N.C.G.S. 160A-383.

**Recommended Council Action:** Council may take action  
**Speaker:** Mr. Jeff Ulma

**STAFF REPORT**

Town Council, March 22, 2012

**Approval of Rezoning Consistency and Reasonableness Statements (PL12-025)**

Consideration of approval of separate statements for future rezoning cases and for three recent cases.

Speaker: Jeffery G. Ulma, Planning Director  
From: Jeffery G. Ulma, Planning Director and Christine Simpson, Town Attorney  
Prepared by: Lisa C. Glover, Assistant Town Attorney  
Approved by: Benjamin T. Shivar, Town Manager  
Approved by: Michael J. Bajorek, Assistant Town Manager

**Executive Summary**

A recent North Carolina Supreme Court decision clarified that, when considering a rezoning case, Town Council should approve a separate "Consistency and Reasonableness Statement" pursuant to NCGS § 160A-383. Staff recommends that Council approve such statements in the future as well as for three recent rezoning cases.

**Discussion**

On March 9, 2012, the North Carolina Supreme Court issued an opinion in the case of *Wally v. City of Kannapolis* which held that, pursuant to NCGS § 160A-383, the governing body of a municipality should approve a separate Consistency and Reasonableness Statement with regard to each rezoning case heard by the governing body. NCGS § 160A-383 states, in relevant part:

When adopting or rejecting any zoning amendment, the governing body shall also approve a statement describing whether its action is consistent with an adopted comprehensive plan and any other officially adopted plan that is applicable, and briefly explaining why the board considers the action taken to be reasonable and in the public interest.

The Cary Town Council has traditionally approved such a statement as part of the adoption of the zoning ordinance for each case. However, based on the very clear language in the *Wally* case, the Town Attorney's office recommends that the Council now approve a separate Consistency and Reasonableness Statement for each future rezoning case heard by Council. As spelled out by the court, approval of such a statement is to follow approval or denial of the zoning map amendment. Thus, two steps will be required for each case.

The Town Attorney's office further recommends that Council approve a separate Consistency and Reasonableness Statement for all rezoning cases heard since January 1, 2012. Those cases are 11-REZ-08, 11-REZ-09, and 11-REZ-10. Council approved the rezoning in each case and determined that the rezonings were consistent with the Comprehensive Plan and were reasonable and in the public interest.

The consistency and reasonableness statements for 11-REZ-08, 11-REZ-09 and 11-REZ-10 follow:

**CONSISTENCY AND REASONABLENESS STATEMENT**

11-REZ-08 Maynard Farm

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: Rezoning 11-REZ-08 is consistent with the Comprehensive Plan.



Section 2: Based upon information presented at the public hearings and by the applicant, and based upon the recommendations and detailed information developed by staff and/or the Planning & Zoning Board contained in the staff report, and considering the criteria of Section 3.4.1(E) of the Town of Cary Land Development Ordinance, Rezoning 11-REZ-08 is reasonable and in the public interest.

Approved: March 22, 2012

### **CONSISTENCY AND REASONABLENESS STATEMENT**

11-REZ-09

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: Rezoning 11-REZ-09 is consistent with the Comprehensive Plan.

Section 2: Based upon information presented at the public hearings and by the applicant, and based upon the recommendations and detailed information developed by staff and/or the Planning & Zoning Board contained in the staff report, and considering the criteria of Section 3.4.1(E) of the Town of Cary Land Development Ordinance, Rezoning 11-REZ-09 is reasonable and in the public interest.

Approved: March 22, 2012

### **CONSISTENCY AND REASONABLENESS STATEMENT**

11-REZ-10 Marsh Tract

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: Rezoning 11-REZ-10 is consistent with the Comprehensive Plan.

Section 2: Based upon information presented at the public hearings and by the applicant, and based upon the recommendations and detailed information developed by staff and/or the Planning & Zoning Board contained in the staff report, and considering the criteria of Section 3.4.1(E) of the Town of Cary Land Development Ordinance, Rezoning 11-REZ-10 is reasonable and in the public interest.

Approved: March 22, 2012

#### **Fiscal Impact**

N/A

#### **Staff Recommendation**

Staff recommends approval of the attached Consistency and Reasonableness Statements for 11-REZ-08, 11-REZ-09, and 11-REZ-10.

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

(Resolution No.'s 2012-28, 2012-29 and 2012-30 are also on file in the town clerk's office.)

2. Planning and Development Committee, March 13, 2012 (*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. Frantz)

- a. **Request for Review Comments from Wake County on a Swift Creek Land Management Plan Variance (EN12-052)**

Committee unanimously recommended approving a variance request from the requirements of the Swift Creek Land Management Plan provided an adequately sized Best Management Practice (BMP) is built and inspected on an annual basis in accordance with Wake County requirements

## **STAFF REPORT**

Planning and Development Committee, March 13, 2012

### **Request for Review Comments from Wake County on a Swift Creek Land Management Plan Variance (EN12-052)**

Wake County is soliciting comments from Town of Cary on a variance request from the requirements of the Swift Creek Land Management Plan

Speaker: Ms. Jan Patterson

From: Tim Bailey, Director of Engineering  
Prepared by: Jan Patterson, Stormwater Engineer  
Approved by: Benjamin T. Shivar, Town Manager  
Approved by: Michael J. Bajorek, Assistant Town Manager

### **Executive Summary**

Wake County submitted a review request to Town of Cary staff regarding a variance from the Swift Creek Land Management Plan (SCLMP) requirements for 115 Brookridge Drive. The applicant seeks to build an addition onto the existing structure which would exceed the 12 percent impervious surface limit recommended by the SCLMP. Staff recommends that Town Council support the variance request provided that an adequately sized Best Management Practice (BMP) is built and inspected on an annual basis in accordance with Wake County requirements.

### **Discussion**

This property is located in Brookridge Estates Subdivision which falls within the new urban residential, non-critical area of Wake County as defined by the Swift Creek Land Management Plan (SCLMP) and the Town of Cary's Urban Service Area (USA). Properties within the USA have the potential to be annexed into the Town limits for the purpose of providing essential urban services, such as public water and sanitary sewer service. In this area of Swift Creek Watershed, the SCLMP requires stormwater control measures and connection to municipal sewer for a property that exceeds the 12 percent impervious surface limit.

According to the information supplied by Wake County, the variance is for a request to increase impervious surface area to 17.2 percent through an addition to the home. The property owner is proposing to provide stormwater mitigation for the percentage above the 12 percent limit; however, Wake County staff has indicated that the type of mitigation will not be determined until after the variance has been approved by their Board of Adjustment. The homeowner is also requesting a variance from the requirement to hook into municipal sewer.

This property is also located in the Swift Creek Watershed which currently has a Total Maximum Daily Load (TMDL) for impaired biological integrity. The TMDL uses percent impervious cover as a surrogate, with the TMDL target being set at nine percent improved stormwater management was recommended in the TMDL as a means to accomplish this goal.

Since this property is in the Swift Creek Watershed and Cary's USA, staff wanted to bring this before Town Council for their approval. The applicant is following the guidelines for installing stormwater control measures; however staff has concerns with a privately maintained BMP on an individual lot that is located in Cary's USA. During preliminary talks regarding annexation, there were discussions about potentially extending Town of Cary utilities into this neighborhood. The neighborhood was not receptive to the idea of annexation. There is a Town of Cary sewer line within 300 feet of the subject property; however, additional private property would have to be crossed to make the connection (reference: Code of Ordinances Section 36-150).

### **Fiscal Impact**

There are no operating or funding impacts associated with the actions discussed in this staff report.

### **Staff Recommendation**

Staff recommends Town Council's approval of the variance request provided that an adequately sized Best Management Practice (BMP) is built and inspected on an annual basis in accordance with Wake County requirements.

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

- 
- b. Designation of Triangle Expressway as a North Carolina Scenic Byway (PL12-020)**  
Committee unanimously recommended adopting a resolution supporting the NC Turnpike Authority's efforts to designate the Triangle Expressway as a North Carolina Scenic Byway.

### **STAFF REPORT**

Planning and Development Committee, March 13, 2012

#### **Designation of Triangle Expressway as a North Carolina Scenic Byway (PL12-020)**

Consideration of a Resolution supporting the NC Turnpike Authority's efforts to designate the Triangle Expressway as a North Carolina Scenic Byway

Speaker: Mr. Philip Smith

From: Jeffery G. Ulma, AICP, Planning Director  
Prepared by: Philip Smith, Planning Manager  
Approved by: Benjamin T. Shivar, Town Manager  
Approved by: Michael J. Bajorek, Assistant Town Manager

#### **Executive Summary**

The North Carolina Turnpike is pursuing a Scenic Byway designation for the Triangle Expressway. Such designation requires support from the local municipalities through which it traverses. The Town Council may express the Town's support of this designation by adopting the attached resolution.

#### **Background**

The North Carolina Turnpike Authority is pursuing a Scenic Byway designation for the Triangle Expressway located in Wake and Durham Counties. The portion of the Triangle Expressway being considered for designation is NC 147 extending south from the NC147/I-40 Interchange in Research Triangle Park to its terminus with the Western Wake Expressway (NC 540) and the Western Wake Expressway (NC 540) extending from the NC 540/NC54 Interchange south to the NC 540/NC 55 Bypass Interchange near Holly Springs, N.C.

The North Carolina Scenic Byways Program identifies and highlights scenic roads with unusual, exceptional or unique intrinsic qualities for public viewing and enjoyment. The Turnpike Authority envisions that such intrinsic qualities of the Triangle Expressway corridor will be preserved. The Authority cites the aesthetic design guide that was developed for the expressway to create a memorable appearance of the hardscape features of the road with bridges, sign structures and tolling features complementing the architecture of the State Capitol region. A landscape restoration plan will also provide a sustainable landscape typifying the distinct and beautiful natural features of the North Carolina Piedmont region.

The North Carolina Turnpike Authority is preparing the application for designation of the Triangle Expressway as a Scenic Byway. A requirement of the application process is evidence of support from the local municipalities through which the Expressway traverses and the Turnpike Authority recently approached the Town asking for our support. The Towns of Apex, Morrisville and Holly Springs were also approached and have passed resolutions supporting the designation. If the Town Council wishes to also add its support to the application, council should adopt the attached resolution herein.

**Fiscal Impact**

None.

**Staff Recommendation**

Council may support the efforts of the NC Turnpike Authority to designate the Triangle Expressway as a North Carolina Scenic Byway by adopting the following resolution.

**RESOLUTION OF THE CARY TOWN COUNCIL  
SUPPORTING THE NORTH CAROLINA TURNPIKE AUTHORITY IN  
ITS APPLICATION TO DESIGNATE THE TRIANGLE EXPRESSWAY  
AS A NORTH CAROLINA SCENIC BYWAY**

**WHEREAS**, the North Carolina Department of Transportation has enacted the Scenic Byway program in order to portray the diverse beauty and culture of the Tar Heel State and provide travelers with safe and interesting alternate travel routes; and

**WHEREAS**, the Triangle Expressway is located with Wake and Durham Counties, and includes NC 147 extending south from the NC147/I-40 Interchange in Research Triangle Park to its terminus with the Western Wake Expressway (NC 540) and the Western Wake Expressway (NC 540) extending from the NC 540/NC54 Interchange south to the NC 540/NC 55 Bypass Interchange near Holly Springs, N.C; and

**WHEREAS**, the North Carolina Turnpike Authority is seeking a Scenic Byway designation for the Triangle Expressway and believes the natural aesthetic beauty of the Expressway corridor, together with enhanced architectural features and landscaping treatments of the roadway qualifies the Triangle Expressway for such designation; and

**WHEREAS**, the Town of Cary has been approached by the North Carolina Turnpike Authority asking for the Town's support of the Scenic Byway application; and

**WHEREAS**, the Town of Cary has a tradition of prioritizing the aesthetic qualities of its streets and roads and for protecting its natural resources to enhance the quality of life for its citizens;

**NOW THEREFORE, BE IT RESOLVED** that the Cary Town Council hereby adopts this resolution in support of the North Carolina Turnpike Authority's application to designate the Triangle Expressway as a North Carolina Scenic Byway.

Adopted this the 22<sup>nd</sup> day of March, 2012.

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

(Resolution No. 2012-31 is also on file in the town clerk's office.)

---

**c. Update of Land Dedication Ordinance (PR12-23)**

Committee unanimously recommended implementing an update of the land dedication ordinance to require a recreation fee for multi-family development and setting a public hearing for the proposed amendments for April 19, 2012.

**STAFF REPORT**

Planning and Development Committee, March 13, 2012

**Update of Land Dedication Ordinance (PR12-23)**

Consideration of implementing an update of the land dedication ordinance to require a recreation fee for multi-family development

Speakers: Mr. Doug McRaine

From: Doug McRaine, Interim PRCR Director  
Prepared by: Sandi Bailey, Parks Planner, PRCR  
Approved by: Benjamin T. Shivar, Town Manager  
Approved by: Michael J. Bajorek, Assistant Town Manager

**Executive Summary**

At a September 2011 work session with Council, staff was directed to proceed with implementation of a new fee for multi-family developments that will become part of the Town's land dedication requirements for parks and recreation purposes. Council requested that staff proceed with implementing the new fee for multi-family development and base the flat fee per unit on 65 percent of the fee for subdivided units. Staff has worked with the consultant, Clarion Associates, and met with staff from other departments in addressing the details associated with the implementation of this new fee. Staff recommends that a public hearing be set for April 19, 2012. The proposed amendment language for the LDO will be available prior to the public hearing.

**Background**

The Town of Cary has, for decades, actively provided recreation facilities for use by Town residents. The Town has had a regular program of acquiring land for parks and recreation purposes, and constructing facilities. The Town has also enacted regulations and requirements resulting in developer participation in the provision of land and facilities to serve the recreation needs of the new residential growth accompanying new development. The Town's effort's to achieve an acceptable Level of Service (LOS) for its parks and recreation needs has been based on a combination of Town-financed initiatives and developer participation. The Town currently has provisions in Chapter 8 of its Land Development Ordinance that require dedication of land for recreational purposes, as land is being subdivided for single-family home development.

In 2007, the North Carolina General Assembly passed S.L. 2007-321 giving the Town of Cary authority to include multi-family developments as part of its land dedication and recreation fee requirements for parks and recreation purposes. This legislation enables the Town of Cary to require developers of multifamily dwelling units to provide funds for recreational land to serve multi-family developments.

A work session was held with Council on December 14, 2010 to provide an overview of the range of issues involved with implementing this special legislation and making it part of the Town's current land dedication requirements. At Council direction, staff held a public meeting in August 2011 to obtain feedback from the community and presented those findings along with additional alternatives for Council to consider at a Council work session held on September 13, 2011. At that time, Council authorized staff to proceed with implementing the new fee and to base that fee on 65 percent of the average fee for subdivided residential units.

As a reminder, the current ordinance requires 1/35 of an acre, or the equivalent value thereof, be set aside for each dwelling unit planned or proposed in a subdivision plan or development. There are procedural provisions calling for individual property value appraisals to be obtained in order to calculate payment-in-lieu amounts when such payments are to be substituted for land dedication.

### **Discussion**

The primary objective of this current effort is to define the basic fee structure and procedure for application under which the recreational fee, or recreational fee and land dedication combination, requirements for new multi-family residential development will be applied.

The flat fee per unit of non-subdivided residential development will be set annually, and will become effective on July 1 of each year.

The fee will be set at 65 percent of the average unit fee for subdivided residential development based on the most recent five-year average. The five-year average will include those subdivided developments for which a recreation payment-in-lieu invoice was prepared within the previous five calendar years.

A combination of land and fees may also be made for the multi-family residential development. If land is dedicated, it will be required to meet the same criteria set forth for subdivided residential development in terms of the nature and characteristics of the land. If land is dedicated, it will be at the rate of 1/55 of an acre for each multi-family unit. This is based on the equivalent of 65 percent of the 1/35 acre requirement for subdivided residential.

These fees and land dedication requirements will apply to new site and subdivision plan applications, excluding those that are actively in review and those that have already been approved and that do not expire. The fee will be applicable to new and additional units added to already approved site and subdivision plans.

These fees will not apply to assisted living or nursing home facilities.

The proposed amendment language for the LDO will be available prior to the public hearing.

In terms of schedule, it is expected that Council will be requested to take action on this ordinance change at its June 2012 Council meeting with an effective starting date for the ordinance change to take place on July 1, 2012.

### **Fiscal Impact**

N/A

### **Staff Recommendation**

Staff recommends setting a public hearing for the proposed LDO amendments related to a recreation fee for multi-family residential development on April 19, 2012.

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

**d. Four-Party Railroad Agreement – CSX, NCDOT, Parkside and Town of Cary**  
(EN12-055)

Committee unanimously recommended non-support of a Four-Party Railroad Agreement associated with the Parkside Town Commons Project under the currently proposed terms and conditions.

**STAFF REPORT**

Planning and Development Committee, March 13, 2012

**Four-Party Railroad Agreement – CSX, NCDOT, Parkside and Town of Cary** (EN12-055)

Consideration of entering into a Four-Party Railroad Agreement associated with the Parkside Town Commons Project

Speaker: Mr. Tim Bailey

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

Prepared by: Laura L. Cove, P.E., Associate Director of Engineering

Approved by: Benjamin T. Shivar, Town Manager

Approved by: Michael J. Bajorek, Assistant Town Manager

**Executive Summary**

The Parkside Town Commons project has been designed and includes the extension of O’Kelly Chapel Road from NC 55 to Louis Stephens Drive, including a new at-grade railroad crossing of the CSX tracks. The developer has worked with CSX and NCDOT to draft an agreement which would allow this new at-grade crossing under certain terms and conditions. Staff recommends that Council not support the current proposal under the current the terms and conditions.

**Background**

The Parkside Town Commons project (07-SP-091) was approved on 3/11/2009. Parkside Town Commons is located in the Alston area at the northeast quadrant of the NC-540 and NC 55 interchange. The project will extend O’Kelly Chapel Road connecting to RTP. O’Kelly Chapel Road extension is a major thoroughfare shown on the Town’s transportation plan. CSX railroad track separates Parkside Town Commons from RTP. Parkside’s plan includes crossing the railroad at-grade adding gates, flashers and necessary equipment. To permit a new at-grade crossing, the developer has worked with CSX and NCDOT to draft an agreement which would allow this new at-grade crossing under certain terms and conditions.

Town Council has considered this issue in the past, primarily through discussions at Council meeting on May 29, 2008; July 24, 2008; August 14, 2008; and January 27, 2011. On January 11, 2011, Council’s Planning and Development Committee unanimously recommended: 1) approving a four-party agreement between CSX, NCDOT, Parkside PDD and the Town of Cary in concept except for the exclusion of the \$500,000 developer contribution to the Town; 2) directing staff to review text details and make minor revisions while keeping the basic intent intact and 3) authorizing the Mayor to execute the agreement. The developer requested that the item be removed from the Council Agenda at the January 27, 2011 meeting.

**Discussion**

The developer of Parkside Town Commons, Kite Realty Group, has continued to negotiate with CSX and NCDOT based on feedback from Town Council and staff and adjusting for current market conditions. In his letter of January 26, 2012, (attached to and incorporated herein as **Exhibit A**) Mr. David George of Kite Realty Group, has requested Council’s consideration of a Four-Party Railroad Agreement (attached to and incorporated herein as **Exhibit B**) between CSX, NCDOT, Parkside and Town of Cary.

General terms of previous drafts of the agreements include the following:

- The Town will accelerate the funding and construction of a bridge project.
- The developer will provide \$500,000 in cash toward the construction of the bridge.
- The developer will not request any form of reimbursement for the thoroughfare road improvements they construct in conjunction with the project.
- The developer will pay for temporary road improvements to close the existing Carpenter Fire Station road at-grade railroad crossing. This will be necessary to construct the new bridge at this location.
- The developer will pay for improvements in road widening and turn lanes to redirect traffic to the Morrisville Carpenter Road at-grade road crossing. They will also pay the cost of removal of the grade crossing in this location when the bridge is complete and open to traffic.
- The Town will enter into a separate agreement with the railroad for the at-grade closings, new bridge and new at grade crossing at O'Kelly Chapel Road.

Town Council previously approved an agreement, in concept, but since funding for capital projects had become limited, the agreement was not finalized. Kite Realty Group, the developer, has negotiated a longer term more favorable agreement for the Town to address staff concerns. They also requested to eliminate the \$500,000 contribution to the Town and will seek development fee credits for eligible street improvement costs due to the difficulty achieving viable projects in the current economy.

General terms of the current proposed agreements include the following:

- The Carpenter Fire Station Road crossing will be closed prior to the opening of the O'Kelly Chapel Road crossing. All traffic for an interim period will be routed through the Morrisville Carpenter Road crossing.
- The developer will make improvements to Morrisville Carpenter Road and NC 55 to redirect traffic when the Carpenter Fire Station Road crossing is closed.
- The Town will build a new bridge creating a grade separated crossing at Carpenter Fire Station Road. The Town must begin construction within 10 years or request an extension. If the bridge is not constructed, the railroad could close the O'Kelly Chapel Road crossing.
- A new at-grade crossing, including railroad warning devices, will be constructed by the developer for the O'Kelly Chapel Road extension.
- The Town will fund the Carpenter Fire Station bridge project and the developer will cover the majority of the other costs.

While the developer has continued to work on revisions to the agreement – adding additional safety enhancements as required by the railroad and coordinating with additional developers on transportation improvements – they have not addressed the Planning and Development Committee's recommendation regarding the \$500,000 developer contribution. Therefore, after evaluating the current proposed agreement and current economic outlook, staff supports the previous recommendation made by the Planning and Development Committee at the January 11, 2011 meeting and recommends that Council not support the current proposal under the current terms and conditions.

#### **Fiscal Impact**

The staff recommendation does not have any financial impact. Should Council desire to move forward with the agreement, Cary's commitment to build the Carpenter Fire Station bridge is currently estimated to cost \$17 million. Cost will likely increase prior to construction. Staff is seeking grants to fund this project but to-date, only a small planning grant has been received from the Capital Area Metropolitan Planning Organization (CAMPO). A funding source will need to be developed as a part of the 10 year capital improvements plan if this agreement is approved

#### **Staff Recommendation**



Staff recommends that Council not support the current proposal under the current the terms and conditions.

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

(Note: Council's action supported the committee recommendation to deny this request.)

- 
- e. **Report on Activities of the Shale Gas Development Task Force** (PWUT12-16)  
Committee unanimously recommended recognizing the report on activities of the Shale Gas Development Task force and requested that wording be added to the legislative agenda at the March 20 council worksession advocating the right to make decisions about shale gas development be afforded to local governments and that thoughtful, deliberate consideration should be given as impact studies are conducted on a state level. Committee further recommended staff prepare a resolution advocating the rights of local government to make decisions locally about shale gas development, also to be considered at the March 20 work session.

## **STAFF REPORT**

Planning and Development Committee, March 13, 2012

### **Report on Activities of the Shale Gas Development Task Force** (PWUT12-16)

Report on Activities of the Shale Gas Development Task Force

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: Benjamin T. Shivar, Town Manager

Approved by: Michael J. Bajorek, Assistant Town Manager

### **Executive Summary**

In response to concerns about anticipated actions by the North Carolina General Assembly that may allow development of potential shale gas resources in our part of the state, Council directed staff at their December 15, 2011 meeting to investigate and report back to Council the pros and cons and suggested actions the Town may take regarding shale gas development within the Cary town limits and/or extra-territorial jurisdiction (ETJ); and to include requests for recommendations from the Environmental Advisory Board (EAB) and the Economic Development Commission (EDC). A Shale Gas Development Task Force has been assembled to consider the many facets and technical complexities of this issue, and to develop the requested report. The task force consists of three staff members and several members of the EAB and the former EDC. Staff requests feedback on its response to Council's December 15, 2011 direction and clarification or confirmation of the task force work plan as outlined in the staff report.

### **Background**

The North Carolina Geological Survey (NCGS) has concluded that a commercially viable reserve of natural gas may underlie parts the Triassic basins of North Carolina. Figure 1 (attached to and incorporated herein as **Exhibit C**) shows the generalized locations of the Triassic basin that may be suitable for natural gas production, with Cary's corporate limits overlaid on the map to show the extent of Cary's potential exposure to this subject. Recoverable gas is thought to exist in the Sanford sub-basin of the Triassic basin (including Lee, Chatham and Moore counties) and possibly the Dan River sub-basin (including Stokes and Rockingham counties). Cary is located in the Durham sub-basin (including Wake, Durham and Granville counties), and gas reserves have not yet been identified in this area. A number of factors, including increased interest developing

new energy sources, access to existing natural gas pipelines in the area, and energy demand from nearby industries and utilities could make potential gas reserve a target for exploration and development.

Modern exploration and gas production technology, such as horizontal drilling and hydraulic fracturing, has enabled the extraction of shale gas in similar formations in other states. Hydraulic fracturing, also known as hydrofracking or fracking, is a process used to stimulate production of natural gas from shale or other impermeable rock formations. The process involves drilling a well into rock that contains natural gas; injecting fluids under pressure to fracture the rock; and extracting the natural gas from the fractures that are created. North Carolina's laws (Article 27, G.S. 113-378 through 113-423) regulating oil and gas exploration and production are dated and do not address the technologies commonly used in shale gas exploration and production, such as horizontal drilling and hydraulic fracturing.

While development of this resource could be an economic benefit to North Carolina, other states have found that shale gas production also has impacts that need to be carefully managed. The possible environmental impacts of shale gas exploration include the use of high volumes of water during drilling; potential contamination of groundwater aquifers by chemicals, water or wastewater during drilling or hydraulic fracturing of the shale layers; clearing of access roads and the drilling area; and storage of chemicals used in the process.

DENR is currently conducting a study of the potential environmental and economic impacts of shale gas exploration and development in North Carolina in response to Session Law 2011-276 (House Bill 242). The law directs DENR to study the issue of oil and gas exploration in the state, and to specifically focus on the use of directional and horizontal drilling and hydraulic fracturing for that purpose.

In response to concerns about the potential development of shale gas resources in central north Carolina, Council directed staff at the December 15, 2011 meeting to "investigate and report back to council the pros and cons and suggested actions the Town may take regarding [shale gas development] within the Town of Cary town limits and/or Extra-Territorial Jurisdiction (ETJ); and to include requests for recommendations from the Environmental Advisory Board and the Economic Development Commission."

In response to Council's direction, a Shale Gas Development Task Force (task force) has been assembled to consider the many facets and technical complexities of this issue, and to develop this report. Staff met in a joint meeting of the EAB and members of the former EDC to discuss Council's direction and consider a plan to respond to council's direction. As a result of this discussion, a task force was formed consisting of three members of the former EDC, four members of the EAB, the staff liaison to the EAB (Sustainability Manager), staff liaison to the EDC (Budget Director), and the Director of Public Works and Utilities. The task force will remain in effect until its final report to Council. This timing of this final report is dependent upon future actions by the General Assembly.

### **Discussion**

Practices essential to unconventional forms of natural gas exploration and extraction are currently not allowed in North Carolina: horizontal directional drilling, and injection of chemicals or water into wells in order to enhance the movement of oil or gas towards a production well (See 15A NCAC 5D .0107(e), 15A NCAC 2C .0209(b), and NC General Statutes 143-214.2(b)) In addition, direct discharges of wastewater from oil and gas exploration/production are prohibited under federal National Pollutant Discharge Elimination System, or NPDES, permit program regulations. Land-based disposal of wastewaters, produced waters and drilling wastes may be permissible under DENR's land application and solid waste regulatory programs, but at this time no such activities have been permitted or are known to have occurred.

The North Carolina General Assembly is considering changes to state law that would allow further development of shale gas resources. Their actions to date include passage of Session Law 2011-276 (House Bill 242) that requires DENR, in cooperation with the Department of Commerce, Department of Transportation, Attorney General's Office and Rural Advancement Foundation International, to conduct a study of the potential development of shale gas in North Carolina and make recommendations regarding the regulatory framework necessary for development of this resource. The study, which must be presented to the legislature by May 1, 2012, must address:

- oil and gas resources present in the Triassic Basins and in any other areas of the state;
- methods of exploration and production;
- potential impacts on infrastructure and water resources;
- potential environmental impacts;
- potential economic impacts;
- potential social impacts;
- potential oversight and administrative issues associated with a regulatory program;
- consumer protection and legal issues; and
- other pertinent issues.

A draft of the DENR report may be available as early as March. A public comment period will begin upon issuance of the report. See **Exhibit D** attached to and incorporated herein for a draft outline of the DENR report.

If it becomes law, Senate Bill 709 would direct DENR to provide a comprehensive report that outlines the commercial potential of shale gas resources within the state as well as the regulatory framework necessary to develop this resource. This legislation would not specifically permit horizontal directional drilling or hydraulic fracturing, but would begin to put in place a regulatory and financial framework for shale gas development. It also, like SL2011-276, directs DENR to fully study the issue and develop a regulatory program. S709 has passed a Senate override of the governor's veto and is expected to appear in the House soon for override vote, after which it would become law.

DENR also requested a nonprofit organization called State Review of Oil & Natural Gas Environmental Regulations (STRONGER) to perform a review of North Carolina's oil and gas regulatory programs. STRONGER's review process brought together representatives from the state, the oil and gas industry, and public interest stakeholders to evaluate the state's regulatory programs against STRONGER's set of national guidelines. STRONGER issued its report (attached to and incorporated herein as **Exhibit E**) in late February 2012. This report concluded that "DENR has mature environmental programs and has staff with significant experience in their various disciplines related to air quality, water quality, water resources, waste management and land resources. While the state's environmental programs are strong, the programs have not been developed in anticipation of regulating oil and gas exploration and production activities. The STRONGER report recommends that the state develop formal standards and technical criteria for exploration and development activities if North Carolina establishes an oil and gas regulatory program. Specific standards are needed to ensure that state environmental staff, the industry and the public are aware of regulatory expectations and to focus permit review on the impacts of oil and gas development."

To date, no bills have been introduced in the legislature to actually permit the use of the unconventional gas extraction methods of horizontal directional drilling, hydraulic fracturing, or injection of chemicals or water into wells in order to enhance the movement of oil or gas towards a production well. The task force, along with other local governments, the North Carolina League of Municipalities (NCLM) and many interest groups, are carefully watching for further legislative and regulatory activities. Through its legislative program, the Town is engaged in these processes.

Since its formation, the task force has met twice to determine the best means to become knowledgeable on the many facets of the issue and develop a report to Council. This has included assembling relevant reference documents and resources, receiving updates on legislative and regulatory activities, gaining access to objective technical and academic work, and learning of activities of other cities and counties in North Carolina and other parts of the country that have or expect to experience increased shale gas development in their jurisdictions. There have been several educational events on the subject sponsored by the General Assembly, DENR, NCLM, universities, and other interest groups.

Task force members have developed a lengthy list of questions and areas of concern that will require further study. These questions were summarized into several general categories to help focus further study. Further discussions will build from this to develop lists of pros and cons and formulate recommendations. Categories include:

- Economic Development
- Environmental Considerations
- Impacts on Town Services
- Land Use Planning
- Legislative and Regulatory Advocacy

The task force's anticipated next steps include:

- Continuing to stay up to date on activities of the legislature and the industry.
- Developing a firm understanding of where this type of activity could occur in our jurisdiction. This will include participation of Planning and Legal staff.
- Engaging in conversation with others who have common interest, such as the NCLM and other local government jurisdictions. The Town of Creedmoor, for example, has passed an ordinance prohibiting "oil and gas drilling which involve horizontal drilling with fracturing". NCLM is assembling a database of local ordinances, proposed and passed, from others in NC and from other states.
- Determining the highest priority issues on which the Town of Cary should focus its efforts and develop positions.
- Develop a list of the pros and cons of regional shale gas development for Cary.
- Further study of the topics most relevant and actionable for Cary in the event that shale gas development is allowed in central North Carolina, culminating in a final recommendation to Council.

Potential shale gas development is a complex, multi-faceted issue involving the NC General Assembly, many regulator agencies at the federal and state levels, many interest groups on all sides of the debate, and many local governments in the region. There are many unknowns at this time, including the exact nature of future legislative and regulatory agency activity. There are also many issues with regulatory supremacy at different levels of government. For example, some federal programs may supersede state authority, as well as state law that may supersede local authority. Legal advice will be needed to fully understand these regulatory relationships. DENR's report and bill introduction in future legislative sessions will also inform further work by the task force. A common concern raised by task force members is that development of a state shale gas program is moving very quickly and that the full impacts on regulatory requirements, economic development, the environment, social aspects affecting communities, and local government services have not been fully assessed. It will take some time to fully understand the full impact of this new topic.

Task force members suggested various ways to raise questions and express concern to key decision makers, such as a town council resolution that the state study the topic more before taking further action, passing an ordinance similar to Creedmoor banning the practice for a time in

our jurisdiction until it is better understood, adding this topic to the town's legislative agenda, and advocating Cary's interests to members of our local delegation in the General Assembly. The task force recommends including an item on the Town's 2012 NC legislative agenda requesting that any further legislative and regulatory activity related to shale gas development preserve local governments' abilities to determine appropriate land use planning related to potential locations of oil and gas activities, that the full impacts on regulatory requirements, economic development, the environment, social aspects affecting communities, and local government services be better understood prior to implementing a new oil and gas program, and that sufficient public input opportunities be provided for any policy and rule making processes. Staff is including this item for Council's consideration at the March 20 work session

**Fiscal Impact**

N/A

**Staff Recommendation**

Staff requests feedback on its response to Council's December 15, 2011 direction, and that Council provide clarification or confirmation of work done to date and the proposed task force direction and work plan outlined above.

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

---

**C. RECOGNITIONS, REPORTS, AND PRESENTATIONS**

1. Presentation of VFW awards to Town public safety employees. **(Chiefs Cain and Bazemore)**

VFW representatives presented awards to Police Officer Vibert and Fire Captain Godwin.

- 
2. Presentation of a proclamation designating April 2012 as "Fit Cary Month". **(Mrs. Robinson)**

**RECOGNIZING APRIL 2012 AS  
FIT CARY MONTH IN THE TOWN OF CARY**

**WHEREAS**, the Town of Cary has been designated a Gold Level Fit Community, a Bronze Level Bicycle Friendly Community, and a Bronze Level Walk Friendly Community.

**WHEREAS**, regular physical activity has curative and protective health benefits. The health benefits of physical activity can improve the quality of life for everyone in the Town of Cary. A healthier populace means long-term cost savings for our society at large.

**WHEREAS**, children need regular physical activity in order to establish positive health habits and prevent future chronic conditions such as obesity.

**WHEREAS**, citizens of Cary are encouraged to walk, bike or use public transportation as a healthy, environmentally friendly mode of transportation. Workplaces are encouraged to provide more physical activity opportunities for their employees.

**WHEREAS**, the Town of Cary Parks, Recreation and Cultural Resources Department provides hundreds of physical activities and health related programs each month.

**WHEREAS**, the representatives of the National Physical Activity Plan call on organizations and individuals to recognize the importance of physical activity.

**NOW, THEREFORE**, I, Harold Weinbrecht, Jr., Mayor of the Town of Cary, North Carolina, on behalf of the Cary Town Council, do hereby proclaim April 2012 as **“Fit Cary Month”** in the Town of Cary, North Carolina and encourage all citizens to become more physically active and support policies and programs that help them do so.

**PROCLAIMED** this 22<sup>nd</sup> day of March, 2012.

Robinson presented the proclamation to Town employee Sam Trogdon and Parks, Recreation and Cultural Resources Advisory Board member Sarah Martin.

(Proclamation No. 12-021 is also on file in the town clerk’s office.)

---

**3. Presentation of the Manager’s operational update. (Mr. Ben Shivar)**

Budget Director Scott Fogleman outlined Page 25 of staff’s PowerPoint presentation (see **Exhibit F** attached to and incorporated herein). He stated favorable interest rates on debt have provided savings of about \$150,000 for the year. He stated the occupancy tax revenue continues to perform better than budgeted, which impacts the assuredness of our interlocal tax revenue distributions that will begin January 2013. He stated recycling revenue has experienced a small decrease from earlier expectations for the year. The expected year-end operating margin of about \$1.2 million is about \$300,000 better than the previous update, mainly due to the increase in sales tax revenue experienced in December.

Fogleman explained the impact of the new Census numbers on Cary (Exhibit F). Cary dropped from 9.2 to 8.3 percentage points in the Wake County sales tax distribution. In FY2011, Cary’s total was \$23.7 million. The new Census numbers will reduce this number by \$2.37 million. He stated this lowered the General Fund revenues more than one penny on the tax rate.

---

**D. PUBLIC SPEAKS OUT (one hour time limit)**

Ms. Lib Hutchby thanked the council for the resolution pertaining to shale gas development on tonight’s agenda.

Mr. Adam Ashbaugh of LStar management, the applicant for 12-REZ-03, stated the request was withdrawn based on neighbor concerns. He said they will work within the framework of the existing zoning. He appreciates the time staff spent reviewing their application.

---

**E. PUBLIC HEARINGS**

**1. Community Development Block Grant (CDBG) Annual Action Plan**

**Subject:** Public hearing on the Community Development Block Grant (CDBG) Annual Action Plan

**Proposed Council Action:** Refer to the April Planning & Development Committee

**Speaker:** Ms. Tracy Stone-Dino

**STAFF REPORT**

Town Council Meeting, March 22, 2012

## **Public Hearing on the FY 2013 Community Development Block Grant (CDBG) Annual Action Plan (PL12-024)**

Conduct the Public Hearing for the FY2013 Annual Action Plan

Speaker: Tracy Stone-Dino, Senior Planner

From: Jeffery G. Ulma, Planning Director  
Prepared by: Tracy Stone-Dino, Senior Planner  
Approved by: Benjamin T. Shivar, Town Manager  
Approved by: Michael J. Bajorek, Assistant Town Manager

### **Executive Summary**

In order to receive its annual Community Development Block Grant, the Town is required by the U.S. Department of Housing and Urban Development to conduct adequate citizen participation to obtain feedback on housing and community development needs. On February 23, 2012, the Town Council approved the citizen participation schedule for the FY2013 Annual Action Plan and established March 22, 2012 as the date of the public hearing before the Town Council.

### **Discussion**

On July 1, 2012 the Town is expected to receive \$420,150 in Community Development Block Grant (CDBG) funds from the US Department of Housing and Urban Development (HUD). In order to receive these funds, the Town must prepare an Annual Action Plan describing the projects the Town will undertake in the upcoming fiscal year.

In order to receive the CDBG funds, the HUD requires that the Town conduct adequate Citizen Participation prior to the adoption of the Annual Action Plan to gather information on the specific needs and projects of interest to our low-and moderate-income community. This process is accomplished through community meetings and at least one public hearing before the governing body. As in the past, our citizen participation process for this year has included input from Town departments, two advertised neighborhood meetings in the low- and moderate-income community, a required public hearing before Town Council and a 30-day comment period for the public.

Input received from this public hearing will be used to identify the priorities for CDBG projects to be included in our FY2013 Annual Action Plan.

### **Staff Recommendation**

Staff recommends that Town Council conduct the public hearing as scheduled. This item will then be on the April Planning and Development Committee for that committee's recommendation to council.

Tracy Stone-Dino of the Planning Department outlined the staff report herein.

The mayor opened the public hearing.

Reverend Tyner of the White Oak Foundation stated staff has visited the White Oak community and provided information to the public. He distributed a fact sheet showing how HUD moneys have been used by the White Oak Foundation (refer to **Exhibit G**, attached to and incorporated herein). He thanked council for their continuing support.

Mr. Tom Beebe of the Caring Place stated this Cary-based organization provides services to Cary families with children. They provide a 16-week life skills program and temporary shelter, with the goal to transition them to permanent housing. He stated their success rate is about 90 percent of participants remaining in permanent housing. He urged council to continue supporting their efforts.

Mr. Kevin Campbell of Habitat for Humanity of Wake County thanked council for their continued focus on affordable housing. They have built 50 Habitat houses in Cary since 1990, and they opened a re-store this past year. He thanked council for their support of the Cary Plaza project, where they are a tenant. They are eager to build a house in Cary this coming year.

The mayor closed the public hearing.

No action was required. This item will be on a future agenda for action.

**2. Rezoning 12-REZ-01 (Wright Property)**

**Location:** 1408 Old Apex Road

**Current Zoning:** Residential 40 (R-40)

**Proposed Zoning:** Residential Multi-Family Conditional Use (RMF-CU), with zoning conditions to limit use (dwelling types), limit residential density to eight dwelling units per acre, and provide additional required buffer area.

**Proposed Council Action:** Refer to the Planning & Zoning Board

**Speaker:** Mr. Wayne Nicholas

**REQUEST**

To amend the Town of Cary Official Zoning Map to rezone approximately 5.37 acres located at 1408 Old Apex Road from Residential 40 (R-40) to Residential Multi-Family Conditional Use (RMF-CU) with zoning conditions to limit use (dwelling types) and residential density, and to provide additional required buffer area.

*NOTE: The purpose of the rezoning is to determine whether or not the land uses and densities allowed in the proposed zoning district are appropriate for the site.*

**SUBJECT PARCELS**

Property Owner(s)	County Parcel Number(s) (10-digit)	Real Estate ID(s)	Calculated Acreage
Lynn H. and Dianne W. Wright	0753644914	0043795	5.37
<b>Total Area</b>			

**ASSOCIATED REZONING CASE**

Rezoning Case Number 12-REZ-02, Oxxford Hunt Planned Development District (PDD) Amendment, is a separate but associated rezoning request for a 2.3-acre parcel (*Parcel B*) adjacent to the property that is the subject of this rezoning request (*Parcel A*). The Oxxford Hunt PDD Amendment is also being presented for public hearing on March 22, 2012. It is the applicant's intent to incorporate both parcels into a single development

The purpose of the separate Oxxford Hunt PDD Amendment is to remove the required 50-foot-wide buffer along the approximately 230-foot common boundary between Parcels A and B, as established by the approved PDD. The portion of the future development project that is within Parcel B will comply with all other aspects of the existing Oxxford Hunt PDD.

**BACKGROUND INFORMATION**

Applicant & Agent	Glenda S. Toppe & Associates		
Acreage	5.37 ±		
General Location	1408 Old Apex Road		
Tentative Schedule	<b>Public Hearing</b>	<b>Planning &amp; Zoning Board</b>	<b>Town Council</b> <i>June 14 or 28, 2012<sup>1</sup></i>



	March 22, 2012	May 21, 2012	
	<i><sup>1</sup>The date of this meeting will be determined after the P&amp;Z Board recommendation. The rezoning will go to the first meeting of the month if there is unanimous approval by the P&amp;Z Board. Otherwise it will go to the second meeting of the month as a discussion item.</i>		
Land Use Plan Designation	Low to Medium Density Residential (LDR to MDR)		
Existing Zoning District	Residential 40 (R-40)		
Existing Zoning Conditions	None		
Proposed Zoning District	Residential Multi-family Conditional Use (RMF-CU)		
Proposed Zoning Conditions	<ol style="list-style-type: none"> <li>1. Development on the site shall be limited to a maximum of 42 townhomes, patio dwellings, or semi-detached/attached single-family dwellings, as such uses are defined by the Land Development Ordinance.</li> <li>2. Residential density shall not exceed eight dwelling units per acre.</li> <li>3. A natural buffer area shall be provided along the southwest end of the property which shall include all the area located west of the centerlines of the existing drainageways and extend to the boundary of any required perimeter buffers along the western and southern property lines. This buffer area shall also be reserved for future extension of the Town of Cary Greenway Trail System. This buffer shall remain undisturbed with the exception to allow construction of future Greenway Trail improvements and supplemental buffer plantings if determined necessary at the time of site plan review.</li> </ol>		
Town Limits	Yes		
Valid Protest Petition	To be determined prior to the public hearing		
Staff Contact	Wayne Nicholas, AICP - Planning Manager (919) 465-4610 wayne.nicholas@townofcary.org		

## SITE CHARACTERISTICS

### Streams

According to Cary's most current GIS maps, the site is impacted by a steam buffer. Field determination will be required at the time of site plan review.

### Floodplains or Wetlands

Cary's most current GIS maps do not identify any floodplains or wetlands on the subject property. Field determination will be required at the time of site plan review.

### Surrounding Zoning Districts/Land Use

North - Oxxford Hunt Planned Development District (Residential condominiums [Hunting Chase] and office use);

South - Residential 40 (R-40) - one vacant parcel, and two parcels each containing a single-family residence;

East - General Commercial Conditional Use (GC-CU), opposite side of Old Apex Road - vacant parcel;

West - Residential 12 (R-12) - vacant parcel.

## CONSISTENCY WITH LAND DEVELOPMENT ORDINANCE

**Land Use**

The applicant has proposed a zoning condition to limit use of the property to a maximum of 42 townhomes, patio dwellings, or semi-detached/attached single-family dwellings, which are allowed uses in the proposed RMF-CU zoning district.

**Density and Dimensional Standards**

	<b>Existing Zoning District (R-40)</b>	<b>Conventional Zoning (RMF)</b>	<b>Proposed Zoning (RMF-CU)</b>
<b>Max. Gross Density</b> (du/acre)	1.08	12	8
<b>Min. Lot Size</b> (sq. ft.)	40,000 sq. ft.	--	
<b>Minimum Lot Width</b> (feet)	150 (160 for corner lots)	20	
<b>Front Yard Setback</b> (feet)	Old Apex Road: 50 Internal streets: 20	Old Apex Road: 50 Internal streets: 18 where parking is provided between the dwelling and the street; otherwise 10	
<b>Side Yard Setback</b> (feet)	15	<i>Patio dwellings:</i> <ul style="list-style-type: none"> <li>- Detached: 0/3 minimum, 16 combined;</li> <li>- Attached or semi-attached: 0/3 minimum, 16 between building groupings;</li> </ul> <i>Subdivided attached, semi-attached, duplexes, and townhouse developments:</i> <ul style="list-style-type: none"> <li>- Detached: 0/3 minimum, 16 combined;</li> <li>- 0/3 minimum, 16 between building groupings.</li> </ul>	
<b>Rear Yard Setback</b> (feet)	30	<i>Patio dwellings:</i> 20  <i>Subdivided Attached, Semi-Attached, Duplexes, and Townhouse Units:</i> <ul style="list-style-type: none"> <li>- 3 minimum, 20 front and rear combined</li> </ul>	
<b>Maximum Bldg. Height</b> (feet)	35	35	

**Landscape Buffer**

In accordance with the LDO, at the time of site or subdivision plan approval, a 40-foot Type A (opaque) buffer will be required between the proposed residential use and the residential uses/zoning to the south and west of the subject property. Buffer requirements between the proposed residential use and the residential uses/zoning to the north of the site would be as follows: a 20-foot Type B with the residential multi-family (condominiums); a 30-foot Type B with the vacant parcel within the existing PDD zoned for office use; and a 20- to 40-foot Type B with the veterinary hospital/office.

**Streetscape**

In accordance with the LDO, a 50-foot streetscape will be required adjacent to Old Apex Road at the time of site or subdivision plan approval.

## **Traffic**

The 5.37-acre parcel is currently zoned R-40 and would have the potential to generate 14 AM and seven PM peak-hour trips in the ITE Trip Generation Guidelines. The proposed zoning caps the build-out to 42 townhomes, patio dwellings, or semi-detached/attached single-family dwellings, which would generate 40 AM and 49 PM peak-hour trips using the conservative trip generation of Single-Family Dwelling. Since the proposed zoning would not generate 50 or more peak hour trips over the existing zoning, a traffic study is not required to meet our Adequate Public Facilities Ordinance (APFO).

## **SUMMARY OF PROCESS AND ACTIONS TO DATE**

### **Neighborhood Meeting**

According to the applicant, a combined neighborhood meeting for the proposed rezoning of the subject property as well as the associated parcel within the Oxxford Hunt PDD (*see section above entitled "Associated Rezoning Case"*) was held on January 9, 2012. According to the information submitted by the applicant, 16 residents attended the meeting. Minutes of the meeting, prepared by the applicant, can be viewed by clicking on the following link: 12-REZ-01 and 12-REZ-02 Neighborhood Meeting Minutes.

### **Notification**

On March 6, 2012, the Planning Department mailed notification of a public hearing on the request to property owners within 400 feet of the subject property. Notification consistent with NC General Statutes was published in The Cary News on March 7 and 14, 2012. Notice of the public hearing was posted on the property on March 7, 2012.

## **CRITERIA FOR CONSIDERATION IN REVIEWING REZONINGS**

Section 3.4.1(E) of the Land Development Ordinance sets forth the following criteria that should be considered 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.

## **APPLICABLE COMPREHENSIVE OR AREA PLAN REQUIREMENTS**

### **Land Use Plan**

The long-range land use recommendation for the subject parcel is given by the townwide Land Use Plan. The Land Use Plan designates the subject parcel as "Low to Medium Density Residential" (LDR to MDR), which includes single-family dwellings at densities ranging from about one to eight units per acre. A wide range of single-family housing products may be appropriate, including single-family detached, duplexes, patio homes, semi-detached/attached homes, and townhomes.

The proposed rezoning includes a condition that limits the use of the 5.37-acre property to a maximum of 42 townhomes, patio dwellings, or semi-detached/attached single-family dwellings, which translates to a maximum gross density of eight dwellings per acre. The proposed rezoning,

therefore, generally conforms to the Land Use Plan's long-range recommended land use designation in terms of product type and density.

### **Growth Management Plan**

The Growth Management Plan includes the following two 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 available and planned infrastructure to minimize costly service-area extensions.

### **Affordable Housing Plan**

The following goals of the adopted Affordable Housing Plan are applicable to this rezoning proposal:

1. Provide for a full range of housing choices for all income groups, families of various sizes, seniors, and persons with special challenges.
2. Facilitate the creation of a reasonable proportion of the Town of Cary's housing as affordable units through additional homeownership opportunities for individuals and families earning between 60 percent and 80 percent of area median income and affordable apartments for individuals and families earning up to 60 percent of the area median income.
3. Facilitate the affordable housing activities of other entities within the Town of Cary, including construction of affordable housing units, rehabilitation of existing housing, homeownership training, and marketing of assistance programs.
4. 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.
5. Assure a quality living environment and access to public amenities for all residents, present and future, of the Town of Cary, regardless of income.

### **Comprehensive Transportation Plan**

**Old Apex Rd. is designated as a Major Thoroughfare.**

**Existing Section:** Two- to three-lanes, approximately 60-foot right-of-way

**Future Section:** Five-lanes, 91-foot right-of-way

**Sidewalks:** Required on both sides

**Bicycle Lanes:** 14-foot-wide outside lanes required

**Transit:** None

**Status of Planned Improvements:** N/A

### **Parks & Greenways Master Plan**

According to the Parks, Recreation and Cultural Resources Facilities Master Plan, a greenway trail is proposed to run north/south across the property, generally along the western end of the property.

A recreation payment-in-lieu will be required for residential development in accordance with the Land Development Ordinance.

### **Open Space Plan**

According to the Open Space Plan, the parcel has mixed hardwood and conifer forest along the northwestern end of the parcel, and the parcel was designated as proposed open space.

### **Historic Preservation Master Plan**

The subject parcel contains no known historic resources.

**OTHER REFERENCE INFORMATION**

<b>Schools</b> <i>This information is being provided for your review; however, the Wake County Bd of Education controls capital projects for school capacities.</i>	<b>Assigned Schools</b>	<b>20<sup>th</sup> Day Enrollment<sup>1</sup></b>	<b>Permanent Seating Capacity</b>	<b>Average Percent Occupied</b>	<b>Projected Range of Additional Students<sup>2</sup></b>
	Laurel Park ES	935	1044	89%	4 - 15
	Salem MS	1096	1305	84%	3 - 9
	Cary HS	2198	2250	98%	1 - 8
Total Projected range of additional students <sup>2</sup>					8 - 32
<sup>1</sup> <i>Current Enrollment and Building Capacity</i> is based on the 20 <sup>th</sup> day of the school year for 2011-2012 as supplied by the Wake County Public School System. School assignment will be determined at the time of development.					
<sup>2</sup> <i>The Projected Number of Additional Students</i> 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 ten 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**

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 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 are at the direction of the applicant and may be formulated into a condition:

**1. Any issues with the size of the tract?**

**Response:** *The size of the tract is appropriate for the proposed use. The property is of ample size to accommodate the propose development. Any development that occurs on the site will be adequately buffered from the adjoining properties. The site is designated for medium density residential and that designation is being maintained.*

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

**Response:** *The request is compatible with the comprehensive plan. The land use plan designates the site as medium density residential and by zoning condition the medium density classification is being maintained. The proposed request is an appropriate transitional use from the existing development in the area. The request will comply with all elements of the Town’s Comprehensive Plan. The proposed use can be served by Town of Cary services. Furthermore, the provisions in the LDO for townhome development will provide the necessary protection to the neighbors and community. The proposed use is compatible with existing development in the area.*

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

**Response:** *The proposed request is an excellent transitional use for the area. Any development on this site will be required to meet all Town of Cary requirements including stormwater regulations, height regulations and lighting regulations. The proposed development will be adequately buffered from all existing development. Any site plan submitted in the future will follow the Town of Cary’s Land Development Ordinance, Community Appearance Manual, and Design Guidelines Manual. The Town will be able to provide sufficient public safety, transportation and utility facilities and services to the subject*

property while maintaining sufficient levels of service to existing development. There are town services in close proximity to the site. Sewer and water lines are available to the subject property.

**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:** *The proposed use is compatible with current land uses in the area. The proposed residential use provides an excellent transition from the existing residential and nonresidential uses in the area. Good land use planning principles support this type of development at this type of location. Other property in the vicinity of the proposed rezoning is currently developed for the same type of residential use proposed. The existing residential property owners and nonresidential property owners will be adequately protected by the provisions in the LDO.*

**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:** N/A

**ORDINANCE FOR CONSIDERATION**

**12-REZ-01 Wright Property at Old Apex Road**

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE TOWN OF CARY TO CHANGE THE ZONING OF APPROXIMATELY 5.37 ACRES LOCATED AT 1408 OLD APEX ROAD, OWNED BY LYNN H AND DIANNE W WRIGHT, BY REZONING FROM RESIDENTIAL 40 (R-40) TO RESIDENTIAL MULTI-FAMILY CONDITIONAL USE (RMF-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)	Calculated Acreage
Lynn H. and Dianne W. Wright	0753644914	0043795	5.37
<b>Total Area</b>			

Section 2: That this Property is rezoned from Residential 40 (R-40) to Residential Multi-Family Conditional Use (RMF-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, policies 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 on the site shall be limited to a maximum of 42 townhomes, patio dwellings, or semi-detached/attached single-family dwellings, as such uses are defined by the Land Development Ordinance.
2. Residential density shall not exceed eight dwelling units per acre.

3. A natural buffer area shall be provided along the southwest end of the property which shall include all the area located west of the centerlines of the existing drainageways and extend to the boundary of any required perimeter buffers along the western and southern property lines. This buffer area shall also be reserved for future extension of the Town of Cary Greenway Trail System. This buffer shall remain undisturbed with the exception to allow construction of future Greenway Trail improvements and supplemental buffer plantings if determined necessary at the time of site plan review.

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.

**3. Rezoning 12-REZ-02 (Oxford Hunt PDD Amendment)**

**Location:** South side of West Chatham Street, about 750 feet west of Old Apex Road

**Current Zoning:** Planned Development District (PDD)

**Proposed Zoning:** Planned Development District (PDD), amended to remove the 50-foot-wide buffer currently required along the southern boundary of the subject property.

**Proposed Council Action:** Refer to the Planning & Zoning Board

**Speaker:** Mr. Wayne Nicholas

**REQUEST**

To amend the Oxford Hunt Planned Development District (PDD) to remove the 50-foot-wide buffer along the southern property line of the subject property and adjacent to the parcel included in Rezoning Case Number 12-REZ-01.

*NOTE: The purpose of the rezoning is to determine whether or not the land uses and densities allowed in the proposed zoning district are appropriate for the site.*

**SUBJECT PARCELS**

Property Owner(s)	County Parcel Number(s) (10-digit)	Real Estate ID(s)	Deeded Acreage
Foxdale Run Associates	0753651257	0159920	2.3
<b>Total Area</b>			2.3

**ASSOCIATED REZONING CASE 12-REZ-01**

Rezoning Case Number 12-REZ-01 (Wright Property) is a separate but associated rezoning request for a 5.37-acre parcel (*Parcel A*) immediately south of the property that is the subject of this rezoning request (*Parcel B*). The rezoning request for the Wright Property is also being presented for public hearing on March 22, 2012. It is the applicant's intent to incorporate both parcels into a single development.

The purpose of the Oxford Hunt PDD amendment is to remove the 50-foot buffer required along the approximately 230-foot common boundary between Parcels A and B. The portion of the future development project that is within Parcel B will comply with all other aspects of the existing Oxford Hunt PDD. Under the previously approved PDD, density on the subject property is limited to a maximum of 10 dwelling units/acre. The applicant is also requesting rezoning of the adjacent Wright Property from Residential 40 (R-40) to Residential Multi-Family Conditional Use (RMF-CU) with zoning conditions to limit development on that parcel (approximately 5.37 acres in size) to no more than 42 townhomes, patio dwellings, or semi-detached/attached single-family dwellings.

**BACKGROUND INFORMATION**

Applicant & Agent	Glenda S Toppe & Associates		
Acreage	2.3 ±		
General Location	South side of W. Chatham Street, about 750 feet west of Old Apex Road		
Tentative Schedule	<b>Public Hearing</b> March 22, 2012	<b>Planning &amp; Zoning Board</b> May 21, 2012	<b>Town Council</b> June 14 or 27, 2012 <sup>1</sup>
	<sup>1</sup> The date of this meeting will be determined after the P&Z Board recommendation. The rezoning will go to the first meeting of the month if there is unanimous approval by the P&Z Board. Otherwise it will go to the second meeting of the month as a discussion item.		
Land Use Plan Designation	High Density Residential (HDR)		
Existing Zoning District	Planned Development District (Major) – Oxxford Hunt PDD		
Proposed Zoning District	Planned Development District (Major) – Oxxford Hunt PDD		
Proposed Zoning Conditions	Modify Oxxford Hunt PDD to remove the 50-foot-wide buffer adjacent to the parcel included in Rezoning Case Number 12-REZ-01 (Wright Property) provided that:  1) Any site or subdivision plan submitted and approved for the subject property (Parcel B) also includes the parcel to the south, as identified in Rezoning Case Number 12-REZ-01 (Parcel A); and 2) The existing boundary between Parcel A and Parcel B is maintained, and no building is planned or constructed such that it straddles said boundary.		
Town Limits	Yes		
Valid Protest Petition	To be determined prior to the public hearing.		
Staff Contact	Wayne Nicholas, AICP - Planning Manager (919) 465-4610 wayne.nicholas@townofcary.org		

## SITE CHARACTERISTICS

### Streams

According to Cary's most current GIS maps, the site is impacted by a stream buffer. Field determination will be required at the time of site plan review.

### Floodplains or Wetlands

Cary's most current GIS maps do not identify any floodplains or wetlands on the subject property. Field determination will be required at the time of site plan review.

### Surrounding Zoning Districts/Land Use

North - Oxxford Hunt PDD, opposite side of West Chatham Street - single-family residential (Brighton Woods) and townhomes (Oxford Hunt Club);  
South - Residential 40 (R-40) - one vacant parcel and two parcels each containing a single-family residence;  
East - Oxxford Hunt PDD - condominiums (Foxdale Run);  
West - Oxxford Hunt PDD - open space.

## CONSISTENCY WITH LAND DEVELOPMENT ORDINANCE

### Land Use, Density and Dimensional Standards

The proposed amendment would eliminate the 50-foot-wide buffer currently required along the



rear (southern) property line if the subject property is developed in conjunction with the property to the south. Development on the subject property would comply with all other aspects of the existing Oxxford Hunt PDD approval. Under the previously approved PDD, density on the subject property is limited to a maximum of 10 dwelling units/acre. A 30-foot setback/buffer is required along the western property line, and a 50-foot buffer is required along the southern boundary. The subject property was part of a previously approved development plan for a total of 35 attached residential dwelling units, of which only 14 units were developed and are now contained on the properties immediately to the east of the site. Future development of the subject property will require site plan review and approval prior to construction of additional dwelling units.

#### **Landscape Buffer**

In accordance with the LDO, at the time of site or subdivision plan approval, a 20-foot Type B buffer will be required between the proposed residential use and the residential use (multi-family/condominiums) to the east of the subject property, and with the vacant property to the west.

#### **Streetscape**

In accordance with the LDO, a 50-foot streetscape will be required adjacent to West Chatham Street at the time of site or subdivision plan approval.

#### **Traffic**

The removal of the 50-foot-wide buffer would not increase the potential for traffic generation; therefore, a traffic analysis report is not required with the zoning case in accordance with the Town's Adequate Public Facilities Ordinance (APFO).

*Note: trip generation information related to this parcel can be found in the Traffic section of 12-REZ-01.*

### **SUMMARY OF PROCESS AND ACTIONS TO DATE**

#### **Neighborhood Meeting**

According to the applicant, a combined neighborhood meeting for the proposed rezoning of the subject property as well as the parcel that is the subject of Rezoning Case 12-REZ-01 (see section above entitled "Associated Rezoning Case") was held on January 9, 2012. According to the information submitted by the applicant, 16 residents attended the meeting. Minutes of the meeting, prepared by the applicant, can be found by clicking on the following link: 12-REZ-01 and 12-REZ-02 Neighborhood Meeting Minutes.

#### **Notification**

On March 6, 2012, the Planning Department mailed notification of a public hearing on the request to property owners within 400 feet of the subject property. Notification consistent with the NC General Statutes was published in The Cary News on March 7 and 14, 2012. Notice of the public hearing was posted on the property on March 7, 2012.

### **CRITERIA FOR CONSIDERATION IN REVIEWING REZONINGS**

Section 3.4.1(E) of the Land Development Ordinance sets forth the following criteria that should be considered 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.

## **APPLICABLE COMPREHENSIVE OR AREA PLAN REQUIREMENTS**

### **Land Use Plan**

The townwide Land Use Plan recommends the future land use of the subject property to be High Density Residential (HDR) development, typically defined as multi-family housing at eight or more units per acre.

### **Growth Management Plan**

N/A

### **Affordable Housing Plan**

The following goals of the adopted Affordable Housing Plan are applicable to this rezoning proposal:

1. Provide for a full range of housing choices for all income groups, families of various sizes, seniors, and persons with special challenges.
2. Facilitate the creation of a reasonable proportion of the Town of Cary's housing as affordable units through additional homeownership opportunities for individuals and families earning between 60 percent and 80 percent of area median income and affordable apartments for individuals and families earning up to 60 percent of the area median income.
3. Facilitate the affordable housing activities of other entities within the Town of Cary, including construction of affordable housing units, rehabilitation of existing housing, homeownership training, and marketing of assistance programs.
4. 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.
5. Assure a quality living environment and access to public amenities for all residents, present and future, of the Town of Cary, regardless of income.

### **Comprehensive Transportation Plan**

#### **W. Chatham Street is designated as a Minor Thoroughfare.**

**Existing Section:** Two-lane median divided, approx. 80-foot right-of-way

**Future Section:** Two-lane with landscaped median

**Sidewalks:** Required on both sides

**Bicycle Lanes:** Four-foot-striped bike lanes required

**Transit:** None

**Status of Planned Improvements:** N/A

### **Parks & Greenways Master Plan**

According to the Parks, Recreation and Cultural Resources Facilities Master Plan, a greenway trail is proposed to run north/south across the property, generally along the western side of the property.

A recreation payment-in-lieu will be required for residential development in accordance with the Land Development Ordinance.

### **Open Space Plan**

According to the Open Space Plan the site is covered by mixed hardwood and conifer forest, and was designated as proposed open space.

## Historic Preservation Master Plan

There are no known historic resources located on the subject site.

### APPLICANT'S JUSTIFICATION STATEMENT

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 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 are at the direction of the applicant and may be formulated into a condition:

**1. Any issues with the size of the tract?**

*Response: The size of the tract is appropriate for the removal of the 50-foot buffer required as part of the Oxxford Hunt PDD. The removal of the buffer is being proposed in order for the tract to develop in conjunction with the tract to the south. If this does not happen, the requirements of the LDO will apply.*

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

*Response: The request is compatible with the comprehensive plan. The land use plan designates the site as high density residential and that classification is being maintained. The request will comply with all elements of the Town's Comprehensive Plan.*

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

*Response: The only change being proposed is the removal of the 50-foot PDD buffer. There is no buffer planned if the site develops in conjunction with the property to the south (0753644914). If this does not happen, the LDO buffers will apply. Adjacent properties will be adequately protected by Town of Cary regulations.*

**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: The approved use is not being changed. The proposed zoning condition will ensure adequate protection to development on the affected properties.*

**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: N/A*

## ORDINANCE FOR CONSIDERATION

### 12-REZ-02 Oxxford Hunt PDD Amendment

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE TOWN OF CARY BY AMENDING THE EXISTING OXXFORD HUNT PDD TO REMOVE REQUIREMENT FOR A 50-FOOT WIDE BUFFER ALONG THE SOUTHERN BOUNDARY OF THE SUBJECT PROPERTY.

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)	Deeded Acreage
Foxdale Run Associates	0753-65-1257	0159920	2.3
<b>Total Area</b>			2.3

Section 2: That this Property is rezoned by amending the existing Oxxford Hunt Planned Development District (PDD) 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, policies and guidelines.

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

Modify Oxxford Hunt PDD to remove the 50-foot buffer adjacent to the parcel included in Rezoning Case number 12-REZ-01 (Wright Property) provided that:

- 1) Any site or subdivision plan submitted and approved for the subject property (Parcel B) also includes the parcel to the south, as identified in Rezoning Case Number 12-REZ-01 (Parcel A); and
- 2) the existing boundary between Parcel A and Parcel B is maintained, and no building is planned or constructed such that it straddles said boundary.

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.

Mr. Wayne Nicholas presented a PowerPoint presentation for 12-REZ-01 and 12-REZ-02 (refer to **Exhibit H** attached to and incorporated herein). A valid protest petition exists on both rezoning applications.

Ms. Glenda Toppe, the applicant for both cases, presented the following report on 12-REZ-01.

“Good evening Mayor and Members of Council. Glenda Toppe with Glenda S. Toppe & Associates. I am here tonight on behalf of the Wright family. The Wright’s are requesting to rezone their property from R-40 to RMF CU. They have owned the property for over 30 years.

**ZONING CONDITIONS**

There are three zoning conditions associated with this rezoning.

Development on the site will be limited to a maximum of 42 townhomes, patio dwellings, or semi-detached/attached single-family dwellings, residential density will not exceed eight dwelling units per acre and a condition that was added that offers an additional buffer along a portion of the western property boundary of the Wright parcel. The size of the tract is appropriate for the proposed use and the proposed zoning classification is suitable for the property. Over 28 percent of the site is affected by streetscapes and buffers.

**LAND USE PLAN DESIGNATION**

The land use plan designation for the property is low to medium density residential. By limiting the number of units to 42, the density for the property is medium, therefore in compliance with the Land Use Plan. The Wright property is adjacent to high density residential development/zoning and nonresidential development/zoning in the Oxxford Hunt PDD. Good land use planning principles recommend locating medium density residential adjacent to high density residential and

nonresidential development and locating low density residential in close proximity to lower residential densities. Based on the surrounding land uses, medium density residential is the most appropriate land use for the Wright property. The low density designation is more appropriate for the area closest to the existing single family development where there are lower densities. The proposed request is an appropriate transitional use for the area. The request will comply with all elements of the Town's Comprehensive Plan. The proposed use can be served by Town of Cary services. The Town will be able to provide sufficient public safety, recreational, transportation and utility facilities and services to the subject property while maintaining sufficient levels of service to existing development. The proposed medium density residential development will help Cary provide for a full range of housing choices for current and future residents. The proposed residential development will be within walking and convenient commuting distance of employment, commercial areas, and other activities. Furthermore, the provisions in the LDO for medium density development will provide the necessary protection to the surrounding lower density residential properties. Good land use planning principles support this type of development at this type of location.

#### CURRENT ZONING

The Wright property is currently in the Town limits of Cary. The current zoning of the property is R-40. In Cary, R-40 is typically considered a holding zone until a rezoning is proposed. Water and sewer is available to the property. From a planning perspective, the Wright property is considered to be an infill parcel given the development that is in the area and where the property is located. By designating the property on the land use plan for low to medium density residential, the Town envisioned this property developing as something other than R-40. I do however want to point out that in the Town's Land Development Ordinance (LDO) other types of residential uses are permitted in R-40 as a use by right or as a special use and that there are some nonresidential uses that are permitted in R-40 as a use by right or as a special use. I mention this because the property could develop without going through the rezoning process.

#### NEIGHBOR CONCERNS

We held two neighborhood meetings. The first meeting was the required meeting that was held January 9 before the application was submitted to the Town. The second meeting was held March 12 as a follow up to our first meeting where we provided the residents with additional information about the proposed rezoning. Both of these neighborhood meetings were held in conjunction with the neighborhood meetings for the next item on your agenda. The main areas of concern were traffic, the number of units proposed, lower density, required buffers, greenway location, height of the proposed buildings, what type of streets are being proposed and will additional units be gained for the Oxxford Hunt parcel if the 50-foot buffer is removed. There were also questions asking for an explanation of R-40 and medium density.

In response to the concerns raised about buffers, we revised the zoning conditions to add a zoning condition that provides for an additional buffer area along a portion of the western property boundary. This is in addition to the required 40-foot buffer. As part of this zoning condition, we included language that states that this buffer area will be reserved for future extension of the Town of Cary Greenway Trail System. We did this after meeting with staff from the Parks, Recreation and Cultural Arts Department. This buffer will remain undisturbed with the exception to allow construction of future greenway trail improvements and supplemental buffer plantings if determined necessary at the time of site plan review. At the time of a site or subdivision plan approval, a 40-foot Type A (opaque) buffer will be required between the proposed residential use and the residential uses/zoning to the south and west of the subject property. A 50-foot streetscape will be required adjacent to Old Apex Road. Each of these buffers is to remain undisturbed in accordance with the Town's Ordinance.

Traffic was also brought up as a concern. As staff will explain with the next rezoning case, the Oxxford Hunt rezoning proposes to eliminate the 50-foot buffer that is adjacent to the northern property boundary of the Wright property. By zoning condition, this can only happen if the development on the Wright property is combined with the development on the Oxxford Hunt tract.

If both rezoning requests are approved, the development on the Wright property will have two access points, one on Old Apex Road and the other on West Chatham Street. Access onto West Chatham Street would be from the existing private drive, Hunting Chase Road. Having two access points connected by a private drive should reduce the amount of vehicular traffic that will use the Old Apex Road access point. The two access points will also help to provide better emergency vehicular access to the Wright property. The future section of Old Apex Road is planned for five-lanes, with a 91-foot right-of-way. Additional right-of-way will be required adjacent to the Wright property along Old Apex Road. The required 50-foot streetscape will be from the new right-of-way. Sidewalk will be required along Old Apex Road along with the provision for bike lanes. If the Wright property came in for a rezoning by itself, there would be only one access point, Old Apex Road. Based on the potential for two access points and given the ultimate section of Old Apex Road, we believe that traffic will be improved with the approval of the rezoning. There was a concern about the proposed density. We have maintained the medium density of eight units per acre given what the uses are to the north of the Wright property. With this proposed density, there is a required 40-foot Type A buffer along the southern and western property boundaries of the Wright property. If the density is lowered, the potential exists for the buffer to be less than 40 feet. We feel that a 40-foot Type A opaque buffer will adequately protect the properties to the south and west. We believe that the proposed 42 units are appropriate for the Wright property. We also told the residents that the height of the buildings will meet Town of Cary LDO requirements and that the planned streets will be private and built to Town of Cary standards.

At the second neighborhood meeting we were able to address the question, what benefit will there be to the property owner of the parcel in Oxxford Hunt PDD if the 50-foot buffer is removed. The overall number of units that were approved for Fox Run was 35. This includes the parcel where the 50-foot buffer is being requested to be removed and the parcel to the east where there are existing condominiums. Of the total 35 units, 14 were constructed (the existing condominiums) and 21 were approved for the vacant parcel where we are requesting the 50-foot buffer be removed. We told the residents with the 50-foot buffer, we anticipate eight units and with the removal of the buffer, we still anticipate eight units. For informational purposes, the total number of approved units can no longer be built due to changes in stream buffer regulations. The bulk of the front portion of the property adjacent to West Chatham Street can no longer be developed.

#### VALID PROTEST PETITION

As staff pointed out, there is a valid protest petition for the Wright property. I will briefly address several of the concerns that were raised in the petitions.

Density and the impact on existing residential development were concerns identified in the protest petitions. We believe the density is appropriate for the site. The Wright property is adjacent to high density residential and nonresidential development. By code there is a required 40-foot Type A buffer along the southern property boundary of the Wright property. From our calculations, there appears to be between 245 feet and 315 feet from the back of the house/deck on the property to the south of the Wright property to the Wright property line. In addition to these distances, there is the 40-foot Type A buffer that is required along the southern portion of the Wright property. We believe this will provide an adequate screen/buffer to the property to the south. There is also a required 40-foot Type A buffer along the western property boundary in addition to the buffer as provided by zoning condition # 3. The adjacent parcel to the west is vacant. We feel that the properties to the west will also be adequately protected from any development planned for the Wright property due to the required buffers in the LDO and the additional zoning condition addressing the buffer along the western boundary of the Wright property.

How the removal of the 50-foot buffer will affect the development on the Oxxford Hunt tract was mentioned. The removal of the 50-foot buffer will not increase the number of units for the Oxxford Hunt parcel but will in fact help with traffic by providing an additional access point for the Wright

property. By zoning condition the 50-foot buffer can only be removed if both the Oxxford Hunt property and the Wright property develop together.

Of the protest petitions that we received from the planning staff, only two petitions provided reasons why they were opposed to the rezoning. Two petitions gave no reasons and two petitions stated that their concerns would be expressed at the Town Council meeting. I bring this up since there may be additional issues brought up tonight that we are unaware of. If this is the case, we would like the opportunity to respond.

#### SUMMARY

In summary, we believe our request complies with the Town's Comprehensive Plan. The proposed zoning classification is suitable for the subject property. Any development that occurs on the site will be adequately buffered from the adjoining properties. The regulations in the LDO along with the proposed zoning conditions will adequately protect the adjacent property owners.

This concludes my presentation. I will be happy to answer any questions you might have."

The mayor opened the public hearing for 12-REZ-01.

Ms. Dianne Wright, co-owner of the property, stated she and her husband have been good stewards of this property for 34 years, and they have had little contact with any of the neighboring property owners. She said it is time this property gives back to them in return for their taking care of it.

Mr. Louis Hovis, Mr. Joanna D'Aquanni and Dr. Krakowski read written comments stating their opposition to this request. Their comments and a petition with 67 signatures is attached to and incorporated herein as **Exhibit I**.

Mr. David Goode, resident of Foxdale Run, agreed with the previous speakers about an increase in traffic problems with a population increase in this area. He said access to Old Apex Road might relieve some of the problem. He said the residents of the 13-unit condominium recently paid to have the entrance of the private road repaved. He wants to know who will pay for it to be repaved again after the construction traffic damages it. He said there is not enough parking for the construction workers or construction vehicles, and there will be inadequate access off of West Chatham Road.

Mr. Keith Ramsey, adjacent property owner, stated the property owner has a right to develop the property, but not at the expense of the adjacent property owners' property value and enjoyment. He said this property was originally developed for a four-lot subdivision, not a high density with eight units per acre. He stated the 50-foot buffer between the two properties was a condition of developing Oxxford Hunt, and it was something that all the residents agreed to.

The mayor closed the public hearing for 12-REZ-01.

Robinson asked about the potential stream buffers. She said it seems the site is extremely impacted by buffers. Nicholas stated staff received a letter on 12-REZ-01 from the Department of Environment and Natural Resources (DENR) determining these as jurisdictional buffers. He said staff's map is based on preliminary data, and is subject to field verification. Robinson stated it seems multi-family units will not fit on the proposed property due to the numerous stream buffers on it.

Robison stated if the original intent of the proposed property was to subdivide it into four lots of about one acre each, she asked why the original intent is changing. Nicholas said after the lots were divided, the Comprehensive Land Use Plan classified the property as low to medium density residential.

Smith asked if the Town can impose conditions on a development if the only means of access to the property being developed a private road. He asked about legal ramifications if the private road is damaged due to construction. Nicholas stated the Town would not intervene in terms of who has the authority to use the private road; that is between the property owners. Town Attorney Chris Simpson said she would have to understand more about the nature of the road.

Robison asked about the required 50-foot buffer in the original Oxxford Hunt PDD. Nicholas said currently a 50-foot buffer is imposed on the PDD. He said the applicant is proposing the buffer be removed if that property (Oxxford Hunt PDD property) is developed with the property to the south (Wright's property).

Bush asked if the Wright's property is part of the Town's greenway master plan. Nicholas said there is a proposed greenway for the western boundary.

The mayor called on the applicant to present 12-REZ-02.

Ms. Glenda Toppe presented her comments for 12-REZ-02 (Oxxford Hunt PDD Amendment) as follows.

"Good evening Mayor and Council Members. I am Glenda Toppe with Glenda S. Toppe & Associates.

I am here tonight representing the property owner of the subject property, who is requesting an amendment to the Oxxford Hunt PDD. The amendment is to remove the 50-foot wide buffer along the southern property line of the subject property. The length of the buffer in this location is approximately 230 feet and is along the common boundary between the Wright property and the subject property. Other than the removal of the 50-foot buffer, all development within the subject property will comply with all other aspects of the existing Oxxford Hunt PDD.

The acreage of the property is approximately 2.3 acres. This parcel is adjacent to the Wright property. As noted with the last zoning case, it is the intent of the two proposed rezoning requests that both parcels be developed as a single development. Currently the density for the tract is limited to a maximum density of 10 dwelling units per acre. The land use designation for the tract is HDR (High Density Residential).

#### ZONING CONDITIONS

There are zoning conditions associated with this case. The request is to modify the Oxxford Hunt PDD by removing the 50-foot-wide buffer that is adjacent to the Wright Property provided that:

1) Any site or subdivision plan submitted and approved for the subject property also includes the parcel to the south, the Wright property and 2) The existing boundary between both parcels are maintained and no building is planned or constructed such that it straddles said boundary.

The proposed amendment would eliminate the 50-foot-wide buffer currently required along the southern property boundary of the subject property only if the subject property develops in conjunction with the property to the south. Otherwise, the 50-foot buffer must remain. As mentioned previously, development on the subject property will comply with all other aspects of the existing Oxxford Hunt PDD approval.

#### LAND USE PLAN DESIGNATION

The request is compatible with the comprehensive plan. The land use plan designates the site as high density residential and that classification is not changing. The Town will be able to provide sufficient levels of service to the subject property while at the same time maintaining sufficient levels of service to existing development. The proposed amendment will not have any adverse impact on the surrounding properties.



We believe that the size of the tract is appropriate for the removal of the 50-foot buffer required as part of the Oxxford Hunt PDD. The removal of the buffer is being proposed in order for the tract to develop in conjunction with the tract to the south. If this does not happen, the 50-foot buffer must remain. The removal of the 50-foot buffer on the subject property will allow both properties to develop as one development creating a cohesive neighborhood and a sense of community. The residential development will be within walking distance to nonresidential uses.

#### CURRENT ZONING

The subject property is part of a previously approved development plan (Fox Run) for a total of 35 attached residential dwelling units, of which only 14 units were developed and are now contained on the property immediately to the east of the site. Twenty-one units were approved for the vacant parcel where the 50-foot buffer is being requested to be removed. Access for the property would be from the existing private drive, Hunting Chase Road that currently ties into West Chatham Street.

The subject parcel is adjacent to existing open space to the west. This open space is wooded and averages over 200 feet in width.

The allowable uses are not changing. In fact with the removal of the 50-foot buffer, no additional units will be gained. As I mentioned earlier, 21 units were approved for the subject site. Because of changes in stream buffer regulations since the site plan was originally approved, the site can no longer accommodate the 21 remaining units. With the 50-foot buffer, it is anticipated that there will be eight units on the subject property and without the 50-foot buffer it is anticipated there will be eight units. The removal of the buffer will allow the two tracts to develop together creating a neighborhood that will provide a housing product that is in demand and at the same time improving circulation and traffic concerns associated with the Wright property.

#### NEIGHBOR CONCERNS

Two neighborhood meetings were held for the proposed Oxxford Hunt PDD amendment. The first meeting was held January 9 and the second meeting was held March 12. The neighborhood meetings were held jointly with the Wright neighborhood meetings. The main issues that were discussed for the Oxxford Hunt PDD amendment were the number of units that were originally approved for the subject property and how will the removal of the 50-foot buffer affect this number. Traffic was also discussed but mainly in association with the Wright property and the affect the development would have on Old Alex Road. The question was asked, why the removal of the 50-foot.

We explained that the 50-foot buffer was being removed so that the subject property and the Wright property can develop together. By doing this, traffic from the Wright property would have the option to use the existing private road that leads out onto West Chatham Street thus reducing traffic on Old Apex Road. We were also able to tell the residents at the second neighborhood meeting that no additional units will be added due to the removal of the 50-foot buffer and that the removal of the buffer will help with circulation and traffic since the Wright property will have two access points.

#### VALID PROTEST PETITION

As staff pointed out, there is a valid protest petition for the Oxxford Hunt rezoning. I will briefly address the issues that were addressed in the petitions.

Traffic concerns were raised. Currently the subject property has approval for units to be built on the property. However, fewer residential units can be built on the subject property today than what was originally approved for the property. This is due to changes in stream buffer requirements. We believe because of this there will be less of a traffic impact. Loss of trees and quality of life were also mentioned. Because of changes in stream buffer regulations, a large portion of the subject property can no longer be built on, thus leading to fewer trees being removed and less area being disturbed on the site. Over 55 percent of the subject property is

affected by streetscapes and buffers, including the stream buffers. There was also a comment about land use. The land use for the parcel is not changing. Of the protest petitions that were provided to us by the planning staff, four petitions listed reasons why they object, one petition had no comment and four petitions stated that their concerns would be addressed at the Council meeting. As I mentioned in the last rezoning case, I bring this up since there may be additional issues brought up tonight that we are unaware of. If this is the case, we would like the opportunity to respond.

#### SUMMARY

In summary, we believe our request is reasonable and will not negatively impact the surrounding area. In fact, by combining the two parcels, we feel that traffic will be improved by the addition of an access point on West Chatham Street and that a quality development can be built that will be an asset to the community providing additional housing opportunities in an area that is well suited for this type of development.

This concludes my presentation. I will be happy to answer any questions you might have.”

The mayor opened the public hearing for 12-REZ-02.

Mr. David Goode asked that an updated map of West Chatham Street be placed on Cary's website so people can see how close the construction will be to the existing adjacent homes.

Mr. Glenn Futrell, property owner in the Oxxford Hunt PDD, stated this property was developed in the late 1980s and was a victim of the recession in 1991. He said in 1997, the state of NC adopted a new set of buffer rules. There was no stream buffer when the first two buildings were built, but there is one now. He had it delineated and put utilities in the ground and in the stream buffer that he will have remove for the proposed development. He said fire hydrants were placed in the rear of the property to serve an additional three buildings that were planned for that property, and are now of no use because of the new buffers. He stated the best place to build anything on the rest of this property is to the rear of the property. He stated they will work with NC Department of Transportation (NCDOT) during the site plan process to make sure the access off of Old Apex Road and the access onto West Chatham Street is safe. He said they will extend the existing roadway and make needed improvements. He stated the Town has more stringent development requirements now than in 1986 when the project originally began, and they will comply with them.

Mr. Walt Thompson, president of the Oxxford Hunt Homeowners Association (HOA), stated the HOA has not been notified about this project. He stated the HOA maintains about 1.5 miles of West Chatham Street's grass, medians and landscaping, so they have an interest in what happens there. It is designated as a minor thoroughfare, and they believe the request will increase traffic hazards and diminish quality of life. He said there is no median crossover at that location. He stated the median is repaired frequently because people drive across it instead of making a U-turn further up the road. He said about eight years ago, \$65,000 was spent to dredge the lake, and the stream will be dredged soon. He believes the 50-foot buffer was established to protect against such changes as the proposed development and to preserve the neighborhood quality of life. He wants the buffer to remain a natural buffer.

Mr. Paul March read his prepared remarks opposing this request, which includes 28 signatures opposing the request (refer to **Exhibit I** attached to and incorporated herein).

Mr. Louis Hovis stated he is one of the original property owners in the Oxxford Hunt area. He stated the buffer is about 30 years old and should be respected.

The mayor closed the public hearing.

Adcock asked if a single development could be placed on two properties with the same owner. Nicholas said that would be a zoning condition to be considered during a site plan review.

Adcock said Old Apex Road and Chatham Street currently experience heavy and fast-moving traffic. She is concerned about the traffic impact that might occur with 12-REZ-01, and she asked if road widening is planned in this area. Nicholas said there are no road widening plans in this area at this time.

Adcock asked if road improvements would be required if development occurs on the Oxxford Hunt property. Jensen stated he does not know at this time, because a traffic study has not been done.

Bush asked if the properties of both rezoning requests combine and development occurs on them, if the threshold would be reached to require a traffic study. Mr. Jerry Jensen of the Engineering Department stated if those properties combine for the site plan, and the density or intensity of that development goes over the threshold, then a traffic study will be required and off-site intersections will be considered.

Bush asked if both properties (Oxxford Hunt and Wright) will be combined for the site plan. Jensen said the applicant is requesting an amendment to the PDD to remove the 50-foot wide buffer along the southern property line of Oxxford Hunt, and the condition for that is the combining of parcels.

Toppe stated at the pre-application meeting, it was determined that a traffic study was not required. She understands there is a pre-submittal meeting for a site plan, and if it is determined that a traffic study is required, then the traffic study would be done prior to site plan submittal.

Adcock does not know if street improvements can be done in that area given the width of the road and no plans for improvement.

Adcock appreciates that the applicant wants to preserve trees and stream buffers, but she does not understand how 42 townhomes will fit without the removal of trees and stream buffers. Toppe stated some of the stream buffers and trees will have to be removed, but the perimeter buffers will remain undisturbed.

Adcock stated she is not convinced this is the right location for this development.

Robison asked about the location of the proposed road for the development. Nicholas said the only way to access the property is through the end of Hunting Chase development, and the road would have to turn south and go towards the property on the south.

Robison asked how a private road could become the major ingress/egress for another development. Nicholas stated the two developed properties in Hunting Chase were part of a larger parcel. He stated any new road would need to meet Town standards; however, whether the developer is permitted to use the private road as an access to the new road is a matter between the property owners.

Robison does not understand having a road at Town standards that would funnel into a road that does not meet Town standards.

Robison asked about the request to waive the 50-foot buffer on the Oxxford Hunt PDD if no buildings are planned for that property. Nicholas believes this refers to the connection to the property to the south (Wright property), because nothing can be placed in the buffer; not even a road. So in order to put in a connection to the south, the buffer will have to be removed.

Bush asked who received the Oxxford Hunt HOA notification. Nicholas stated notifications are sent to addresses on the current tax property record on the Wake County Tax Record data of all adjacent property owners within 400 feet. Toppe stated they used the Town's notification list. She said notifications were mailed to the various entities associated with Oxxford Hunt.

Bush asked staff for a copy of the Town's notification list for 12-REZ-02 to be sent to council and the Oxxford Hunt HOA.

Frantz thanked tonight's speakers. He said a lot of valid points and concerns about traffic were presented. He said the request seems compatible with the properties to the north but not to the south. He hopes the residents, developer, landowners and applicant work together to come up with a development everyone can support.

Weinbrecht said there is a valid protest petition on both rezoning requests. He said everyone needs to work together for the best possible solution.

**ACTION: Council referred 12-REZ-01 and 12-REZ-02 to the Planning and Zoning Board.**

---

**4. Rezoning 12-REZ-03 (Lynch Property)**

**Location:** North side of Westhigh Street, approximately 0.4 miles west of Cary Parkway

**Current Zoning:** Residential 8 Conditional (R-8-C)

**Proposed Zoning:** Transitional Residential Conditional Use (TR-CU), with zoning conditions to limit use to detached single family residential dwellings with a maximum density of three dwelling units per acre, and conditions regarding minimum lot size.

**Proposed Council Action:** Refer to the Planning & Zoning Board

**Speaker:** Mr. Wayne Nicholas

This item was removed from the agenda.

---

**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)

**1. The Fryar Tract**

**a. Rezoning 11-REZ-07**

**Location:** North side of Green Hope School Road, opposite the intersection with Highcroft Drive

**Current Zoning:** Planned Development District (PDD) Major

**Proposed Zoning:** Amendment to the Planned Development District (PDD) Major

**Acreage:** Approximately 89.83 acres

**Planning & Zoning Board Recommendation:** Voted 5-3 to recommend denial

**Proposed Council Action:** Council may take action

**Speaker:** Ms. Debra Grannan

**b. Statement of Consistency and Reasonableness**

**Subject:** Consideration of council approval of a statement of consistency and reasonableness for Rezoning 11-REZ-07 (see above item) in accordance with N.C.G.S. 160A-383.

**Recommended Council Action:** Council may take action

**Speaker:** Ms. Debra Grannan

**REQUEST**

The Fryar PDD Amendment was presented to the Town Council for action on January 24, 2012. Due to several unresolved issues and a need for clarification regarding roadway design and traffic calming, the Town Council forwarded the plan to the February 20, 2012 Planning and Zoning Board for a third public hearing. The applicant has made several modifications to the plan in response to concerns raised at that meeting. Those modifications are summarized in this report.

**History**

The Fryar Planned Development District (PDD) was first approved in 2006 as a 94-acre tract that combined low density, medium density, a 2.5-acre commercial site and approximately 25 acres of regulatory open space. In 2008, the PDD was amended to convey approximately 4.3 acres of land from the medium density tract to the adjacent Highcroft PDD. With that amendment, the dwelling unit count was reduced from 322 to 305.

**Current Request**

The applicant, Jacob Anderson, representing the Fryar Family Partnership and David Roscoe Fryar Trust, has requested an amendment to the Town of Cary Official Zoning Map by amending the existing Fryar Planned Development District (PDD) to increase the number of residential dwelling units from 305 to 355. The amendment also seeks to remove the current low density residential designation for PDD Tract R1, and would apply medium density standards to all residential use.

The plan proposes to relocate the existing commercial tract to the south side of Morrisville Parkway, designate approximately 1.5 acres for Office Use and designate between one and 1.4 acres for a neighborhood amenity site, plus approximately 0.5 acres of land area for non-regulated open space. The applicant has also proposed to prohibit certain uses on the commercial tract.

A significant aspect of the request is the proposed street profile and street-tree design for Highcroft Drive. The applicant is seeking alternative design options to the Town’s Comprehensive Transportation Plan for the portion of Highcroft Drive South of the future Morrisville Parkway. Due to an alley-loaded housing product with reduced roadway setbacks being proposed, they have asked to eliminate the 30-foot opaque streetscape, as required by the LDO for collector roads. As an alternative, they are proposing ornamental trees and evergreen shrubs within HOA maintained landscape easements on individual lots and street trees incorporated into the public right-of-way. On-street parking is proposed along some segments of the future collector road. For the non-residential portions of the PDD, a 15-foot-wide streetscape is proposed.

**Fryar PDD**

The Comprehensive Plan Amendment 11-CPA-04, associated with this case was approved on December 15, 2011.

NOTE: The purpose of the rezoning is to determine if the land uses and densities allowed in the proposed zoning district are appropriate for the site.

**SUBJECT PARCELS**

<b>Property Owner(s)</b>	<b>County Parcel Numbers (10-digit)</b>	<b>Real Estate IDs</b>	<b>Calculated Acreage</b>
Fryar Family Partnership 201 Fryars Frontier Trail Cary, NC 27519	0734397102	0241797	23.96
	0735402360	0241796	33.79

Property Owner(s)	County Parcel Numbers (10-digit)	Real Estate IDs	Calculated Acreage
R. Daniel Brady Successor Trustee David Roscoe Fryar Trust 7210 Green Hope School Road Cary, NC 27519	0734482230	0361803	3.39
	0734496195	0030966	28.69
<b>Total Area</b>			<b>89.83 +/-</b>

#### BACKGROUND INFORMATION

Applicant	Jacob Anderson 1105 Willowgrass Lane Wake Forest, NC 27587 Jacob@alliancegroupnc.net		
Applicant's Contact Person	J.W. Shearin, AICP, Innovative Development Solution 1251 NW Maynard Road Ste 324 Cary, NC 27513 jwshearin@yahoo.com		
General Location	7210 Green Hope School Road		
Schedule	<b>Town Council Public Hearing</b> September 8, 2011	<b>Planning &amp; Zoning Board Public Hearing</b> December 19, 2011  <b>Planning &amp; Zoning Board Public Hearing</b> February 20, 2012	<b>Town Council</b> January 24, 2012
Land Use Plan Designation	Commercial (COM), Office (O&I) and Medium Density Residential (MDR)		
Existing Zoning District(s)	Planned Development District (PDD) Major		
Proposed Zoning District(s)	Planned Development District (PDD) Major Amendment		
Town Limits	Yes		
Valid Protest Petition	No		
Staff Contact	Debra Grannan, Senior Planner Debra.grannan@townofcary.org (919) 460-4980		

#### SITE CHARACTERISTICS

##### Streams

Based on Cary's GIS files, the subject property is impacted by several stream buffers. The applicant has indicated the approximate location of these streams on the Open Space Plan in the PDD document. Exact field determination of buffers will be required at the time of site plan review.

##### Topography

According to Cary's GIS files, elevation changes on the subject property are gradual.

**Existing Land Use**

Vacant, Single-Family Residential and Agricultural

**Surrounding Land Uses:**

North: Vacant and single-family residential (Wackena Road properties)

West: Agricultural and single-family residential (Twyla Road properties)

South: Single-family residential, (Highcroft)

East: Vacant; Wake Memorial Park Property, currently in review for a proposed rezoning to single-family residential

**CONSISTENCY WITH LAND DEVELOPMENT ORDINANCE AND COMPARISON TO PREVIOUSLY APPROVED PDD**

**Use and Density for Overall PDD**

	<b>Existing PDD</b>	<b>Proposed PDD Amendment</b>	<b>Net Change and Comparison to LDO and to previously approved PDD</b>
<b>Maximum Dwelling Units</b>	<b>305</b>	<b>355</b>	Increase of <b>50</b> dwelling units
<b>Unit Types</b>	54 Low Density Units 251 Medium Density Units (Option of Either Attached or Detached)	Single-Family Detached: 50 percent to 75 percent of total density  Single-Family Attached: 25 percent to 50 percent of total density	Low Density residential component is removed from PDD
<b>Max. Gross Residential Density</b> (Dwelling Units/Acre)	Approximately 3.58 du/ac	Approximately 4.00 du/ac	Increase of 0.42 du/ac  Consistent with Medium Density Residential range of three to eight du/ac  (Note: Based on the gross acreage of the entire PDD)
<b>Commercial Tract</b>	2.5 Acres  22,000 (square feet)	Approximately 2.25 Acres  15,000 square feet maximum  Prohibited Uses: vehicular service stations, fast food restaurants and convenience stores	Decrease of .25 acres (7,000 square feet)  Previously approved plan did not specify use restrictions on the commercial tract
<b>Office &amp; Institutional Tract</b>	No Office tract designated	1.50 acres  7,500 square feet	Increase of 1.5 acres (7,500 square feet)

**Dimensional Standards and Setbacks  
Single Family Detached Tracts**

	<b>Existing PDD</b>	<b>Proposed PDD Amendment</b>	<b>Net Change and Comparison to LDO Standards for Transitional Residential (TR) per LDO 6.1.1</b>
Minimum Lot Size (Square Feet)	54 Low Density Units: 8,000	Front-Loaded: 5,000 sq. ft.	Increase of between 250 to 1,250 square feet in lot size for medium density products. Removal of the 8,000-square foot low density product.
	251 Medium Density Units: 3,750 sq. ft.	Alley-Loaded: 4,000 sq. ft.	LDO Minimum TR Lot Size: 6,000
Minimum Lot Width (Feet)	R-1 Tract: 65 R-2 Tract: 35	Front-Loaded: 50 Alley-Loaded: 36	Minimum Lot Width for TR: 60
Minimum Front Yard or Roadway Setbacks (Feet)	R-1: 20 R-2: 5	Front-Loaded: 18 Alley-Loaded: 15 With a three-foot encroachment allowed for stoops, overhangs, bay windows and other similar architectural features.	From thoroughfare: 50 From collector: 30 From other streets: 18 when parking is provided 10 when parking is not provided between dwelling and roadway. (Sills and cornices may encroach 18-inch into setbacks. Bay Windows porches and similar features may encroach three feet provided they are no closer than five feet to the property line.)
Minimum Side Yard (Feet)	R-1: 10 Corner Side: 18 R-2: 6	Front-Loaded: Minimum: Three (With no encroachments) Aggregate: Eight	Minimum: 3 Aggregate: 16 Note: Front or "roadway" setbacks apply to any portion of the lot which abuts a street Note: The term "Corner Side" was removed from the table of setbacks and



	Existing PDD	Proposed PDD Amendment	Net Change and Comparison to LDO Standards for Transitional Residential (TR) per LDO 6.1.1
			replaced with Roadway Setbacks
Minimum Rear Yard (Feet)	R-1: 20 R-2: 15	Front-Loaded: 15 Alley-Loaded: Five for the garage  18 to the principal structure	TR: Width of front and rear setbacks combined shall equal at least 20 feet and any individual rear setback shall be at least three feet.
Maximum Building Height	No increases to LDO limits exist.	No increases to LDO limits are proposed.	35 feet (Consistent with LDO)

Single-Family Attached	Existing PDD	Proposed PDD Amendment	Net Change
Minimum Building Width for Single-Family Attached (Feet)	16	20	Increase of four feet; Consistent with LDO
Minimum Rear (Feet)	10	From Property Line: Three  From Stream Buffer or streetscape: 10	Front and rear setbacks combined shall equal at least 20 feet and any individual rear setback shall be at least three feet.
Maximum Building Height (Feet)	No increases to LDO limits exist.	No increases to LDO limits are proposed.	35

### Open Space

Pursuant to Chapter 4 of the LDO, Planned Development Districts that contain between 76 to 100 acres are required to provide a minimum of 10 percent open space. The proposed PDD Amendment provides approximately 23.42 acres of open space, which represents approximately 25 percent of the gross land area. Based on calculations provided by the applicant, 21.42 acres is regulatory open space in the form of either buffers or streetscape areas. Approximately two acres are proposed for an amenity feature and additional, non-regulatory open space. The exact location of the amenity feature has not been specified.

The existing PDD identified 25.39 acres in regulatory open space and did not designate a site for an amenity feature.

### Landscape Buffer

The applicant has proposed a 15-foot-wide Type B perimeter landscape buffer along the eastern edge of the property. The original PDD provided a 10-foot landscape strip for this same area. The applicant also proposes a 20-foot perimeter buffer along the western edge of the property. These buffer widths either meet or exceed LDO standards if single-family-detached dwelling units are proposed; however, if townhomes are proposed, buffer width required by Chapter 7 of the LDO may be wider. For example, when a townhome is adjacent to a single-family residential lot that is

8,000 square feet or larger, the LDO requires a 40-foot-wide buffer. When adjacent to lots that are 8,000 square feet or less, the buffer width is 30 feet.

### **Streetscape**

According to Chapter 7 of the LDO, a 50-foot, Type-A (opaque) streetscape is required along thoroughfares when residential use is proposed. The existing Fryar PDD was approved with a 30-foot streetscape along Green Hope School Road and Morrisville Parkway. The proposed PDD Amendment maintains this 30-foot width and proposes an opaque streetscape. Highcroft Drive is designated as a Collector Avenue, and per the LDO, a 30-foot streetscape is required. The previously approved Fryar PDD did not illustrate the Highcroft Drive streetscape on the Open Space plan, nor did the document specify proposed reductions to Town standards along this future roadway. LDO streetscape standards along collector avenues specify a 30-foot-wide opaque streetscape.

The proposed PDD amendment seeks to eliminate a separately platted streetscape along the portion of this road south of Morrisville Parkway. The plan calls for street trees to be located on individual lots within an easement dedicated to a master Home Owners Association and for street trees to be incorporated as part of the road design in landscape areas within the public right-of-way. The PDD document indicates that responsibility for the maintenance of trees in the public right-of-way would lie with the future Home Owner's Association. Previous versions of the plan provided a cross section that varied in width from between three to nine feet. The current proposal shows a minimum 10-foot-wide planting strip for the west side of the road (where no on-street parking is proposed).

### **Traffic**

A traffic study (11-TAR-331) was prepared by Ramey Kemp for the Fryar Tract and finalized in November 2011. This study analyzed 250 single-family homes, 125 townhomes, 7,500 square feet of general office and 15,000 square feet shopping center/commercial that had the potential to generate 320 AM and 583 PM peak-hour trips. The study analyzed intersections within one mile as required by Cary's Adequate Public Facilities Ordinance (APFO). The following improvements are required:

#### NC 55 at Morrisville Parkway

1. Provide protected + permitted phasing for the northbound left turn movement on NC 55.
2. Provide a total storage of 470 feet for the eastbound left turn movement from Morrisville Parkway Extension.

#### NC 55 at Green Hope School Road

1. Extend the northbound left turn lane storage on NC 55 to provide a total of 365 feet of storage.  
Green Level Church Road and Green Hope School Road

#### Green Level Church Road at Green Hope School Road.

1. Construct an exclusive westbound left turn lane on Green Hope School Road with a minimum storage of 100 feet.
2. Construct an exclusive southbound left turn lane on Green Level Church Road with a minimum storage of 100 feet.

#### Highcroft Drive Extension at Green Hope School Road

1. Provide a three-lane on Green Hope School Road along the site frontage as required by the CTP.
2. Provide an exclusive left turn lane on eastbound Green Hope School Road with a minimum storage of 50 feet.
3. Construct southbound Highcroft Drive with an exclusive left turn lane and a shared through-right lane. The left turn lane should provide a minimum of 100 feet of full width storage.

### Highcroft Drive Extension and Morrisville Parkway Extension

1. Morrisville Parkway Extension and Highcroft Drive Extension should be constructed in accordance with the CTP requirement. At a minimum, each approach at this intersection should provide one exclusive left turn lane and one shared through-right lane.
2. Provide stop-sign control on Highcroft Drive Extension approach.

Note that the traffic study made the assumption that Morrisville Parkway would be extended from the Fryar Tract and continue eastward to NC 55. It was also assumed that the off-site extension of Morrisville Parkway would be constructed by the developers of Highcroft Village, Phases 4 and 5. If Morrisville Parkway is not connected to NC 55 with the Highcroft Village development then all site traffic would have to use Green Hope School Road and the traffic study should be re-done to address any changes in these assumptions.

## **SUMMARY OF PROCESS AND ACTIONS TO DATE**

### **Changes Since the Planning and Zoning Board Meeting**

- The applicant has proposed to meet Town of Cary LDO Standards for an opaque streetscape and collector avenue standards for the future portion of Highcroft Drive located north of Morrisville Parkway.
- The proposed connection to the Twyla Road properties was shifted northward to address future development options for that adjacent property.
- Language was added to the document to better define street tree planting standards.

#### **South of Morrisville Parkway:**

- The width of the proposed planting strip along the west side of Highcroft Drive was increased from 8 to 10 feet.
- Street cross sections were revised to require a 10-foot-wide landscaped median.
- A note was added to state that no more than two consecutive parking spaces will be allowed between bumpouts along the eastern side of Highcroft Drive.
- A condition was added to provide eight-foot-wide, 50-foot-long medians at the intersection of the southern portion of Highcroft Drive and Morrisville Parkway and the intersection of Highcroft Drive and Green Hope School Road.

### **Planning and Zoning Board Meeting (February 20, 2012)**

Staff outlined the changes since the Town Council Meeting. The applicant spoke about the modifications that had been made to the plan. Adjacent property owners in the Highcroft subdivision expressed concern about safety and property owners from the Twyla Road neighborhood expressed concern about not wanting the proposed revisions to detract from their development opportunities. Several board members noted that compliance with the Town's Comprehensive Transportation Plan and the adequacy of the proposed landscaping remained an important issue. A motion to approve the request failed.

The Planning and Zoning Board recommended the case for denial 5-2.

### **Changes Since the Town Council Meeting**

- The applicant has reduced the proposed unit count from 375 to 355. (Staff has updated the school impacts portion of the staff report to reflect the reduction.)
- The applicant has proposed a round-a-bout on Highcroft Drive approximately midway between Green Hope School Road and Morrisville Parkway.
- Language regarding financial credits and reimbursement opportunities as provided in the LDO has been clarified

- The applicant limited the allowed encroachment for stoops and other similar features into the roadway setback to three feet
- The applicant added a condition to the PDD to indicate disclosure of the Highcroft Drive Collector Avenue designation will be provided to future homeowners.
- Planting standards within the proposed HOA easement were provided.
- Additional minor text clarifications have been made regarding setbacks and encroachments.

#### **Developer Meeting with Highcroft Neighborhood (February 2, 2012)**

The developer and his consultant team met with the Highcroft neighborhood to discuss the project and address residents' questions. Five Town staff members were present at the meeting including representatives from Planning, Engineering, and Police. A significant portion of the discussion focused on the extension of Highcroft Drive through the Fryar project, raising concerns about: the amount of traffic that may be directed into their neighborhood; vehicle speeds; traffic calming measures and potential in the plan; impacts of additional children and parents coming through the neighborhood to the school; and the timing of the Morrisville Parkway extension and interchange with NC 540 Toll Road.

#### **Town Council Meeting (January 24, 2012)**

Staff provided a summary of the request and a comparison of both the LDO and the previously approved Fryar PDD. The Planning and Zoning Chairman reported on the board's recommendation for denial and noted that the majority of the board felt compliance with the Comprehensive Transportation Plan was an important issue. The board chair also noted that clarification on where the different housing products will be located was important.

Two council members asked for more clarification on how the development plan will manage traffic calming. One council member asked the applicant to provide more detail in the plan to show where the proposed attached housing will be located and what the mix of uses would be. The Town Council forwarded the case back to the Planning and Zoning Board for another public hearing.

#### **Changes Since the Planning and Zoning Board Meeting**

The applicant has proposed the following changes to the PDD document:

- Minor map labels and wording have been corrected and font sizes increased for clarity.
- A map with the proposed locations of alternate street cross sections was provided.
- The documents clarify that the streetscape along Morrisville Parkway shall meet a Type-A (opaque) standard.
- A note has been added to the Open Space plan to indicate that, "The amenity site will be provided south of Morrisville Parkway and east of Highcroft Drive. The site for the amenity will be 1.0 to 1.5 acres in size."
- The roadway setback for alley-loaded single-family attached and detached dwellings was increased from 10 to 15 feet, but with exclusions for stoops, overhangs and other architectural features. Architectural features have not been defined.

The applicant and DRC staff met to discuss the proposed reduction to Town of Cary Standards for the road profiles and streetscape requirements for Highcroft Drive. Staff has remained consistent with the recommendation that Comprehensive Transportation Plan standards and streetscape treatments for a collector avenue are the most appropriate for this road.

#### **Planning and Zoning Board (December 19, 2011)**

Staff presented the request and noted that, the proposed land use and density was consistent with Cary's Land Use Plan. Staff provided an overview of the changes that were requested and emphasized staff's concern about the proposed roadway design along Highcroft Drive. Staff noted that the proposed product mix of attached and detached dwellings could be 50 percent of each.

The applicant described the improvements made to the original PDD and the developer described his goal for a neighborhood feel along the collector roadway. They also emphasized the value this development would bring to the community in light of the required roadway improvements. The applicant described the need for flexibility with the product mix based on market demands. No citizens spoke during the public hearing.

The board conducted an in-depth discussion regarding safety issues and asked for input from the Town's Engineering and Police Departments.

Based primarily on inconsistency with Cary's Comprehensive Transportation Plan, The Planning and Zoning Board made a recommendation for denial 5-2.

### **Changes Since the Town Council Public Hearing**

The applicant has made the following changes to the proposed PDD in response to staff comments:

- The PDD document now contains three options for proposed cross-sections on Highcroft Drive
- A third parking space on individual lots is required for the alley-loaded products.
- An 18-foot rear yard setback to the principal structure is proposed for the alley-loaded residential units.
- Out-dated language referring to corner side setbacks was replaced to roadway setbacks, and the distances were increased to more closely reflect LDO standards
- The type of streetscape proposed along the Morrisville Parkway Streetscape was changed to opaque rather than semi-opaque
- The exact location of the amenity site is no longer specified on the Land Use Plan; however, a commitment to providing 2.0 acres of non regulatory open space for an amenity feature and pocket parks is still provided. The specific location of an amenity feature was also removed from the Land Use plan in the PDD document.
- The maximum dwelling unit count was corrected on the staff report to reflect an increase of 70 rather than 53 units.
- Language was added to the PDD document to explain that a 10-foot landscape easement, to be maintained by the Master HOA, would be provided along Highcroft Drive adjacent to residential uses-in-lieu of a standard streetscape.
- On the circulation plan, dashed lines showing future connections to adjacent properties were labeled as conceptual.
- At the Town Council public hearing, the applicant indicated the mix of uses would be 1/3 attached and 2/3 detached. The PDD document now states the project includes a mix of single-family detached at 50 to 75 percent of the total density and single-family attached at 25 to 50 percent of the total density.

### **Town Council Public Hearing (September 8, 2011)**

Staff presented the request and summarized the changes between the existing and proposed PDD. Staff noted that there were no protest petitions. The applicant, JW Shearin, presented the request and described the design merits of the proposed plan. He noted that the developer would provide a pedestrian tunnel under Morrisville Parkway. He noted the prohibited uses proposed for the commercial tract and the specification of a neighborhood amenity site. Mr. Shearin also stated that the proposed plan would reverse the current PDD mix of uses from 1/3 detached and 2/3 attached to a product mix that is 2/3 detached and 1/3 attached.

John Myers, the future developer, spoke in support of the plan and provided the council with illustrations of other projects that he stated would be similar in design.

No citizens spoke during the public hearing. During the discussion, one council member asked if the pedestrian tunnel under Morrisville Parkway would be incorporated as part of the PDD requirements. The applicant replied that it would. There were no questions for staff. The Town Council forwarded the request to the Planning and Zoning Board.

#### **Notification**

On August 24, 2011, the Planning Department mailed notification of a public hearing on the request to property owners within 400 feet of the subject property. Notification consistent with General Statutes was published in the Cary News on both August 24 and 31, 2011. Notice of the public hearing was posted on the property on August 24, 2011.

#### **Neighborhood Meeting**

Based on information provided by the applicant, a neighborhood meeting to present the applicant's proposed rezoning was conducted by the applicant on April 14, 2011 at Crosspoint Church in Cary.

The applicant reported that 12 citizens from the Twyla Road community attended the meeting. The attendees expressed concern over how future road improvements for Morrisville Parkway and road connectivity from the subject property to the Twyla Road community would impact their property. The applicant reported that no opposition to the changes proposed for the PDD regarding lot size or density were expressed.

#### **CRITERIA FOR CONSIDERATION IN REVIEWING REZONINGS**

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

1. The proposed rezoning corrects an error or meets the challenge of some changing condition, trend or fact; The proposed rezoning is consistent with the Comprehensive Plan set forth in Section 1.3 (LDO);
2. 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;
3. The proposed rezoning is unlikely to have significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife and vegetation;
4. The proposed rezoning will not have significant adverse impacts on property in the vicinity of the subject tract, and
5. The proposed zoning classification is suitable for the subject property.

In addition to the general approval criteria for rezonings set forth above, Section 3.4.3 states that PDD rezoning applications shall be reviewed for compliance with the following additional criteria:

1. 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
2. The request complies with the PDD standards of Section 4.2.3.

#### **4.2.3 PDD; Planned Development Districts**

##### **General Intent/Purposes of the PDD Districts**

The PDD zoning districts allow projects of innovative design and layout that would not otherwise be permitted under the LDO because of the strict application of zoning district or general development standards. The PDD district encourage innovate land planning and design concepts by:

- (1) Reducing or eliminating the inflexibility that sometimes results from strict application of zoning and development standards that were designed primarily for individual lots;

- (2) Allowing greater freedom in selecting means to provide access, light, open space and design amenities;
- (3) Allowing greater freedom in providing a mix of land uses in the same development including a mix of housing types, lot sizes, densities and non-residential uses in a planned development;
- (4) Promoting quality urban design and environmentally sensitive developments by allowing development to take advantage of special site characteristics, locations and land uses and
- (5) Encouraging quality urban design and environmentally sensitive development by allowing increases in base densities when such increases can be justified by superior design or the provision of additional amenities such as public and or private space.

In return for greater flexibility in site design requirements, PDDs are expected to deliver exceptional quality community designs that preserve critical environmental resources, provide above-average open space amenities, incorporate creative design in the layout of buildings, open space and circulation; assure compatibility with the surrounding land uses and neighborhood character; and provide greater efficiency with the layout and provision of roads, utilities and other infrastructure. The PDD districts shall not be used as a means of circumventing the Town’s adopted land development regulations for routine developments.

**APPLICABLE COMPREHENSIVE OR AREA PLAN REQUIREMENTS**

Comprehensive Plan Element	Consistent	Not Consistent	Not Applicable
Land Use Plan	<b>X</b>		
Parks, Recreation, and Cultural Resources Facility Master Plan	<b>X</b>		
Growth Management Plan	<b>X</b>		
Affordable Housing Plan	<b>X</b>		
Comprehensive Transportation Plan		<b>X</b>	
Open Space and Historic Resources Plan	<b>X</b>		

**A. Land Use Plan**

This Comprehensive Plan Amendment case concerns a site that straddles the boundary between the Town’s Northwest Area Plan and Southwest Area Plan, along the future Morrisville Parkway. Therefore, future land use recommendations for the northern third of the subject area are given by the Northwest Area Plan, and for the southern two thirds by the Southwest Area Plan.

**Land Use Plan Designation**

A recently approved Comprehensive Plan Amendment case, 11-CPA-04, changed the future land use recommendations for the subject parcels. That case (a) re-designated the LDR area north of Morrisville Parkway to MDR; (b) shifted the approximately two-acre commercial area from the north to the south side of Morrisville Parkway; and (c) designated a new area of about 1.5 acres as Office/Institutional adjacent to the Commercial site south of Morrisville Parkway.

Medium Density Residential (MDR) is typically defined as single-family housing at three to eight dwellings per acre, with housing that typically includes types such as single family detached, semi-detached/attached homes, townhomes, patio homes, and/or duplexes. Multi-family housing is typically not envisioned within MDR areas.

Town Council approved this amendment at their December 15, 2011 meeting.

**Analysis of Land Use Plan Conformance**

The request is in conformance with the current Land Use Plan.

**B. Parks, Recreation & Cultural Resources Facilities Master Plan**

In accordance with the Parks, Recreation and Cultural Resources Facilities Master Plan the developer will construct a greenway trail along the riparian buffer located along the northern and eastern borders of the applicant’s property. This greenway will connect with a planned greenway

within the Highcroft Village and Wake Memorial properties to the south, and to the north will link with a proposed multi-use trail along Highcroft Drive (at the point where the riparian buffer intersects the Highcroft Drive multi-use trail). Construction of this greenway will include installation by the developer of a 12'x12' pedestrian tunnel under Morrisville Parkway. The developer will also construct multi-use trails along the north side of Morrisville Parkway and along the east side of Highcroft Drive for the length of the PDD. A recreation payment-in-lieu will be required for residential development in accordance with the Land Development Ordinance.

The above comments and construction were reviewed and approved by the Town's Parks, Recreation & Cultural Resources Advisory Board at its September 2011 meeting, and by the Greenway Committee at its August 2011 meeting.

### **C. Growth Management Plan**

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

Guiding Principle L1: Concentrate growth near existing and planned employment centers and available and planned infrastructure to minimize costly service-area extensions.

Guiding Principle A1: Increase permitted densities in preferred growth areas to encourage desired forms of development.

**Analysis:** The site is within four miles of Research Triangle Park (RTP), a major employment center. Adequate infrastructure is available to serve the site. Most of the area covered by the Northwest Area Plan, including the subject site north of Morrisville Parkway, can be considered a preferred growth area.

### **D. Affordable Housing Plan**

The Affordable Housing Plan includes the following goals that 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.

**Analysis:** The proposed amendment may somewhat increase the chances of furthering the above housing goals by providing for somewhat higher densities, however the proposed density isn't so high as to significantly raise the chances of affordability or a wider range of housing choices.

### **E. Comprehensive Transportation Plan**

#### **Morrisville Pkwy. Is designated as a major thoroughfare**

**Existing Section:** N/A

**Future Section:** Four-lane median divided within 100 feet of right-of-way

**Sidewalks:** Required on both sides

**Bicycle:** 14-foot-wide outside lanes required

**Transit:** No requirements

#### **Green Hope School Rd. is designated as a major thoroughfare.**

**Existing Section:** Three lanes in approximately 70 feet of right-of-way

**Future Section:** Three lanes, 70 feet of right-of-way

**Sidewalks:** Required on both sides

**Bicycle:** 14-foot-wide outside lanes

**Transit:** No requirements



**Highcroft Drive is designated as a Collector Avenue.**

**Existing Section:** N/A

**Future Section:** Two- to three-lane section in 60 to 70 feet of right-of-way

**Sidewalks:** Required on both sides

**Bicycle Lanes:** Four-foot striped bike lane or 14-foot-wide outside lane

**Transit:** No requirements

**History of Highcroft Drive**

Highcroft Drive Extension appeared in the Cary Comprehensive Transportation Plan in 2001 and was designated as a collector road. The roadway began in the south at Roberts Road and continued northward where it bisected many future east-west thoroughfares, and eventually connected east of NC 55 at the future extension of Louis Stephens Drive. In 2002, the adoption of the Northwest Area Plan included the collector roadway as previously shown in the earlier Transportation Plan. The adoption of the Southwest Area Plan in 2004 also included Highcroft Drive as a collector road, but was modified to remove a southern portion of the collector near Roberts Road and terminate at Green Level West Road. In addition, the connection of the roadway at Green Level West Road was also relocated further to the east to increase the spacing from the Western Wake Freeway (NC 540 Toll Road) interchange. The adoption of the 2008 Cary Transportation Plan also included the Highcroft Drive Extension as a collector as previously shown in the Southwest Area Plan.

In 2004, the Town adopted Policy Statement 140 "Collector Avenue Road Classification." The policy was developed to address many concerns and problems that were witnessed by several developments where major collector roadways traversed through the project. Many of the concerns included speeding, the need for traffic calming measures, allow for more major roads to function as intended, restrict and limit access along major collectors through the addition of medians. The policy set higher standards for collector roadways where the expected average daily traffic would exceed 3,000 vehicles per day.

**Note**

Town staff is evaluating the feasibility of a possible road name change from Highcroft Drive to Highcroft Avenue.

**Collector Avenue Classification & Definition**

The section of Highcroft Drive Extension that traverses through the Fryar PDD Tract is designated as a collector avenue. The Town's Policy Statement 140 provides further definition of the collector avenue. Summarized below are the qualifying criteria and standard design requirements for collector avenues.

Qualifying Criteria

If the proposed collector road has a future ADT of 3,000 vehicles or greater, and meets one of the following criteria, the collector avenue classification will apply:

1. Links to two arterial streets.
2. Classification as a major collector by the Town.

Standard Collector Avenue Design Requirements

1. Typical section includes a two-lane roadway with striped bike lanes and sidewalk on both sides. A 14-foot grass median will be provided.
2. All single-family residential driveway cuts will be restricted.
3. Minimize driveway cuts along the avenue.
4. Installation of bicycle facilities in the form of striped bike lanes will be required.
5. On-street parking will not be permitted.
6. Typical speed limit posting of 35 miles per hour.

7. Medians and landscape maintenance will be the responsibility of the Homeowner's Association. Plantings will be in accordance with the Town's LDO and planting dimensional and selection guidelines provided in the NCDOT "Guidelines for Planting within Highway Right-of-Way".

#### Alternative Standard Collector Avenue Design Requirements

1. Typical section includes a two-lane undivided roadway with striped bike lanes and sidewalk on both sides. (no median)
2. Minimize driveway cuts along the avenue.
3. Installation of bicycle facilities in the form of striped bike lanes will be required.
4. On-street parking will not be permitted.
5. Medians will not be required with the Alternative Standard cross-section due to the restriction of single-family residential driveway cuts.
6. Typical speed limit posting of 35 miles per hour.

#### **Purpose of Collector Streets**

Collector streets provide a balance between land access and mobility. They typically serve as a link between local streets and arterials. The typical section of the street generally consists of two to three travel lanes, striped bike lanes, and sidewalk on both sides. Highcroft Drive Extension will provide connectivity between residential and commercial areas in western portions of Town. Beginning at Green Level West Road, the roadway extends northward for approximately four miles where it intersects with NC 55 Hwy and will eventually extend eastward to Louis Stephens Road Extension. The roadway parallels NC 55 Hwy and the Western Wake Freeway (NC 540). Given its length and connectivity to many arterials along its route, Highcroft Drive will be a major collector with traffic volumes anticipated to exceed 3,000 vehicles per day.

#### **Existing Highcroft PDD Neighborhood Located to the South**

In 2007, the Town Council received a request from the Highcroft neighborhood expressing traffic and safety concerns. In particular, they requested a reduction of the speed limit along Highcroft Drive to 25 miles per hour, to allow traffic calming measures on the collector road, the removal of Highcroft Drive from the Transportation Plan, and to allow on-street parking, which was prohibited by the original Highcroft PDD document. Staff recommended in a staff report to Town Council (EN07-113) that Highcroft Drive speed limit be lowered to 30 miles per hour, a limited number of speed humps be added, the street remain as a collector and on-street parking be prohibited. Staff also requested guidance from Town Council concerning the establishment of a policy for decorative speed hump installation and maintenance costs. In two separate actions, Town Council approved a reduction of speed limit to 25 miles per hour (4-2 vote), and directed staff to work with the neighbors on a traffic calming plan with the understanding that the Town will not participate in cost sharing for aesthetic devices, but will consider cost sharing for regular devices (unanimous vote).

#### **Access to Transit**

The closest existing transit service to the subject properties is Triangle Transit Route 311, which provides service along NC Highway 55, approximately three quarters of a mile east of the site. At present, the closest C-Tran fixed route service terminates at the intersection of High House Road and NC 55, approximately two miles from the site. The long-range expansion plan for C-Tran fixed route service currently envisions a route along Green Level Church Road, approximately one mile west of the site.

#### **F. Open Space Plan**

The subject parcels include areas identified as potential open space on the Open Space Plan Map and on the Priority Open Space Inventory. These resources include significant amounts of mixed upland hardwood forest, some mixed hardwood/conifer forest, both bottomland hardwoods, and riparian areas. Most of the resources are associated with existing forested and

riparian areas of 201 Fryars Frontier Trail (PIN # 0735402360), with the northern central forested portion of 210 Fryars Frontier Trail (PIN # 0734496195).

#### **G. Historic Preservation Master Plan**

The parcel at 201 Fryars Frontier Trail (PIN # 0735402360) includes a home built in 1925, plus a farm outbuilding. The parcel at 210 Fryars Frontier Trail (PIN # 0734496195) includes a home built in 1910 plus about eight farm outbuildings (barn, etc.). The buildings are listed on the Wake County Historic Inventory, but as of the last inventory update the buildings were deemed ineligible for National Register designation. However, the question of whether or not the buildings may have local significance has not yet been determined. A special survey update of Cary's portion of the Wake County Inventory is currently under way in order to fully assess such properties.

#### **ADDITIONAL STAFF OBSERVATIONS ON PROPOSED PDD**

##### **General Intent/Purposes of PDD Districts**

In evaluating the proposed PDD Amendment, staff considered the general intent and purposes of PDD districts described in LDO section 4.2.3 and made the following observations:

- When the PDD was first approved, flexibility to LDO standards was applied to allow reduced lot sizes, setbacks and streetscape widths from 50 to 30 feet along Morrisville Parkway and Green Hope School Road. The current request asks to maintain those previously granted reductions.
- The request is consistent with the Town of Cary Comprehensive Land Use Plan. Staff finds that the proposed residential density, mix of housing products, commercial tract and proposed addition of an office tract meets the general intent and purpose of a PDD district by providing a balanced mix of land uses. The overall proposed density increase is minor. The plan, however, does not provide the level of detail needed to know how the residential uses will be arranged on the property so transitions between uses cannot be fully evaluated.
- If approved, an amendment to the PDD creates the opportunity to bring the proposed plan into compliance with Cary's Stormwater Management regulations in regard to placement of stormwater devices outside stream buffers and removing definitions that are not consistent with LDO language.
- Designation of a neighborhood amenity site and areas for pocket parks or gathering spaces beyond the required open space in buffers encourages quality urban design. The PDD exceeds LDO standards for open space requirements and the proposed amendment has slightly increased perimeter buffers. The specific nature and location of amenities has not been provided.
- The proposed pedestrian tunnel under Morrisville Parkway greatly enhances pedestrian circulation and accessibility. By agreeing to construct this tunnel and by constructing a public greenway trail along Panther Creek, staff finds that this demonstrates an innovative combination of land dedication and actual development of public recreation facilities. The applicant would be able to seek credits at the time of development plan review under LDO Section 8.2.3 (B) (b) for these features.
- The applicant's proposed limits on high intensity or high traffic generating commercial uses provides a better transition for the commercial tract to nearby residential and office uses.

##### **Staff Observations**

In previous staff reports, staff noted that eliminating the 30-foot opaque streetscape and 30-foot setback, required by the LDO along collector avenues was not sufficiently justified by proposing alley-loaded housing. Because of the anticipated high traffic on this road, staff feels this type of

reduction is more appropriate along internally located residential streets or within urban environments.

The applicant has agreed to provide the standard 30-foot-wide streetscape on the northern portion of Highcroft Drive and has agreed to provide a landscaped median on the southern portion of Highcroft Drive. The Town staff is satisfied with the performance of the road, and defers to the Town Council to decide if the proposed on street parking, landscaping and setbacks are appropriate for this location.

**In the event The Town Council finds the proposed design for the southern portion of Highcroft Drive is appropriate as submitted by the applicant, staff makes the following observations about PDD document proposed by the applicant:**

1. The PDD documents propose a 15-foot-wide streetscape along the non-residential tracts. Because of the close proximity to residential use, staff suggests a 30-foot streetscape be implemented adjacent to the office and commercial uses, unless the applicant provides a condition to locate all parking behind the building. The applicant has agreed to address this concern.
2. To reduce the amount of traffic on Highcroft Drive, the developer may wish to consider one right-in, right-out driveway on Morrisville Parkway to access each of the residential tracts located north and south of Morrisville Parkway and east of Highcroft Drive extension. The additional access to the thoroughfare will reduce traffic on Highcroft Drive and will provide the benefit of not overloading neighborhood access roads connecting to Highcroft Drive.
3. Due to high traffic volumes anticipated for Highcroft Drive, a separate left turn lane should be provided on Highcroft Drive at all side street and driveway intersections where the left turning volume could be expected to be at least 25 vehicles per hour. An acceptable alternative to the left turn lane requirement includes a median within Highcroft Drive making the access right-in, right-out only or the inclusion of roundabouts.

**OTHER REFERENCE INFORMATION**

Schools	Assigned Schools	20 <sup>th</sup> Day Enrollment <sup>1</sup>	Building Capacity	Average Percent Occupied	Projected Range of Additional Students <sup>2</sup>
<i>Note: The Wake County Board of Education controls capital projects for school capacities.</i>	Highcroft Elementary	777	1081	72%	5 to 21
	Mills Park Middle	1101	1311	84%	3 to 8
	Green Hope High	2029	2089	97%	2 to 10
	Total Projected range of additional students <sup>2</sup>				

<sup>1</sup> *Current Enrollment and Building Capacity* is based on the 20<sup>th</sup> day of the school year for 2010-2011 as supplied by the Wake County Public School System. School assignment is determined at the time of development.

<sup>2</sup> The *Projected Number of Additional Students* is an approximation. The actual number of students will fluctuate depending on variables, such as the number of bedrooms, the dwelling size, and other factors. For example: a site with 50 two-bedroom dwellings may only yield 10 additional students, while 50 dwelling units with three or more bedrooms could yield up to 39 students. The basis for making this calculation is based on multipliers provided from the Wake County Schools Office of Student Assignment. At rezoning, student yield cannot be accurately determined due to unknown variables.

## **APPLICANT'S JUSTIFICATION STATEMENT**

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 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 are at the direction of the applicant and may be formulated into a condition:

### **1. Any issues with the size of the tract?**

*Response: There are no known tract issues with this request.*

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

*Response: This proposed amendment includes a housing density of approximately four units per acre. The medium density category on the land use plan provides for three to eight dwellings per acre and can include a mixture of dwelling types including single family detached and semi-detached units, single-family attached units, patio homes and townhouses. A variety of neighborhood-compatible and complimentary uses may also be considered. This request is consistent with the plan by providing the recommended residential use types and low impact neighborhood support uses in the nonresidential areas.*

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

*Response: This request provides for improvements in traffic distribution. By extending Highcroft Drive to Morrisville Parkway and making a connection to the proposed interchange of Morrisville Parkway and I-540, vehicular access to I-540 shall occur for the surrounding neighborhoods. This allows better access and will lessen current impacts to existing roads and intersections.*

### **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: This request will compliment the adjacent land uses by providing like uses. The Land Use Plan indicated MDR for this area as the predominant use.*

### **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: The Highcroft Road cross section being proposed is not a typical design. The plan calls for a 70-foot Right-of-way for this collector. Upon meeting with staff, we were asked to minimize driveway cuts. The existing Highcroft Drive to the south has front-loaded homes along the street maximizing driveway cuts. Speed humps have been added to reduce speeds because of traffic related issues. In an effort to meet the Town's goal, we are proposing alley-loaded lots on Highcroft Drive to minimize curb cuts, but still respect the integrity of the street. In addition, we are proposing on-street parking with planted islands to assist in traffic calming measures. A plan view has been included in the PDD document showing islands between parking pods. With the requirement for a multi-use path, we have relocated the bike lane as shown in the provided cross-section within the PDD document.*

## **Additional Justification Statements provided by applicant on July 22, 2011**

### **Density**

*The approved Fryar PDD allows for 322 units. The proposed Fryar PDD Amendment allows for 375 units, which is an increase of 53 units. This amendment shall achieve a greater mix of uses,*

*greater mix of product types and higher quality of development due to improved and revised development standards. Although this amendment requests an increase of 53 units, the product shall provide an average density of 4.5 units per acre, in keeping with the lower end of the Town of Cary's Medium density Classifications. The Medium Density classification allows for 3 to 8 units per acre.*

**(Staff Comment:** The 322 units was based on the original PDD approved in 2008. In 2008 the PDD was amended to transfer a portion of the land area to the Highcroft PDD and the maximum unit count was reduced to 305. The increase to 375 units proposed by this PDD Amendment therefore, increases the unit count by 70 dwelling units.)

**Uses:** *The approved Fryar PDD allows for Low Density Residential, Medium Density Residential and a commercial use. The proposed Fryar PDD Amendment allows for Medium Density Residential, a commercial use and an office use. This amendment shall exclude zero lot line development as an allowable use within the residential tracts, currently allowed as a residential use. This amendment only intends to increase the total commercial square footage by 500 square feet. This amendment shall exclude fast food restaurants, convenience stores and vehicular service stations, currently allowed as non-residential uses. These uses are high intensity uses so the overall impact to the development and surrounding area shall be reduced.*

**Uses:** *The Approved Fryar PDD allows for a Commercial use north of Morrisville Parkway. The proposed Fryar PDD Amendment allows for a commercial use and an office use south of Morrisville Parkway. This shift shall allow for better circulation and provide more separation and an increased buffer from the existing residential uses along the western boundary of the project.*

**Development Standards:** *The approved Fryar PDD allows for a minimum lot size of 3,750 square feet within the R-2 Medium Density Residential tract. The proposed Fryar PDD Amendment allows for a minimum lot size of 4,000 square feet related to alley-loaded lots and a minimum of 5,000 square feet from front-loaded lots. The alley-loaded lots are proposed along the Highcroft Drive extension to minimize curb cuts, avoiding issues that have been of great concern south of our project site. A non-standard cross section has been conceptually described and proposed to allow on-street parking, accommodate bicycle traffic, a multi-use trail and establish an aesthetically pleasing streetscape. This Amendment shall establish a maximum related to attached and detached products achieving a true mix of product types throughout the development not currently provided in the approved Fryar PDD but there is not a guarantee related to a mix of product types related to the residential tracts.*

**Development Standards:** *The approved Fryar PDD allows for minimum of 16-foot wide townhomes. The proposed Fryar PDD amendment intends to meet standards regarding townhome widths by increasing the width to 20 feet, as described in the Town of Cary LDO. This Amendment shall set a maximum number of townhomes to be developed, not currently provided in the approved Fryar PDD*

**Buffers:** *Approved Fryar PDD allows for Stormwater devices within stream buffers. The proposed Fryar PDD shall abide by current Town of Cary requirements regarding stream buffers by not allowing stormwater devices to be located within the stream buffers.*

**Open Space:** *The approved Fryar PDD only includes acreage related to ponds, stream buffers streetscapes and permanent landscape buffers in open space calculations. The proposed Fryar PDD shall include non-regulatory open space, along with required multi-use trails along Morrisville Parkway and Highcroft Drive, potentially a greenway trail along the northern stream buffer and potential a pedestrian tunnel underneath Morrisville Parkway. The proposed Fryar PDDs shall disperse non-regulatory open space throughout the development based on the discussed standard, providing 1,250 square feet per 10 developed acres. The proposed Fryar PDD shall exceed the 10 percent requirement related to open space for the entire project (9.28 acres.)*

## ORDINANCE FOR CONSIDERATION

### 11-REZ-07 FRYAR PDD AMENDMENT

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE TOWN OF CARY BY AMENDING THE EXISTING FRYAR PLANNED DEVELOPMENT DISTRICT. SUCH AMENDMENTS INCLUDE, BUT ARE NOT LIMITED TO, THE INCREASE IN THE NUMBER OF RESIDENTIAL DWELLING UNITS FROM 305 TO 355 AND REMOVAL OF A LOW DENSITY DESIGNATION. THE AMENDMENT RELOCATES THE EXISTING COMMERCIAL TRACT TO THE SOUTH SIDE OF MORRISVILLE PARKWAY, DESIGNATES APPROXIMATELY 1.5 ACRES FOR OFFICE USE AND BETWEEN ONE (1) AND 1.5 ACRES FOR A NEIGHBORHOOD AMENITY SITE. FURTHERMORE. THE AMENDMENT REMOVES THE REQUIREMENT FOR A STREETScape ADJACENT TO RESIDENTIAL PROPERTIES ON THE PORTION OF HIGHCROFT DRIVE SOUTH OF MORRISVILLE PARKWAY AND SUBSTITUTES AN HOA MAINTAINED LANDSCAPE EASEMENT. A 15-FOOT WIDE STREETScape SHALL BE ALLOWED ADJACENT TO HIGHCROFT DRIVE FOR NON-RESIDENTIAL PARCELS. ADDITIONAL MODIFICATIONS TO THE PDD ARE CONTAINED WITHIN THE DOCUMENT AND INCLUDE REVISIONS TO LOT SIZE AND BUILDING SETBACKS AND CLARIFICATION OF DEFINITIONS.

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 Numbers (10-digit)	Real Estate IDs	Calculated Acreage
Fryar Family Partnership 201 Fryars Frontier Trail Cary, NC 27519	0734397102	0241797	23.96
	0735402360	0241796	33.79
R. Daniel Brady Successor Trustee David Roscoe Fryar Trust 7210 Green Hope School Road Cary, NC 27519	0734482230	0361803	3.39
	0734496195	0030966	28.69
<b>Total Area</b>			<b>89.83 +/-</b>

Section 2: That this Planned Development District for this Property is amended subject to the individualized development conditions set forth in the "Fryar Planned Development District Amendment" dated March 8, 2012 and on file in the Planning Department, and to all the requirements of the Cary Land Development Ordinance (LDO) and other applicable laws, standards, policies and guidelines, all of which shall constitute the zoning regulations for the approved district and are binding on the Property.

Section 3: The conditions proposed by the applicant to address conformance of the development and use of the Property to ordinances and officially adopted plans, to address impacts reasonably expected to be generated by the rezoning, and to promote the public health, safety and general welfare, and accepted and approved by the Town are set forth in the "Fryar Planned Development District Amendment" dated March 8, 2012 and on file in the Planning Department.

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

Adopted and effective: March 22, 2012

\*\*\*\*\*

**Option 1 (if rezoning is approved):**

**CONSISTENCY AND REASONABLENESS STATEMENT**

11-REZ-07 Fryar PDD Amendment

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: Rezoning 11-REZ-07 is consistent with elements of the Comprehensive Plan, except that it is not consistent with the Comprehensive Transportation Plan.

Section 2: Based upon information presented at the public hearings and by the applicant, and based upon the recommendations and detailed information developed by staff and/or the Planning and Zoning Board contained in the staff report, and considering the criteria of Section 3.4.1(E) of the Town of Cary Land Development Ordinance, Rezoning 11-REZ-07 is reasonable and in the public interest.

\*\*\*\*\*

**Option 2 (if rezoning is denied):**

**CONSISTENCY AND REASONABLENESS STATEMENT**

11-REZ-07 Fryar PDD Amendment

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: Rezoning 11-REZ-07 is consistent with elements of the Comprehensive Plan, except that it is not consistent with the Comprehensive Transportation Plan.

Section 2: Based upon information presented at the public hearings and by the applicant, and based upon the recommendations and detailed information developed by staff and/or the Planning and Zoning Board contained in the staff report, and considering the criteria of Section 3.4.1(E) of the Town of Cary Land Development Ordinance, denial of Rezoning 11-REZ-07 is reasonable and in the public interest.

\*\*\*\*\*

**N.C.G.S. § 160A-383. Purposes in view.**

Zoning regulations shall be made in accordance with a comprehensive plan. When adopting or rejecting any zoning amendment, the governing board shall also approve a statement describing whether its action is consistent with an adopted comprehensive plan and any other officially adopted plan that is applicable, and briefly explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

The planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall provide a written recommendation to the governing board



that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

Zoning regulations shall be designed to promote the public health, safety, and general welfare. To that end, the regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration, among other things, as to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such city.

Ms. Debra Grannan of the planning department presented the staff report herein and a PowerPoint presentation attached to and incorporated herein as **Exhibit J**. She stated a condition to prohibit parking between commercial and office buildings and Highcroft Drive has been added to the request since the Planning and Zoning Board (P&Z) public hearing, and is not included in the report herein.

The P&Z representative, Al Swanstrom, summarized the Board's recommendation (herein); however, he stated the request before council is significantly different than the proposal the board reviewed.

Frantz asked if the roundabout was in the plan during the P&Z review. Swanstrom said yes. He said the medians at either end, the specifics on how many parking places would be between the bump outs and the information pertaining to the area north of Morrisville Parkway are items that have been added since the P&Z review.

Robinson said she struggles with whether the P&Z concerns have been addressed sufficiently by the changes, and how the list of concerns voiced at the P&Z meeting compare to the changes. Swanstrom stated one of the P&Z recommendations was to look at medians at the entrances to Highcroft Drive at Morrisville Parkway and at Green Hope School Road, which has been addressed with the changes. However, a motion for approval was made with that stipulation and that motion failed. He would suggest to council that even if the board would have seen the change, the same vote would have been reached. He stated the changes do not address the streetscape concern or the primary concern of safety.

Robinson asked for the width of the on-street parking spots. Jensen said staff has tried to address the issue about car doors being opened within the bike lane, and they worked with the applicant early on to make the lane with on-street parking wider to accommodate bike lanes and car door opening provision for enhanced safety.

Robinson said it appears that since P&Z has seen the request, two additional feet have been added to the utility strip between the sidewalk and the curb on the west side. Jensen said there is a two- or three-foot utility strip on the east side. There are no street trees adjacent to the parking stalls; these will only be at the bump out locations.

Robinson stated there is a two- or three-foot utility strip on the east side, a 10-foot wide multi-use path and a front yard setback of 15 feet. Grannan stated language clarification was made that the encroachment would be limited to three feet for stoops, porches and other similar features, to be more consistent with the LDO. She said the setback has remained at 15 feet.

Robinson said a traditional road has a 30-foot streetscape with no building closer than 30 feet from the road and a Type A buffer for privacy. She said the proposal has a decrease of about

three feet in the streetscape with no Type A buffer or curb cuts. Jensen said the 30-foot opaque streetscape is measured from the right-of-way line, which is a 10- to 11-foot decrease to the setback. Robinson said the setback will be half of a traditional development setback. Grannan said there will be an additional setback off of that property line depending on the type of product. She said the deviation from the standard streetscape is so the front of the house and the architecture will be visible. The parking would be in the rear and would be accessed by an alleyway.

Robinson said the median width will be 10 feet almost the full length of the property, but will it decrease to eight feet where it approaches a road intersection. Jensen said a traditional collector road median is proposed south of Morrisville Parkway, which is an 11-foot grass median. The area south approaching Green Hope School Road will need modifying during the site plan process, because a collector road design median should be in that area, and a median is not proposed. He said the only median proposed is for the Morrisville Parkway intersection approach.

Robinson struggles with the request, because P&Z has not seen the recent changes and has not given council a relevant recommendation. However, people who live to the south of this project are excited about it, because it is more harmonious with their community and gives them the potential of slower traffic in that area. She is inclined to support this project, because she thinks it is better for the existing community than what was envisioned during the Comprehensive Transportation Plan (CTP).

Bush believes P&Z struggled with the collector road. She believes if it is sent back to P&Z, they would still struggle with it. Swanstrom stated P&Z wanted to recommend approval of this project, but they were concerned with the streetscape and the collector road. There was no evidence that the CTP was wrong in designating Highcroft Drive as a collector road, and on-street parking on a collector road has safety issues. He said he is not sure that the changes are substantive enough to address P&Z concerns.

Bush asked if the nearby collector road could serve as a replacement to Highcroft Drive. Jensen stated Highcroft Drive goes all the way to Highway 55. The other collector road is further east and only connects Green Hope School Road to Morrisville Parkway with no opportunity to go any further to the north as the Town's CTP envisions.

Adcock stated this application has been denied by the P&Z twice, and the applicant has made changes to the request that the P&Z has not seen. She believes the rezoning process is being thwarted. She believes it is not right to send this request back to the P&Z for the third time, because it is still not consistent with the CTP. She cannot support the request.

Robison wants to know if staff believes the proposed function of the collector road is acceptable. She does not think placing trees and shrubs in a HOA maintained easement, on individual lots and in the public right-of-way is typical, and she thinks problems might arise. Grannan stated a required streetscape typically has plantings in a HOA's common open space. She said zoning compliance staff will contact the HOA if enforcement issues occur. Robison thinks this is not a good approach and does not follow a well established trend.

Jensen stated the collector road to the north of Morrisville Parkway will be built to Town standards. The site plan will include elements of the Town's collector road standards to the south (i.e., the proper amount of lanes, bike lanes, sidewalk, multi-purpose path facilities and a median). The applicant wants on-street parking for the residents to help supplement their product type. Staff has been insistent that this does not meet the collector road standards. The applicant tried to meet the median standard by proposing a median for a significant portion of the roadway, which deviates a bit from the Town's standard. He added that left turn provisions are proposed. He stated the intent of the roadway is being met, but on-street parking and opaque streetscape remain the issues.

Frantz stated the section of Highcroft Drive to the south is currently 25 miles per hour. Grannan stated it is 25 miles per hour in the existing Highcroft neighborhood.

Frantz asked for the typical speed limit on collector roads. Jensen stated the standard is no greater than 35 miles per hour.

Frantz does not want to send the request back to the P&Z.

Robinson believes traffic calming devices, such as frequent tree plantings and on-street parking are right for this area. The proposal does not have the ideal collector road formation; however, it has a lot of elements that will cause people to slow down automatically, which will be good for Highcroft residents.

Robinson said in the current proposal, the applicant is asking for a waiver of the median requirement in front of the commercial property. Grannan stated if the applicant agrees to council requested modifications, then staff would request that council not vote on it tonight and allow staff the time to update the staff report.

Adcock is concerned about the poor use of the P&Z process in this case and the potential safety issues with on-street parking.

Robinson thinks an important land use issue has been presented with this request, and she thinks council should make a decision based on its merits. She thinks council should send it back to P&Z along with a list of needed improvements.

Adcock would agree to that with the stipulation that no changes occur after the P&Z meeting.

Smith said the request does not fit in this area. The heart of it is the proposed use of the collector road. He does not see any merit of sending the request back to P&Z.

Robison agreed with Smith. She thinks this proposal has had plenty of opportunity to comply with the Town's ordinances, and council should make a decision on the request before them tonight. If it does not pass, she will consider allowing the applicant a waiver of time to resubmit. She said the rezoning is consistent with elements of the comprehensive plan, but it is not consistent with the Comprehensive Transportation Plan. She is unclear about potential long-term implications and enforcement issues for the Town with placing landscaping in a public right-of-way or on HOA property. She thinks this is a design guideline issue that council could discuss at a later time. She said more work is needed on the request for it to be in compliance.

Robinson said other collector roads in Cary have been designed through neighborhoods, and the speed limit has been reduced. She thinks traffic calming devices will be good for this area. She believes the proposed road will make a better cross section.

**ACTION: Adcock moved to deny 11-REZ-07. Robison provided the second.**

Bush agrees the P&Z process has been subverted; however, she likes the urban feel of the plan, and unique development ideas (i.e., roundabout and median). She said she will not support the motion. Frantz concurred.

**ACTION: The mayor called for a vote on the motion. Robinson, Frantz and Bush voted "no"; all others voted "aye". The motion passed by a majority vote to deny the request.**

**ACTION: Adcock stated the following motion pertaining to the consistency and reasonableness statement regarding 11-REZ-07 Fryar PDD Amendment: Rezoning 11-REZ-07 is consistent with elements of the Comprehensive Plan, except that it is not consistent with the Comprehensive Transportation Plan; and based upon information presented at**

the public hearings and by the applicant, and based upon the recommendations and detailed information developed by staff and/or the Planning and Zoning Board contained in the staff report, and considering the criteria of Section 3.4.1(E) of the Town of Cary Land Development Ordinance, denial of Rezoning 11-REZ-07 is reasonable and in the public interest. Robison provided the second. Robinson, Frantz and Bush voted “no”; all others voted “aye”. The motion passed by a majority vote.

(Resolution No. 2012-32 is also on file in the town clerk’s office.)

---

**G. COMMITTEE REPORTS** (discussion items)

Planning and Development Committee, March 13, 2012 (any item pulled from the committee consent agenda for discussion [agenda item B.3.] will be discussed during this portion of the agenda) **(Mr. Frantz)**

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. Consideration of adoption of the following: (a) the 2012 state legislative agenda; (b) the 2012 advocacy goals; and (3) the resolution pertaining to shale gas development.  
**(Mrs. Hygh)**

**STAFF REPORT**

Council Work Session, March 20, 2012

**REVISED 3/21/2012**

**NC Legislative Agenda** (AD12-014)

Consideration of a 2012 NC Legislative Agenda

Speaker: Lana Hygh

From: Ben Shivar, Town Manager

Prepared by: Lana Hygh, Assistant to the Town Manager

Approved by: Benjamin T. Shivar, Town Manager

Approved by: Michael J. Bajorek, Assistant Town Manager

**Executive Summary**

The General Assembly convenes in May for the short session. Staff recommends that Council adopt advocacy principles and a 2012 legislative agenda.

**Background**

Each year, Council adopts an advocacy agenda for the upcoming session of the General Assembly.

In 2011, Council’s adopted Legislative Agenda (herein) included a request to add Cary to S.L. 2010-57 which provided local flexibility in leasing and bidding rules to promote local pilot programs to increase energy efficiency and the generation of renewable energy. This item was very favorably received in the Wake County delegation with bills being submitted on both the House and Senate side and co-sponsored by nearly all members. S.L. 2011-150 was passed and

effective on June 16, 2011. On August 9, Council approved the Town entering into a public-private partnership with FLS Energy to install and operate solar panels on Town of Cary property. Final details are currently being wrapped up with construction expected to begin by April 1 and complete by June 30.

### **Discussion**

The 2012 session is scheduled to convene on May 16. The matters to be considered in this short session are limited by an adopted resolution to bills affecting the state budget, amending the Constitution, bill previously passed in one house and received in the other ("crossover"), implementing recommendations of study commissions and non-controversial local bills, as well as other specialized topics. A non-controversial local bill is defined as one in which all members of the local delegation approve its introduction.

Staff has prepared advocacy principles for council consideration as well as specific legislative requests. The advocacy principles are meant to provide a foundation on which the specific requests are then based and which will also provide staff with guidance when unanticipated actions are taken that need an immediate response.

On March 13, 2012, the Planning and Development Committee requested, as part of its discussion on the activities of the Shale Gas Development Task Force, that staff provide Council with a draft resolution (included herein) urging the General Assembly to proceed thoughtfully and deliberatively, to preserve local interests when developing a regulatory framework for Shale Gas Development in North Carolina and to carefully consider all of the potential environmental, economic and social effects before moving forward.

### **Fiscal Impact**

N/A

### **Staff Recommendation**

Staff recommends that Council adopt advocacy principles and a 2012 NC Legislative Agenda (included herein).

**At the March 20, 2012 Work Session, Council requested that staff revise the Advocacy Principles. Staff also revised the suggested language to protect information on minors to clarify that it applies to persons who are not yet 18 years old. Staff recommends adoption of the revised Advocacy Principles and the 2012 Legislative Agenda and the Resolution regarding Shale Gas Exploration legislation.**

## **RESOLUTION OF THE TOWN OF CARY , NORTH CAROLINA**

### **DRAFT**

**Whereas**, the North Carolina Geological Survey has concluded that a commercially viable reserve of natural gas may underlie parts of North Carolina, possibly including areas within Cary's corporate limits and extra-territorial jurisdiction; and

**Whereas**, a number of factors, including increased interest in developing new energy sources, access to existing natural gas pipelines in the area, and energy demand from nearby industries and utilities could make this potential gas reserve a target for exploration and development; and

**Whereas**, North Carolina's laws regulating oil and gas exploration and production (Article 27, G.S. 113-378 through 113-423) are dated and do not address the technologies commonly used in shale gas exploration and production, such as horizontal drilling and hydraulic fracturing; and

**Whereas**, Session Law 2011-276 (House Bill 242) directs DENR to study the issue of oil and gas exploration in the state, and to specifically focus on the use of directional and horizontal drilling and

hydraulic fracturing for that purpose and Senate Bill 709 would, if it becomes law, direct DENR to provide a comprehensive report that outlines the commercial potential of shale gas resources within the state as well as the regulatory framework necessary to develop this resource; and

**Whereas**, while development of this resource could be an economic benefit to North Carolina, other states have found that shale gas production also has impacts that need to be carefully managed;

**Whereas**, the possible environmental impacts of shale gas exploration include the effects of the use of high volumes of water during drilling; potential contamination of groundwater aquifers by chemicals, water or wastewater during drilling or hydraulic fracturing of the shale layers; clearing of access roads and the drilling area; and storage of chemicals used in the process; and

**Whereas**, the state of North Carolina and the Town of Cary enjoy outstanding quality of life and the Town seeks to preserve that quality of life regarding environmental quality, environmental health, and economic opportunities; and

**Now Therefore Be it Resolved** by the Town Council of the Town of Cary that any further legislative and regulatory activity of the North Carolina General Assembly related to shale gas development proceed in a thoughtful and deliberative manner, that it preserve local governments' abilities to determine appropriate land use planning related to potential locations of oil and gas activities, that the full impacts on regulatory requirements, economic development, the environment, social aspects affecting communities, and local government services be better understood as represented in the forthcoming DENR report and the February 2012 STRONGER report prior to implementing a new oil and gas program, and that sufficient public input opportunities be provided for any policy and rule making processes.

Adopted: 3/22/12

\*\*\*\*\*

**Town of Cary  
NC Legislative Agenda  
Unanimously adopted  
March 22, 2012**

## **Advocacy Principles**

### **Municipal Authority**

Voters elect council members to decide significant municipal issues in the public interest. Every municipality has unique issues that need to be addressed in the context of that community. Municipal authority and flexible, local control allow Cary Town Council members to make decisions that effectively and efficiently meet the unique needs of their citizens.

### **Revenue**

Responsible and sound management of Town of Cary resources requires stability and certainty with regard to revenue sources as well as a variety of sources to reduce volatility. Approximately 25 percent of the Town's revenues are from sources outside its direct control. Sales tax, utility franchise tax, beer and wine tax, Powell Bill, etc. are examples of these revenues. These state-collected local revenues are important to the fiscal health of the organization and any changes should not decrease local revenue or keep it from growing over time.

### **Mandates**

Burdensome and expensive legislative, regulatory or administrative mandates to perform functions or activities should not be enacted without adequate local authority, flexibility and financial resources for development, implementation and continuation.

### **Town Services**

The Town of Cary provides its growing population with water, sewer, transportation, police and fire protection, solid waste, parks and recreation, cultural amenities and other services. To continue providing the services that our residents expect, the town must have the continued authority and flexibility to make management, human resource, financial and operations decisions in ways that most efficiently and effectively meet these demands.

### **Community Standards**

Every community is unique and needs the authority to maintain the standards that the community desires. Deciding whether to pick up garbage from the front yard or the back yard, what size and material signs should be, or what types of building materials are allowed are all decisions relating to the “look and feel” of a particular community. Cary residents value the quality of life they have chosen by locating in this community and expect their town government to maintain the appearance that brought them here.

### **Environmental Stewardship**

The Town of Cary is committed to being good stewards of its finite natural resources by preserving and protecting the environment. Environmental laws and regulations should be evidence-based, feasible and equitable, and standards should be outcome-based, not process-driven. Cary should have the flexibility to meet environmental outcomes in the most effective way.

### **Community Planning**

One of Cary’s Focus Areas is Community Planning – Planning for Quality of Life, and our goal is to achieve a well-planned community. The population of Cary is expected to continue growing over the next 25-35years. To ensure that Cary remains an attractive, economically viable community that continues to attract new business and maintain the quality of life expected by residents while at the same time becoming larger and more urban will require long range infrastructure planning including water resources, wastewater facilities, transportation and transit, and land use. To achieve these goals, it is necessary to maintain a measure of control over development areas designated by the county for urban services. Traditionally, this has been done through an extra-territorial jurisdiction (ETJ) designation by the county. In areas where the Wake County Commissioners have granted ETJ, the town has the responsibility to establish zoning and enforce the LDO.

The primary benefit of ETJ is to regulate development as it occurs to ensure that development occurs in a planned, orderly way and that the Town is prepared to provide services when they are needed. If the Town of Cary is not able to adequately plan for infrastructure needs and service provision, future roads, greenways, and utilities may never be constructed, yielding inefficient and incomplete systems that are not only inadequate to serve existing and future growth but which are also more costly. In addition, the Town has already made very significant investments in roads and utilities in order to have the infrastructure in place by the time it is needed.

### **Transportation**

High quality transportation infrastructure is critical to moving the people, goods and ideas that keep our economy strong and enhance our quality of life. Transportation needs, however, continue to grow across the state, including in Cary and Wake County. The Town maintains 432.6 miles of local roads, providing transportation to our neighborhoods and connections to thoroughfares. Cary also maintains bikeways, sidewalks and walking paths as well as a transit system. Flexibility in using transportation revenues allows the Town to put available resources toward the most pressing needs. NCDOT maintains the thoroughfares which are used, not only by Cary citizens, but are transportation routes that provide connections across the region. Adequate state funding should be provided to support regional transportation needs including congestion mitigation and maintenance of the complete state roadway network.

## **Legislative Agenda**

The Cary Town Council supports:

- Tax reform that may be undertaken to make North Carolina's system more equitable, efficient, understandable business-friendly, and appropriate for a 21<sup>st</sup> century economy while not negatively impacting the Town of Cary in the short or long-term.
- Reforming transportation funding formulas to direct highway funds to areas with greatest needs and the most congestion and providing municipal input into state transportation prioritization.
- Preserve local interests when developing regulatory framework for shale gas development.

The Town Council opposes:

- S731. Zoning / Design and Aesthetic Controls

#### **Local bills**

- Design-Build for Capital Projects
- Protect municipal records on minors that contain personal identifying information

**ACTION: Smith moved to approve the 2012 legislative agenda, advocacy principles and the resolution. Adcock provided the second; council granted unanimous approval.**

(Resolution No. 2012-33 is also on file in the town clerk's office.)

---

#### **I. CLOSED SESSION**

**ACTION: Bush moved to hold a closed session for the following reason(s). Adcock provided the second. Frantz voted "no", all others voted "aye". The motion passed by a majority vote.**

**PURSUANT TO G.S. 143-318.11(A)(3) AND (6), I MOVE THAT WE HOLD A CLOSED SESSION 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:**

**BRIAN CECCARELLI ET AL V. TOWN OF CARY**

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

---

#### **J. ADJOURNMENT**

**ACTION: At 10:48 p.m. Robison moved to adjourn. Adcock provided the second; council granted unanimous approval.**