1. COMMENCEMENT

Mayor Weinbrecht called the meeting to order at 6:30 p.m. and led the ceremonial opening.

Call to Order and Ceremonial Opening

Without objection, council moved to the next item.

Adoption of agenda

2. QUASI-JUDICIAL PUBLIC HEARINGS

2.17-1363 Starbucks at Millpond Village

Weinbrecht: We now are at our first evidentiary hearing, 17-1363 Starbucks at Millpond Village. As a reminder to those in attendance even though we’re in the council chambers, an evidentiary hearing is more like a court case; council acts like the judge and can only accept evidence that is competent, material, and substantial. North Carolina and the United States constitutions give the applicant certain due process rights in an evidentiary hearing that council must comply with. The Constitution really ties our hands on what evidence we can accept, and I apologize in advance for what might seem a burdensome or a complex process. We will consider competent material and substantial evidence from anyone who testifies. By law, we can only accept testimony from expert witnesses regarding whether this development will affect property values, and whether it will increase traffic resulting from this development, whether it will pose a danger to public safety and those types of things. To those who are with us this evening intending to testify that are not qualified as experts, we can accept your testimony on factual issues on what you’ve observed. Our contractual attorney, who’s sitting to my left, will help us determine who’s an expert and what evidence we can consider. The hearing procedures and detailed rules are attached to the printed agenda. All speakers who want to speak during the public hearing must be administered an oath by our town clerk, Mrs. Johnson, who is on my right. And at this time, we will pause to allow those individuals who would like to speak at the public hearing to approach Mrs. Johnson and receive their oaths, and council will pause from taking any action until this has been completed.

Virginia H. Johnson, Town Clerk, administrated oaths to potential witnesses.
Weinbrecht: At this time, I’m going to ask council members if they’ve had any site visits, ex parte communications, financial relationships, specialized knowledge, or a close relationship to an affected person to disclose.

George was the only council member who had a disclosure which is captured below.

George: I’ve just shopped there. No special visits.

Weinbrecht: Okay. Very good. Based on the disclosures you’ve heard from our council members, at this time I would invite any party to this matter to come forward if they have an objection to a council member’s participation in this hearing. Going once, going twice. Seeing no one, we’ll open the quasi-judicial hearing, and Mr. Hales of our staff will introduce the item.

Hales: Thank you, council. The first item on tonight’s agenda is a request to develop a 2,000-square-foot coffee shop on the last remaining outparcel in the Millpond Village Shopping Center. This item is only before council this evening because of the proposed drive-through, and the plan is otherwise in compliance with the town standards, having requested no modifications, either administrative or through this body. Millpond Village is a planned development district that spans the northeastern/northwestern quadrants of Kildaire and Ten-Ten intersection. The development of the sites occurred in the early and mid-2000s, and you will see that there are large swaths of undeveloped property mostly to the north and northwest, and these are not future development areas. Those were set aside as preserved open spaces in order to meet the watershed requirements of the Swift Creek watershed. Millpond Village Shopping Center itself is located in the northwestern quadrant of the intersection, and contains approximately 200,000 square feet of commercial space, and about 55,000 square feet of office. The office is primarily used for Western Wake’s campus of Wake Technical College. The proposed coffee shop is located on the last remaining outparcel contemplated for development in the shopping center. The site was cleared and made pad-ready for development during the original shopping center construction. In fact, the parking for the outparcel was constructed at that time and is currently used and supports the larger shopping center use itself. The proposed plan locates a coffee shop in the center of the site on the pre-graded development pad, and a new drive-through lane will be cut behind the building, with minor changes proposed to create new tree islands in the parking lot. Sidewalks are being provided to tie the site into the existing sidewalk along the southern property boundary, which further connects out to Kildaire Farm Road and its public sidewalk. The proposed building is a single-story brick design utilizing a fairly warm color palette. The building is consistent with the town’s architectural standards in all ways. The short side of this building faces Kildaire Farm Road, with the drive-through being located behind the building shown in this rendering. That concludes staff’s presentation. Staff will be back following the applicant and any other speakers to briefly wrap up and be available for questions.
Weinbrecht: Thank you, Mr. Hales. At this time we'll call on the applicant’s attorney to present arguments and evidence in support of the application by addressing the applicable approval criteria.

Barron: Good evening, Mr. Mayor, and members of the council. Jason Barron with Morningstar Law Group here on behalf of the applicant. Here with me today is Mr. Jason Meadows of John A. Edwards Company. He's the engineer of record that has prepared the plans that have been reviewed by the staff and that are presented for you for approval tonight. Also here with me tonight is Mr. Travis Fluit, of Kimley-Horn, who has provided a traffic review and analysis with respect to this proposal. I’m going to keep my comments brief and hand it over to the people who actually have evidence to prepare, but I believe what you will see and it is consistent with what Kevin has presented, is that the application before you tonight satisfies the Land Development Ordinance standards for approval of a site plan. It’s here tonight because it includes a drive-through, as Kevin indicated. This is the kind of last outparcel at Millpond Village available for development, and I think you’ll agree that at the conclusion of the testimony and once you all have received all the evidence, that the application satisfies the town council requirements for approval of a site plan. With that, we will call our first witness, Mr. Jason Meadows. Thank you.

Meadows: Good evening. I’m Jason Meadows, with John A. Edwards and Company. I have a bachelor’s in science engineer—in civil engineering from NC State University. I am also a registered professional engineer in the State of North Carolina. As the project manager with John A. Edwards and Company, I oversaw the day-to-day design duties, as well as the site plan review process with the town. I’m here to discuss the general site design and overall design of the project. Over the past several months, I worked closely with town staff through the site plan process. With their assistance, we’ve been able to ensure that this plan meets the technical requirements of the town’s LDO. Thus, the plan is substantially complete and clear of all comments at this time. This is because we designed the project in strict compliance with the town’s LDO where applicable, and the Millpond PDD where it supersedes the town’s LDO. I do want to note that we are not asking for modifications, even administrative-level modifications associated with the site plan. This site complies with the LDO requirements without exception. The parcel noted is internal to the Millpond Village Shopping Center, and much of the protections associated with the original development associated with protection for adjacent properties were implemented with the development of the original shopping center. There are no residential properties adjacent to the site, and no public rights-of-way directly adjacent to the site. Thus, the only property directly adjacent to the site is the property associated with the Millpond Shopping Center. Therefore, adjacent properties are already adequately protected. This site plan aims to establish a coffee shop with a drive-through use which is harmonious with the other existing uses within the shopping center. Moreover, the site plan complies with the architectural guidelines which govern the development within the shopping center. In this way, the site plan provides a unity of development. The shopping center already has several sidewalks to guide pedestrians.
throughout the center. The site plan will construct additional sidewalk and pedestrian crosswalks to further complete the pedestrian network throughout the shopping center, and the pedestrian network is effective at providing safe pedestrian access throughout the shopping center, including to the subject site. This plan has been designed so as not to interfere with the ability of emergency access to the site. There are three access points currently to the shopping center from the public rights-of-way, and the multiple points of access will remain unimpeded by any development consistent with the proposed site plan. Thus, in my opinion, the proposed plan complies with all applicable requirements of the LDO, including Chapters 7 and 8, and the plan adequately protects the property—adjacent properties—from potential adverse effects. The plan is harmonious with the development of nearby properties, and the plan provides safe conditions for pedestrians and motorists, and provides safe ingress and egress for emergency services to the site. With that, if there are no further questions, I would like to turn it over to Travis Fluitt, our traffic engineer, to talk about my final point.

Fluitt: Good evening. Travis Fluitt with Kimley-Horn and Associates. I have a master’s degree in civil engineering from the University of Texas and over 14 years of experience performing traffic studies in the State of North Carolina. I’m also a registered professional engineer in the State of North Carolina. I was the traffic engineer for this project, and I’m here to discuss the traffic impacts as I oversaw the traffic management for this project. We were retained as part of the development of the site plan to evaluate the traffic impacts related to the project, and we performed a traffic impact analysis for the site. The proposed store will result in a minimal increase in traffic, approximately 15 net new trips in the a.m. peak hour and 5 in the p.m. peak hour. The shopping center was designed with this type of use in mind for the outparcels and roadway improvements required to accommodate shopping center traffic, where previously installed. Our analysis of the site revealed that, indeed, the traffic facilities in this area are adequate to handle the traffic expected to be generated as a result of the proposed development. Therefore, it is my professional opinion that the proposed plan before you today provides mitigation for traffic congestion impacts reasonably expected to be generated by the project. I’m available to answer any questions you may have.

Barron: Mr. Mayor, at this time I would ask the council to accept as part of the record the staff report, as well as the associated exhibits, and also ask that the council take judicial notice of the contents of the town’s Land Development Ordinance and other adopted plans. With those being submitted into evidence, coupled with the testimony that you have heard here tonight, we believe that we have satisfied our evidentiary burdens as applicants in a quasi-judicial proceeding for the site plan, and that the site plan should be approved. And we’re here to answer any questions the council might have. Thank you.

Weinbrecht: Thank you, Mr. Barron. At this time I will invite other speakers who have been sworn in who wish to speak in support of the application to approach the podium, one at a time. First speaker. Anybody to speak in support that hasn’t spoke—spoken,
sorry. Seeing no one, we’ll continue. We will now open the hearing to those who are opposed to the request. As a reminder to those testifying, please limit your testimony to facts that you know. The applicant’s representative has a right to object to your testimony. He or she may object while you’re speaking. They have the right to do that. Our contractual attorney, sitting beside me, may help council determine what evidence we may consider. I would invite our first speaker forward that’s in opposition. Anyone to speak in opposition? All right. Moving on. We will now call on staff to provide professional observations about the request.

Hales: Thank you, Mayor. This is an unusual case, in that the development pad is—the development’s proposed on an outparcel in a shopping center and it’s been sitting there for more than a decade, and they’re not requesting any modifications to any town standards, so it’s consistent with the town’s regulations. It’s really only here because of the proposed drive-through and its potential impacts on the traffic infrastructure surrounding it. And so, just to cover those numbers briefly, the report provided by the applicant, traffic generation for this development was looked at, and it results in less than a 10% increase in the morning peak hour, and less than a 1% increase in the evening peak hour. And given those numbers in relationship to the surrounding development pattern, those impacts were considered minimal, and therefore, no mitigations were proposed nor requested from staff. So, that concludes staff’s presentation. As always, we’re available for questions. Thank you.

Weinbrecht: thank you, Mr. Hales. Mr. Barron, any need for cross-examination?

Barron: No, thank you.

Weinbrecht: Okay. Any need from town staff? All right. We’ll now begin the deliberative phase of the hearing and open it up to council members for questions or comments.

Bush: I just have one question that’s been on my mind lately. Mr. Hales, can you tell me, does this new proposal meet our transparency requirements? Because I’ve noticed that we’ve had some strange transparency issues going on.

Hales: All transparent glazing. Yes, it does meet the transparency requirements.

Bush: Okay. So, it has—

Hales: Visibility into the seating area and the front part in front of the kitchen. So they were able to meet the transparency requirements—

Bush: On the front—So, they don’t have transparency on the drive-through side?

Hales: They have some transparency on the drive-through side.
Bush: Because it’s required.

Hales: The transparency applies at most in two facades; it’s the two most visible. In this case, it would be the short façade facing Kildaire Farm Road, and the long façade facing the parking lot, which is their seating area for the most part.

Bush: Okay. So, it has some sort of probably fake transparency on the drive-through side, or is it—

Hales: No. Nope.

Bush: You know what I’m talking about?

Hales: The transparency that is provided on the drive-through side is all real transparency.

Bush: Okay. It’ll be interesting to see, because you know we have on another Starbucks by Lowe’s, it’s got transparency, but it’s just a window to nothing, to a wall.

Hales: There were a time when we were accepting spandrel glass, which you were talking about, which is basically glass with a piece of sheetrock or something against it.

Bush: Right.

Hales: A lot of blank background.

Bush: Right.

Hales: These are all visibility into the—

Bush: Okay. Just curious, thank you.

Weinbrecht: Any other questions or comments?

Smith: From what I’ve heard, because it’s a little bit in the inside of the shopping center, we don’t have any queuing issues with the major highways.

Hales: There will be no queuing on the adjacent public road. The queuing for this site would be—I don’t have the queuing plan, but basically, it’s in the drive-through lane itself, and then into the travel aisle in between the Starbucks and its own parking lot, so all the queuing is contained on its site. If it were to back up, it would back up into the travel aisle that runs parallel to Kildaire.
Weinbrecht: Any other questions, comments? Okay. I believe we’ll close the deliberative or public comment portion of the hearing, and I’ll ask council for a motion on the proposed development.

Bush: I’ll make a motion that we approve the Starbucks at Millpond.

Weinbrecht: There is a motion.

Bush: Village.

Weinbrecht: Is there a second?

George: Second.

Weinbrecht: Discussion? All in favor, please say aye.

All council members present said aye.

Weinbrecht: Any opposed? It’s unanimous. Thank you.

ACTION (Captured verbatim above):
Motion: For the reason discussed, Bush moved that council approve the proposed development plan with conditions as stated below as it meets all the approval criteria set forth in Section 3.9.2(l) of the LDO. The approval is conditioned upon the following: The applicant must satisfactorily address all remaining Development Review Committee comments on the master plan set submitted for signature.
Second: George
Vote: Unanimously Approved (5-0, Robinson and Frantz were absent for the vote)

RESULT: APPROVED [UNANIMOUS]
MOVER: Lori Bush, At-Large Representative
SECONDER: Ken George, District D Representative
AYES: George, Weinbrecht, Smith, Bush, Yerha
ABSENT: Robinson, Frantz

2.217-DP-1135 Shelbourne Senior Living
Council Member Robinson joined the meeting before the second hearing.

Weinbrecht: We now are at our second evidentiary hearing, 17-DP-1135, Shelbourne Senior Living. This case is before us tonight because the applicant has proposed to develop more than a hundred units. As a reminder to those in attendance—sorry to have to repeat myself—even though we’re in the council chambers, an evidentiary hearing is
more like a court case; council acts like the judge and can only accept evidence that is competent, material, and substantial. North Carolina and the United States constitutions give the applicant certain due process rights in an evidentiary hearing that council must comply with. The Constitution really ties our hands on what evidence we can accept. I apologize in advance for what might seem burdensome or a complex process. We will consider competent material and substantial evidence from anyone who testifies. By law we can only accept testimony from expert witnesses regarding whether this development will affect property values or whether it will increase traffic resulting from this development will propose danger to public safety. To those that are with us this evening intending to testify that are not qualified as experts, we can only accept testimony from you that is factual issues on what you have observed. Our contractual attorney to my left will help us determine who’s an expert and what evidence we can consider. The hearing procedures and detail rules are attached to the printed agenda and all speakers wishing to speak during this public hearing must be administered an oath by Mrs. Johnson, who is to my right. And at this time, I'll ask you to go and receive your oath if you plan on speaking, and the council will refrain from taking any action until that has been completed.

*Town Clerk Virginia H. Johnson provided oaths to potential witnesses.*

Weinbrecht: At this time, I’ll ask council members if they’ve had any site visits or ex parte communication, financial relationships, specialized knowledge, or close relationship to an affected person to disclose, starting on my right with Mr. George.

*Council members present did not have any disclosures.*

Weinbrecht: All right. Very good. Based on the disclosures you’ve heard from council members, I’d invite any party to this matter, if you have an objection to one of the council member’s participation in this hearing. Any objections? All right. Moving on, we’ll open the quasi-judicial public hearing and recognize Mr. Hales of our staff, who will introduce the item.

Hales: Thank you again. The next item on tonight’s agenda is a request for development of a 138-unit senior living project on one of the remaining outparcels, or remaining development tracts, in Regency PDD. Similar to the previous case, this item is before town council this evening to give the town the opportunity to review potential traffic impacts to the surrounding infrastructure network. The Regency PDD was established in the late 1980s as an office park, and over the intervening decades, the vision of the office park has adapted to changing market pressures, resulting in a buildout more mixed with office and residential uses combined. This tract is one of the few remaining tracts in the original Regency Park PDD. The parcel proposed for development is located at the intersection of Regency Parkway and Ederlee Drive, representing a fourth leg on the existing traffic signal at that intersection. The site lies adjacent to town-owned open space parcels that tie into Ritter Park, Hemlock Bluffs...
farther to the east. Council has seen a few recent development projects in the Regency PDD, and these include parking expansions at 11000 Regency Parkway, in the Regency I location, and then you also approved a large office building across Symphony Lake at Regency Woods II. The site’s currently wooded and there is an existing 10-foot-wide street-side trail that runs along the entire frontage of Regency Parkway. The site is severely impacted by floodplain associated with Swift Creek and its tributaries. The development footprint proposed, therefore, represents less than one-half of the total property acreage. This pushes the building toward Regency Parkway and away from the townhouses and open space uses to the south and east. Vehicular access to the site will be via a fourth leg added to the Ederlee Regency signal, and a right-in/right-out driveway located farther north along Regency Parkway. Pedestrian accommodation is provided throughout the site, connecting to the street-side trail along Regency Parkway, and thereon northward to the town’s Swift Creek Greenway corridor. The proposed units will occupy a single building oriented parallel to Regency Parkway. A single, double-loaded bay of parking rings the perimeter of that building with a surface lot in the northeast corner. A portion of the parking, approximately 14%, on the south side of the building, shown by the hatching you see, will be covered by a shade structure provided over surface parking. A community gathering space at the rear of the building opens onto the open space and connects to a private asphalt trail loop through that open space. The proposed building is a four-story, residentially styled structure; walkout basement to the rear opening onto the previously discussed community open space. The building is predominantly brick and cement—and fiber cement siding, using a lot of warm earth tones. The proposed site plan does include three modifications to development standards, all of which have been approved administratively. First, the spacing between the signal and the internal circulation has been reduced from 100 feet to approximately 72 feet. We did not anticipate issues with this reduction, given that the senior housing tends to have a very low trip generation during peak hours. Second, a payment-in-lieu of improvements to Regency Parkway, including a bike lane, have been proposed and accepted by the town. This was to prevent an irregular traffic shift occurring in the curve, and since a street-side trail was already in place along the frontage to serve the cyclist and pedestrian population. Finally, vehicular connectivity was eliminated to the north, east, and south, as environmental constraints and surrounding development patterns, including townhouses and open space, preclude those connections being made. That concludes staff’s presentation, and we’ll be available following the applicant and other speakers to provide a wrap-up. Thank you.

Weinbrecht: Thank you, Mr. Hales. At this time I’ll call on the applicant’s attorney to present arguments and evidence in support of the application by addressing by addressing the applicable approval criteria.

Barron: Good evening, Mr. Mayor, members of the council. Jason Barron with Morningstar Law Group. I’m here on behalf of the applicant. Here with me tonight is Mr. Mark Hallowell of Shelbourne Capital. They are the proposed developers of this site. Also here with me is Mr. Ryan Fisher of Withers and Ravenel; he’s prepared the
engineered drawings that are before you. And lastly, Mr. Travis Fluitt of Kimley-Horn is here to discuss traffic impacts associated with this proposed development. Before I hand it over to the people who will be providing evidence, I want to add a couple of observations and a couple of preliminary thoughts associated with this case. First, from a big picture standpoint, this is a use that in this location makes a lot of sense. As Kevin indicated, this is a site that is addled with a lot of undevelopable area. It is a site that is actually much larger than the development area that it is to be located on. The benefit of developing a senior living center on it is that senior living centers with, you know, age restrictions and dependent care associated with it generate far less traffic. They also generate the need for far less parking, and so you can put more into a much smaller box, and effectively and efficiently use the site. It also addresses a need that the town has for—a continued need that the town has for senior living facilities, and it does so in an area where there is already residential uses. There’s office uses; there’s commercial and restaurants nearby to the site, so from a big picture standpoint, it’s a use—not only is it zoned for that purpose, and that’s obviously important for purposes of establishing whether it can be approved at all—but from a big picture standpoint in this location we believe it is an ideal use of this property. I mentioned traffic. It’s an incredibly low traffic generator, and you’ll hear that from Mr. Fluitt. As this council is aware, and as Kevin indicated, this site plan is only before you tonight because its technically more than 100 residential units. And I mentioned that it’s only technically more than 100 residential units because that is a technicality. For purposes of establishing the density associated with this type of use in the OI district, two units count as one. And so, if this was a traditional development, it would be considered 69 dwelling units, as opposed to the 138 that’s before you. Again, that’s kind of a nod to the fact that it generates much less traffic, it generates the need for much less parking, just given the nature of the use. As you all are aware, the LDO was amended in 2013 to provide for certain plans to come before you all before they could be approved. That was at the time that the town was repealing the adequate public facilities for roads that the town had enforced up until that point, and the council and the town approved revisions to the LDO that certain plans, once they met a certain threshold, had to come before you all. And when they came before you all, they come in a quasi-judicial capacity, and it included a new finding. Up until that point, there were five findings for council approval of a site plan, and a sixth one was added. And that sixth one was, that site plans had to demonstrate that mitigations were being provided for transportation impacts reasonably anticipated to be generated by the use. That was the new finding that was added to site plans that come before you all. And the reason why that was added, obviously, was that as the town was moving away from the Adequate Public Facilities Ordinance it had had, the town wanted to ensure that uses that generated a certain amount of traffic were doing their part, that uses that were high traffic generators—either more than 100 residential units or more than 100,000 square feet of commercial—were providing traffic mitigations for their intended use, so there wouldn’t be gridlock in the streets.

And so, while we’re technically more than 100 units, and we have to come before you all to demonstrate that mitigations are, in fact, being provided, as you’re going to hear, in the a.m. there are eight peak-hour trips associated with this use, and in the p.m. there
are 23 peak-hour trips associated with this use. As you will hear from Mr. Fluitt, that is the equivalent of 29 single-family homes. If these were straight, single-family detached residential dwellings, this would be the equivalent, on a daily basis, of 29 single-family homes. And so I wanted to provide that preface for the benefit of the council, for the benefit of the public as well, and that is, but for the fact that we’re technically more than 100 units, this plan wouldn’t be before you all tonight, because in every other respect it complies with the town’s requirements for approval of a site plan. It’s zoned for this purpose. And it is, in fact, an incredibly low generator of traffic.

So, with that, I’m going to hand it over to Mr. Fisher, who will walk through the site plan requirements.

Fisher: Good evening. My name is Ryan Fisher, with WithersRavenel. I have a Bachelor of Science at NC State, registered P.E. in North Carolina. Personally, project manager on this project, lead engineer for the site planning process with the town. Worked with the town staff going through the submittal process, and with their assistance, ensured the plan meets all the technical requirements of the LDO. There’s only six outstanding minor modifications that Kevin Hales mentioned earlier—or, excuse me, six outstanding comments that are minor in nature. We have three minor modifications that he mentioned earlier. The—it is situated in the PD—Regency Park PDD, and we meet the town’s LDO standards and the PDD standards, which supersedes that. The three minor modifications are the payment-in-lieu for the Regency Parkway—or excuse me, Regency Parkway widening, and then the accesses to the north, east, and south through the floodplain. We got those removed due to the environmental areas on those sides of the development. The final is, the final modification is that the corner clearance at the signalized intersection, reducing that DOT requirement. For the protections of—for adjacent properties, we—you know, because of the floodplain and stream buffers, we’re far away from the north, east, and south areas, or adjacent properties. It’ll be pushed towards Regency Parkway because of this, and further away from the adjacent properties and towards the road. We have buffers on Regency Parkway, a 20-foot Type A buffer, and we’re using storm water management as an underground sand filter, and sediment control devices during construction. And taken together, we feel that this will prevent impacts to adjacent properties. The Regency Park was approved for this—you know, for this tract it was approved in the PDD for this use, so it meets the harmony and unity of the development as a whole. And then, for the safe conditions for pedestrians and motorists, this site was designed for the elderly in mind, for sidewalk accesses on numerous spots. You don’t have to cross but one travel aisle to get to a walkway where you’re parking. And connection to the greenway. There’s also a private trail in the back for an amenity for the residents. There’s also a—as you can see—a ring road around the building for emergency access, to allow for ambulances, fire trucks to go around the entire building with ease.

So, in my professional opinion, this proposed plan complies with all applicable requirements of the LDO, including Chapters 7 and 8. The plan adequately protects other property from potential adverse effects. The plan is harmonious with the development of nearby properties, and the plan provides safe conditions for pedestrians.
and motorists, and provides safe ingress and egress for emergency services to the site. If there are no further questions at this time, I’d like to invite Travis Fluitt, the traffic engineer, to speak on this last point.

Weinbrecht: Thank you.

Fluitt: Good evening again. Travis Fluitt, senior transportation engineer with Kimley-Horn and Associates. I have a master’s degree in civil engineering from the University of Texas, and I am a professional engineer in the State of North Carolina with over 14 years of experience. I was the traffic engineer for this project, and I’m here to discuss the traffic impacts, as I oversaw the traffic management of this project. We were retained as part of the development of the site plan to review the traffic impacts related to this project, and as you may have heard—Mr. Barron stole all my thunder—life care communities generate very little traffic. We prepared a trip generation analysis for this site, and I found that the a.m. peak-hour trips would be approximately 8 trips in the a.m. and 23 trips in the p.m. peak hour. From a daily trip generation standpoint, that equates to approximately 29 single-family homes, and this does not meet the threshold for required off-site mitigations. Therefore, it is my professional opinion that the proposed plan before you today provides mitigation for traffic congestion impacts reasonably expected to be generated by the project. I’ll be happy to answer any questions you may have.

Weinbrecht: Thank you.

Barron: At this time, Mr. Mayor, I ask that the council accept as part of the record a copy of the staff report, as well as the associated exhibits, and ask that the council take the additional notice of the contents of the town’s Land Development Ordinance, and other officially adopted plans. And with that, we believe that we have satisfied the evident—our evidentiary burden to demonstrate a prima facie case entitling us to approval of a site plan. The six standards for council approval of this site plan have been satisfied. And again, lastly, I think this is a great use in this location, and we all are familiar with the area, familiar with this site, and from a traffic standpoint, I think it’s a compelling reason to have this site approved for this type of use, given the low traffic generation. So, with that, we’ll conclude our evidence and we’re here to answer any questions you all may have.

Weinbrecht: Thank you, Mr. Barron. At this time I’d invite speakers who have been sworn in who wish to speak in support of the application to approach the podium. First speaker, any speaker, in support?

Hales: If I can find it, yes.

Gemberling: Mr. Mayor, council members, my name is Roy Gemberling. I’m a resident of Lions Gate, part of that group in the back there that will be affected probably by, mostly
by the light of this development. And my purpose in standing up here today, very quickly, is just to plead with the development group and the designers that we do the best job that we can to keep light from—because there’s no parking inside, all the parking will be done outside, and therefore, the rear portion of that that faces Lions Gate, we would not like to see lights on the side of the building going out into the parking area. Kevin has provided me with an answer today about the fact that there are designer posts that have caps on them that are designed to keep the light from going out, but mainly going down. That’s very good. We appreciate that. But we would like to make sure that there are no additional lights on the side of the building that are not filtered or not controlled. That’s my main purpose in standing.

Weinbrecht: Mr. Gemberling, I understand your concern. My question is, are you speaking in support of this application?

Gemberling: Yes.

Weinbrecht: Thank you. Anyone else to speak in support of the application? Okay. Moving on. Any party in the matter wish to cross-examine any—the witnesses? Okay. Very good. We will now open the hearing to those who are opposed to the request. As a reminder to those testifying, please limit your testimony to facts that you know. Applicant’s representative has a right to object to your testimony. He may object while you’re speaking—they have the right to do that. Our contractual attorney to my left will help council determine what we may consider. Anyone to speak in opposition? Yes, sir.

Greenberg: I guess in the spirit of the previous speaker, I could have called this in support, but there is an issue that I’d like to address. My name is Richard Greenberg. I’m on the flood mitigation committee for the Williamsburg Commons Homeowners Association, and I—and as far as expertise, I have a Ph.D. from the MIT Department of Earth and Planetary Sciences, which is MIT’s geology department. The Williamsburg Commons neighborhood is—like I said, I don’t have a pointer, but it’s just downstream from this site right on Swift Creek.

Hales: I don’t think this zooms out enough.

Greenberg: Oh, it actually does. So, I think I can move the pointer. So, the stream runs down along here, and this is Williamsburg Commons, and the stream runs right by. So, the problem is that Williamsburg Commons, being so close to the stream, is occasionally flooded. And, for example, when Hurricane Matthew’s something on the order of $100,000 worth of damage was done to the houses there—oops—[PHONE RINGS]—sorry. And apparently, over the years, the situation has gotten worse, as further development has come in upstream and uphill.

Weinbrecht: Excuse me. That’s an opinion. You have to state facts.
Greenberg: This was based on evidence from neighbors who have lived in the neighborhood for the past 30 years.

Barron: Objection.

Weinbrecht: Yes, you’ve observed additional flooding, but you cannot attribute that to development without factual evidence.

Greenberg: In terms of my expertise, I know that if you put in buildings and pavement—

Weinbrecht: Hold on, wait a second. Can we accept this as—

Gadd: [INAUDIOIBLE].

Weinbrecht: Can you talk about your Ph.D. at MIT in earth and—

Greenberg: Earth and planetary sciences.

Weinbrecht: Yes. What that entailed, what expertise that gave you.

Greenberg: Well, expertise—

Weinbrecht: Elaborate.

Greenberg: Over the course of my career—I’m a planetary scientist and I’ve studied workflow on the Earth and on other planets. The point is that if you have pavement, pavement prevents the water from soaking into the ground and water will flow into—

Weinbrecht: I totally understand impervious surface. We have to understand if we can accept this as an expert witness or not, that’s what I’m trying to determine.

Gadd: I’d like to know experience and also if there’s any objection. Can you tell me what experience you have? You said in your experience and in your career. Can you expand on that?

Greenberg: I’ve worked with numerous other scientists on projects understanding workflow on the surface of the Earth and on Mars.

Gadd: Okay.

Greenberg: So we under—I understand the physics of flow. The point is that if you have a building like this—

Weinbrecht: Just a moment.
Barron: I objected previously. I would object to any evidence with respect to—and while Mr. Greenberg might, in fact, be an expert with respect to waterflow, I haven’t heard or haven’t seen any analysis with respect to this proposed use, and the manner in which it’s being implemented, as it potentially impacting the requirements for approval of the site plan. So I would object to the council receiving any testimony really, because beyond—without any evidence, without any analysis related to this particular use, all of the evidence that would be presented would be hearsay evidence, or it would be opinion testimony without the benefit of some sort of study associated with the actual plans for the site.

Weinbrecht: So, Mr. Greenberg, let me try and help here. I understand it’s very frustrating. I understand you’re a very intelligent man with a Ph.D. However, we have to go by the guidelines we’re given, and I’m afraid Mr. Barron’s exactly right. If you can instead say “I have observed,” rather than saying this development and other developments have created—that’s an opinion—"I have observed flooding at such and such a time,” and leave it at that, you’re good.

Greenberg: Okay.

Weinbrecht: If you start making an opinion, then we have a problem. Am I correct, Mr. Barron? Okay.

Greenberg: We’ve had substantial flooding. Hurricane Matthew is an example where considerable damage was done. I have observed on numerous rainfalls since then, water coming up over the streets in our neighborhood. Any addition to that waterflow in Swift Creek will exacerbate the problem.

Barron: Objection.

Greenberg: Any addition will exacerbate the problem because it will increase the waterflow.

Weinbrecht: We can’t accept that testimony.

Greenberg: Well, I didn’t give you a number, but it certainly will increase. Now, here’s the thing. And this is for the council members. Our community did not find out about this until five o’clock this evening, so I haven’t had time to get specific numerical data for you. But I would like the council simply to bear in mind that any development like this is going to increase the flow into water, and I only ask—

Weinbrecht: Mr. Greenberg—
Greenberg: I only ask that you consider ensuring that the developers make sure that it does not increase—

Weinbrecht: Mr. Greenberg, our requirements and regulations require runoff to be less after development than before.

Robinson: For a thunderstorm.

Greenberg: As long as that takes place, and—

Weinbrecht: That’s a requirement.

Greenberg: As long as that’s enforced—

Weinbrecht: It’s enforced.

Greenberg: Then I have no problem at all. I just want the council to be aware that development, when it adds to the flow in Swift Creek, is a problem for us.

Weinbrecht: We have over 80 years’ experience. We get impervious surface. Thank you so much.

Greenberg. Okay. Great. Thanks a lot.

Robinson: But it—excuse me—it’s, the requirement says for a 10-year storm.

Weinbrecht: Right.

Robinson: Is that correct?

Weinbrecht: We’re not in deliberative—

Robinson: I’m just—I’m sorry, I just—you made a statement. I just think that we need clarification. I don’t want a citizen walking away thinking that the next hurricane that comes through which is not a 10-year storm, that that site is going to retain the fluid. So, if we don’t address it now, we should address it before the end of this hearing.

Weinbrecht: Right. Very good. Yes?

Greenberg: All I ask is that the council bear in mind this issue. We are just downstream from this, and flooding affects us, and does considerable numerical, financial damage.

Weinbrecht: Thank you.
Greenberg: Thanks very much.

Weinbrecht: Anyone else to speak in opposition after I’ve scared everybody off? [LAUGHS] I apologize for being so frightening with the rules and regulations of this hearing. Mr. Barron, do you need to cross-examine?

Barron: No, Mr. Mayor.

Weinbrecht: Okay. So, I’ll call on staff to provide professional observations about the request.

Hales: I’m not going to repeat what everybody else says and say that Jason stole my thunder about traffic numbers, and that’s really why this is before you. However, given the testimony that we heard during the for and against, I would call Mr. Billy Lee of our storm water section down to just briefly address what the town’s requirements are, so it’s on the record, and just to clarify everything.

Weinbrecht: Thank you.

Lee: Good evening, council. Billy Lee, storm water engineering manager. The site, it will be required to mitigate storm water to form a peak flow, to the 10-year storm. And that will be the requirement, other than water quality, plus the 2- and the 5- and the 10-year storm. So, at Williamsburg Common, the—that property is in the FEMA 100-year flood plain. There’s about 11-and-a-half square miles of drainage area that goes to that particular piece of property. So, the additional flow that this would generate would be a drop in the bucket.

Weinbrecht: Okay. We’re going to be asking you questions again when we get to the deliberative phase, okay?

Lee: No problem.

Weinbrecht: Don’t go anywhere.

Hales: That concludes staff’s additional testimony, and we are available for questions.

Weinbrecht: Okay. Does either party believe evidence has been presented this evening that warrants a continuance of this hearing? Okay. Very good. We’ll now open the deliberative phase of the hearing, and open it up to council members for questions or comments. What I thought I heard him say, and I just want to repeat it, is this development where we had the speaker is in a floodplain, a hundred-year floodplain.

Hales: Correct.
Weinbrecht: That’s correct. Okay. Other comments or questions?

George: Can I ask an alerting thing? If people didn’t find out until five o’clock today, was this—is this not posted because QJs aren’t posted? Is that—

Weinbrecht: So, Mr. Hales, how is this posted?

Hales: The property was posted at the intersection in the snow.

George: With a white sign with white writing. [LAUGHTER]

Bush: Don’t—you’re going to put up a picture, aren’t you, with the blue sign? In the snow.

Hales: Well, my numbers are off, but it’s right there—in the snow—

George: Oh, it shows up.

Hales: To be fair, it’s only posted on the property frontage, which is on Regency, and there is no frontage on Kildaire, so if you’re not driving down Regency, you wouldn’t have seen the sign.

George: And these neighbors would have seen it.

Hales: And notifications are mailed to 400 feet, so.

Weinbrecht: So, within 400 feet had mail notifications?

Hales: Correct.

Bush: I thought notifications were mailed to 800 feet.

Hales: For rezonings; 400 feet for site plans. It varies by application type.

Bush: Okay. Thank you. I didn’t realize they were different. I’m sorry.

George: I’m sorry. I do want to go back to something I heard from Mr. Barron, because I wasn’t quite—this road lane shift thing you talked about, payment-in-lieu, because of the curve in a road lane shift—I didn’t quite understand what you were saying.

Barron: I didn’t say that. Mr. Fisher, do you want to clarify?

George: I thought you said he would talk about it.

Barron: Mr. Hales might have introduced that.
George: Oh, maybe there was a road. I’m sorry, then you’ve said that.

Hales: It was just because you have a short frontage of being widened along, and it’s in a curve.

George: Oh, we don’t want to widen it just there because it would be pointless, is what you’re saying?

Hales: The rest of the road is already developed, so widening it further on is going to be a long-term project, and there’s already a facility there to accommodate the cyclists and pedestrians.

George: Now I understand.

Hales: Add all that together.

George: That was it. Thank you.

Weinbrecht: Okay. Mrs. Robinson, then Mr. Smith.

Robinson: Yeah, times we are in a QJ, we’re told that we are only supposed to be looking at the matter that’s before us. In this situation, are you bringing this to us to look at it in an open-ended manner, or are we looking at it just really for the traffic?

Hales: The entire site plan is before you, so it’s the normal site plan criteria.

Robinson: - before us, okay.

Hales: The reason the site plan is coming to you is because of the traffic generated. It’s not -

Robinson: So, everything is fair game?

Hales: Sure.

Robinson: Okay. All right. Yeah, I just think—you know, it’s a really tough thing with the mitigation, where we say that we retain the water, because that is better than what, I think, other neighboring jurisdictions do. But it’s not like it’s all water that comes off of a site. And so, it’s really those big storms that are probably the ones that are most concerning. And I understand Mr. Lee said it was a drop in the bucket, considering there’s such a wide basin that feeds this. I think if I lived in one of those houses I’d probably be like, “Well, every drop counts.” You know?
Weinbrecht: Right.

Robinson: So, I just think we need to consider that. I don’t know on your site here where your storm water is, and if there’s—

Hales: It’s actually underground.

George: Sand under—

Robinson: It’s the sand underneath—underneath this square right here—okay. All right.

Fisher: There’s detention in that.

Robinson: So, it’s like a dry detention area? Is that what it is?

Fisher: In the sand filter for treatment purposes.

Robinson: Okay. And does it satisfy just the 10-year storm, or does it—you know, sometimes by design it can go up to like a 20-, 25-, 30-year storm?

Fisher: I don’t have those—it does satisfy the 10-year. I don’t have the numbers on the larger storms.

Robinson: Okay.

George: But no dry pond, at all?

Fisher: No, no.

George: Anywhere?

Fisher: It’s all—it’s—everything is underground.

Robinson: Okay.

Weinbrecht: Mr. Smith?

Smith: I think what makes this a little more difficult for the gentleman that spoke is it’s hard to—on the maps we have—can you get to the best map that would show where Williamsburg Commons is? Because I tried to—I just tried to google it, and I can’t get it to work.

Hales: It’s right here, past Ritter.
Smith: You’re going down Lochmere Drive. It’s directly across from the golf course.

George: Which hole?

Smith: What I’m looking at there is the other end of Lochmere. I mean, all I’m trying to do is get my bearings on where Williamsburg Commons is, in relation to this development. And I understand, if I look at this, it’s farther right and farther—no, not farther south—

Hales: This is the farthest zoom-out I have, and—

Smith: All right. Now, where—there it is, right there.

Hales: Yep.

Smith: All right. So, the question is, with the mitigations that are required by law, with the Hemlock Bluffs as a buffer—I’m just trying to—look, I’ve been working with Williamsburg Common for 20 years, you know? And they were built at a time when the codes were completely different. And they go through changes of ownership and so forth, and the staff has worked with them over the years on things that they have to do, and we have reached out and done a lot ourselves. So, there’s a lot going on. But they are a vulnerable community. What I’m struggling with is the concern that was brought up, and I’m not sure—I’m not even sure how much I’m allowed to consider, you know, based on this being quasi-judicial. I’m having a hard time understanding how this development is going to affect Williamsburg Common, just by its location and everything else. So, all I’m trying to do is put that into the proper perspective. As long as you have that. Now, Lions Gate, I’ve worked with them for many years. I have good friends up there that—Lafrenieres, the Brunswicks, and several others. And we’ve worked through—as you know, Jason—we’ve worked through office scenarios; we worked through all kinds of scenarios there. And for a variety of reasons, be they buffers or whatever else, we’ve just struggled to get this to be what we’d hoped it would be, which is basically office, you know, coming into Regency. The point made about the roof—I recall back—see, Lions Gate sits up. You can’t see it on this map, but it sits up, so you’re looking down. So, the only request that I would have, and I don’t know if we can make that as a condition, is we’ve had previous developments that were proposed there, and we did something for the roof. So that you’re not like in New York looking at bare air conditionings, and, you know, tarred rooftops. You don’t—you know, I hate to say it, but we need to have some aesthetics on the roof.

Bush: Which one—

Smith: Because you’re looking down it a little bit.

Bush: —is landscape?
George: To the south.

Smith: Now, if it’s the type of structure that is A-framed or peaked, it kind of solves the problem because you have the shingles. But I just want to—you know, I just want to make the council aware that over the years, as we’ve looked at things there, one of the concerns that came out of the Lions Gate Community back then was that view looking down. And we just want to make sure that that’s somehow addressed.

Hales: And I was just clarifying with the engineer. It’s basically a mansard roof, so it looked like a pitched roof from the sides, and then the HVAC and mechanical units are set down in a pit in the roof, so it’s up and then it—

Smith: Right. Okay. Again, I just think that’s an important point because of the topography there.

Robinson: Which of these views is what Lions Gate would see? Is it the bottom one?

Hales: It’s the bottom one.

Robinson: The bottom one.

George: From the end, yeah.

Hales: It’s a combination of both, because of—

Robinson: Because of the angle.

Weinbrecht: So, I would like to broach another subject. When we’re around Regency, I think of all the complaints I get about noise. Did we talk about the noise? Since we are directly across the street from Booth Amphitheatre, and about a dozen times a year at least, these elderly residents are going to get about 95 decibels. I’m just curious if there’s been any discussion.

Hales: I’ll defer to the applicant in that instance. Most of the requirements that you’ve seen are because zoning conditions were added during rezonings, as everything switched to residential. Because this didn’t require a rezoning, there’s no condition. So, they will have to confer where they’re at—

Weinbrecht: Okay.

Hales: —with the client and see if they’re going to offer anything above and beyond what’s normally required.
Robinson: Yeah, I wish there was a noise disclosure—

Bush: You know, here’s probably a technology way to jam their hearing aids during—

Weinbrecht: So, I would actually like to ask that question of our—

George: Not all aged people have hearing aids, I’m sorry.

Weinbrecht: Okay. I’d like to ask that question of our attorney. Do we have any kind of authority to request they post information inside that says, you know, you can experience—?

Gadd: Not that I’m aware of in this forum, as it pertains to approving or not, this project.

Weinbrecht: Okay.

Hales: But council could add conditions that relate to the is it in harmony with character of the neighborhood, so if there’s—

Bush: Well, is that true? Because we did a disclosure requirement for—Well, for some of the ones that are in the airport corridor, we required of developers.

Robinson: Yeah, we don’t require it; it’s the regional authority requires it.

Bush: No, but we added it in one of our—not a QJ, but in one of our requests. I mean, we didn’t add it. We requested it of the developer that they add that disclosure.

Robinson: Yeah, it’s required. It’s—

Bush: I know it’s required in the corridor, but outside of the corridor.

Robinson: Oh, outside the corridor.

Bush: Near Preston.

Weinbrecht: Mr. Barron looks like he’s about to say something, so.

Barron: Yes, Mr. Mayor, Mark Hallowell, with Shelbourne Capital, you had asked the question with respect to noise and whether that’s something to consider, and that’s something that our team is aware of, and Mr. Hallowell would like to expand a little bit on what they’re doing during the planning associated with the building itself to ensure that their residents will be—.
Hallowell: Mark Hallowell, Shelbourne Healthcare. We are aware that there had been some issues with noise, and I have developed other projects that are close to highways and noise. We will have an acoustic engineer do a study on the noise, either in actual concert, or in some theoretical generation, and we can install glass in the windows, which is very effective in cutting down the—

Weinbrecht: So, you said “we can.”

Hallowell: Yes.

Weinbrecht: That’s different from “we will.”

Hallowell: We will.

Weinbrecht: Oh, okay.

Bush: Is that an offered condition?

Barron: And to be clear, what Mr. Hallowell is sharing with you is that we’ve been—they’re aware of the presence of the amphitheater within proximity, and they’re going to be studying it as part of the construction process, and so if their study reveals that they need to be doing additional things, that’s what they’re inclined to do.

Hallowell: We have a very solid business reason to not have the front of our building—

Bush: I get that, and I know that you’re—for all intents and purposes, you want your residents to be as happy as they could be. But we also receive a lot of complaints from people because of the noise. Is there some sort of condition, a disclosure that you all are offering that would help this council feel more comfortable with the fact that people who move in there—they might not know that Koka Booth is right up—you know, they bring their parents or their grandparents down, and they don’t go up Regency.

Weinbrecht: Or they might think it’s a symphony every night, not Van Halen.

Bush: Right. Is there—trust me, it does happen. I would be more comfortable with that, personally. I don’t want to speak for the rest of the council.

Barron: Okay. And I want to make sure I understand what you’re asking for. Are you asking for a condition requiring the owners to disclose to their future residents that there’s an amphitheater nearby, and that—

Weinbrecht: That allows up to 95 decibels.

Bush: Up to 95 decibels.
Barron: Up to 95 decibels? Okay.

Weinbrecht: I’m okay with that.

Bush: It should be part—it’s just like in covenants of an HOA, you should be aware of what you’re getting into. It would be great if you say not only—I mean, this is my personal opinion—but not only do—are you disclosing it, but you have put in mitigation factors so that they don’t hear it.

Bush: That would be great. But that’s—

Weinbrecht: And that might come into play in a positive way. It allows 95 decibels. Here’s what we’ve done to address that.

Barron: We’re happy to make that offer as a condition.

Weinbrecht: Okay.

Bush: That’s fantastic. Thank you.

Hallowell: We would put language to that effect in the rental agreement.

Bush: Thank you.

Weinbrecht: Okay, very good.

Hallowell: Somebody has a chance to see it. The other ask—Jason may think I’m bold here—but the gentleman that requested that we not shine lights directly away, we would engineer, have the lighting with cut-off lamps so that the bulbs are not directly visible.

Bush: And that’s another condition that you’re offering as part of this quasi-judicial—

Barron: I think that’s a code compliance. I think that is bold and code-compliant.

Bush: Oh, so it’s within the—

Smith: You have to be in compliance with it.

Bush: Sorry. I thought that was something extra you were offering.

Hales: All lights are required to be full cut-off fixtures in a parking lot.

Robinson: You were asking for—
Bush: I thought it was you were doing something—

Robinson: —lower conditions. Yeah. So, I'm wondering if you can do anything about retaining water to a higher standard than a 10-year storm? And that might be something you have to go and research before you can make a decision on.

Barron: Yeah, that's—we haven't studied anything beyond the 10-year storm, and Mr. Fisher, I think what you're—correct me if I'm wrong—but the information that you all have is that it's the 10-year storm and it's reduced by 13% for the 10-year storm?

Fisher: Yes, 13% to Swift Creek.

George: Reduction?

Fisher: Reduction.

Bush: Over what?

Robinson: For being built. Yeah, and my concern is—

Bush: Over what it is now.

Robinson: —it seems like we get far more 100-year storms, not that I want you retained to a 100-year storm, but, you know, making some kind of extra effort, like to a 40- or 50-year storm, I think, is really a huge goodwill move towards the people who are downstream. Because the reality is—the fact is, they're concerned. That's a fact. That's not an observation. The fact is, they're concerned about water, and I think that would probably alleviate some of their concern.

Weinbrecht: Understood.

Smith: Yeah. It's a fact they're concerned.

Robinson: Yeah.

Smith: It's not a fact that we really know what that impact is. That's the point.

Robinson: That's correct. That's why I wanted to see if they wanted to take time to understand that.

Smith: That's what we're talking—goodwill. But I also think that when you look at the noise—we have had so many noise studies out here, and what I recall from the past with
those noise studies—they—because of the height, the number one place that gets affected by noise is Lions Gate.

Bush: Yes.

Smith: It’s not what’s below it. So, you know, I think you’ll see that that’s going to be something for you to mitigate, because I don’t think you’re going to see the effect that serious. I think it would be great if there’s some way you could look at that drainage in the back that would help the situation, but I understand that that’s not based on evidentiary facts that we’re allowed to consider.

Weinbrecht: Mr. Yerha, we haven’t given you an opportunity.

Yerha: Well, I guess leaving this site undeveloped would satisfy everybody’s concerns, but if we’re developing this, I frankly don’t see a better use than the one that’s been proposed, especially with the mitigations that have been offered.

Weinbrecht: Okay.

Smith: Well, again, we’re going back to the noise, and the question becomes, do we really—how are we going to manage that for making this—you know, this approval? You know, has the—did I understand the applicant that they will look at that noise and present acoustical study, or not?

Barron: We have offered as a commitment—

Smith: I mean, I’m giving you my anecdotal stuff from the past, but how do we—[OVERLAPPING]

Barron: Understood. We have offered as a condition that it would be disclosed to residents that there are concerts up to 95 decibels at the amphitheater. Beyond that is something that, just as what you heard from Mr. Hallowell, as good operators of the site, they’re going to do what they can to ensure that there will be minimal noise. But, with respect to offer conditions, it’s the disclosure to residents.

Hales: And there would be next to no way for the town to enforce that. He also mentioned an acoustical engineer. You could locate conditioning that they do that study and provide it as part of their building permit set, to say, “Hey, we looked at this; these are what the numbers are, and this is what we’re doing to address it.” Because that is a process we can get involved in. That’s—if you feel that’s important.

Robinson: But they’re not putting any condition in that they’re going to resolve it at all. They’re just saying that they—
Weinbrecht: Are going to disclose it.

Hales: Study.

Robinson: They’re going to disclose it. That’s in—we’re hearing, but not as a condition that they will study it.

Hales: Yes, but if you put a condition that they disclose it, there would be no way for us to know what they do then.

Bush: Enforce that.

Robinson: Right. I understand that.

Weinbrecht: The way I see that, and I know it doesn’t help you guys—when I get the complaint, I’ll say, “My understanding is it should have been in your rental agreement.” And at that point, the—if they wanted to proceed further, then they can—

Hales: And if you want to do that, you could say it’s in the rental agreement, and we can get a copy of the rental agreement, if you want to be that specific.

Weinbrecht: Right.

Hales: Because then we can say, “Okay, well, this is what you should be using,” and we—[OVERLAPPING]

Weinbrecht: We have no way of—and do we want to have any way of going to look at every rental agreement? No.

Hales: Right.

Bush: I have a—taking us totally off that topic—can you speak to the pedestrian crossing, because I noticed on the page there where the pedestrian crossing is across the street—you know, we know that a lot of folks like to walk. It’s—so there’s across Regency and then across again, right? Because of where the traffic is. Can you talk about what that crosswalk looks like? Is it multidisciplinary? Does it have lights? Does it have beepers? Because these are folks with ADA issues. What are the supports there, since we’ll have a senior community?

Dunn: Ken Dunn, transportation and facilities. They are striping it. They are mitigating it by putting in pedestrian crosswalk amenities for it, but there’s no—to my knowledge, there’s no beepers, there’s no additional lighting, more so than what you would normally have with a standard crosswalk.
Bush: Are there any warnings on the road? Because that’s a pretty high-speed road that people—especially on the way to work. I would really like to—would love to see some sort of multidisciplinary—whether it’s lights or beepers—because these are folks who, you know, are going to walk. And we know it’s a senior community. What are we going to have to do to keep these folks safe? Can the applicant speak to that, or Mr. Jensen? Can you talk about what we’ve done in other places?

Jensen: So, with the crossing, yeah, they’re—and a new entrance there. They’re going to have to do signal modifications, so they’re going to have to add a whole other signal head for getting traffic in and out. As far as pedestrians, you know, there’ll be pedestrian-actuated buttons and actually a pedestrian signal for—now, for that accommodation. The beacon that you referred to, we refer those for accessible beacons. We have been in practice and with DOT, is installing those when they’re requested, because they’re basically for those in areas where people with disabilities—then they would, we would accommodate those. So, if there’s a request for that type of actuated accessible pedestrian system, then we would have that part of the installation. But we generally don’t put it in there automatically on everyone, because not every intersection needs that level of accessibility.

Bush: Would you determine that this would be an area where you might likely put that? And accept a request?

Jensen: It certainly might be, and I think when we—when staff evaluates it with NCDOT, signal modification will make that conclusion then. You know, is there a likelihood that we would need it there? I can’t tell you today that that would automatically need it. I don’t know how many people with accessible issues would need it. Just because it’s age, doesn’t mean that they have an accessible hearing issue.

Barron: Council. We’re happy offering a condition indicating that we’ll make the request, at some point. I mean, I’m happy at the time of building permit request; at the time of CO—I mean, that’s something that we’re happy to make the request on and offer it as a condition that, at a minimum, the applicant will make the request for it.

Bush: Thank you.

Weinbrecht: Other questions, comments?

Robinson: I have a question, and I don’t know it’s for Mr. Fisher or if it’s for staff. So, with the dry pond that you have now, will you be clearing out some trees? Like, do you have to clear out a certain amount of trees for that? Because it looks kind of like in this area here, like this visualization looks like there’s a lot of trees there. And then if you were to expand, how many year storm you did, is that a depth thing, or is that like a horizontal thing, where you’re going and clearing out more trees?
Fisher: For this site, with the floodplain, the back of the site is very flat, so it would be a horizontal increase in size to do that.

Robinson: Okay.

Fisher: Which would be more—

Robinson: Clearing trees?

Fisher: Correct.

Robinson: Right. Okay. All right, that’s good information for me to have. I appreciate it.

Weinbrecht: Any other questions or comments? The only thing I’d mention about storm water is, we have storm water issues all over town and we’re studying that. And next week at the retreat that’s one of our main topics. I’m looking at Russ down there. They have some wonderful ideas that are going to be very expensive and very complicated.

Overton: That is true.

Weinbrecht: But we’re going to hear about them next week, and we’ll figure out how to proceed after that, because there—those that are in this neighborhood that has storm water issues, you’re not alone. We have them all over town, because the requirements years ago were so different, and they allowed building in floodplains. So, we hear you. We’re not ignoring you. And, whether this is approved or not, that’s an issue we’ll continue to work on. Okay. Getting back to this issue, are there—is there anything else before we close the public comment portion of this meeting? All right. So, we’ll close the public comment portion and I’ll ask council for a motion on the development plan. I’m sorry?

George: No, it’s—that was fine. I just wanted to make sure I was clear on what we had agreed upon with these conditions. They offered the conditions for the—they would request the beacons?

Weinbrecht: Okay. We’ll continue the public comment period and you can ask—

Bush: You mean, before you make the motion?

George: Well, this—I was going to make a motion. Before I make a motion, that’s what I’m trying to clarify.

Weinbrecht: Okay, well, let’s keep the public comment open and ask the attorney.
Glover: Thank you, Mr. George, because I would like Mr. Barron to state for the record what, in his words—and we can refine them later if we need to—but in his words what the two—

Weinbrecht: Okay.

Glover: —conditions are that they are offering.

Barron: That a disclosure statement will be provided to potential residents of the site with respect to the location of Booth Amphitheater and the fact that there are concerts there up to 95 decibels. And then the second condition is that prior to the issuance of a certificate of occupancy for the site, that the applicant will make a request of the town that beepers be installed for pedestrian crosswalks along Regency Parkway.

Weinbrecht: Okay.

Glover: Mr. Jensen, I’d like to speak about the timing of the request

Jensen: So, I think that what we would suggest is not at time of CO—is that if it’s approved by the town and NCDOT, then it becomes operational at time of CO.

Weinbrecht: Okay.

Jensen: To get back to your point about the accessible signals, it’s not so much for those hearing impaired; it’s those that are visually impaired. So, that’s why I was asking you, you know, that, just because we have a retirement—or this type of facility near it, doesn’t necessarily mean that we’re going to have those that are heavily visually impaired. And then usually, we get requests in from people that are having those challenges that we—as when we accommodate, make that accommodation. So if they want to make that as a condition that they’ll provide that, and as approved by NCDOT and Town of Cary, and it’s operational at time of CO, then I think that would be a good condition.

Weinbrecht: Mr. Barron?

Barron: I’m not sure what we’re supposed to be asking for. I’m happy to ask for it now and have the record reflect that we’ve made the request, then. I’m happy to have the condition note that the applicant has made the request, and that, subject to approval by NCDOT and the Town of Cary, that prior to the issuance of a CO, they will be in operation. I’m fine with that.

Weinbrecht: Okay.

Barron: Did you get that, Lisa?
Weinbrecht: Other conditions that you heard?

Smith: Nothing about storm water. We’re going to keep that as is?

Weinbrecht: Correct. Okay? Everybody good? Any other comments or questions? All right. We’re closing the public comment portion of the hearing, and I’ll ask council for a motion on the proposed development.

George: I’ll motion to approve the development plan for the reasons discussed. I move that we approve the development plan with the conditions as stated below, as it meets all of the above criteria set forth in Section 3.9.2i of the LDO. This approval is conditioned upon the following: that you must satisfactorily address all remaining Development Review Committee comments on the master plan set submitted for signature. And the two additional conditions that Mr. Barron stated, however you word it, one that deals with requesting the beacons and, for DOT, and that if they get approved, that they’ll be installed before the CO is issued. And the second, that they will notify residents—and I wasn’t sure if it’s through a rental agreement, or whether it was through—

Barron: We’ll provide a disclosure statement.

George: A disclosure statement that they will sign for the residents that there may be 95 decibels and concerts nearby.

Weinbrecht: There’s a motion. Is there a second?

Yerha: Second.

Weinbrecht: Second. Discussion?

Smith: The only thing, you know, that I’ll add is that it’s very frustrating that we couldn’t get what I think would have been a nicer fit there, but sometimes you just have to be pragmatic about things. You know, having the office there, we just couldn’t make the footprint work that could deal with all the other issues at hand, the storm water and the stream buffers and all the other things. So, I’m not exactly jumping up and down on this one, but I think it is well thought out, and it’s, the way it’s set back from the road and everything else, I think—I think it’ll be a good neighbor to the community.

Weinbrecht: Any other questions or comments? All in favor, please say aye.

All council members voted aye.

Weinbrecht: Any opposed? The motion carries unanimously.
ACTION (Captured verbatim above):
Motion: For the reasons discussed, George moved that council approve the modification request made by the applicant as the request meets all the approval criteria of the applicable sections of the LDO. The approval is conditioned upon the following: 1) The applicant must satisfactorily address all remaining Development Review Committee comments on the master plan set submitted for signature 2) The beacons, if approved by DOT, will be installed before the CO is issued; 3) A disclosure statement, through the rental agreement, will notify residents that there may be 95 decibels and concerts nearby.
Second: Yerha
Vote: Unanimously approved (6-0, Frantz was absent for the meeting).

RESULT: APPROVED [UNANIMOUS]
MOVER: Ken George, District D Representative
SECONDER: Ed Yerha, Mayor Pro Tem - At-Large Representative
AYES: George, Weinbrecht, Smith, Robinson, Bush, Yerha
ABSENT: Frantz

2.3 Channing Park/16-SB-011

Weinbrecht: We are at our last evidentiary hearing, Channing Park 16-SB-011. This case is before us tonight because the applicant has proposed to develop more than 100 units and requests that a modification to the town development standards. As a reminder to those in attendance, even though we are in council chambers, an evidentiary hearing is more like a court case. Council acts like the judge and can only accept evidence that is competent, material, and substantial. North Carolina and United States constitutions give the applicant certain due process rights in an evidentiary hearing that council must comply with. The Constitution really ties our hand on what evidence we can accept, and I apologize in advance for what might seem burdensome or a complex process. We'll consider competent, material, and substantial evidence from anyone who testifies. By law we can only accept testimony from expert witnesses regarding whether this development will affect property values and whether any increase in traffic resulting from this development will pose a danger to public safety. Those who are with us this evening intending to testify that are not qualified as experts, we can only accept testimony from you on factual issues on what you have observed. The contractual attorney who is sitting to my left will help council determine who’s an expert and what evidence we can consider. All hearing procedures and detail rules are attached to the printed agenda. All speakers who want to speak at this public hearing must be administered an oath by Mrs. Johnson, who is to my right. And at this time, we will pause to allow that oath to take place, and we will refrain from any action until that has been completed.

Town Clerk Virginia H. Johnson provided oaths to potential speakers.
Weinbrecht: Now I’ll ask council members if they’ve had any site visits, ex parte communications, financial relationships, specialized knowledge, or close relationship to an affected person to disclose.

*Council members present did not have any disclosures.*

Weinbrecht: All right. Very good. Based on the disclosures you’ve heard from council members, I’d invite any party to this matter if they have an objection to a council member’s participation to come forward at this time. Seeing no one, we will continue. And we’ll open the quasi-judicial hearing and recognize Mr. Loveland of our staff, who will introduce this hearing.

Loveland: Thank you, Mr. Mayor. Good evening, council. This, Channing Park is a residential development that is before you tonight due to the number of units, which exceed 100 dwelling units, and due to a modification request for a reduction of the required highway corridor buffer. Channing Park site is located on the southwest corner of McCrimmon Parkway, which is designated as a thoroughfare, and Highcroft Drive, which is designated as a collector. The Morris Branch stream runs along the southern property line of the site—actually, is the southern property line of the site. There’s a second smaller stream that runs, flows from the north into the Morris Branch. The base zoning district for this site is the Panther Creek planned development district, PDD. However, the site is also in the Alston mixed-use overlay district, and it is subject to the requirements and the use allocations of the Alston activity concept plan. As you are probably aware, the Alston plan is divided into five separate neighborhoods. The Channing Park site is located in the McCrimmon neighborhood, fittingly enough. These neighborhoods are also, then, further divided into traffic analysis zones, which you can see demarcated by these numbers, how we refer them to as TAZs, so we don’t have to say traffic analysis zone every time. This property is located in TAZ 5. It is actually the one and only property in TAZ 5, which makes figuring out the use allocations more convenient. This table here comes from the Alston plan, and shows the allowable uses and the maximum densities for each TAZ. Again, we’re focused on the Traffic Analysis Zone 5, so you can see there’s no permitted nonresidential uses, but a density of up to 460 residential units are permitted on the site. There’s been a fair amount of ongoing activity and submitted development review within this quadrant alone of the Alston plan. So, this slide is showing in relation to the Channing Park site what is ongoing, what has been submitted for review. In the green you can see the Alston Town Center up to the northeast, and just to the east, the existing Bexley apartments. The blue is the Alston Village, which is undergoing development. You see the N.C. 55 Grocery and Hillstone Apartments, which have been approved, but have not begun construction. Finally, in the purple there, you see two plans are in the same stage as Channing Park; they have been submitted for development review. Lastly, of course, you have just immediately to the north, the one use on this slide that’s not in the Alston district; it predates the Alston plan. It’s the existing Panther Creek High School. So, the existing site is currently
vacant. As you can see, it is well wooded. The development plan is for a total of 206 dwelling units. On the eastern two-thirds of the site the applicant is proposing 189 townhome units. The stream that we noticed earlier splits the site into the eastern two-thirds. On the western two-thirds, the applicant, or the development plan, is proposing 17 single-family detached units. Three vehicle access points on the plan, two accessing McCrimmon, which is a median-divided road. The first is a right-in/right-out on McCrimmon. Secondly, a right-in/right-out with a constructed leftover movement. And finally, on Highcroft Road you have a full access movement. The applicant is also proposing, as required, to construct an improvement on McCrimmon of outer travel lane for the full length of the frontage. Proposing to construct a five-foot sidewalk along the majority of the McCrimmon frontage; a five-foot sidewalk exists already along Highcroft Drive. The Parks and Rec Master Plan calls for the Morris Branch Greenway Trail to be constructed, so the development plan proposes the construction of that from Highcroft Drive along the stream buffer, up to McCrimmon, and then from that trailhead, west to the property line is a 10-foot street-side trail. The development plan includes a proposal for a 50-foot streetscape along the McCrimmon thoroughfare; a 30-foot streetscape along the collector Highcroft. A 100-foot corridor buffer is required adjacent to N.C. 540, as we’ll see in more detail in a moment. They are requesting a modification to reduce the area of that requirement. The Alston plan requires the provision of a 160-foot stream buffer along Morris Branch, and there’s a 50-foot urban transition buffer, as well. There are five gathering—community gathering spaces, or recreation areas, provided by the plan. I won’t go through them all. Notable, Recreation Area B has some playground equipment roughly equivalent to a tot lot. D and E are picnic areas that are accessed by the Morris Branch Greenway. There is a public art requirement, and that is being—the public art is being provided at the head of the greenway trail, where it intersects McCrimmon. That artwork was reviewed and approved by the Public Art Advisory Board. This is a graphic of the required highway corridor buffer. This is adjacent to N.C. 540, so it is required 100 feet along that right-of-way line. You can see the buffer provided or marked there in green. Note that it is on both sides of that purple easement. That easement is an existing 70-foot Duke Energy easement that splits the buffer into two separate pieces, which is permissible. That’s not uncommon. But you can also see the—there, marked in brown, the Morris Branch Greenway, which is a permitted encroachment into the highway corridor buffer also. Enters into the Duke Progress Energy easement. I’ve shown it in brown just for contrast. It is, of course, going to be a paved trail. Lastly, you note in red, you have an NCDOT slope easement. This is the reason for the modification request. This slope easement prevents the permanent preservation of trees or other vegetation. Of course, that’s part of the purpose of a buffer, is to plant and maintain trees and vegetation, so this conflict, again, reduces the area of the buffer—hence, the modification. Approximately 6,800 square feet of this slope easement overlaps with an area that would otherwise be in the highway corridor buffer. This represents a reduction of approximately 10% of the total area of the highway corridor buffer. It is an irregular width. This is why I’m presenting you an aerial—but, just for reference sake, where that area is, is probably the neck where it is the narrowest, is approximately 75 feet in width. And council, I know you’re aware of the
modification approval that the applicant will have to demonstrate or met before you can approve, but for the benefit of everyone else, these are the two modification criteria for the modification request, and for the site plan. We saw this on the last request. Six criteria for the approval of the site plan. And with that, I’ll happily turn it over to the applicant, and note that staff will come back after the applicant and public have spoken to present our observations.

Weinbrecht: Thank you, Mr. Loveland. We will call on the applicant’s attorney to present arguments and evidence in support of the application by addressing the applicable approval criteria.

Trahos: Mr. Mayor and town council members, my name is Beth Trahos. I’m an attorney with Nelson Mullins, here tonight on behalf of Natelli Communities, to ask for your support of the proposed site plan and associated minor modification. I have with me this evening Mr. Michael Natelli, from Natelli Communities; Mr. Jarrod Edens, from Edens Land, the civil engineer on the project; Mr. John Cate, with AMS, the traffic engineer on the project; and Mr. Rich Kirkland, with Kirkland Appraisers, to talk to you about harmony and adjacent property values. As we present to you, we will try to differentiate when we’re talking about the site plan approval criteria and the minor modification approval criteria, so that it will be a bit easier for you to discern the points that we’re making. I would give you just a couple of overview points relative to the site. This use is precisely what you asked for in your area plan. You asked for a mix of residential; we are providing both single-family and townhomes. You allowed a maximum density of 460 units; we’re proposing a little less than half of that, 206. So the project is low-density, making a good transition between the very-low-density Cameron Pond and the apartments on the other side of Highcroft Road. Two issues that have arisen in the last 24 hours that we expect to be discussing with you in the course of this presentation, or a request to consider changing the required sidewalk along the frontage of Mccrimmon—I think that’s 2,300 feet of frontage that this property has—from what is planned in your comprehensive plan as a sidewalk. Perhaps upgrading that to a greenway trail. We have scrambled to determine whether or not we could accommodate that with the significant planting and lighting requirements. Our preference is to retain the sidewalk that you have planned, that we think is a very visible and easy-to-follow connection to the intersection, but want you to be aware of that, so that we can—as the appropriate folks are here—discuss that with you. A second issue that we learned about earlier today is that there is some desire that there be a commitment to fund a traffic light at the intersection of Highcroft and McCrimmon Parkway, if it is warranted by NCDOT. That, too, was a very big surprise to us. This project is a relatively small residential community that generates a small portion of traffic, as you will hear from our traffic engineer. And our traffic engineer did not recommend the installation of a traffic light. So, that, too, was something we were scrambling to deal with, and wanted to make sure that you were aware of those issues, so, again, we could discuss them as the appropriate experts are before you. So, with
that, let me get to the experts.  I'm going to ask Mr. Jerry Edens to come forward and talk with you first about the site plan, and then we will move into the design modifications.

Edens:  Good evening.  My name is Jarrod Edens.  I live at 1708 Morehead Hill Court, in Durham.  I'm the president of Edens Land Corp.  I've founded and been operating in that company since 2004.  And I received my bachelor's degree in civil engineering from Virginia Tech in 1997.  I’m a licensed professional engineer in seven states, including North Carolina.  I have over 20 years of experience in land development and in many projects similar to Channing Park.  As mentioned earlier in the staff report, Channing Park is a proposed 206-unit residential community consisting of a mixture of single-family and townhomes.  We’ve been working with staff on the design of this project since late 2016, and have made numerous adjustments along the way in an effort to meet town code requirements.  In my opinion, the plan adequately protects other properties and the residential uses on this site from potential adverse impacts, for three main reasons.  We're proposing a low-density residential use in an area that is comprised of similar density uses.  Topography, stream buffers, and extensive landscaping will largely make this project fairly invisible, or tough to see, I guess, from adjacent properties.  And our design includes two storm water ponds designed per town standards, to meet both detention and water quality requirements.  In addition, in my opinion, the plan provides harmony and unity of development with nearby properties, and it’s really for the same reasons I just stated.  When you combine the density and the use being consistent with adjacent properties in the area and the landscape buffering, we will have very little visual impacts.  In my opinion, the plan provides safe conditions for pedestrians and motorists, and prevents a dangerous arrangement of pedestrian/vehicular ways.  As staff mentioned earlier, we have three access points planned for the project.  We are also constructing—it’s about 4,300 feet of greenway trail that runs along Panther Creek, and then north/south up to McCrimmon Parkway.  The trail is being located away from the homes, tucked away in a safe location.  In my opinion, our plan provides for safe ingress and egress for emergency vehicles.  We have three access points.  Each access point was designed, as much as possible, to maintain a relatively flat slope, which is desirable for larger emergency vehicles.  And we also analyzed each turn throughout the project, with a standard fire truck turning template to make sure that emergency vehicles can access any locations on the property in the event necessary.  Upon my review of the traffic study compared by Mr. Cates, it's my belief that the plan provides mitigation for traffic congestion impacts reasonably expected to be generated by the project.  And, as Ms. Trahos mentioned earlier, we are requesting a modification to the highway corridor buffer along I-540.  The standard width is 100 feet, and as we’ve discussed, there are Duke Power easements, NCDOT easements that are existing that we’re trying to work around.  We also have a greenway trail that staff had requested we go ahead and extend that up to McCrimmon in that location, which we were glad to do so.  To help offset this, we are planning the buffer to Type A standards.  When you combine the buffer and the existing easements, your closest home is about 170 feet from the 540 right-of-way, and again, the 540 road itself is, again, much further in than the right-of-way, so you have a nice distance between the homes and the adjacent freeway.  And there’s also a
significant grade difference, a grade difference between the homes and 540. The homes are going to sit much higher, and the further you push them back on a higher grade difference, the better it’s going to improve your buffer between 40, 540. In my opinion, this minor modification will advance the goals and purposes of the LDO, and I will cite three examples. LDO Section 7.2.15: this modification maintains the scenic natural beauty of the area, visible from a fully controlled access highway, and provides open space. And two components of LDO Section 1.4.1: we are providing a greenway pursuant to the Parks, Recreation and Cultural Resources Master Plan, which is incorporated into this section as the ordinance, and this modification provides for more housing options in new neighborhoods, as recommended by Policies 2 and 3, in the Live Section of the Cary Community Plan, which is part of LDO Section 1.4.1. In my opinion, this minor modification does result in less of a visual impact. The 170-foot separation, combined with topography and plantings, will provide for greater protection than a standard 100-foot buffer. In my opinion, this minor modification results in more effective environmental or open space preservation. We do have a small amount of additional open space beyond what is required, and, as mentioned earlier, a significant active open space component with almost one mile of 10-foot wide greenway trail. So again, thank you very much for your time. I'll be glad to answer questions at the appropriate time. Thank you.

Weinbrecht: Thank you.

Trahos: Mr. Mayor, I ask John Cate to come forward.

Cate: Hello, everyone. My name is John Cate. I work for A. Morton Thomas and Associates, and I have a master’s degree and a bachelor’s degree in civil engineering from UT Knoxville. I’ve been working, preparing traffic studies in North Carolina and other states since 2002. I’m a professionally licensed engineer, with a professional license in North Carolina; I also have a PTOE, which is a traffic operations licensure that I also hold. AMT was commissioned to perform the traffic study for this project. I performed the traffic study. We submitted that for town staff review. We received some comments from them. And then there has been additional negotiations, based on the results of the traffic study. Given that the client has committed to adding the second travel lane on the south side of McCrimmon Parkway that runs from the overpass of N.C. 540 to Highcroft Road, that it is my opinion that that is an adequate mitigation of the traffic impacts of this relatively-low-density residential development. A traffic signal was considered at the intersection of Highcroft Road and McCrimmon Parkway. It is my professional opinion that, due to the Highcroft Road dead-ending to the south of the proposed development, and the only other connection to this roadway at this time is also residential, and it is apartments, that this, the traffic patterns produced by these residential developments will not require a traffic signal in that area. We did perform a peak-hour signal warrant analysis for the a.m. peak hour. The warrant was met; however, in my opinion and my experience, NCDOT does not typically grant signal to be installed based on a peak warrant—otherwise
we’d have 10,000 signals in the entire Town of Cary. In my personal opinion and professional opinion, the site plan that I’ve seen provides adequate mitigation for any traffic impact caused by this development, and it appears to be a— it appears to also provide adequate and safe modifications for pedestrian access to the site, as well. I’ll be available for any comments or questions that you have later on. Thank you.

Weinbrecht: Thank you.

Robinson: Mr. Cate, can I ask you just one question?

Cate: Sure.

Robinson: Can you give us the trip generation in the a.m. peak to this site, as compared to the greater traffic in the area?

Cate: Sure. This residential site will produce approximately 90 trips in the a.m. peak hour. The a.m. peak hour was the peak hour that was met by the signal warrant study. That’s basically due to the high amount of traffic that’s going to the high school, as we all know that. So, due to the high volume of traffic on McCrimmon Parkway during that small peak period for the high school students and parents to drop off, and given that a residential development, everybody leaves to go to work in the morning. So you’re looking at approximately 80 total trips exiting the site in the morning, and 60% of that traffic is going to exit the northbound approach of Highcroft Road. The total amount of traffic that goes through Highcroft Road during essentially both a.m. and p.m. peak hours is approximately 1,300 total trips. We’re looking at our development only contributing less than 7% of that total traffic. Therefore, we feel it is not the responsibility of this development to provide a traffic signal at this location. Thank you.

Weinbrecht: Thank you.

Trahos: Mr. Mayor, I would call Mr. Kirkland.

Kirkland: Good evening. Again, my name is Rich Kirkland. I’m a state-certified general appraiser. I’ve been appraising the area for over 20 years. I also have my MAI designation through the Appraisal Institute. Again, I regularly appraise land, subdivision properties, in and around Wake County and the Town of Cary, and I was asked to look at this as far as harmony and whether or not this project would have an impact on adjoining property values. To that end, I have prepared a report. I’m not sure if that was presented or not, but I guess I’ll be speaking from it, since it has not. I visited the site in preparing that report, and— again the surrounded uses around this, there’s clearly the high school; there’s apartments to the east. There’s some single-family—the Cameron Pond subdivision and a couple of large sort of estate lots down to the south across the creek. I was looking at those. The closest the townhome that’s proposed here, getting towards the estate lots; I was looking at those in particular. It’s about 490 feet, so it’s a
pretty significant buffer between the closest townhouse and the closest house down there. These uses—the townhomes and single-family uses—are commonly in close proximity. In fact, lots of developments right now, like this one, incorporate single-family and townhouses together. This is regular. I’m working on a project in Clayton right now where they’re developing the exact same type of blend. You see them all over Cary. Again, in my report, I just zoomed out a little further, and you can see townhomes, single-family developed all around here. I specifically looked at the Village Square at Amberly, and looked at some of the mix of the townhomes and the single-family housing there, did a matched pair analysis, comparing whether or not those homes in that facility—the ones that were adjoining the townhomes—whether they had any impact, compared to the same homes further out from that same development. They showed no impact on that. And again, I actually found a slight premium for the homes closer to the townhomes, which I think is just an anomaly. But, and again, Weycroft is next to that; there’s subdivisions all around these townhomes. So, again, this is a very typical development pattern; I see it everywhere around the Triangle. So, it is my professional opinion that this is a harmonious use; that this is going to provide harmony and unity with development of nearby properties. It’s also my professional opinion that the proposed plan adequately protects other property, as well as the residential uses within this property, from any potential adverse effects. I’m happy to go into greater detail or speak further if you have any questions.

Weinbrecht: Thank you.

Trahos: Mr. Mayor, there’s one important factor that I think you do need to know about Mr. Kirkland.

Kirkland: I wasn’t sure if you were serious.

Trahos: As a high school student, Mr. Kirkland, did you hold any offices in the Town of Cary?

Kirkland: I was a junior member of the Appearance Commission; it’s been a few years. Thank you.

Trahos: I thought you had to know that.

Kirkland: Unrelated to that, also, the Town of Cary is one of my clients, and I’ve already completed an assignment for the Town of Cary earlier this year. So, again, I’m happy to go over my qualifications further if needed. [LAUGHTER]

Weinbrecht: Thank you.

Kirkland: Thank you.
Trahos: And finally, Mr. Mayor, Mr. Natelli, just to talk with you briefly about the community he plans.

Natelli: Good evening. Michael Natelli with Natelli Communities. Natelli Communities is a developer. We’re based in Maryland, just north of Washington, D.C. We’ve done a lot of large-scale developments in that area, one being Avenel, which won the Urban Land Institute’s best planned community in the nation, a few years back. We developed Lakelands in Gaithersburg, Maryland, which you may or may not be familiar with. It’s notable, it was one of the early trendsetters of neotraditional development, and that’s based in Montgomery County, Maryland. Over the past few years we’ve been looking to expand into some new markets, and North Carolina’s always been one that’s been very interesting to me and to our company. And, driving down and trying to understand the area a little bit, Cary was really notable and was really interesting to us for a lot of reasons, but really, the primarily because it was really evident, the thought that went into the land-planning process here. Just driving the roads, looking at streetscapes and buffers and architecture, it was clear a lot of attention to detail was taken from the staff and from developers. So, it really felt like a place that, if there was an opportunity that made sense, we wanted to be in, and we’re excited about the opportunity, and we hope we can make something work here, and we seek your approval. Thank you.

Weinbrecht: Thank you.

Trahos: Mr. Mayor, we would ask that you include the staff report and all of the associated documents, including the traffic impact analysis, into the record, that you similarly take judicial notice of the LDO and its associated plans, and just ask for an opportunity to interact with you if necessary. But otherwise, we thank you for your time tonight and ask for your support.

Weinbrecht: Thank you, Ms. Trahos. The only question I would ask is that it is my understanding that the appraisal was not entered into evidence and the only evidence we have was the testimony provided.

Trahos: That’s correct.

Weinbrecht: Okay. Council, do you feel that you need to delay this so that you have time to review that evidence?

Robinson: I don’t need a delay.

Weinbrecht: Okay.

George: No.
Weinbrecht: Then, we'll move on. At this time, I'll invite speakers who've been sworn in who wish to speak in support of the application to approach the podium. Anyone to speak in support? Seeing no one, we'll continue. Does any party? No. We'll now open the hearing to those who are opposed to the request. As a reminder to those testifying, please limit your testimony to the facts that you know. The applicant's representative has a right to object to your testimony. She may object while you are speaking. They have the right to do that. Our contractual attorney sitting beside me will help council determine what evidence we may consider, and who is an expert. Yes?

Phillips: Hello. I am Mary Beth Phillips. I live with my husband, Brian, on this piece of property right here; it's 3.08 acres. We bought a manufactured home on that property in 1985; in 1997 we built our dream home in our backyard, 70 feet behind. We've been very happy there for many years. Our quality of life has suffered a bit in the past few years due to difficulty getting onto Carpenter Fire Station Road due to increased traffic. But, other than that—now, we're bordered on the front, which you can't see, by what was formerly Martin Howard's property, just sold or visited by a developer who wants to put townhomes in front of us, as well. So, we are a little concerned about being surrounded by townhomes; we are really hoping with Cameron Pond kind of to the right of us and with the road stubbed out there next to our gravel road, saying future road extension that we would get a Cameron Pond-type situation near us and that we would be able to fit in in a nice single-family home. And your vision for West Cary does have real human impact. Many of our friends have already had to leave; one now commutes from Holly Springs to church at Good Hope Baptist every Sunday. We have been worshipping in the Green Hope High School for many years, and the property on Yates Store Road is what we will eventually be building a church on, and we're now finally under study to build that church. So, if townhomes come in all around us, it would just be very hard to leave our friends and miss witnessing the fruition of that, and we don't know yet what will happen and what we will do. But, we are still discerning whether we'll be moving or staying and enduring the construction noise and traffic—oh, wait, I can't say that. The thing that makes us physically sick is the vision of the wrecking ball destroying our dream home into rubble. After reading the letter that we received from you, we went back and forth about bothering to come, since we didn't think you would consider what we said, but we decided it was the right thing to do to represent other people, too, who received that letter and, because they are not experts and don't know any experts, they don't bother to come. So, again, as you pursue your vision for West Cary, which is density, density—even Cameron Pond to me is dense—remember, that, you know, we're one couple who previously enjoyed a peaceful life, and who came to let you know that your decisions do have human impact. Thank you.

Weinbrecht: Thank you. Anyone else to speak in opposition? Okay. Any need to cross-examine any witnesses?

Trahos: No, sir.
Weinbrecht: Okay. We now move to staff to provide professional observations about the request.

Loveland: Thank you. The proposal is for 206 dwelling units. We'll note that that's approximately 45% of the allowable maximum density for TAZ 5, which was for 460 dwelling units. The Alston plan has numerous development standards and requirements. One of particular note is that garages be shielded or limited from view from the public streets or the main streets as much as possible, and it encourages the use of rear-loaded, alley-loaded garages. Note that 86 of the townhome units in this plan are alley-loaded garages; the remainder of the townhomes are front-loaded—17, all 17 of the single-family garages are front-loaded. We also know, given the shape of the property, it would have been a challenge to get all of them alley-loaded, of course. The residential use and the building type, we feel, offers a good transition from the multifamily use to the east to this property, and from the institutional use, the high school to the north. We also feel it represents a good transition and use of step-down and use from an institutional to this use to the single-family to the south and to the west. Further note that there's a large degree of spatial separation to that property and to the uses to the south, due to the Morris Branch buffer, and to the west because of N.C. 540 and the highway corridor buffer. As Ms. Trahos alluded to, town council has recently noted a preference for 10-foot sidewalks, street-side sidewalk trails along thoroughfares adjacent to residential developments. The requirement in the LDO is for a five-foot sidewalk, and that's what's being contemplated by this plan for the majority of McCrimmon Parkway. For the modification, again, just to summarize, it’s a reduction of approximately 10% of the total area of the highway corridor buffer. As the applicants noted, the total spatial separation achieved by the easements and the buffer total approximately 170 feet. There's also a vertical separation, as N.C. 540 is lower than the homes, so there is separation, both horizontal and vertically there. The applicant is proposing some additional areas of open space that are located adjacent to the buffer. They don't all qualify as buffer area; they don't offset the total amount of easement, but they do provide some supplemental buffer area, or some supplemental open space, I should say. And additionally, they’re proposing supplemental plantings, approximately 20 evergreen understories within the Duke Energy easement. At this point, I'd like to turn to Ken Dunn and let him give some observations on roadway improvements.

Dunn: So, I wanted to talk real briefly about the traffic portion of the staff report. When we prepared the staff report, we had noted the offer for—or that the traffic study indicated a southbound right turn lane on Highcroft Drive we need in the future. We had some subsequent conversations about that and took a look at the overall larger development in the area. Earlier on, Doug had shown a slide that showed all of the various developments that were happening in the area, and we had that additional discussion, and as we looked at that, we felt like the turn lane was not really a lot of benefit for the overall corridor, and that if the applicant were to spend money towards making improvements, that that would be much better served looking towards a signal. I am providing the analysis. We did meet with the applicant two weeks ago—I think that's
right, right? Two weeks ago? A week ago Tuesday. To talk about it. And from some conversation we had today, I think there may have been some misunderstanding. In the traffic study, under the intersection of McCrimmon Parkway and Highcroft Drive, it makes a recommendation to monitor the intersection for potential future signal installation of a traffic signal. When we have that, generally it implies installing the traffic signal if the warrant is met, and I don’t think—I think we had some miscommunication on that. And when that came to light recently, we had talked about it and talked about it quite a bit today, as far as what—you know, what our expectation was when we read the report and read the staff report. And so, we would like to see some effort put towards the traffic signal and doing the analysis and looking at it. It’s difficult to tell whether, as that progresses, whether they will need to install a signal or not; it all depends on the warrants and how things show up around the development.

Robinson: Can you tell us exactly what you’re recommending, in light of the traffic signal? What are you recommending that we—that the applicant propose?

Dunn: Generally, when we have the call for a signal analysis, we’ll talk about a schedule for when to do the analysis and see when those warrants are tripped, or if they are tripped, at certain milestones with the development process. So, to look at that, it’s actually fairly common for developments about this size to offer the signal warrant analysis if it’s recommended in the study.

Robinson: So you’re asking them to do an analysis at certain points in the life cycle of their development, but you’re not asking them to contribute toward a signal?

Dunn: Not unless it ends up being warranted.

Robinson: So if they—

Bush: I thought you said it was warranted.

Robinson: No, they’re trying to decide whether it is or not, so if it met warrants—let’s say at the end of the project they went ahead and did a warrant study and it met warrants, then you would want them, you’d want their condition to say that they would then install the traffic signal?

Dunn: Yes.

Bush: But, I’m sorry—

Weinbrecht: Wait. Hold on. We’re not in a deliberative phase of the meeting yet. Let’s take all the testimony—she has a right to object—and then once we get past that, we can ask all the questions. We can bring you back and ask you more questions.
Bush: Okay.

Wei: Okay? Everybody good? All right. Anything else?

Dunn: No, sir.

Wei: Would you like to cross-examine?

Trahos: Given the point made is about the traffic study that was prepared by Mr. Cate, what I’d like to do is recall Mr. Cate and ask him about his recommendation.

Wei: Okay.

Trahos: If that’s appropriate, Mr. Mayor. Yes, sir. Mr. Cate, can you clarify your recommendation relative to the installation of a traffic signal?

Cate: Yes, depending on how far in the weeds you guys want to get and how bored you want to be. First, clarify my recommendation. It was my professional recommendation that this particular development was not contributing enough traffic to that intersection to warrant them to be responsible for a traffic signal; therefore, I did not recommend a traffic signal. The monitoring comment was placed there because it’s my responsibility to, as part of performing the traffic analysis, to recognize that an area might need an improvement. Just mentioning that the improvement might need to be there was not meant to require the developer to install it. It’s just my professional requirement, to let staff review know that that may be an issue in the future. You were not wrong; I did say that it was—it did meet a warrant. There are nine different warrants that are involved in a traffic warrant analysis. Peak-hour warrant is one of those. In my professional opinion and my experience, NCDOT uses primarily an eight-hour peak warrant, and a four-hour peak warrant. If those are met—and to clarify as well, just because—warrants are guidelines. Warrants are not requirements, so it doesn’t matter—you could meet all nine requirements, and you’re not required to install a traffic signal. That’s still based on professional judgment of whichever engineer is making that decision. So, it does meet one warrant. We don’t have the evidence that it would meet an eight- or four-hour warrant, especially considering that this, both connections to Highcroft Road at that intersection are residential. So they have a high peak in the a.m. exiting, and they have a slightly lower peak coming back in, in the evening around five or six o’clock, but it generates very little traffic at any other time. So, the idea—the minor street approach is the driving force in determining whether a warrant is met or not. So, for our—for the northbound approach of Highcroft Road, but considering that it’s a dead end at this point, we would not think that the traffic patterns would support either an eight- or a four-hour warrant being met. The other thing that I wanted to mention is that I would be concerned that the Alston development will connect to extend Highcroft down to McCrimmon Parkway from the north, to create a four-leg intersection. And, if the requirement of this was just to monitor the signal and then, if warrants are met, that our
development would pay for the traffic signal, the warrants could be met, but they could be met by the southbound approach with the Alston traffic, and then you would be requiring a development that wasn’t driving the warrants to install a traffic signal. So, that’s just something else that needs to be on the record.

Weinbrecht: Okay. Ms. Trahos, anything else? We want him to stay close by because I’m sure he’s going to get a lot of questions when we get to the deliberative phase.

Trahos: Sure.

Weinbrecht: Any cross-examination? Are we good to move to the deliberative phase of this hearing? All right. Any party believe that there’s any evidence presented that we need to continue this hearing? Okay. We now begin the deliberative phase of the hearing, and I’m going to turn it over to Ms. Robinson. I’m sure she wasn’t done.

Robinson: Yeah, I wasn’t. But that’s okay. I have a lot of questions. So, I understand your points about the equity of the, you know, having them have to pay for the entire signal if they’re generating at this point about 7% of the traffic. So, if we were to go and pursue anything with them, I would say asking for a payment of lieu up to 7% or at 7% of the cost of the signal should it meet warrants at some point. I think that would be an equitable approach. If it’s—I don’t know what a signal costs these days, if it’s, you know, 100,000, that’d be 7,000. I mean, I don’t know what your signals cost these days.

Cates: A quarter million.

Robinson: Yeah.

Cates: Or so.

Robinson: So. But anyway, I think that would be more equitable. I think asking them to pay the entire thing is a lot. My next question has to do with the material in the—going from a 5-foot sidewalk to 10-foot. Is that still a concrete, like the multi-use paths that we’ve historically put in, or does the material change? It’s—

Loveland: I’m being told it’s concrete.

Robinson: Okay. And so, can you tell me, along McCrimmon on this side of the street, are there 10-foot sidewalks that this would meet up with? Can you kind of pull back and show us, put it into context a little bit, to let us understand how that would tie in? Just so we could see the justification for asking for 10-foot right there.

Loveland: The—of course, there’s a greenway trail coming up through here, which goes off to the west, and then the 10-foot sidewalk here. There is also a 10-foot street-side trail on the east side of Highcroft, and my understanding, that’s the only other 10-foot
trail in the vicinity. So, what this would do—go back to my pedestrian slide here—would be to complete a loop. Of course, you’d have a 10-foot greenway trail. This would complete a loop of a 10-foot trail back to this point. You’d then have a 10-foot, existing 10-foot street-side trail-type thing. There’s actually some public art in this sidewalk. I don’t know, so I don’t know what you’d term that as, but this is 10-foot width.

Robinson: Okay, so it kind of gives it a full loop for people who want to go out cycling with their kids, or whatever.

Loveland: The one other thing to note that I briefly touched on is the only crossing point for pedestrians to get to the north side of McCrimmon is at this intersection. There is no mid-block crossing. We explored the locations of mid-block crossing, but were told it’s just not safe to do so. So, the impact of a 5-foot sidewalk versus a 10, to get pedestrians to this point, I’ll let you debate, but, just to point that out for consideration.

Robinson: Okay.

Hales: There is also a 10-foot street-side trail that was approved as part of the Alston Village plan, on the north side of Highcroft, on the west side of Highcroft.

Robinson: As it goes north?

Hales: As it goes north. So that would connect farther up into the shopping center.

Robinson: I see. Okay. All right. That’s important information. Can you tell us—and I don’t know if this a question for the staff or for the applicant—can you tell us what the difference is between the private, the quality, or the conditions of these private streets that they’re putting in, versus the public streets? Because the applicant may be aware that the council asked several months ago that we change our ordinances to require all public streets, and the staff is in the process right now of putting together the ordinance change for us. So, this just predates that a little bit, so we have expressed a lot of concern about these private streets, as far as maintenance and so forth, and the standards. So, what is the leap here from going from these private streets to a public street as far as the conditions?

Loveland: I’m going to yield to Transportation and Facilities. I will point out, I do have—one public street in the development, highlighted here in blue, and the rest are private. But, for other information I’m going to have to yield the floor.

Jensen: So, you’re correct, we’re—staff is exploring the option of bringing back to you all opportunities to go to full public streets and in town type of developments and in other private street developments. Right—I don’t—it may be best to ask the applicant this, but I think if they were to—having to convert these to a full public street standard, that would involve really dedicating a full right-of-way width, which would probably impact their
setbacks and maybe some of their lot sizes and things of that nature. They have provided a public street from their western-most entrance all the way back, because we don’t allow private streets in the single-family development. So, carrying that forward throughout this development, I would say it probably is going to have some impact if they were to try to do that, and dedicate a right-of-way for it. But I certainly—I think the applicant could be better to talk about that than I could.

Smith: Well, I mean, it does beg the question, and why are we doing these? I mean, we have—I don’t want to say a nightmare—but we have the legacy of private streets that are now probably 30 years old or more disintegrating. A lot of neighborhoods do not take care of them. And, are we just kicking the can down the road for nothing? You know, that some council 30 years from now—I just—I think I’m in shock, that we’re still dealing with private streets, when—even though we haven’t finished the codes, the message is loud and clear. We don’t want them. So—

Glover: Mr. Smith, I understand, and we are looking into it, but at this point in time, what they’re proposing—it meets all of our requirements on private streets.

George: Can I ask—so, if we were to make the trail 10 feet wide, there is a buffer being proposed, so we’re going to lose five more feet of vegetation to try to keep the same size buffer. That seems to me like it moves the—maybe even moves the homes or the lots further in the home. Is that what—

Loveland: It’s a 50-foot streetscape, so they’re planning to a Type A rate, so there’s plenty of room there, if they were to lose an additional 10 feet, to still provide that.

George: That’s an additional five.

Robinson: An additional five, yeah, good.

George: Okay. And I think these are the complaints we’re going to get with the snow removal, when the guy turns in there and goes right, and then comes back out and leaves, and plows the road, and they—the neighbors call and say, “Why didn’t you plow my street?” Well, it’s a private street. This may lend itself to what we did in the previous decision, would be to add a condition that there’s a disclosure for this neighborhood that these streets are private and the responsibility is to maintain by the residents, and the HOA, when everybody that moves in.

Robinson: I would still like to hear what the applicant has to say about the difference—what the impact is to them to put in a private street, versus a public street.

Loveland: And could I offer just a point of clarification? It does not affect the lot sizes or the setback. The right-of-way width may have some effect.
Trahos: And I think I’ll let Mr. Edens speak to that, but his initial reaction was that it would require a redesign three-quarters of the site.

Weinbrecht: And could you be more specific?

Trahos: I will ask him to.

Edens: Sir, and again, Jarrod Edens with Edens Land. Just my quick look at it. You know, oftentimes, and the main difference between private streets and public streets is geometrically, you know, horizontal curvature, right-of-way widths, and things like that. If you take that plan, which basically, you know, 80% of the project has private streets, and you had to start adjusting radii and right-of-way widths, which pushes the buildings around, it would be a pretty major redesign at this point, for sure. And I just would point out—I understand the concern with private streets, but we would have a properly-set-up HOA in this instance. I know older communities and older streets, 30- and 40-year-old streets, may have a different base to work from, but we would have a properly-set-up HOA with money funded to provide maintenance of the streets. Thank you.

Trahos: And we could include, as a condition, a commitment to disclose as a part of the homeowners’ association documents that the streets are private and funds would be required to maintain them on a going-forward basis.

Smith: Right. And to Mr. George’s point, we all signed those agreements when we moved here from somewhere else and had a 50-page HOA agreement in front of us, and buried on page 39 in microprint is the private streets. I’m just saying that, what you’re saying is right and legal. But I think you’re really, it really needs, we just need to understand, it’s a mess. And, you know, people moving in—yeah, they look at the covenants and the HOAs, and they’re—you know, they’ve got the stars in their eyes about moving to Cary and all the nice things here. And we’re just—this is all the new area. This is all new Cary out here, and we’re now still accepting it. Now, it may be the law, but I think one of the things we need to start looking at pretty quick is, do we have the legal right to a moratorium or something until we get it all resolved? I don’t know; I’m not going to make that the issue tonight, but we’ve got to get the message out loud and clear. This has got to stop.

Weinbrecht: I think, as far as moratoriums, there are certain things you can have moratoriums on—

Smith: I understand.

Weinbrecht: —based on what I know, like we’re out of water, or something like that.

Smith: Right.

Weinbrecht: But I don’t think you could do it for this reason.
Smith: Yeah. Maybe it’s a poor choice of words, but I understand. I understand.

Weinbrecht: How about this end?

Bush: Could we go back to the discussion, maybe with Mr. Jensen, about crosswalk, and I’ll just get on my pedestrian and bike soapbox. Where, exactly, would students who live in Phase I or Phase II—how would they get to Panther Creek across the street? And just detail for me, where—there’s no safe place to put a crosswalk anywhere there?

Jensen: Well, we currently have a crosswalk located at Highcroft and McCrimmon right now. And there is no traffic control protection right there right now. There’s no signal, there’s no crosswalk beacon; there is nothing of that nature there. We do have a light volume that we’ve counted numerous times, traveling, walking to school. It’s less than 10. So, we haven’t worked with DOT to put any more aggressive type of traffic control. So, what we’re suggesting on this particular site is that we would upgrade the—let’s go back to the original one—I think the site plan includes upgrading the crosswalks to some high-visibility crosswalks. We’ve also, if the applicant doesn’t offer to make a condition to put a traffic signal in there, which would include pedestrian accommodations for traffic signals, then, you know, our staff would be looking probably to putting some types of pedestrian beacon there, a warning device, just to make it safer. With this many new residents living out there, it’s all about a safe way to get across the street. We looked at other—I think our staff has looked at other ways of trying to get them across the street, particularly the entrance—main entrance to the school, which is the—which is basically where the high schoolers go to park. This is so close to the bridge at 540 when you come over it, we just felt like that was not a really safe location to cross children. The other thing is we’re—because they have an entrance located on this side of the project, there’s going to be some U-turns that are being made, so we’re having to bulb out the road to accommodate that U-turn movement so that they don’t hit the curb. So, there really wasn’t a safe place to—that we felt—to get high school students across the road, so we’re trying to put them in a position to succeed and be safe, and taking them down to Highcroft. I know that that’s a long way around to get them to their—

Bush: About a mile. It’s like a mile to go all the way down—

Robinson: People are not going to do it.

Bush: They’re not going to do it; they’re going to cross at the easiest place.

Robinson: Yeah, Lori and I both have sons. I can tell you right now, they’re going to just dash across the road.

Jensen: Yeah, and, you know, there’s—the only thing I can think of in that case, then, is then we’re going to have to—if that’s the case, and we see there’s a lot of that occurring,
we’re going to have to find a safe way to get them across, because we don’t want them
dashing across the street. But our experience right now is this. As many students that
go to the school, we don’t have a huge volume, but that could change with this
development. I think that has to be an ongoing look, as we—as this development occurs,
where are they crossing, and where can we make it safe for them to cross? And then we
have to do whatever we can to make that happen. But it’s really, right now, trying to get
them in a position to succeed at least, to have an opportunity to cross safely somewhere
along that corridor, and right now, the only one that we currently have is up here at
Highcroft. Getting back to what the traffic engineer had talked about earlier is, you
know, this intersection, as they evaluate it, is going to perform quite poorly as an
unsignalized intersection, and I think that’s why we were—again, it’s all about trying to
get them, you know, making sure that they are mitigating the responsible amount of
traffic out here. We felt like that, you know, a signal would allow this development to
succeed along this corridor, because we are having a deficiency there, and that’s one of
the things that they’re asked to prove, is that they’re mitigating their traffic that’s
reasonable to it. So again, some of the language that Ms. Robinson had talked about,
that may be a finding that you feel is the reasonableness of it. There’s no doubt that a
signal would be beneficial to this development and the corridor, but again, we won’t
know that until some point in time that they do some additional check-in points with
warrant analysis. We’ve done this on several other large neighborhoods, where they may
not have met the warrants right today for a signal, but we’ve always had check-in points,
and then if a signal was justified, that we would ask them to put the signal in. If at the
end of buildout, if it still doesn’t meet warrants, we would just absolve them from any
requirement to do a—to put a signal in. So, there’s many ways that, you know, that we
could make that happen. So, that just is for your consideration. But the signal has two
purposes. One, for not only moving traffic in the area, but for safe pedestrian crossing.

Bush: And that’s a school zone, so it’s striped for a school zone?

Jensen: Yeah, it’s got a reduction in speed for—to account for that, yeah.

Bush: Yeah, my only—just as a moment of clarification—my only concern isn’t just the
students going to Panther Creek, but there’s a great big field that a lot of people use,
because there’s not a park right now, close to that. So, it’s—they use the shared services
of the space around Panther Creek for more than just students. People are often going
there to run around the park, right? You know, there’s tennis courts there, et cetera.

Weinbrecht: And let’s follow up on that. That was one of the things I had written down.
The way I understand it, they have a tot lot and picnic areas. So, basically no active
recreation, so that’s exactly where they’re going to go, is across the street.

Bush: Right.
Weinbrecht: For active recreation, which is another safety concern I have. We’ve already listed about three or four safety concerns.

Bush: Me too.

Weinbrecht: Other questions?

Robinson: I have a question about planting. The language—I can’t remember how it was said, but they’re offering supplemental plantings in the Duke Progress Energy easement, 20 evergreen trees. I understand they’re offering it. Will Duke Energy allow the trees there?

Loveland: That’s a good question. They do have guidelines to allow a certain amount of vegetation towards the edges of an easement. Honestly, I think, at the end of the day it’s just, it’s a bit of an unknown to staff whether—it’s just at their discretion.

Robinson: Okay.

Weinbrecht: Other questions or comments?

Yerha: Well, public, private streets—I don’t like private streets any more than anybody else does here, but I don’t think there’s a lot we can do about it unless, you indicated, Ms. Trahos, that there could be a condition added that you disclose that, even though it’s maybe on page 37 in the fine print. I mean, unless that’s a normal thing to do. If that’s something extra that you would want to do, I think the condition to do that would be helpful.

Trahos: We’d be happy to do that. And we’d be happy to put it in bold type. [LAUGHTER]

George: Or even a separate document?

Trahos: It could be a separate page of the HOA document?

George: A separate signature document?

Trahos: So, the HOA documents will likely be recorded, so it would need to be a part of what’s recorded, but it could be on its own page, sure.

Yerha: And I’d also like to see a condition that you would—how you word this, and the technicality, I don’t know—but that you would do your part, as far as putting the signal, if it would warrant it. I mean, I don’t know whether it was Mr. Loveland’s words before, or someone had suggested to do that. So, I’d like to see that, some kind of condition added along those lines.
Trahos: I think that we would be willing to contribute to the cost of the traffic signal. Like you, we’re not precisely sure how much that would be. So what we’d like to do is offer that if there is a warrant for a signal before the last CO is issued, that we would contribute $15,000 towards the installation of the signal.

Robinson: Yeah. I personally am comfortable with that. I think that’s fair.

George: But I think a signal is a quarter million—the one at Chatham and Cary Parkway was a quarter million.

Robinson: Am I hear—is that correct?

George: The one at Olde Weatherstone was a quarter million.

Jensen: Yeah, I think, in reality, by the time you put metal mast arms and pedestrian signals, and everything there, it’s probably in that quarter-million-dollar range.

Robinson: Which you’d be willing to—

Jensen: And again, if they were doing 7% of the quarter—

George: 25,000 would be 10%.

Yerha: About 17,000. So it’s less than 7%, so.

George: I’m just throwing a number, yeah.

Weinbrecht: Sure, go ahead. Sorry.

Natelli: I would be willing to contribute the signal. I think I would just want to be—have a little clarity on the comprehensive nature of what we’re talking about. If it’s 25,000 and the 10-foot path, then I think I would need to think about it, but in talking to staff today, and to Beth, it seemed like the 10-foot path along McCrimmon was a kind of compromise, because the signal wasn’t going to be getting installed by us. So, if I’m here, you know, ready to commit to giving 20,000 or 25,000 to the signal, I would ask that we could just keep the five-foot sidewalk, as was originally planned.

Robinson: The 10-foot sidewalk is probably the most important element to me. I think it’s—we have set this as our standard. This is what we believe in, and I think it’s a major asset to our community. I see people using our 10-foot sidewalks all the time.

Bush: Yep.
Robinson: It’s a safe way for young kids to bike with their parents. So, I would actually—my highest priority is the 10-foot-wide sidewalk. I understand you not wanting to pay for a full signal when you’re contributing a small portion, so my opinion is, is that, you know, we come up with some number, or not to exceed 10% of the cost of the signal. So, if the signal turns out to be 200,000, you’re not paying a disproportionate amount for the signal.

Bush: I agree with you. I mean, since we both live in an area where the 10-foot sidewalk is in use, consistently—I mean, you don’t ever see on Davis Drive anyone not using that sidewalk. I think that’s a—it’s not only a benefit to our community, but it’s directly across the street from a school. So those two things, for me, are imperative for having an—they’re showing on the picture there’s several other developments coming in, and we often get traffic analysis that show that an off-site improvement has to be made. You know. What is it? Last-in sometimes has to pay a little bit more. Those new developments are going to come in with traffic mitigations, and they might have to bear the brunt of more of that. I would much rather see the 10-foot sidewalk.

Weinbrecht: So, you’ve heard what is desired. What I’m understanding is you’re offering an either/or. I can do the 10-foot sidewalks or I can contribute to the traffic light. I thought that’s what I heard.

Natelli: Yeah, that’s what I was proposing.

Weinbrecht: Okay.

Natelli: And yeah, I guess it was my thought that we’re building a mile of greenway; that people would want to go down to the greenway and use that 10-foot path, instead of the path along McCrimmon. But if it gets your approval that the McCrimmon sidewalk is 10-foot, and then we would contribute a pro rata share not to exceed 10%, then I would be okay with that, if those were the conditions of approval.

Glover: Just to interject. Staff would prefer that we not try to calculate 10%, when we have no idea when we would be calculating that, so we’d rather go with a hard figure that we would know up front and we’d know at what point we would collect it.

Natelli: 20,000?

Robinson: That seems reasonable.

Bush: It does.

Robinson: Yeah.
Weinbrecht: So, there are two conditions you’re offering? $20,000 contributed to the traffic signal, and the 10-foot—

Robinson: Just for clarification—it’s if a $20,000 towards a traffic signal if it meets warrant—

Weinbrecht: Right.

Robinson: —before the last—

Smith: CO.

Robinson: —CO is issued. Correct?

Glover: Yes.

Natelli: And who’s monitoring it, to—?

Robinson: I’m trying to look at staff here. Jerry, is that—what does—how does it usually work?

Jensen: Well, normally how it would work is we would have the developer do a warrant study, and those are anywhere from, you know, $5,000 to $7,500. We have a lot of other developments occurring out there. We need to be monitoring this intersection anyway. I would just say that, that they’d go ahead and give the money up front—$20,000, you know, prior to the first CO—and we’ll monitor the rest for the signal, and look at the warrant analysis of it. That would be my preference. I believe what the Alston activity that’s already going up there, with all that traffic, I think we’re going to hit the warrants pretty quickly. But if you preferred to say “prior to” the last phase, or the second phase of this development, we could do it that way, as well.

Robinson: I would prefer to go the way the staff would like to receive it. So, if you’re saying you’d prefer to have it up front—

Jensen: I think it’s just cleaner, and that way, you know, they go on their way, and we look at the warrant analysis as we, as always out in this area.

George: And/or you pay for, or the town pays for it, out of that 20, the warrant analysis. Okay.

Jensen: Yeah, we can. Yeah, we can certainly do that. We’ll be monitoring this area pretty heavily because there’s a lot of activity going on right here, so.

Robinson: Okay.
Weinbrecht: So, does the applicant want to offer that, or not?

Robinson: He doesn’t have a choice. Voted up or down.

Natelli: Just so I’m clear, that what staff is proposing is that we would provide 20,000, and even if the signal is not warranted, it would still be, we would still owe 20,000 no matter what? Or would that money get refunded later?

Yerha: Good question.

Robinson: My—go ahead.

Jensen: We could certainly preface that if at the final CO of their development, that a signal still is not warranted, that we refund their money back.

Robinson: The only concern I have is that the warrant could be met six months later, and you guys still contributed 7% of the traffic on this site, so you’re still impacting the intersection.

Jensen: That’s correct.

Robinson: So, I say we just—you know, everybody should pay his share. That way the last guy isn’t the guy holding, you know, the responsibility.

Smith: A quarter million, amen.

Robinson: So, 20,000 seems reasonable for a $250,000 traffic signal. The sidewalks are our standard. This is what differentiates our community from other communities. We—Lori and I certainly know the benefits of 10-foot, and we also know the negatives of a five-foot—

Bush: Yes. Absolutely.

Robinson: I’m thinking of the—you know, the east side of Lewis Stevens Road.

Bush: Louis Stevens Road.

Robinson: Yeah. So, those are our standards. I make a motion and—[OVERLAPPING]

Weinbrecht: Whoa, we can’t do that. We’re not there.

Robinson: Oh, okay. Okay.
Glover: Well, and Mr. Mayor, if you don’t mind, I will remind council that in a quasi-judicial setting, unlike a rezoning, you all can impose conditions—

Bush: Impose a condition.

Glover: —that are reasonable and that are meant to bring the development into compliance with our standards. So, while I do like and prefer that the applicant agrees here at the hearing.

Weinbrecht: He doesn’t have to.

Glover: —“Yes, we’re fine with that.” They don’t have to, but you all have to be satisfied; we have to be satisfied that the condition you’re imposing is reasonable and is necessary for the development to comply with the criteria you’re looking at for review.

Weinbrecht: Okay. So, let’s talk about other issues we want to ask about, okay?

George: That separate page that they’re going to have—

Trahos: Yes.

George: —outlines a private street, and I believe on that page—just for the sake of being thorough—that you spell out what that means. That means maintenance of it; snow removal, et cetera. I think there needs to be, rather than just saying, “Oh by the way, it’s a private street,” and they sign it. I just don’t think—

Bush: Does the trash pick up on private streets?

George: Yes.


Trahos: I had assumed that that would be included.

George: So that you say what that means to the community. I think that would be a great condition that they’re willing to add.

Weinbrecht: Other questions, comments, before we move to the—

Yerha: We haven’t talked about the modification.

Weinbrecht: Yes.
Yerha: I have no issue with the modification, but I think we need to—that would be the first motion that we would need to make.

Weinbrecht: So, can we move to—okay. We’ll close the deliberative phase, and Mr. Yerha, you want to lead?

Yerha: I’m thinking Mrs. Robinson—

Weinbrecht: Oh, Mrs. Robinson?

Robinson: I’m ready to do it.

Weinbrecht: Go for it.

Robinson: All right. For the reasons discussed, I move that we approve the modification request made by the applicant, as the request meets all the approval criteria of the applicable sections of the LDO, and this approval is conditioned upon the following: a 10-foot concrete sidewalk will be—excuse me—

Bush: Wait, isn’t that—

Weinbrecht: That’s the—


George: I second that motion.

Robinson: And period .

Yerha: For the modification.

Robinson: For the modification.

Weinbrecht: And we’re all clear what the modification is?

George: That little bit of—

Bush: The little sliver.

Robinson: Yeah.

George: The screen.
Weinbrecht: Discussion? There was a motion and second, right?

Yerha: I think Mr. George—

Weinbrecht: You seconded it? Okay.

Robinson: No, I think they’re saying we need to put it down there.

Bush: Oh, I just—since we’re in the discussion phase of the motion, I’m going to support it, but I’m still incredibly concerned about the safety of this road, especially since it’s across from Panther Creek, especially since it’s near an active area where there is no active recreation. I hope that staff will help us keep an eye on it, because we’ve already had some tragic deaths of children that go to Panther Creek, and for some other reasons. But it’s just an area of concern. It’s near the highway. It feels faster, right? So, I just want us to really keep an eye on it, so we can monitor it.

Weinbrecht: And I’m glad you brought that up, just because I still have serious concerns about safety and I can’t in good conscience support anything where I put children in danger, so—and I think that’s exactly what this does, so I’m not going to support it.

Glover: Right. So, just to point out right now, you’re only voting on the highway corridor buffer modification.

Bush: Oh, we’re doing them one at a time? I thought you put them—sorry.

Yerha: No, just the modification.

Robinson: Yeah, sorry.

Weinbrecht: All right. I’ll support that. All right. All in favor of the motion, please say aye.

Robinson, George, Weinbrecht, .

Weinbrecht: Any opposed?

Smith: No.

Weinbrecht: The motion is six to one.

Weinbrecht: Now, the other motion.

Robinson: Okay.

Smith: Five to one.
Robinson: Five to one because Don is not here.

Weinbrecht: We’re one missing. That’s right. Five to one.

Smith: We can’t count the lawyer.

Bush: He didn’t vote.

ACTION (Captured verbatim above):
Motion: For the reasons discussed, Robinson moved that council approve the modification request made by the applicant as the request meets all the approval criteria of the applicable sections of the LDO.
Second: George
Vote: Approved (5 – 1, Smith voted no and Frantz was absent from the meeting).

Robinson: Okay. I make the motion to approve the development plan for the reasons discussed. I move that we approve the proposed development plan with conditions as stated below, as it meets all of the approval criteria set forth in Section 3.9.21 of the LDO, and this approval is conditioned upon the following: one, the applicant must satisfactorily address all remaining Development Review Committee comments on the master plan set submitted for signature; two, a 10-foot concrete sidewalk will be installed along McCrimmon; three, $20,000 contribution will be made toward the signal at Highcroft and McCrimmon; and four, a disclosure statement will be included on all purchases, not just from the developer, but ongoing—it will go with the properties for subsequent resale. On the—

George: Private.

Robinson: It’s going to be a part of the HOA?

George: HOA.

Robinson: The HOA document, good. So disclosure.

Bush: On its own page.

George: On its own.

Robinson: On its own page. Disclosure regarding private streets and that that entails.

Weinbrecht: There’s a motion.

George: Second.
Yerha: Second.

Weinbrecht: Discussion?

Bush: So, back to what I was saying. You’ve got—it’s very interesting that you brought that. I mean, I come to the table sometimes trying to—and I do—keep an open mind. And then when you said, you know, “I’m really concerned about the safety and I’m not going to support it without the safety,” the first thing I think of is, “What would make me want to support this?” Right? And staff didn’t give any suggestions about how to make this safer, just some things that you’ll look at down the road. And so, I am going to support it, but I really—because staff didn’t come out and say, you know, “This is what we would do,” and I see them shaking their heads, and we’re going to monitor this, and I know they very much care for our kids, just as much as we do, and I know that they’ll do that. But because they didn’t give me any recommendations, I’m not voting against any professional who said this is what we would—this is, in particular, what we would do to keep those kids safe. And I don’t think a light—to be totally fair—would absolutely make that safer.

Smith: Yeah.

Bush: For now. So, maybe when there’s more traffic, et cetera. So, I’m look—I’m going to vote with the motion because of the—

Weinbrecht: Any other comments?

George: I agree. If they keep looking at it, and they have to cross somewhere else, and they figure out a way to do it, I think the town does that all the time. I think it’s—they’ve done the 10-foot, and they’re doing their part toward the light, so I think we could, in the interest of safety, we can get the kids across. If we find a way, I’m in favor of that.

Weinbrecht: Anything else? All in favor of the motion, please say aye.

Robinson, Smith, George, Bush, and Yerha said aye.

Weinbrecht: Those opposed?

Smith: No.

Weinbrecht: No. The motion carries—

George: Four-two.

Bush: Four-two.
Weinbrecht: Four-two.

Bush: You're used to doing—

ACTION (Captured verbatim above):
Motion: For the reasons discussed, Robinson moved that council approve the proposed development plan with conditions as stated below, as it meets all of the approval criteria set forth in Section 3.9.2(l) of the LDO. The approval is conditioned upon the following: 1) The applicant must satisfactorily address all remaining Development Review Committee comments on the master plan set submitted for signature. 2) a 10-foot concrete sidewalk will be installed along McCrimmon; 3) $20,000 contribution will be made toward the signal at Highcroft and McCrimmon; and 4) a disclosure statement will be included on all purchases, not just from the developer, but ongoing—it will go with the properties for subsequent resale regarding the private streets.
Second: George and Yerha
Vote: Approved (4 – 2, Weinbrecht and Smith voted no. Frantz was absent from the meeting.)

Weinbrecht: And that—I’ll close the public hearing. And that concludes our agenda.

RESULT: APPROVED [4 TO 2]
MOVER: Jennifer Robinson, District A Representative
SECONDER: Ken George, District D Representative
AYES: George, Robinson, Bush, Yerha
NAYS: Weinbrecht, Smith
ABSENT: Frantz

3. CLOSED SESSION
No closed session was held.

4. ADJOURNMENT
The meeting adjourned at 9:06 p.m.

RESULT: ADJOURNED [UNANIMOUS]
MOVER: Jack Smith, District C Representative
SECONDER: Ken George, District D Representative
AYES: George, Weinbrecht, Smith, Bush, Yerha
ABSENT: Robinson, Frantz