Cary Town Council Minutes
July 25, 2013, 6:30 p.m.
316 N. Academy Street, Cary, N.C.

Present: Mayor Harold Weinbrecht, Mayor Pro Tem Gale Adcock, and Council Members Lori Bush, Don Frantz, Jack Smith and Ed Yerha

Absent: Council Member Jennifer Robinson

A. COMMENCEMENT

1. Call to Order (Mayor Weinbrecht)

Weinbrecht called the meeting to order at 6:30 p.m. and announced that Robinson is absent.

2. Ceremonial Opening (Mayor Pro Tem Adcock)

Adcock provided the ceremonial opening.

3. Adoption of agenda (Town Council)

Weinbrecht stated Robinson has asked the council to remove the council-initiated request pertaining to landfill diversion (item I.1.) from this agenda. He stated Robinson will present this request to council at the August 8 council meeting.

ACTION:
Motion: Adcock moved to adopt the amended agenda.
Second: Bush
Vote: Unanimous

B. CONSENT AGENDA

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

   a. Consideration of approving the following minutes: June 25, 2013 work session, June 27, 2013 council meeting and July 11, 2013 work session. (Town Council)

ACTION:
Motion: Bush moved to approve the consent agenda.
Second: Adcock
Vote: Unanimous

   b. Consideration of adopting certificates of sufficiency and resolutions calling for public hearings on the following owner-initiated annexations:

      (1) Annexation 13-A-07
         Property Owner(s): Betty T. Williams; William L. Tunstall; Betty T. and James L. Williams
Location: 1,860 feet south of Morrisville Parkway and Green Level Church Road intersection
Acreage: 45.23 plus 1.34 adjacent right of way = 46.57 total deeded acres
Zoning: Residential 40 (R-40) and Conservation Residential Overlay District
Contiguous to Primary Corporate Limits: Yes
Existing Use: Single-family Residential; vacant
Proposed Use: Residential Subdivision
Associated Case: 13-SB-002 (Williams Tract)
Proposed Council Action: Council may take action
Speaker: Mr. Ricky Barker

CERTIFICATE OF SUFFICIENCY OF ANNEXATION PETITION
I, the undersigned Town Clerk of the Town of Cary, do hereby certify that I have investigated the sufficiency of Annexation Petition of Betty T. Williams; William L. Tunstall; Betty T. and James L. Williams; Wake County Parcel Identification #0724954144; 0724856372; 45.23 acres plus 1.34± acres of adjacent right-of-way; as directed by the Town Council by resolution, and that my investigation reveals the following:
1. The signers of the Petition are the owners of the real property within the area proposed for annexation.
2. The area is contiguous to the municipal boundaries of the Town of Cary as defined by G.S. 160A-31, or is appropriate for annexation as a noncontiguous area as defined by 160A-58.

RESOLUTION ORDERING PUBLICATION OF A NOTICE OF PUBLIC HEARING ON THE QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-31
WHEREAS, the Town Council of the Town of Cary has received an annexation petition of Betty T. Williams; William L. Tunstall; Betty T. and James L. Williams; Wake County Parcel Identification #0724954144; 0724856372; 45.23 acres plus 1.34± acres of adjacent right-of-way; requesting the annexation of certain lands contiguous to the municipal boundaries of the Town of Cary; and
WHEREAS, the Town Clerk has certified to the Town Council the sufficiency of said Petition as required by law; and
NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Cary, North Carolina that:
Section I. A public hearing on the question of annexation of the area described herein will be held in the Council Chamber of the Town of Cary, 316 N. Academy Street, Cary, NC at 6:30 p.m. on 8/22/2013 at which time all residents and area owners in said territory and all residents of the Town of Cary will be given an opportunity to be heard.
Section 2. The area proposed for annexation is described as follows:
LEGAL DESCRIPTION: Wake County Parcel Identification #0724954144; 0724856372
Section 3. Notice of public hearing shall be published in the Cary News, a newspaper having general circulation in the Town of Cary, at least ten (10) days prior to the date of the public hearing.

ACTION:
Motion: Bush moved to approve the consent agenda.
Second: Adcock
Vote: Unanimous

2. Annexation 13-A-14
Property Owner(s): James D. Slade
Location: 925 Pittard Sears Road
Acreage: 37.77 plus .95 adjacent right of way = 38.72 total deeded acres
Zoning: Residential 1 (R-1) (Chatham County)
Contiguous to Primary Corporate Limits: Yes
Existing Use: Residential (detached dwelling)
Proposed Use: Residential
Associated Case: 13-REZ-04 (Slade Property)
Proposed Council Action: Council may take action
Speaker: Mr. Ricky Barker

CERTIFICATE OF SUFFICIENCY OF ANNEXATION PETITION
I, the undersigned Town Clerk of the Town of Cary, do hereby certify that I have investigated the sufficiency of Annexation Petition of

James D. Slade;
Chatham County Parcel Identification #0725-29-0405.000 (portion);
37.77 acres plus 0.95± acres of adjacent right-of-way;

as directed by the Town Council by resolution, and that my investigation reveals the following:
1. The signers of the Petition are the owners of the real property within the area proposed for annexation.
2. The area is contiguous to the municipal boundaries of the Town of Cary as defined by G.S. 160A-31, or is appropriate for annexation as a noncontiguous area as defined by 160A-58.

RESOLUTION ORDERING PUBLICATION OF A NOTICE OF PUBLIC HEARING ON THE QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-31
WHEREAS, the Town Council of the Town of Cary has received an annexation petition of James D. Slade;
Chatham County Parcel Identification #0725-29-0405.000 (portion);
37.77 acres plus 0.95± acres of adjacent right-of-way;
requesting the annexation of certain lands contiguous to the municipal boundaries of the Town of Cary; and

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

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

Section I. A public hearing on the question of annexation of the area described herein will be held in the Council Chamber of the Town of Cary, 316 N. Academy Street, Cary, NC at 6:30 p.m. on 8/22/2013 at which time all residents and area owners in said territory and all residents of the Town of Cary will be given an opportunity to be heard.

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

LEGAL DESCRIPTION
Beginning at an existing iron pipe, said pipe being North 35°04’12” West 38,895.65 feet from NCGS Survey Monument “A EARL SMITH”, said monument having NC grid coordinates (NAD 83 – 2011) of N=727,659.310, E=2,043,744.810, thence from said Beginning point South 02°55’33” West 123.89 feet to an existing iron pipe, thence South 02°17’31” West 1,137.99 feet to an existing iron pipe, thence South 69°00’16” West 227.30 feet to an existing iron pipe, thence South 20°21’08” West 639.25 feet to an existing iron pipe, thence South 52°19’30” West 347.56 feet to an existing iron pipe, thence South 89°12’06” West 265.22 feet to an existing iron pipe, thence North 00°18’03” East 829.56 feet to a point on the centerline of Pittard Sears Road (SR 1732) (50’ Public R/W), thence along said centerline along a curve to the left with a radius of 818.51 feet, an arc length of 147.68 feet, and a chord bearing and distance of South 80°07’00” East 147.48 feet to a new iron pipe, thence leaving said centerline North 05°00’45” East 237.58 feet to a new iron pipe, thence North 26°13’37” West 144.91 feet to an existing iron pipe, thence North 89°40’47” West 100.21 feet to an existing iron pipe, thence North 00°18’03” East 287.98 feet to an existing iron pipe on the eastern right of way of the State of North Carolina Department of Transportation Property DB 781 Page 468 formerly Durham and South Carolina Railroad, thence with right of way North 14°44’06” East 748.75 feet to an existing iron pipe, thence leaving said...
right of way South 88°12'47" East 828.95 feet to the point and place of Beginning containing 38.830 acres more or less.

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

**ACTION:**
Motion: Bush moved to approve the consent agenda.
Second: Adcock
Vote: Unanimous

3. **Annexation 13-A-17**
   - **Property Owner(s):** Wake County Board of Education
   - **Location:** Intersection of Green Level Church Road and Roberts Road
   - **Acreage:** 87.85 plus 0.00 adjacent right of way = 87.85 total deeded acres
   - **Zoning:** Residential 40 (Wake) (R-40)
   - **Contiguous to Primary Corporate Limits:** Yes
   - **Existing Use:** Vacant; Residential
   - **Proposed Use:** Public High School
   - **Associated Case:** 13-REZ-10 (H-7 High School)
   - **Proposed Council Action:** Council may take action
   - **Speaker:** Mr. Ricky Barker

**CERTIFICATE OF SUFFICIENCY OF ANNEXATION PETITION**
I, the undersigned Town Clerk of the Town of Cary, do hereby certify that I have investigated the sufficiency of Annexation Petition of
   - Wake County Board of Education;
   - Wake County Parcel Identification #0733150700, 0733060430, 0733066539, 0723964723;
   - 87.85 acres plus 0.00± acres of adjacent right-of-way;
as directed by the Town Council by resolution, and that my investigation reveals the following:
1. The signers of the Petition are the owners of the real property within the area proposed for annexation.
2. The area is contiguous to the municipal boundaries of the Town of Cary as defined by G.S. 160A-31, or is appropriate for annexation as a noncontiguous area as defined by 160A-58.

This 7/25/2013.

**RESOLUTION ORDERING PUBLICATION OF A NOTICE OF PUBLIC HEARING ON THE QUESTION OF ANNEXATION PURSUANT TO G.S. 160A-31**
WHEREAS, the Town Council of the Town of Cary has received an annexation petition of
   - Wake County Board of Education;
   - Wake County Parcel Identification #0733150700, 0733060430, 0733066539, 0723964723;
   - 87.85 acres plus 0.00± acres of adjacent right-of-way;
requesting the annexation of certain lands contiguous to the municipal boundaries of the Town of Cary; and
WHEREAS, the Town Clerk has certified to the Town Council the sufficiency of said Petition as required by law; and
NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Cary, North Carolina that:
   - Section I. A public hearing on the question of annexation of the area described herein will be held in the Council Chamber of the Town of Cary, 316 N. Academy Street, Cary, NC at 6:30 p.m. on 8/22/2013 at which time all residents and area owners in said territory and all residents of the Town of Cary will be given an opportunity to be heard.

July 25, 2013 Minutes
Minute Book #177, Minute Book Page 82
Section 2. The area proposed for annexation is described as follows:

LEGAL DESCRIPTION

Wake County Parcel Identification #0733150700, 0733060430, 0733066539, 0723964723

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

ACTION:
Motion: Bush moved to approve the consent agenda.
Second: Adcock
Vote: Unanimous

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

a. Ellis Property at Pittard Sears Road

(1) Annexation Petition 13-A-05
Property Owner: Coussit Pennie Ellis ETAL; Peggy Ellis Buckingham; and Scott Wheeler Ellis
Location: 2,660 feet east of O’Kelly Chapel Road and Yates Store Road intersection
Zoning: Residential 1 (R-1) (Chatham County)
Contiguous to Primary Corporate Limits: Yes
Existing Use: Vacant
Proposed Use: Residential (subdivision)
Proposed Council Action: Council may take action
Speaker: Ms. Debra Grannan

AN ORDINANCE ANNEXING LANDS CONTIGUOUS TO THE MUNICIPAL BOUNDARIES OF THE TOWN OF CARY
WHEREAS, on 3/1/2013, the Town Council has been petitioned under G.S. 160A-31 to annex the area described below:
Coussit Pennie Ellis ETAL; Peggy Ellis Buckingham; and Scott Wheeler Ellis; Chatham County Parcel Identification #0726-32-7074 (portion); including 32.05 acres, plus .83 acres of adjacent right-of-way; which are Contiguous to the existing municipal limits of the Town of Cary; and
WHEREAS, on 4/18/2013, the Town Clerk of the Town of Cary certified the sufficiency of said Petition, the same being duly made after investigation; and
WHEREAS, on 4/18/2013, the Town Council of the Town of Cary ordered a public hearing on the question of said annexation and Notice of a Public Hearing was published in the newspaper of general circulation as required by law; and
WHEREAS, the matter came for public hearing before the Town Council of the Town of Cary on 5/23/2013 at which time all persons opposed and all persons in favor of said annexation were allowed to be heard; and
WHEREAS, the Petition above mentioned meets all the requirements of G.S. 160A-31.
NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Cary, North Carolina that:

Section 1. The area described in the petition and depicted on the map (which is on file in the Planning Department), is hereby annexed to and made a part of the Town of Cary, effective on 7/25/2013 with a condition that the property owner connect to the Town of Cary sewer/water line based upon the Town’s policy(ies) in place on the effective date of this ordinance.

July 25, 2013 Minutes
Minute Book #177, Minute Book Page 83
LEGAL DESCRIPTION
Beginning at a new iron pipe on the western right of way of Pittard Sears Road (SR 1732) (50 Public R/W), said pipe being North 30°09’05” West 38,867.40 feet from NCGS Survey Monument “A Earl Smith”, said monument having NC grid coordinates (NAD 83 – 2011) of North=727,659.310, East=2,043,744.810, thence from said Beginning point leaving said right of way North 80°15’33” West 1045.74 feet to an existing iron pipe, thence North 10°30’18” East 42.56 feet to an existing iron pipe, thence North 09°50’05” East 1,247.19 feet to a new iron pipe on the southern right of way of O’Kelly Chapel Road (SR 1731), thence with said right of way North 80°17’28” East 41.22 feet to a point, thence North 79°40’30” East 50.91 feet to a point, thence North 79°08’11” East 50.04 feet to a point, thence North 77°59’33” East 50.64 feet to a point, thence North 79°06’50” East 49.82 feet to a point, thence North 79°23’14” East 49.32 feet to a point, thence North 80°34’27” East 49.18 feet to a point, thence North 82°43’02” East 48.29 feet to a point, thence North 85°23’31” East 48.00 feet to a point, thence North 88°38’18” East 47.58 feet to a point, thence South 88°10’04” East 47.73 feet to a point, thence South 84°49’49” East 48.25 feet to a point, thence South 81°40’51” East 48.03 feet to a point, thence South 79°17’01” East 47.36 feet to a point, thence South 77°09’13” East 48.87 feet to a point, thence South 75°08’13” East 49.99 feet to a point, thence South 73°27’05” East 49.60 feet to a point, thence South 72°56’17” East 128.58 feet to an existing iron pipe, thence leaving said right of way South 02°50’03” West 501.31 feet to an existing iron pipe, thence South 02°40’24” West 40.98 feet to an existing iron pipe on the western right of way of Pittard Sears Road (SR 1732) (50 Public R/W), thence with said right of way along a curve to the left having a radius of 597.96 feet, an arc length of 92.83 feet, and a chord bearing and distance of South 11°13’34” West 92.74 feet to a new iron pipe, thence South 06°46’44” West 513.84 feet to a new iron pipe, thence along a curve to the left having a radius of 2,889.61 feet, an arc length of 247.08 feet, and a chord bearing and distance of South 04°19’45” West 247.01 feet to a new iron pipe, thence South 01°52’47” West 34.17 feet to the point and place of Beginning containing 32.055 acres more or less according to the map by Withers & Ravenel entitled “External Boundary Survey for Epcon Communities Carolinas, L.L.C. of Ellis Property” dated March 28, 2013.

Section 2. That from and after the effective date of this ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Cary, and shall be entitled to the same privileges and benefits as other parts of the municipality. Said annexed territory shall be subjected to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the Town of Cary shall cause an accurate map of the newly annexed territory together with a copy of this ordinance, duly certified, to be recorded in the Office of the Register of Deeds of Wake County and in the Office of the Secretary of State of North Carolina.

Section 4. Pursuant of G.S. 160A-22, the Town Clerk is directed to update the Official Town Map by drawing in the territory annexed, or setting out the boundaries in a written description, or showing the current Town boundaries by a combination of these techniques. Such a map shall also be delivered to the Wake County Board of Elections as required by G.S. 163-288.1.

Section 5. Pursuant of G.S. 160A-23, the boundaries of Electoral District A are hereby revised to account for and include the territory annexed, and the Official Town Map of Electoral Wards is hereby amended to include the annexed territory in the said Electoral District.

ACTION:
Motion: Bush moved to approve the consent agenda.
Second: Adcock
Vote: Unanimous

(2) Rezoning 13-REZ-01
Location: Southwest corner of Pittard Sears Road and O’Kelly Chapel Road intersection

July 25, 2013 Minutes
Minute Book #177, Minute Book Page 84
Current Zoning: Chatham County R1
Proposed Zoning: Transitional Residential Conditional Use (TR-CU)
Conditions offered by the applicant include limiting density to 2.9 du/ac and limiting use to single-family-detached age-restricted housing
Planning & Zoning Board Recommendation: Unanimously recommended approval
Proposed Council Action: Council may take action
Speaker: Ms. Debra Grannan

Changes Since the Town Council Public Hearing: Language for the proposed zoning condition regarding age-restricted housing was clarified to ensure enforceability.

Planning and Zoning Board Meeting (June 17, 2013): Staff presented an overview of the case and described the zoning conditions offered by the applicant to limit the use to single-family, detached, age-restricted homes with a density limit of 2.9 dwelling units per acre. The applicant’s representative noted that the request did not exceed the density cap of four (4) dwelling units per acre established by the Chatham-Cary Joint Land Use Plan. The board verified that the language regarding age-restricted housing was acceptable. Staff confirmed that the condition had been vetted and was enforceable. Several board members noted that the proposed use provided good transitions. The Planning and Zoning Board forwarded the case to Town Council with a recommendation for approval by a vote of 9-0.

ORDINANCE 0-2013-22
13-REZ-01 Ellis Property at Pittard Sears Road
AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE TOWN OF CARY TO CHANGE THE ZONING OF APPROXIMATELY 31.63 ACRES OWNED BY COUSSIT PENNIE ELLIS, ET AL., PEGGY ELLIS BUCKINGHAM AND SCOTT WHEELER ELLIS, BY REZONING FROM CHATHAM COUNTY R-1 TO TRANSITIONAL RESIDENTIAL CONDTIONAL USE AND TO APPLY THE WATERSHED PROTECTION OVERLAY DISTRICT (JORDAN LAKE SUB-DISTRICT).

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

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

<table>
<thead>
<tr>
<th>Property Owner(s)</th>
<th>County Parcel Number(s) (10-digit)</th>
<th>Real Estate ID(s)</th>
<th>Deeded Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peggy Ellis Buckingham, Scott Wheeler Ellis and Coussit Pennie Ellis Et AL. 1120 Cheryl Lane Wilmington, NC 28405</td>
<td>Portion 0726327074</td>
<td>Portion 19946</td>
<td>31.63 ±</td>
</tr>
<tr>
<td>Total Area</td>
<td></td>
<td></td>
<td>31.63 ±</td>
</tr>
</tbody>
</table>

Section 2: That this Property is rezoned from Chatham County R-1 to Transitional Residential Conditional Use (TR-CU) and to the Watershed Protection Overlay District (Jordan Lake sub-district) subject to the individualized development conditions set forth herein, if any, and to all the requirements of the Cary Land Development Ordinance (LDO) and other applicable laws, standards, policies and guidelines, all of which shall constitute the zoning regulations for the approved district and are binding on the Property.

Section 3: That the conditions proposed by the applicant to address conformance of the development and use of the Property to ordinances and officially adopted plans, to address impacts reasonably expected to be generated by the rezoning, and to promote the public health, safety and general welfare, and accepted and approved by the Town are:
1. The use shall be limited to single-family age-restricted housing. Prior to The Town of Cary approving the first subdivision plat for recordation within the proposed development, the property owner shall provide certification from an attorney licensed in the state of North Carolina that restrictive covenants are recorded with the Chatham County Register of Deeds subjecting the whole of the development to an age restriction requirement such that at least eighty percent (80%) of all occupied units shall have as a resident at least one person age 55 or older. Such restrictive covenants shall comply with all federal and state laws including the Fair Housing Act.

2. Density shall be limited to 2.9 dwelling units per acre.

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

Adopted and effective: July 25, 2013

ACTION:
Motion: Bush moved to approve the consent agenda.
Second: Adcock
Vote: Unanimous

(3) Comprehensive Plan Consistency
Subject: In accordance with N.C.G.S. 160A-383, Town Council will approve a statement of consistency and reasonableness for Rezoning 13-REZ-01.

Proposed Council Action: Council may take action (Option A if council approves the rezoning; Option B if council denies the rezoning)
Speaker: Ms. Debra Grannan

Option A (recommended if rezoning 13-REZ-01 is approved):

CONSISTENCY AND REASONABLENESS STATEMENT
13-REZ-01 - Ellis Property at Pittard Sears Road

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: Rezoning 13-REZ-01 is consistent with the Comprehensive Plan.

Section 2: Based upon information presented at the public hearings and by the applicant, and based upon the recommendations and detailed information developed by staff and/or the Planning & Zoning Board contained in the staff report, and considering the criteria of Section 3.4.1(E) of the Town of Cary Land Development Ordinance, rezoning 13-REZ-01 is reasonable and in the public interest.

ACTION:
Motion: Bush moved to approve the consent agenda.
Second: Adcock
Vote: Unanimous

(The motion approves Option A.)

b. Stormwater Master Plan
Subject: Consideration of adoption of the stormwater master plan.
Planning & Zoning Board Recommendation: Unanimously recommended approval
Proposed Council Action: Council may take action
Speaker: Mr. Dan Clinton

July 25, 2013 Minutes
Minute Book #177, Minute Book Page 86
Executive Summary: Since July of 2011, Town Staff has been working on developing a Stormwater Master Plan. Two public hearings were held with no public comments received. The Planning and Zoning Board unanimously recommended forwarding the plan to Town Council for final action. Staff recommends adoption of the Stormwater Master Plan to serve as a guide for future stormwater planning and decision making.

Background: The Stormwater Master Plan process was initiated in July 2011 with the hiring of the Engineering consultant team of Michael Baker Engineering and Kimley-Horn and Associates. The purpose of the master plan is to 1) explore the history of the Stormwater Management Program for the Town of Cary, 2) assess the Programs’ current condition in light of the state of the practice, its peers and the regulatory environment, and 3) propose a framework for Stormwater Management for the next 10 to 20 years.

Discussion: The Master Plan is divided into the following chapters:

- Introduction and Background
- Town of Cary Stormwater Program
- Water Quantity
- Water Quality
- Findings and Opportunities
- Economic Analysis, Enhancement Summary and Funding Opportunities
- BMP Toolbox

The development of the Master plan included a public community meeting held on January 17, 2012. Draft review was conducted by key members of Town Staff representing all departments which interact with stormwater. Staff presented the draft Stormwater Master Plan at a Town Council Work Session on December 11, 2012 and to the Environmental Advisory Board (EAB) on January 15, 2013. The draft document has been edited in response to comments. Edits were focused around the BMP Toolbox and the ratings related to public acceptance of BMPs.

Two public hearings were held for the master plan. The first was held at the May 9, 2013 Town Council meeting. No comments were received from the public or Town Council during this public hearing. The second public hearing was during the June 17, 2013 Planning and Zoning Board meeting. No public comments were made during the public hearing. The board had one question related to references used to generate the plan. The board unanimously recommended forwarding the plan to Town Council for approval at their July 25, 2013 council meeting.

Fiscal Impact: There are no operating or capital impacts associated with this staff report. The Stormwater Master Plan is a long-range planning document. Fiscal impacts are tied to annual budget-year decisions. Projects or policy changes with fiscal impact will come to Town Council for future decision making.

Staff Recommendation: Staff recommends adoption of the Stormwater Master Plan to serve as a guide for future stormwater planning and decision making.

ACTION:
Motion: Bush moved to approve the consent agenda.
Second: Adcock
Vote: Unanimous

3. Operations Committee, July 3, 2013 (any committee consent agenda item pulled for discussion will be discussed at the end of the committee discussion portion of the agenda, which is item H on this agenda) (Council Member Smith)
a. **Affordable Housing Accounting Changes (FN14-01)**

Committee unanimously recommended moving affordable housing projects from General Fund operations to the General Government Capital Project Fund as of the date of Council action and granting the Town Manager or his designee authority to move funds within the affordable housing projects.

**Executive Summary:** To improve internal controls in accounting for non-grant related affordable housing projects, a change in accounting and budget is recommended to move certain activity from General Fund operations to the General Government Capital Project Fund.

**Discussion:** Currently all affordable housing projects that are funded with General Fund revenues are managed within operational accounts in the General Fund. Using the General Government Capital Project Fund to manage more of the affordable housing projects would improve internal controls and financial management through improved inquiry and reporting capabilities. Certain operational expenses related to affordable housing should continue to be managed within the General Fund.

Three affordable housing initiatives, 1) general and downtown rehabilitation, 2) façade improvements and 3) the Jones House rehabilitation can be better controlled as capital projects because the activity crosses fiscal years. Also, affordable housing program resources include a specific amount of budgeted, but unallocated, funding, and unrestricted fund balance that has been utilized in the past for special affordable housing related projects. These unallocated resources could also be better controlled in the capital budget.

It would also enhance the efficiency of affordable housing program management if the Town Manager was granted authority to move funds between affordable housing projects without additional council approval. This authority would not permit any additional resources to be appropriated to affordable housing programs, and any additional funds required will continue to be requested through either the annual budget or through specific Council action.

**Fiscal Impact:** There is no financial impact because the recommended accounting changes are totally administrative in nature. The following is a summary of the funding to be transferred as of the date of this staff report:

<table>
<thead>
<tr>
<th>Affordable Housing Project</th>
<th>Budget/ Funding</th>
<th>Expense to Date</th>
<th>Budget to be Moved</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing Rehabilitation</td>
<td>903,398</td>
<td>(674,042)</td>
<td>229,356</td>
</tr>
<tr>
<td>Downtown Façade</td>
<td>100,725</td>
<td>(44,284)</td>
<td>56,441</td>
</tr>
<tr>
<td>Jones House Historic Rehabilitation</td>
<td>225,000</td>
<td>---</td>
<td>225,000</td>
</tr>
<tr>
<td>Assigned resources for affordable housing</td>
<td>116,563</td>
<td>---</td>
<td>116,563</td>
</tr>
<tr>
<td>Assigned affordable housing fund balance</td>
<td>50,000</td>
<td>---</td>
<td>50,000</td>
</tr>
<tr>
<td>Total</td>
<td>1,395,686</td>
<td>(718,326)</td>
<td>677,360</td>
</tr>
</tbody>
</table>

These projects and programs remain active through the time of the preparation of this staff report and final Council action. Council action is requested to move the purposes at the current financial activity level as of the date of Council action.

**Staff Recommendation:**

1. Staff recommends moving funds for the listed purposes from General Fund operations to the General Government Capital Project Fund. If financial activity occurs between the date of this report and the date of approval, staff recommends that Council authorize a transfer for funds remaining as of the date of Council action.

2. Staff recommends that Council grant the Town Manager or his designee authority to move funds within the affordable housing projects.
ACTION:
Motion: Bush moved to approve the consent agenda.
Second: Adcock
Vote: Unanimous

b. Justice Assistance Grant Funding (PD14-001)

Committee unanimously recommended recognizing $10,832 in federal grant revenue awarded by the Department of Justice to the General Fund Justice Assistance revenue account, and appropriating $10,832 to the Police small equipment account for the purchase of the light bars.

Executive Summary: Staff requests the Cary Town Council recognize $10,832 in federal grant funds revenue into the General Fund as awarded by the Department of Justice to the General Fund Justice Assistance revenue account. This funding is awarded to agencies to assist in paying for programs, equipment and supplementing crime fighting strategies. Staff recommends grant funding of $10,832 be recognized and appropriated to the Police Department’s small equipment account for the purchase of four LED light bars for police cars.

Background: In FY 2009 the police department received funding in the budget to replace twelve outdated light bars on police vehicles in our fleet. This was the start of a light bar replacement program intended to replace older light bars in future fiscal year budgets as equipment ages out. With the awarding of JAG grant funding we have been able to continue this program each year. In July of 2009, staff report PD10-001 was approved by Cary Town Council which authorized $18,185 in JAG grant awards for the purchase of eight additional new light bars. In July of 2010, staff report PD11-003 was approved by Cary Town Council which authorized $15,831 in JAG grant awards for the purchase of seven additional light bars. In November of 2011, staff report PD12-007 was approved by Cary Town Council which authorized $13,367 in JAG grant awards for the purchase of five additional light bars. In June of 2012, staff report PD12-017 was approved by Cary Town Council which authorized $10,802 in JAG grant awards for the purchase of four additional light bars. So far, we have replaced 36 of 67 light bars on police vehicles identified in the replacement plan.

Discussion: The Town of Cary has received notification that it is the recipient of additional Justice Assistance Grant funding in the amount of $10,832 as part of the FY 2013 federal budget year. This federal award is administered by the Office of Justice Programs and is specifically for the purchase of police equipment or supplementing personnel cost for programs supported and defined by the Department of Justice. There are no matching funds required of the Town of Cary for this grant.

The Town of Cary Police Department proposes to use $10,832 in allocated JAG funding to purchase four new LED light bars for our existing fleet. Funding will be used to continue upgrading our current light bar systems to enhance safety and allow for more efficient operation of police related equipment installed in cars.

Fiscal Impact: This grant requires no matching funding and is paid through reimbursement for expenses incurred.

Staff Recommendation: Staff recommends that the Cary Town Council approve the following actions to authorize the police related expenditures in the amount of $10,832.

1.) Recognize $10,832 in federal grant revenue into the General Fund as awarded by the Department of Justice to the General Fund Justice Assistance revenue account.
2.) Appropriate $10,832 of grant funding to the Police Department’s small equipment account 010-5110-522-3370 (for the purchase of the light bars).
c. Adjust WT1206, Air Release Valves for 42-inch Finished Water Line Project, Budget to Include Reimbursement from the Town of Apex (PWUT14-01)

Committee unanimously recommended reducing Town of Cary appropriations to WT1206 by $40,250 from $175,000 to $134,750, with $40,250 to be returned to unrestricted utility capital reserve fund balance. Committee further recommended appropriating $40,250 in anticipated reimbursements from the Town of Apex to WT1206 as this is a Cary/Apex Water Treatment Plant project and is subject to the related cost sharing agreement.

Executive Summary: This staff report requests that Council reduce Town appropriations to the WT1206 - Air Release Valves for 42-inch Finished Water Line by $40,250 to incorporate the Town of Apex’s contribution to this water treatment plant related project. These adjustments will not change the total amount budgeted for this project. Rather, they serve to align project funds with the 77% Town of Cary / 23% Town of Apex cost sharing arrangement for water treatment plant related projects.

Background: $175,000 is currently appropriated to the WT1206 - Air Release Valves for 42-inch Finished Water Line project. This entire amount consists of Town of Cary unrestricted utility capital reserve funding appropriated as part of the FY 2013 Capital Improvements Budget. WT1206 provides for the replacement of existing two-inch air release valves located on the Jenks Road 42-inch finished water transmission line that connects the Cary/Apex Water Treatment Plant with Cary’s water distribution system. This work is associated with the operations of the Cary/Apex Water Treatment Plant and as such, should be funded at the 77% Town of Cary / 23% Town of Apex cost share rate for projects associated with this facility.

Fiscal Impact:
Operating: There are no operating impacts associated with recommendations contained in this staff report.
Funding: No additional funds are being requested for this project. Staff requests that Council approve the reduction of Town of Cary contributions to WT1206 by $40,250 to $134,750 and the appropriation of $40,250 in anticipated reimbursements from the Town of Apex (See Table 1). The Town of Apex is aware of this funding adjustment and is anticipating reimbursement requests from the Town of Cary as the project progresses.

Table 1: Summary of Cost Shares

<table>
<thead>
<tr>
<th></th>
<th>FY 2013 Adopted</th>
<th>Adjusted</th>
<th>% Share of Adjusted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Town of Cary</td>
<td>175,000</td>
<td>134,750</td>
<td>77%</td>
</tr>
<tr>
<td>Town of Apex</td>
<td>-</td>
<td>40,250</td>
<td>23%</td>
</tr>
<tr>
<td>Totals</td>
<td>175,000</td>
<td>175,000</td>
<td>100%</td>
</tr>
</tbody>
</table>

The $40,250 in unrestricted utility capital reserve funding being removed from the project will return to utility capital reserve fund balance where it will become available for future utility project needs.

Staff Recommendation: Staff recommends that Council:
1. Reduce Town of Cary appropriations to WT1206 by $40,250 from $175,000 to $134,750. $40,250 will return to unrestricted utility capital reserve fund balance.
2. Appropriate $40,250 in anticipated reimbursements from the Town of Apex to WT1206 as this is a Cary/Apex Water Treatment Plant project and is subject to the related cost sharing agreement.

**ACTION:**
Motion: Bush moved to approve the consent agenda.
Second: Adcock
Vote: Unanimous

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**d. Declaration of Appropriate Speed Limit on Morrisville Parkway by NCDOT (EN14-001)**

Committee unanimously recommended recognizing NCDOT’s decision on the appropriate speed limit on Morrisville Parkway between Davis Drive and NC 55. NCDOT has reviewed the section of road in question and intends to maintain the current 45 mph speed limit (exclusive of the school speed zone limit) on the section of Morrisville Parkway between Davis Drive and NC 55.

**Executive Summary:** Based on a Council initiated request at the December 13, 2012 meeting, Council directed staff to prepare a report for a future meeting on the speed limit on Cary’s portion of Morrisville Parkway. Since Morrisville Parkway is a state maintained facility, Town staff asked NCDOT to consider recent changes to the area and make a final decision for an appropriate speed limit. NCDOT has reviewed the section of road in question and intends to maintain the current 45 mph speed limit (exclusive of the school speed zone limit) on the section of Morrisville Parkway between Davis Drive and NC 55.

**Background:** In May, 2011, due to the recent completion of the section of Morrisville Parkway between Davis Drive and Louis Stephens Drive and at the request of Town Council, a speed study was performed on Morrisville Parkway from NC 54 to NC 55. The study, which was performed by an engineering consultant, recommended retaining the 45 mph posted speed limit on all sections of Morrisville Parkway within the Town Limits. The recommendations for Morrisville Parkway were accepted by Town Council and NCDOT. The 45 mph posted speed limit was exclusive of the school speed zone posting on Morrisville Parkway for Carpenter Elementary School. This school speed zone was reduced to 25 mph, 20 mph below the posted speed limit.

In 2012, the Town of Morrisville petitioned NCDOT to consider reducing the speed limit on all sections of Morrisville Parkway within the Town of Morrisville to 35 mph. Morrisville based their request on several field conditions that they felt required a lower speed limit. There is a severe vertical constraint at the existing railroad crossing that requires drivers to slow their vehicles in effort to avoid undercarriage damage. Golf cart crossings are located along this section which introduces slow moving vehicles with unsecure cargo to the roadway. Permanent street lighting poles are located within the median and these poles represent a fixed object within the roadway that can cause potentially fatal damage to anyone who crosses the median in a crash. Morrisville has also begun expanding their pedestrian facilities along Morrisville Parkway including multi-use trails that are installed at the back of curb. In addition, an upcoming NCDOT project to separate Morrisville Parkway and the railroad tracks was also considered by NCDOT as this project will introduce a new vertical and horizontal curve design along Morrisville Parkway. The lower speed limit helps NCDOT with accommodating tight design constraints. Finally, a reduction to the 45 mph speed limit would also correspond with the 35 mph speed limit section of Morrisville Parkway that existed in the vicinity of Morrisville Elementary School. This section was posted at 35 mph due to the horizontal alignment of the road as well as landscaping berms that limited sight distance. NCDOT agreed to the reduction in speed limit in October 2012.

July 25, 2013 Minutes
Minute Book #177, Minute Book Page 91
Since the reduction of the speed limit on Morrisville Parkway within the Town of Morrisville, Town of Cary citizens have made requests to have the same reduction considered on sections of Morrisville Parkway within Town of Cary limits.

**Discussion:** Since all sections of Morrisville Parkway have been accepted for maintenance by NCDOT, the ultimate decision on the speed limit is the responsibility of NCDOT. Town staff asked NCDOT to consider recent changes to the area, including the reduction of the speed limit along the sections of Morrisville Parkway located in Morrisville, and make a final decision on an appropriate speed limit.

**Fiscal Impact:** None.

**Staff Recommendation:** NCDOT has reviewed the section of road in question and intends to maintain the current 45 mph speed limit (exclusive of the school speed zone limit) on the section of Morrisville Parkway between Davis Drive and NC 55.

**ACTION:**  
Motion: Bush moved to approve the consent agenda.  
Second: Adcock  
Vote: Unanimous

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e. **Maynard Water Storage Tank Project** (EN14-004)  
Committee unanimously recommended awarding the engineering design services and construction administration for the Maynard Water Storage Tank Project to Hazen & Sawyer in an amount up to $560,270. This award represents a preliminary determination as to the qualifications of this consulting firm and no legally binding acceptance of this award occurs until the Town of Cary has executed a written agreement.

**Executive Summary:** Staff received proposals on May 21, 2013 for engineering design services and construction administration for the Maynard Water Storage Tank Project, WT1214. Proposals were received from five firms. After extensive consideration and discussion, staff recommends selecting Hazen & Sawyer for engineering design services and construction administration for the Maynard Water Storage Tank Project in an amount up to $560,270.

**Discussion:** Constructed in 1966, the Maynard Road elevated water storage tank is located at 710 S.E. Maynard Road, a ½-acre property adjacent to multifamily and single family residential properties and across the street from Cary High School. Due to the impending need for maintenance on the Maynard tank and the anticipated need for additional storage in the Central Pressure Zone (CPZ) the Town requested proposals from qualified firms to provide Engineering Services for the evaluation of replacement/rehabilitation options as well as for the design, and construction administration of a new elevated water storage tank.

On May 21, 2013 proposals were received from five firms. As the Maynard Tank Project is in the earliest stages of conceptualization, a key component of each proposal was the preliminary evaluation of options to address replacement/rehabilitation of the tank. Each firm submitted a proposal based on the following four options:

- **Option 1**  
  Rehabilitate and continue to use the existing Maynard tank for water storage.

- **Option 2**  
  Rehabilitate the existing Maynard tank and also construct a new tank on a separate site in order to provide additional water storage. Once rehabilitated, the existing tank could continue to be used for water storage.
storage or maintained but no longer operated as part of the water system.

**Option 3**
Demolish the existing Maynard tank and construct a new tank on the existing site.

**Option 4**
Demolish the existing Maynard tank and construct a new tank on a new site.

The selected firm will compare options and prepare a technical memorandum detailing storage requirements, maintenance and operation needs, as well as present and future costs. Once the technical memorandum is complete and prior to the Town selecting a design option, a public meeting will be held in order to provide a community forum to discuss the results of the preliminary evaluation as well as gather public input.

Subsequent design and construction administration will be based on the option selected by the Town. The table shown below summarizes each firm’s proposal and the range of costs across the various options. The total cost for each option includes the preliminary evaluation as well as all design, permitting, and construction administration necessary to complete the given option.

<table>
<thead>
<tr>
<th>Firm</th>
<th>Cost Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>AECOM</td>
<td>$342,410 to $593,910</td>
</tr>
<tr>
<td>CDM</td>
<td>$328,060 to $651,170</td>
</tr>
<tr>
<td>Freese &amp; Nichols</td>
<td>$493,100 to $877,600</td>
</tr>
<tr>
<td>Hazen &amp; Sawyer</td>
<td>$193,813 to $560,270</td>
</tr>
<tr>
<td>Kimley-Horn</td>
<td>$284,440 to $445,095</td>
</tr>
</tbody>
</table>

A five-member selection committee consisting of staff from Engineering and Public Works & Utilities was assembled to evaluate the proposals and select a firm. Key factors used to evaluate the proposals included:

- Firm experience/reputation/workload
- Experience of personnel assigned to the project team
- Response to objectives outlined
- Past performance on Town projects
- Schedule
- Price proposal

While each firm’s experience with water modeling, master planning, and tank construction was significant, Hazen & Sawyer offered the best balance between cost and direct experience with the previous water storage tank installations within the Town. The Hazen & Sawyer team was involved with the design and/or construction of the last three Town elevated water tanks – Field Street, Plumtree, and Carpenter. In addition, Hazen & Sawyer is currently performing the Raleigh Interconnect Project WT1195 for the Town; one of three active Town projects that directly affects the design of the Maynard Tank Project. For these reasons the selection committee ultimately decided to recommend awarding the contract to Hazen & Sawyer.

**Fiscal Impact:** A total of $3,500,000 has been appropriated to date to the Maynard Water Storage Tank Project, Project WT1214. The existing project funds are sufficient to cover the cost in an amount not to exceed $560,270 which is the highest cost of the four options by the recommended firm and therefore this amount would cover any of the options that move forward.

**Staff Recommendation:** Staff has reviewed the proposals and recommends award to Hazen & Sawyer for engineering design services and construction administration for the Maynard Water Storage Tank Project in an amount up to $560,270. This award represents a preliminary
ACTION:
Motion: Bush moved to approve the consent agenda.
Second: Adcock
Vote: Unanimous

4. Planning and Development Committee, July 11, 2013 (any committee consent agenda item pulled for discussion will be discussed at the end of the committee discussion portion of the agenda, which is Item G on this agenda) (Council Member Frantz)

a. Withdrawal of Town-Owned Property from Neighborhood Covenants (PR14-01) Committee unanimously recommended withdrawing Town-owned land located within the Twin Lakes development, releasing it from the covenants of the development, and authorizing the Mayor to sign the withdrawal document.

Executive Summary: Park and open space property within the Twins Lake PDD that was dedicated to the Town was conveyed encumbered by covenants of the homeowners association. Staff recommends Council give consent for the Town-owned land in the Twin Lakes development to be released from the covenants of the development, and give authority to the Mayor to sign the withdrawal document.

Background: Twin Lakes was originally approved in April of 2004 as a 300-acre master-planned community focused on extensive open space, public greenways, and a mixed-use village. As part of the approval process, the developer agreed to dedicate 50+ acres of parkland and open space to the Town, including 10 acres of developable parkland, approximately 32 acres of adjacent land that includes lakes and natural buffers, and three other open space parcels.

Discussion: To date, the 10-acre formal park site and one of the three open space parcels has been conveyed to the Town. These parcels were inadvertently conveyed to the Town encumbered by the covenants of the Twin Lakes Master Association. The developer is working with the Town to record a “Withdrawal” document which will release the Town-owned land, as well as the additional land proposed to be dedicated to the Town, from the subdivision covenants. Since the Town is a current owner of some of these parcels, the Town needs to sign the withdrawal document thereby giving consent for the parcels to be released. Staff requests Council give the authority for the Mayor to sign the withdrawal document.

Town staff is currently working with the developer to convey the remaining parcels to the Town in accordance with the Twin Lakes PDD. It is anticipated that two open space parcels will be conveyed within the next month or so. Ongoing discussions regarding the 32 acres that include the lakes are being held between staff and developer to resolve remaining issues so that that acreage can also be conveyed to the Town.

Fiscal Impact: There is no fiscal impact associated with the recordation of the withdrawal document.

Staff Recommendation: Staff recommends Council give consent for the Town-owned land in the Twin Lakes development to be released from the covenants of the development, and give authority to the Mayor to sign the withdrawal document.
ACTION:
Motion: Bush moved to approve the consent agenda.
Second: Adcock
Vote: Unanimous

b. Request for Waiver of the Waiting Period for Subsequent Rezoning Application – Howell Tract (PL14-001)
Committee unanimously recommended approving a request for a waiver of the one-year waiting period for a subsequent rezoning application for the Howell Tract. In accordance with the LDO, a supermajority vote of council is needed to grant the request.

Executive Summary: The Howell Tract was the subject of rezoning case 12-REZ-12 that was withdrawn by the applicant, LStar Management, LLC, on January 24, 2013. LStar has requested a waiver of the one-year waiting period for submittal of a subsequent rezoning application for the same property. In comparison to the previously withdrawn rezoning request, the current proposal consists of larger minimum lot sizes and a reduction in the maximum number of proposed lots. Based on these differences, staff recommends waiving the one-year waiting period for a subsequent rezoning application.

Discussion: As required by Section 3.4.1(G) of the Land Development Ordinance (LDO), LStar Management has requested a waiver of the one-year waiting period for a subsequent rezoning application for property that was the subject of a withdrawn rezoning case (12-REZ-12). The property consists of approximately 14.66 acres, located at 1403 and 1401 Davis Drive and 5900 Farm Pond Road.

Public hearings on case 12-REZ-12, a conditional use rezoning, were held on September 27, 2012 (at Town Council) and December 17, 2012 (at the Planning and Zoning Board). During the hearings, neighboring property owners expressed several concerns with the rezoning request including the proposed density of development and minimum lot size. At the Town Council meeting on January 24, 2013, several members of the council expressed concerns with the proposed request. Based on council’s discussion, the applicant then withdrew the associated request for annexation. This had the effect of removing the rezoning case from consideration as well. Since then, the applicant has developed new conditions in an effort to address the concerns.

Based on the above referenced request for a waiver of the one-year waiting period, there are several key differences between the applicant’s proposal and the previously considered rezoning request. These changes are summarized as follows:

<table>
<thead>
<tr>
<th>Proposed Zoning</th>
<th>Previous Rezoning Request</th>
<th>Current Proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Unit Type</td>
<td>TR-CU</td>
<td>R-8-CU</td>
</tr>
<tr>
<td>Max. Number of Units</td>
<td>43</td>
<td>28</td>
</tr>
<tr>
<td>Minimum Lot Size</td>
<td>7,250 Sq. Ft.</td>
<td>8,000 Sq. Ft.</td>
</tr>
<tr>
<td>Lot Size abutting Farm Pond Road</td>
<td>8,000 Sq. Ft.</td>
<td>20,000 Sq. Ft.</td>
</tr>
</tbody>
</table>

Fiscal Impact: None

Staff Recommendation: Based on the differences described above between the previously withdrawn rezoning request and the current proposal, staff supports this request for a waiver of
the one-year waiting period for a subsequent rezoning application for the subject property. In accordance with the LDO, a supermajority vote of council is needed to grant the request.

**ACTION:**

Motion: Bush moved to approve the consent agenda.
Second: Adcock
Vote: Unanimous

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

N/A

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

Mr. Ian Henshaw updated council on Cary’s Code for America Brigade, which formed in May 2013 as a result of the former technology task force. He stated this organization’s purpose is to improve the relationship between citizens and government, create low risk settings for innovation, engage citizens to create better services and support ongoing competition in the govtech marketplace. He stated the Cary Brigade wants to provide a visualization of the development underway. He stated they received commercial permit data files on May 24, which contained nine different files. He stated the files did not include geo-coding information, so the Brigade geo-coded all 79,000 locations and provided that information to the Town so they could update their records. Henshaw stated the Cary Chamber allows them to use their facility for meetings, and Council Member Bush is their municipal sponsor. He requested the Town allow a staff member to be their municipal sponsor.

Ms. Glenda Toppe stated she and others are present to answer any questions pertaining to the Lewter Shop Road on tonight’s agenda.

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**E. REGULAR PUBLIC HEARINGS**

1. **Arrington Woods**
   
a. **Rezoning 12-REZ-28**
   
   **Location:** 906 Kildaire Farm Road and 111 W. Cornwall Road
   
   **Current Zoning:** Residential 12 (R-12) and Office & Institutional Conditional Use (OICU)
   
   **Proposed Zoning:** Mixed Use (MXD), including Preliminary Development Plan for development of up to 72 age-restricted multi-family dwelling units
   
   **Planning & Zoning Board Recommendation:** Voted 6-3 to recommend approval
   
   **Proposed Council Action:** Council tabled this item at the May 23, 2013 council, and scheduled another public hearing due to changes to the request. Council may take action at this meeting.
   
   **Speaker:** Ms. Mary Beerman

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**REQUEST**

The applicant, Grounded Engineering, has requested an amendment to the Town of Cary Official Zoning Map to rezone approximately 3.18 acres located at the southwest corner of the Kildaire Farm Road and W. Cornwall Road intersection from Office and Institutional Conditional Use (OICU) to Mixed Use (MXD), including Preliminary Development Plan for development of up to 72 age-restricted multi-family dwelling units.

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July 25, 2013 Minutes
Minute Book #177, Minute Book Page 96
CU) and Residential 12 (R-12) to Mixed Use District (MXD) subject to conditions specified on an associated Preliminary Development Plan (PDP). The PDP proposes development of up to 72 age-restricted multi-family residential units.

### SUBJECT PARCELS

<table>
<thead>
<tr>
<th>Property Owner(s)</th>
<th>County Parcel Number(s) (10-digit)</th>
<th>Real Estate ID(s)</th>
<th>Deeded Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>William E. &amp; Sue R. Stevens</td>
<td>0763463987</td>
<td>0067712</td>
<td>1.78</td>
</tr>
<tr>
<td>Billie A. Lang &amp; Faye A. Dellinger</td>
<td>0763466922</td>
<td>0023234</td>
<td>1.40</td>
</tr>
<tr>
<td><strong>Total Acreage</strong></td>
<td></td>
<td></td>
<td><strong>3.18</strong></td>
</tr>
</tbody>
</table>

### BACKGROUND INFORMATION

<table>
<thead>
<tr>
<th>Applicant/Agent</th>
<th>Sean Dolle, Grounded Engineering.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acreage</td>
<td>3.18</td>
</tr>
<tr>
<td>General Location</td>
<td>(906 Kildaire Farm Road and 111 W. Cornwall Road)</td>
</tr>
<tr>
<td>Schedule</td>
<td></td>
</tr>
<tr>
<td>Planning &amp; Zoning Board Public Hearing</td>
<td>April 15, 2013</td>
</tr>
<tr>
<td>Town Council Public Hearing</td>
<td>May 23, 2013</td>
</tr>
<tr>
<td>Land Use Plan Designations</td>
<td>111 W. Cornwall Rd: High Density Residential (HDR); 906 Kildaire Farm Rd: Low Density Residential (LDR); Both parcels are within the Mayfair Community Mixed Use Center</td>
</tr>
<tr>
<td>Existing Zoning Districts</td>
<td>111 W. Cornwall Rd: Office &amp; Institutional Conditional Use (OI-CU); 906 Kildaire Farm Rd: Residential 12 (R-12)</td>
</tr>
<tr>
<td>Existing Overlay Districts</td>
<td>Mixed Use Overlay District (MUOD); Watershed Overlay District; Swift Creek sub-area</td>
</tr>
<tr>
<td>Existing Zoning Conditions</td>
<td>1. Maximum of 40-foot height from existing Cornwall Road grade level. 2. Driveways to be located as part of the site development process.</td>
</tr>
<tr>
<td>Proposed Zoning District</td>
<td>Mixed Use (MXD)</td>
</tr>
<tr>
<td>Proposed Zoning Conditions</td>
<td>Included on the Preliminary Development Plan (maintained in the planning department according to the Records Retention and Disposition Schedule).</td>
</tr>
<tr>
<td>Corporate Limits</td>
<td>Yes</td>
</tr>
<tr>
<td>Valid Protest Petition</td>
<td>To be determined prior to the public hearing.</td>
</tr>
</tbody>
</table>
| Staff Contact                         | Mary Beerman, AICP  
|                                        | (919) 469-4342  
|                                        | mary.beerman@townofcary.org |

### PROJECT SUMMARY

Since the subject property is located in the Mixed Use Overlay District, the requested zoning district is Mixed Use (MXD), which requires a Preliminary Development Plan (PDP) as a component of the request.
The proposed rezoning would allow development of up to 72 age-restricted multi-family units at the southwest corner of the intersection of Kildaire Farm Road and W. Cornwall Road. The following statement is included on the preliminary development plan regarding this restriction: “Prior to application for a building permit the property owner shall provide certification from an attorney licensed in the state of North Carolina that restrictive covenants are recorded with the Wake County Register of Deeds subjecting the whole of the development to an age restriction requirement such that at least eighty percent (80%) of all occupied units shall be occupied by at least one person 55 or older. Such restrictive covenants shall comply with all federal and state laws including the Fair Housing Act”.

SUMMARY OF PROCESS AND ACTIONS TO DATE

**Neighborhood Meeting:** According to meeting minutes provided by the applicant, a neighborhood meeting held on November 1, 2012 was attended by four area residents. Questions and concerns expressed at the meeting related to the number of units, the target market, and architectural standards.

**Notification – April 15, 2013 Planning and Zoning Board Public Hearing:** On April 2, 2013, the Planning Department mailed notification of a public hearing on the rezoning request to property owners within 400 feet of the subject property. Notification consistent with General Statutes was published in the Cary News on April 3 and 10, 2013. Notice of the public hearing was posted on the property on April 3, 2013.

**Notification – May 23, 2013 Town Council Public Hearing:** On May 7, 2013, the Planning Department mailed notification of a public hearing on the rezoning request to property owners within 400 feet of the subject property. Notification consistent with General Statutes was published in the Cary News on May 8 and 15, 2013. Notice of the public hearing was posted on the property on May 8, 2013.

**Planning and Zoning Board Public Hearing (April 15, 2013):** There were no speakers at the public hearing other than the applicant. There were questions and concerns raised by board members regarding the requested streetscape and parking reductions. The board recommended approval of the request by a vote of 8-1.

**Changes After the Planning and Zoning Board Public Hearing:** The cover sheet of the PDP was revised to modify wording related to the age-restriction condition, and to request that a portion of the perimeter buffer (between the proposed stormwater pond and the adjacent non-residential parking lot to the west) be reduced to 10 feet, as illustrated on the Preliminary Development Plan.

**Town Council Public Hearing (May 23, 2013):** One speaker expressed concern with the requested parking reduction and noted that cars associated with Glenaire were often parked along W. Cornwall Road. Council members also expressed concern with the requested parking reduction and noted that additional parking had been requested by Waltonwood. Staff clarified that Waltonwood was an assisted living facility, rather than independent age-restricted multifamily units, and the parking needs for Waltonwood were affected by employee parking needed during shift changes. Assurance of a quality building design and façade was also raised as a concern. The request was tabled to a future meeting to provide an opportunity for the applicant to consider the comments and discussion at the public hearing and proposed additional zoning conditions.

**Changes Since the Town Council Public Hearing:** The applicant has added conceptual building elevations and carport elevations to the preliminary development plan illustrating the following Architectural Control Notes specified in the PDP:

**ARCHITECTURAL CONTROL NOTES:** The primary residential building on the site shall be constructed of at least 45% brick materials, not including area covered by doors and windows. The remaining siding areas will be fiber-cement siding and trim. Architectural accent features shall consist of fiber-cement simulated board-and-batten or cedar shake shingle siding in the gable ends and accent walls. The building shall be painted in colors consistent with the Craftsman Style.
All building roofs shall be clad in asphalt shingles. Main roofs on all buildings shall have symmetrical gables or hips with a minimum roof pitch of 5:12. Overhanging eaves shall be a minimum of 1'-0" from the face of the building with gutter. Copper colored metal roof may be optionally utilized as an accent feature.

The primary residential building on the site shall contain windows which face the public streets and any large expanses of uninterrupted walls will be avoided through the introduction of articulated façades and/or specially designed architectural elements. The major building materials on all sides of the building shall be the same. Long planes of the building will be broken up through the use of projected porches/balconies or building planes that project such that no un-articulated wall plane greater than 32'-0" of horizontal length exists.

The included elevations are examples of the architectural concept for the Site and intended to portray the basic character of the all elevations of the building. Accessory structures such as optional carports shall share materials and be articulated in character with the primary residential building.

No building located on the Site shall exceed 45 feet in height (measured from average grade to mean elevation between eave and ridge) or contain more than three stories.

### SITE CHARACTERISTICS

**Floodplain and Streams:** According to Cary's current GIS maps there are no streams or floodplains on the subject property. Field determination will be required at the time of site plan review.

**Streams:** According to Cary's current GIS maps there are no wetlands on the subject property. Field determination will be required at the time of site plan review.

**Adjacent Zoning and Land Use:**
- **North:** Office & Institutional Conditional Use (OI-CU); Glenaire Retirement Community
- **South:** General Commercial (GC) and General Commercial Conditional Use (GC-CU); Mayfair Plaza Shopping Center
- **East:** Office & Institutional (OI); office (opposite side of Kildaire Farm Road)
- **West:** Residential Multi-Family – Conforming (RMF-C) and General Commercial Conditional Use (GC-CU); Cornwall Village and shopping center parking lot

### CONSISTENCY WITH LAND DEVELOPMENT ORDINANCE

The review of a Preliminary Development Plan (PDP) associated with a MXD rezoning request is addressed as follows in the LDO:

**Mixed Use Zoning District (MXD) Provisions** (per LDO Section 4.5.2(D))
- **Land Uses:** Uses are allowed in accordance with Chapter 5 of the LDO for the specific type of activity center (Community Activity Center, in this case).
- **Dimensional Standards:** Dimensional standards are as stated on the approved PDP.
- **Overlay Districts and Use Regulations** (LDO Chapters 4 and 5): Unless otherwise waived or modified by the PDP, the development must meet applicable overlay district regulations (LDO Chapter 4) and use regulations (LDO Chapter 5), General Development and Design Standards (LDO Chapter 7).
- Requirements related to urban transition buffers, stormwater control, and nitrogen reduction may not be waived or modified. (See Section below entitled “Regulations Proposed to be Waived or Modified by the Preliminary Development Plan”)

**Mixed Use Overlay District (MUOD) Provisions** (per LDO Sections 4.4.2(F) and (G))
- **Buffer Widths:** Buffer widths may not exceed the requirements of the LDO based on adjacent uses, and in no case may exceed 65 feet in width.
Connectivity: The road network must ensure that adjacent residential areas will have direct access to the non-residential portions of the activity center. In addition, residential and non-residential uses within the development must be connected in accordance with townwide design guidelines.

1. **LAND USE**
   Maximum of seventy-two (72) age-restricted multi-family units, with a minimum of 2/3 of the units having one bedroom and a maximum of 1/3 having 2 bedrooms.

2. **DIMENSIONAL STANDARDS**

<table>
<thead>
<tr>
<th>Minimum Building Setbacks</th>
<th>20’ from all streets and property lines (except where greater width required by perimeter buffer)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum Building Height</td>
<td>36’</td>
</tr>
</tbody>
</table>

3. **PERIMETER BUFFERS**

<table>
<thead>
<tr>
<th>LOCATION</th>
<th>LDO STANDARD</th>
<th>PROPOSED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Between subject property and shopping center to south</td>
<td>40’ Type B</td>
<td>Reduction to 10’</td>
</tr>
<tr>
<td>Between subject property and residential use to west</td>
<td>20’ Type A</td>
<td>Per LDO</td>
</tr>
</tbody>
</table>

4. **STREETSCAPE BUFFER**

<table>
<thead>
<tr>
<th>FRONTAGE</th>
<th>LDO STANDARD</th>
<th>PROPOSED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kildaire Farm Road</td>
<td>50’ Type A</td>
<td>30’ Type A</td>
</tr>
<tr>
<td>E. Cornwall Road</td>
<td>30’ Type A</td>
<td>20’ Opaque</td>
</tr>
</tbody>
</table>

5. **TRAFFIC:** Since this rezoning case was filed prior to the repeal of LDO Section 3.23 Adequate Public Facilities for Roads, effective March 1, 2013, the rezoning was evaluated under that ordinance for traffic study requirements. The existing zoning on the property of O&I-CU and R-12, allows uses with a trip generation potential much higher than the proposed 72-unit senior apartments. The LDO states that whenever a property is being rezoned to a less intensive trip generation zoning district, a traffic study is not required at the time of the rezoning application. For informational purposes, the ITE Trip Generation Manual Land Use Code 252, Senior Adult Housing – Attached was referenced to determine that 72 senior apartments would generate 10 am and 12 pm peak hour trips.

6. **STORMWATER:** At the time of site plan review, the future plan must meet all stormwater management and detention requirements. Peak flow from the one-, two-, five- and 10-year storm events must be determined and must be attenuated back to pre-development conditions from the discharge point leaving the development.

---

**REGULATIONS PROPOSED TO BE WAIVED OR MODIFIED BY THE PRELIMINARY DEVELOPMENT PLAN**

Per Section 4.5.2(D)

Listed below are modifications to standards proposed by the applicant. The applicant’s justification and staff’s observation is provided for each. These waivers or modifications are listed for the purpose of understanding the details of the proposed PDP. Because the proposed standards represent zoning conditions voluntarily offered by the applicant, the Planning and Zoning Board recommendation and Town Council action is limited to approval or denial of the requested rezoning application as a whole. While individual waivers and modifications incorporated in the PDP may be taken into consideration, they may not be voted on individually.

1. **LDO Section 7.2.4(C)  Required Width of Streetscape - Kildaire Farm Road**

   **Standard:** 50’ streetscape
   **Proposed Modification:** 30’ streetscape
   **Applicant Justification:**
   A. A 30’ width is consistent with the street yard buffer provided on the Glenaire Development located to the north of the proposed Arrington Woods Development;
   B. The majority of the area designated to be a street yard buffer is not currently vegetated. Therefore the reduction of buffer width will not significantly impact vegetation preservation.
C. The street yard buffer on the adjacent property to the south is essentially 0’.
D. The reduction in buffer will increase the sense of connectivity of the proposed
development to the adjacent roadway and community.

**Staff Observation:** An office building constructed in 1961 is located on the east side of
Kildaire Farm Road across from the site. The streetscape for that site is approximately 5’
adjacent to on-site parking spaces, approximately 20’ along the southwest corner, and
approximately 40’ along the northwest corner.

### 2. LDO Section 7.2.4(C)  Required Width of Streetscape - W. Cornwall Road

<table>
<thead>
<tr>
<th>Standard</th>
<th>30’ streetscape</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed Modification</td>
<td>20’ streetscape</td>
</tr>
</tbody>
</table>

**Applicant Justification:**
A. The eastern end of the proposed buffer is not currently vegetated;
B. The reduction in buffer will increase the sense of connectivity of the proposed
development to the adjacent roadway and community;
C. The reduced width is more consistent with the buffer widths along the south side of W.
Cornwall Road.

**Staff Observation:** A 30’ streetscape is provided on the north side of W. Cornwall Road
along the frontage of Glenaire. The 0.34-acre parcel at the northwest corner of Kildaire
Farm Road across from the subject property is currently undeveloped. The streetscape
width on the south side of W. Cornwall to the west of the site, along the frontage of Cornwall
Park, is approximately 15 feet.

### 3. LDO Table 7.2-1  Perimeter Buffer

<table>
<thead>
<tr>
<th>Standard</th>
<th>40’ Type B buffer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed Modification</td>
<td>10’ semi-opaque buffer</td>
</tr>
</tbody>
</table>

**Applicant Justification:** PER LDO TABLE 7.2.1, the required perimeter buffer along the south
side of the proposed development is 40’ in width. With this rezoning and PDP plan, we are
requesting that a portion of this buffer be allowed to be reduced as shown on the PDP plan.
We believe the following reasons serve as a justification for such request:
The required perimeter buffer along the south side of the proposed development shall be
reduced from 40’ to 10’ for the portion of buffer located at least 300’ from Kildaire Farm
Road.
A. The request is only for the portion of the buffer located along the rear third of the south
property line and is approximately 300’ from Kildaire Farm Road;
B. The area of the requested reduction is planned to be utilized for a driveway location to
support pedestrian and vehicular cross connection requirements along with a
stormwater BMP. The BMP is planned to be designed and developed as an amenity to
the site;
C. A portion of the requested area is already encroached on by an adjoining property
driveway;

**Staff Observation:** No perimeter buffer is provided on the adjoining property along to the
portion of the parking lot adjacent to the western boundary of the subject property. If no
reduction is granted, the applicant must provide the total required buffer width of 40 feet at
the time of site plan approval.

### 4. LDO Table 7.8-1  Off-street Parking Spaces Required

| Standard | 2.25 spaces per unit (2.0 spaces per unit plus .25 spaces per unit for guest
parking)                  |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed Modification</td>
<td>1.5 spaces per unit</td>
</tr>
</tbody>
</table>

**Applicant Justification:** The minimum parking for multi-family apartment comprised of 1-
bedroom and 2-bedroom units shall be reduced from 2.25 spaces per unit (2.0 spaces per
unit for residents and 0.25 space per unit for visitors) to 1.5 spaces per unit.
A. With the limitation of the age demographic, the residents will require fewer vehicles and will be making fewer vehicular trips;

B. By locating the proposed development directly on two different significant transit routes, the need for vehicular trips and vehicles will be reduced;

C. By designing a pedestrian friendly development located within walking distance of a variety of commercial, retail, and public uses, the need for vehicular trips and vehicles will be reduced;

D. The North Carolina Housing Finance Agency (NCHFA) only requires a minimum of 2/3 space per unit for age-restricted apartment communities.

The applicant also provided the letters from Excel Property Management and the Town of Oxford concerning parking needs for senior apartment communities.

**Staff Observation:** Senior apartment and independent living components of Highland Village were developed with parking ratios ranging between 1 and 1 1/2 spaces per unit. Staff is not aware of any problems that have arisen regarding adequacy of parking.

### Criteria Applicable to MXD Rezonings

Section 4.5.2(E) of the Land Development Ordinance sets forth the following development standards to be considered in reviewing Preliminary Development Plans associated with MXD rezoning requests:

**Approval Criteria for Mixed Use District Rezonings**

In addition to the criteria for a general rezoning specified in Section 3.4.1(E), rezoning requests to a MXD district shall be reviewed for compliance with the following criteria, as applicable [i.e., it may not be reasonable or practical to expect that some existing or partially-built mixed use districts (formerly activity center concept plans or mixed use sketch plans) to achieve certain design standards]:

1. **Intensity, Type, and Mix of Uses**
   The preliminary development plan includes an appropriate intensity, type, and mix of land uses, as outlined by the guidelines contained in the Land Use Plan. This shall be assessed in relation to the scale of the activity center and the mix and relationship of existing and planned uses in the activity center, including residential, commercial, office, and institutional uses;

2. **Site Design**
   The preliminary development plan shows how the proposed mixed use development will meet or exceed Town site design guidelines and other established Town standards, including connections and linkages to immediately adjacent properties;

3. **Expected Land Uses**
   The extent to which the proposed development provides the expected land uses, including medium- and higher-density housing, outlined by the numerical and other guidelines contained in the Land Use Plan;

4. **Public Spaces**
   The preliminary development plan includes some formal outdoor space(s) for public use, such as a park, village green, or plaza, with larger mixed use centers including more such space than smaller centers; and

5. **Scale and Context**
   The preliminary development plan demonstrates that the proposed development is appropriate for the context and location, responds to the unique conditions of the area, and provides reasonable transitions within and adjacent to the district.

### APPLICABLE COMPREHENSIVE OR AREA PLAN REQUIREMENTS

**Land Use Plan:** As per the Town of Cary Land Use Plan, the future land use designation of the subject parcels is Low Density Residential (LDR) for 906 Kildaire Farm Road and High Density Residential (HDR) for 111 West Cornwall Road. Low Density Residential (LDR) is defined as single-family-detached housing at one to three units per acre. High Density Residential (HDR)
contains housing densities at eight units to the acre or greater. Both parcels are located within the Mayfair Community Mixed Use Center, which allows flexibility and a mix of uses within such a center. Also in a community sized mixed use center, medium and high density residential uses should be present. The table below shows a comparison between existing and proposed land use categories within the Mayfair Community Mixed Use Center.

<table>
<thead>
<tr>
<th>Land Use Category</th>
<th>Existing Development</th>
<th>Range Proposed by Case</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medium Density Residential dwellings</td>
<td>28</td>
<td>0</td>
<td>28</td>
</tr>
<tr>
<td>High Density Residential units</td>
<td>0</td>
<td>72</td>
<td>72</td>
</tr>
<tr>
<td>Institutional floor space (schools &amp; daycares, assisted living facilities, places of worship)</td>
<td>55,042</td>
<td>0</td>
<td>55,042</td>
</tr>
<tr>
<td>Office/Institutional floor space, est. range (sq. ft.)</td>
<td>490,962</td>
<td>0</td>
<td>490,962</td>
</tr>
<tr>
<td>Commercial/Retail floor space, est. range (sq. ft.)</td>
<td>290,170</td>
<td>0</td>
<td>290,170</td>
</tr>
</tbody>
</table>

**Analysis:** Medium and high density residential uses are an important part of a community-sized mixed use center. This case proposes to add 72 high density residential units to the Mayfair Mixed Use Center. There are currently no high-density units found within this center, so this mixed use rezoning request helps further the goals of the Town of Cary Land Use Plan. The typical number of residential units in a community-sized mixed use center, per 1,000 square feet of nonresidential space, is ½ to 3 (about 400 to 2500 units), with 1 ¼ (or about 1,050 units) being the ideal minimum number. The Mayfair Mixed Use Center has ample need for additional medium and/or high density residential development.

**Parks, Recreation & Cultural Resources Facilities Master Plan:** According to the Parks, Recreation and Cultural Resources Facilities Master Plan there are no issues related to this site. A recreation fund payment will be due for residential development in accordance with the LDO. These comments were reviewed and approved by the Town’s Parks, Recreation and Cultural Resources Advisory Board at its January 7, 2013 meeting.

**Growth Management Plan:** The Growth Management Plan includes the following Guiding Principles which may be relevant to this case:

1. **R1 Guiding Principle:** Ensure that adequate infrastructure and services are available concurrently with new development.
2. **L1 Guiding Principle:** Concentrate growth near existing and planned employment centers and available and planned infrastructure to minimize costly service-area extensions.
3. **A1 Guiding Principle:** Increase permitted densities in preferred growth areas to encourage desired forms of development.
4. **A2 Guiding Principle:** Ensure that the overall amount of development in Cary is consistent with the Town’s growth management goals.
5. **Q1 Guiding Principle:** Continue Cary’s leadership role in quality growth and development.

**Analysis:** The subject property is located within a preferred growth area – the Mayfair Community Mixed Use Center.

**Affordable Housing Plan:** The Affordable Housing Plan includes the following goals that may be relevant to this case:
1. Provide for a full range of housing choices for all income groups, families of various sizes, seniors, and persons with special challenges.

2. Facilitate the creation of a reasonable proportion of the Town of Cary's housing as affordable units through additional homeownership opportunities for individuals and families earning between 60% and 80% of area median income and affordable apartments for individuals and families earning up to 60% of the area median income.

3. Encourage the location of high density housing within walking and convenient commuting distance of employment, shopping, and other activities, or within a short walk of a bus or transit stop, through "mixed use" developments, residences created on the upper floors of nonresidential downtown buildings, and other creative strategies.

4. Assure a quality living environment and access to public amenities for all residents, present and future, of the Town of Cary, regardless of income.

**Analysis:** A higher density, age-restricted housing development, located in a mixed use center, has the potential to support the goals of the Affordable Housing Plan.

**Comprehensive Transportation Plan**

Kildaire Farm Road is designated as a Major Thoroughfare.

**Existing Section:** 3 lanes in approximately 60-foot ROW  
**Future Section:** 4-lane median-divided in 100-foot ROW  
**Sidewalks:** Existing on both sides  
**Bicycle Lanes:** Existing shared use arrows  
**Transit:** C-Tran Route 5 runs on Kildaire Farm Road.  
**Status of Planned Improvements:** None

Cornwall Road is designated as a collector.

**Existing Section:** 2-lane undivided in approximately 60-foot ROW  
**Future Section:** Existing  
**Sidewalks:** Existing on the north side  
**Bicycle Lanes:** None  
**Transit:** C-Tran Route 5 runs nearby on Kildaire Farm Road.  
**Status of Planned Improvements:** None

As shown on the Preliminary Development Plan, the applicant is proposing to widen Kildaire Farm Road to one-half of a 4-lane thoroughfare section along the project frontage. The applicant is requesting to make a payment-in-lieu of construction for one-half of the required median within Kildaire Farm Road, since the other side road has not been widened and the median could not be installed in its final location at this time. Recent LDO text changes (Section 8.1.5) allow the Engineering Director to approve payment-in-lieu of required roadway improvements in some cases. The payment-in-lieu request in this case can be approved by, and is supported by, the Engineering Director.

**Open Space Plan:** According to the Open Space Plan, there are no significant natural resources associated with this site.

**Historic Preservation Master Plan:** The Historic Preservation Master Plan recommends preserving Cary's historic buildings whenever possible, and especially those with identified architectural and historic significance. The house at 906 Kildaire Farm Road is listed on the Cary Historic Resources Inventory (#WA7332) as a circa 1950, one-and-one-half-story asbestos-shingle, frame house built in the Minimal Traditional style. The survey report notes that the house is a good, intact example of the Minimal Traditional house-type popular in the mid-twentieth century – a style that was the immediate predecessor to the Ranch. The property includes a concrete block barn and a small shed. The house’s historical context is “post-WWII,” and is a property type representing the growth in Cary between the end of WWII and the beginning of...
Research Triangle Park. The house was first surveyed in 2012, and at that time wasn’t identified as having National Register or Cary Landmark potential.

**Comprehensive Plan Analysis**
Overall, the potential development of up to 72 age-restricted multi-family residential units fits very well into the Mayfair Community Mixed Use Center. More medium- and high-density residential development is needed in this location, and this proposal could begin to meet this need efficiently and effectively. This mixed use rezoning request is consistent with the goals of the Town of Cary Comprehensive Plan.

<table>
<thead>
<tr>
<th>STAFF EVALUATION - CONSISTENCY WITH THE DESIGN PRINCIPLES FOR MIXED USE CENTERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff makes the following observations regarding the Design Principles for Mixed Use Centers included in the Town of Cary Site Design Standards:</td>
</tr>
<tr>
<td><strong>Create a Sense of Place:</strong> The proposed building placement frames the mixed use center intersection corner.</td>
</tr>
<tr>
<td><strong>Create Human Scale:</strong> The proposed building placement and architectural features will help meet this requirement.</td>
</tr>
<tr>
<td><strong>Connect Uses:</strong> Vehicular and pedestrian connections are provided into and within this site, and connect to public sidewalks along Kildaire Farm Road and W. Cornwall Road, and to the adjacent shopping center.</td>
</tr>
<tr>
<td><strong>Provide Transitions:</strong> Transitions are created through building placement and landscape buffers.</td>
</tr>
<tr>
<td><strong>Reduce Parking Impacts:</strong> The parking area is broken into smaller areas with ample landscape areas.</td>
</tr>
<tr>
<td><strong>Plan for Pedestrians, Bicyclists, and Transit Users:</strong> Pedestrian circulation is provided into and within the Arrington Woods PDP. C-Tran fixed route services is provided on Kildaire Farm Road.</td>
</tr>
<tr>
<td><strong>Provide Open Space:</strong> A community gathering space is provided within the site. Stormwater BMPs will be designed as site amenities.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>STAFF EVALUATION - CONSISTENCY WITH SITE DESIGN STANDARDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Staff makes the following observations regarding the Town’s Site Design Standards, the four design standard themes that support and strengthen the Town of Cary’s seven design principles:</td>
</tr>
<tr>
<td><strong>Vehicular Circulation:</strong> Vehicular circulation through the site is simple and intuitive.</td>
</tr>
<tr>
<td><strong>Building Placement:</strong> Building placement makes a signature statement for this site as well as within the Mayfair Community Mixed Use Center.</td>
</tr>
<tr>
<td><strong>Pedestrian Circulation:</strong> Pedestrian circulation is provided into and within the proposed Arrington Woods development with connections to the adjacent shopping center.</td>
</tr>
<tr>
<td><strong>Community Spaces:</strong> A community gathering space with seating and landscaping will be provided. Stormwater BMPs will be designed as site amenities.</td>
</tr>
</tbody>
</table>

**ORDINANCE 0-2013-23**

12-REZ-28 Arrington Woods

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE TOWN OF CARY TO CHANGE THE ZONING OF APPROXIMATELY 3.18 ACRES LOCATED AT THE SOUTHWEST CORNER OF THE INTERSECTION OF KILDAIRE FARM ROAD AND W. CORNWALL ROAD BY REZONING FROM RESIDENTIAL 12 (R-12) AND OFFICE & INSTITUTIONAL CONDITIONAL USE (OI-CU) TO MIXED USE DISTRICT (MXD).

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CARY:
Section 1: The Official Zoning Map is hereby amended by rezoning the area described as follows:

**PARCEL & OWNER INFORMATION**
Property Owner(s) | County Parcel Number(s) (10-digit) | Real Estate ID(s) | Deeded Acreage
--- | --- | --- | ---
William E. & Sue R. Stevens | 0763463987 | 0067712 | 1.78
Billie A. Lang & Faye A. Dellinger | 0763466922 | 0023234 | 1.40

Total Acreage 3.18

**Section 2:** That this Property is rezoned from R-12 and OI-CU to MXD subject to the individualized development conditions set forth in “Arrington Woods Preliminary Development Plan” dated July 8, 2013, and on file in the Planning Department, and to all the requirements of the Cary Land Development Ordinance (LDO) and other applicable laws, standards, policies and guidelines, all of which shall constitute the zoning regulations for the approved district and are binding on the Property.

**Section 3:** The conditions proposed by the applicant to address conformance of the development and use of the Property to ordinances and officially adopted plans, to address impacts reasonably expected to be generated by the rezoning, and to promote the public health, safety and general welfare, and accepted and approved by the Town are set forth in the “Arrington Woods Preliminary Development Plan” dated July 8, 2013, and on file in the Planning Department.

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

Adopted and effective: July 25, 2013

**ACTION:**
Motion: Frantz moved to remove this item from the table.
Second: Adcock
Vote: Unanimous

Staff presented the request.

Mr. Sean Dolle, the applicant, distributed a handout (on file in the planning department according to the Records Retention and Disposition Schedule). He stated the plan proposes 72 units, a three-story building, all age-restricted senior apartments, one or two bedroom units, and a significant amount of road improvements. He stated his handout shows color renderings in response to council’s recent questions about architecture. He stated they have increased the masonry to exceed the minimum requirement. He stated they originally requested a parking reduction that will allow 1.25 spaces per unit, and they have increased that to allow 1.5 spaces per unit. He outlined the information in his handout. He stated industry standards recommend 2/3 of a parking space per unit, which is well below what they will provide. He thinks their parking will result in a lot of vacant spaces, but it will more than adequately serve the project needs and the residents who live there. He thinks this project is greatly needed in Cary.

Beerman stated the information in Dolle’s handout that is not included in the staff report (herein) has not been reviewed by staff.

Weinbrecht opened the public hearing.

Ms. Pam Payne, Ms. Pat Maultsby and Ms. La Verne Longe spoke in support of the request. All commented that Cary needs more affordable housing options for its senior population. Maultsby submitted the following information.

| Affordable Housing | # of Apartments | Available Parking | # of Used Spaces |
|--- | --- | --- | ---
| Commons at Highland Village | 68 | 50 | 13 |

July 25, 2013 Minutes
Minute Book #177, Minute Book Page 106
Affordable Housing | # of Apartments | Available Parking | # of Used Spaces
--- | --- | --- | ---
Highland Manor | 32 | 33 | 23
Highland Terrace | 80 | 73 | 33
Weatherstone Springs | 72 | 63 | 29

Weinbrecht closed the public hearing.

Frantz's concern is that there may be too many unused parking spaces, which means there is more impervious surface than is needed. He and other council members believe the proposal is good and will help Cary meet the needs of its senior population.

**ACTION:**
Motion: Smith moved to approve 12-REZ-28.
Second: Frantz
Vote: Unanimous

__________________________


**Proposed Council Action:** Council may take action (Option A if council approves the rezoning; Option B if council denies the rezoning)

**Speaker:** Ms. Mary Beerman

**Option A** (recommended if rezoning 12-REZ-28 is approved):

**CONSISTENCY AND REASONABLENESS STATEMENT**
12-REZ-28 – Arrington Woods

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: Rezoning **12-REZ-28** is consistent with the Comprehensive Plan.

Section 2: Based upon information presented at the public hearings and by the applicant, and based upon the recommendations and detailed information developed by staff and/or the Planning & Zoning Board contained in the staff report, and considering the criteria of Section 3.4.1(E) and 4.5.2(E) of the Town of Cary Land Development Ordinance, rezoning **12-REZ-28** is reasonable and in the public interest.

**ACTION:**
Motion: Frantz moved to approve Option A.
Second: Bush
Vote: Unanimous

__________________________

2. **COMPREHENSIVE PLAN AMENDMENT 13-CPA-03, Future Yates Store Road Alignment Change**

**Location:** Yates Store Road from just north of Ferrell Road and the American Tobacco Trail across Ferrell Road and extending to Morrisville Parkway at White Oak Church Road.

**Current Land Use Plan Designation:** Low Density Residential/Very Low Density Residential (LDR/VLDR)

**Proposed Land Use Plan Designation:** The land use plan designation is not proposed to change. The proposed alignment of Yates Store Road is proposed to move northwest
from its current proposed location to facilitate an at-grade crossing of the American Tobacco Trail and an at-grade intersection with Ferrell Road.

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

**Speaker:** Mr. Todd Delk

### REQUEST

The proposed amendment will move the alignment of Yates Store Road up to 850 feet northwest to facilitate the crossing of the American Tobacco Trail and the intersection with Ferrell Road. Due to the change in alignment east of the trail, the Town must consider several new alternatives for the alignment of Yates Store Road between Ferrell Road and Morrisville Parkway.

### SUBJECT PARCELS

<table>
<thead>
<tr>
<th>Property Owner(s)</th>
<th>County Parcel Number(s) (10-digit)</th>
<th>Real Estate ID(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sandra B. Emerson 1017 E Ferrell Road Apex, NC 27502</td>
<td>072405182, 072420328, 0724048359</td>
<td>18613, 0086971, 0133617</td>
</tr>
<tr>
<td>Terrence L. &amp; Bettina M. Gardner 1117 E Ferrell Road Apex, NC 27523-7586</td>
<td>0724158582</td>
<td>0086972</td>
</tr>
<tr>
<td>Glennjan LLC 128 Yorkchester Way Raleigh, NC 27615-2979</td>
<td>0724169863, 0724168506, 0724178697, 0724176275</td>
<td>0104762, 0179885, 19822, 19984</td>
</tr>
<tr>
<td>Robert P. &amp; Fanola M. Hangebrauck 113 Dublin Woods Dr. Cary, NC 27513-3008</td>
<td>0724159786</td>
<td>0063080</td>
</tr>
<tr>
<td>Gary D. &amp; Mary C. Holly 1101 E Ferrell Road Apex, NC 27523-7586</td>
<td>0724159125</td>
<td>0121879</td>
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<tr>
<td>Kaye Mangum Howard 7025 Carpenter Fire Station Road Cary, NC 27519-8607</td>
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<td>0080143</td>
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<tr>
<td>Patrick Richard Miller 109 Fairytale Ln. Surf City, NC 28445-6865</td>
<td>0724160985</td>
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<td>Ralph L. &amp; Catherine R. Parker 1157 E Ferrell Road Apex, NC 27523-7586</td>
<td>0724167344</td>
<td>0065320</td>
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<tr>
<td>Emelda P. Wagoner 111 Turtle Creek Farm Road Apex, NC 27523-6141</td>
<td>0724162606</td>
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### BACKGROUND INFORMATION

<table>
<thead>
<tr>
<th>Applicant &amp; Agent</th>
<th>Town of Cary Engineering Department</th>
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</thead>
<tbody>
<tr>
<td>Acreage</td>
<td>N/A</td>
</tr>
<tr>
<td>General Location</td>
<td>Yates Store Road from just north of Ferrell Road and American Tobacco Trail across Ferrell Road and extending to Morrisville Parkway at White Oak Church Road</td>
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### Land Use Plan Designation

<table>
<thead>
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<th>LDR / VLDR</th>
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### Existing Zoning District(s)

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<tr>
<td>PDD Major</td>
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</table>

### Town Limits

- The alignment north of Ferrell Road is located within the corporate limits of the Town of Cary.
- The alignment south of Ferrell Road to Morrisville Parkway is located outside the corporate limits and the Town of Cary ETJ.

### Staff Contact

<table>
<thead>
<tr>
<th>Staff Contact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Todd B. Delk, P.E.</td>
</tr>
<tr>
<td>(919) 462-3834</td>
</tr>
<tr>
<td><a href="mailto:todd.delk@townofcary.org">todd.delk@townofcary.org</a></td>
</tr>
</tbody>
</table>

### DISCUSSION

**Notification:** On July 10, 2013, the Planning Department mailed notification of a public hearing on the request to property owners within 400 feet of the proposed alignments. Notification consistent with General Statutes was published in the Cary News on July 10 and 17, 2013. Notice of the public hearing was posted on the property July 10.

The current alignment of Yates Store Road proposed in the CTP is a generalized corridor aimed at extending the existing alignment of Yates Store Road (previously County Line Road) to White Oak Church Road at Morrisville Parkway, and ultimately to Wimberly Road. When originally developed, the County Line Road corridor was planned to be the westernmost north-south thoroughfare for the Town.

The Montvale subdivision is a part of the Weldon Ridge PDD that began development in 2003. The majority of land that is Montvale was added to Weldon Ridge in 2004. None of the land that is currently within Montvale has completed development. The subdivision developer is currently working on site plans for the final phases of the development located along Yates Store Road between Indian Creek and the American Tobacco Trail. This amendment will determine the horizontal alignment for the road. Town staff will be meeting with NCDOT to finalize plans for the vertical alignment of the road (ex. At-grade or grade separated crossings).

The realignment of Yates Store Road to allow for the crossing requires realignment east of Ferrell Road and, therefore, consideration of a Comprehensive Transportation Plan amendment. The development schedule of the Montvale subdivision does not allow for the change to be made with the Community Plan update.

Therefore, two alternatives to the existing conceptual corridor are presented for consideration in the location map.

**Alternative 1** - This alternative aligns Yates Store Road to the current intersection of Ferrell Road at Turtle Creek Road just inside Chatham County. The corridor continues south back into Wake County to connect with White Oak Church Road at Morrisville Parkway. The advantage of this alternative is that it provides direct connectivity and nearly 90-degree intersection to Turtle Creek Road in the interim, until the eastern parcels redevelop. Based on the nature of the area and discussions during the development of the Cary-Chatham Joint Land Use Plan, those parcels are unlikely to redevelop in the foreseeable future. The disadvantage of the alternative is the impacts to the pond and stream buffers on the Parker property if the extension were constructed with future redevelopment.

**Alternative 2** - This alignment is similar to Alternative 1, but moves the connection with Ferrell Road to the southeast. The more easterly alignment lessens the impacts to the pond and buffers, but would create an offset intersection with Turtle Creek Road on Ferrell Road.
Both alternatives shift the existing corridor partially into Chatham County, therefore, staff has contacted the Chatham County Planning Department and the Durham-Chapel Hill-Carrboro (DCHC) Metropolitan Planning Organization (MPO) to coordinate any changes to their plans. Chatham County staff stated there is no required process to make this type of change on their CTP, currently under development with the help of NCDOT. Their staff asked that the Town keep their department informed of the CPA process. DCHC staff asked that we inform them of the final action for the CPA so they can make appropriate changes in their Metropolitan Transportation Plan (MTP). The change would not affect regional air quality conformity since the connection is currently shown in the Capital Area Metropolitan Planning Organization's MTP. The two MPOs' air conformity are modeled together, and any change has no net effect on the region.

**COMPREHENSIVE PLAN SUMMARY**

**A. Southwest Area Plan and Joint Chatham/Cary Land Use Plan**

The presently-adopted alignment of Yates Store Road is located within the Southwest Area Plan, an element of Cary’s Comprehensive Plan. The first 1,000 linear feet of the present alignment are located within an area of the Plan designated as appropriate for “Low-Density Conservation Residential” or LCR. In the LCR area two types of residential development are appropriate: (a) conventional single-family residential consistent with the existing R-40 zoning, on lots of at least 40,000 square feet, or (b) conservation subdivisions having lots smaller than 40,000 square feet, but generally at least 10,000 square feet, up to a potential maximum of no more than about 2.5 dwellings per acre. The remainder (and the majority) of the present alignment is located within an area designated as appropriate for “Very Low Density Conservation Residential,” or VLCR. Two types of residential development are appropriate within this area: (a) conventional single-family residential consistent with the existing R-40 zoning, on lots of at least 40,000 square feet, or (b) conservation subdivisions having lots smaller than 40,000 square feet, but generally at least 15,000 square feet, up to a potential maximum of no more than about 1.5 dwellings per acre. In both the LCR and VLCR areas, the maximum density for conservation subdivisions is proportional to the amount of additional non-regulatory open space provided.

The majority of the two alternative alignments being considered with this CPA are located within the Southwest Area Plan’s Very Low Density Conservation Residential (VLCR) area discussed above, but because both alternatives travel briefly into Chatham County, portions of both alternative alignments also fall within the Joint Chatham/Cary Land Use Plan’s Low-Density Residential (LDR) and Very Low Density Residential (VLDR) areas. In the LDR area of the Chatham/Cary Plan, the Plan recommends housing densities up to two dwelling units per gross acre, and typically averaging at least one dwelling per gross acre. Housing types may include single-family detached, duplex, patio homes, semi-detached/attached dwellings, and townhouses. In the VLDR, the Chatham/Cary Plan recommends agricultural and single-family detached residential uses in general, and in the VLDR area where the alternative alignments are being considered, the Chatham/Cary Plan specifically recommends a maximum density of one dwelling per one gross acre, with a minimum lot size of 40,000 square feet for development occurring within Chatham County’s zoning jurisdiction. If this area should become part of Cary’s zoning jurisdiction, the lots may be smaller than 40,000 square feet because under certain circumstances, Cary allows for residential clustering to preserve larger swaths of open space, and also because residential lots in Cary’s zoning jurisdiction can’t be platted into stream and other regulatory buffers.

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

According to the Parks, Recreation and Cultural Resources Facilities Master Plan, the American Tobacco Trail exists in the path of the proposed crossing of Yates Store Road. This is the section of the American Tobacco Trail located in Chatham County, which was recently constructed by and is currently managed by the Town of Cary. The trail at this intersection is 16 feet wide, consisting of 10 feet of asphalt and a 6-foot-wide section of screenings for equestrian use.
The PRCR Master Plan recommends grade-separated crossings for significant greenway corridors with high user volumes, crossings of four vehicular lanes or more, or roadways with design speeds higher than 45 mph. Yates Store Road will be a 4-lane median-divided roadway with a 45 mph posted speed. The American Tobacco Trail has the highest user count in the Town of Cary’s greenway network (based on weekend user counts) with 60-70 users per hour.

The land west of the American Tobacco Trail was not included in the Town’s PRCR Master, and the Chatham-Cary Joint Land Use Plan did not address parks and greenways.

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

1. R1 Guiding Principle: Ensure that adequate infrastructure and services are available concurrently with new development.
2. L2 Guiding Principle: Ensure that future growth protects sensitive natural resources and protects open space.
3. C2 Guiding Principle: Ensure public investment decisions are consistent with the Town’s growth management goals.

D. Comprehensive Transportation Plan
Yates Store Road is designated as a Major Thoroughfare
Future Section: 4 lanes with landscaped median
Sidewalks: Required on both sides
Bicycle Lanes: 14-foot-wide outside lanes required
Transit: None existing or planned
Status of Planned Improvements: No funded Town projects

Morrisville Parkway is designated as a Major Thoroughfare
Existing Section: Approximately 60-foot ROW
Future Section: Rural Section: 4-lane median-divided east of Yates Store Road in 115-foot ROW and 2-lane undivided in 64-foot ROW west of Yates Store Road
Sidewalks: N/A
Bicycle Lanes: N/A
Transit: None existing or planned
Status of Planned Improvements: No funded Town projects

Ferrell Road is designated as a Local Street
Future Section: N/A
Sidewalks: N/A
Bicycle Lanes: N/A
Transit: None existing or planned
Status of Planned Improvements: None Planned

E. Open Space Plan
According to the Open Space Plan all proposed routes pass through large swaths of mixed hardwood/conifer forest. Alternatives 1 and 2 appear to also pass through areas of mixed upland hardwood forest located just southwest of the intersection of Ferrell Road and Turtle Creek Farm Road.

F. Historic Preservation Master Plan
One of the properties somewhat affected by all three alignments -- the presently adopted alignment as well as the two subject alternatives -- is the 61-acre historic Yates Farm located at 10109 Morrisville Parkway. The Yates Farm is included in the Cary/Wake County Architectural and Historic Inventory and is considered one of the best preserved Depression-era farm
complexes in this part of Wake County. In 2007, the North Carolina National Register Advisory Committee (NRAC) determined that the property appears to be eligible for nomination to the National Register, and they subsequently placed the property on the Study List for the National Register of Historic Places. Though the farm property falls both north and south of Morrisville Parkway, the house and outbuildings buildings themselves straddle both sides of White Oak Church Road where it “tees into” the south side of Morrisville Parkway, and therefore it appears they wouldn’t be physically endangered by any of the alignments. Even so, the portion of the Yates Farm land located on the north side of Morrisville Parkway is a part of the farm’s historic context and view shed which would be impacted by any one of the alignments.

CRITERIA FOR CONSIDERATION IN REVIEWING COMPREHENSIVE PLAN AMENDMENTS
Section 3.2.2(B) of the Land Development Ordinance states that proposals to amend the Comprehensive Plan shall be evaluated based upon whether the amendment is necessary in order to address conditions including, but not limited to, the following:

- A change in projections or assumptions from those on which the Comprehensive Plan is based;
  **Staff Analysis:** No changes in projections or assumptions.

- Identification of new issues, needs, or opportunities that are not adequately addressed in the Comprehensive Plan;
  **Staff Analysis:** Development of the Montvale subdivision identified the need to realign Yates Store Road to address issues with crossing the American Tobacco Trail based on discussions between the developer, Town, and NCDOT. The subdivision’s development provides an opportunity to provide safe and cost-efficient crossing and identify a reasonable and feasible alignment for Yates Store Road.

- A change in the policies, objectives, principles, or standards governing the physical development of the Town or any other geographic areas addressed by the Comprehensive Plan; or
  **Staff Analysis:** No changes in policies, objectives, principles, or standards.

- Identification of errors or omissions in the Comprehensive Plan.
  **Staff Analysis:** No identification of errors or omissions.

STAFF ANALYSIS (SUMMARY) AND RECOMMENDATION
This Town-initiated request is to move the alignment of Yates Store Road up to 850 feet northwest to facilitate a crossing of the American Tobacco Trail and at-grade intersection with Ferrell Road. Amendments to the Town’s Comprehensive Transportation Plan require two public hearings (one conducted by the Planning and Zoning Board) prior to a vote by Town Council. Staff recommends conducting a public hearing at the July 25, 2013 Town Council meeting with a Planning and Zoning Board public hearing to follow at the next possible Planning and Zoning Board meeting.

Staff presented the request.

Weinbrecht opened the public hearing.

Mr. Joe Wagoner spoke against the request and how it will negatively impact his and his family’s quality of life. He stated either road option will split his property in half, impact his well (and there is no other property on which to drill a well) and result in loss of acreage that will cause his property to be non-compliant with subdivision covenants and county zoning that require a minimum of five acres. He believes both alternatives will negatively impact the residents of the Turtle Creek Farm subdivision, including negative impacts to the watershed and eco-system. With alternative #1, he thinks it is not clear (1) how the existing dirt road would intersection with the proposed road and (2) how the Parker residence will access their property without coming across his land.
Ms. Emelda Wagoner, a long-time resident in this area, spoke against the request, which will result in the Town condemning her property and eliminating her well. She explained her current quality of rural living, including the natural habitat and wildlife.

Ms. Mary (Peggy) Holly spoke against the request. She expressed concern at losing the natural beauty they currently enjoy. She stated both alternatives cross the back of her property, and the topography will render that portion of her property unusable for building.

Mr. Robert Hangebrauck spoke against the request. He stated both alternatives go through parts of his property that he had previously determined were suitable for future building. He proposed three options: (1) using a road centered on the western property lines of the parcels in this area, or (2) using East Ferrell road, or (3) taking a route east of the Trail. He stated these alternatives will preserve some of the existing character of the area and its environmental attributes.

Ms. Sandra Emerson spoke against the request. She stated she has resided in this area for about 40 years. She concurred with the comments of prior speakers. She stated this proposal will negatively impact their quality of life. She stated homeowners have options they hope the council will consider, which have less impact on the residents.

Ms. Catherine Parker spoke against the request. She stated there is a two-acre spring fed pond on her property, which is home to many wildlife species. She stated both options disrupt the pond and will reroute the water, which she believes will also damage the quality of the pond water. She urged council to allow all interested parties to work together and develop a solution. In the process of development alternative solutions, she asked that the following issues be considered: (1) the impact to East Ferrell Road and additional traffic; (2) access for adjoining property owners; and (3) impact on water quality and peaceful environment.

Mr. Gary Holly spoke against the request. He believes a major thoroughfare will create safety problems for people who use the American Tobacco Trail. He concurred with other speakers’ comments about both alternatives impacting access for some existing homeowners. He stated the Yates Farm area is on a study list for eligibility to the National Register. He does not think the public was involved in development alternatives. He urged council to recommend additional study to develop more alternatives, with consideration given to right-of-way consequences, safety, highway function, limiting the taking of stream buffers and hardwoods. He supports an alternative that uses appropriate NCDOT horizontal alignment and vertical profile values to mitigate impacts. He would like this to also include a pedestrian tunnel for the Trail.

Ms. Colette Burrus spoke against the request. She presented an alternative #3 proposal that provides an grade-separated crossing with a pedestrian tunnel at the trail; has less impact to streams, pond and hardwoods; reduces negative impact to the Turtle Creek Farm subdivision; reduces access issues for residents on East Ferrell Road; keeps the new road within Wake County; reduces future impacts to the Trail; and avoids conflicts with the Yates Farm house and outbuildings. She stated was told that a pedestrian tunnel cannot be provided because a train might come down the trail. She stated the original plan indicated this could be turned back into a railroad. At this time she thinks it is ridiculous to think that the American Tobacco Trail, which is now part of the East Coast Greenway, will ever be converted back to an active railroad track. She stated if Cary approves at-grade crossings at Yates Road and Morrisville Parkway, she believes it will destroy that portion of the trail, because it will not be safe to cross the road.

Ms. Sally Kost, a Chatham County Commissioner, stated she is speaking as an individual commissioner, and not on behalf of the Board. She stated the community has provided council with a good alternative to realign the road to have less impact on existing parcels. She provided two additional options:
(1) Bring the road down and align parallel to the trail and provide a “T” into Morrisville Parkway (formerly Lewter Shop Road). She thinks it is too late for this option, although this makes the most sense.

(2) Forget crossing East Ferrell and eliminate the connectivity with White Oak, and instead provide a “T” to East Ferrell and improve Morrisville Parkway to the interchange, thus directing the traffic to the road that can accommodate it.

Kost stated the existing subdivision is basically built out and has protective covenants. She stated it is not appropriate to propose a road through it. She urged council to consider her two options in addition to the options presented by the community (refer to the speakers’ handouts attached to these minutes).

Weinbrecht closed the public hearing.

Weinbrecht asked who initiated this request. Mr. Todd Delk of the engineering staff stated it came from the Department of Transportation (DOT) request to provide a crossing at the American Tobacco Trail. Weinbrecht stated he supports tonight’s speakers.

Adcock asked if the Town or the DOT makes the final decision. Delk stated Cary will coordinate with DOT throughout this process.

Weinbrecht asked what triggers the creation of this proposed road. Delk stated the only part that will be constructed in the near term is the segment to East Ferrell Road. He stated subdivision plans have been submitted that are part of the Weldon Ridge Planned Development, which triggered this road. He stated if one side of the road changes, then staff looks at a comprehensive transportation amendment to consider an alternate alignment for the entire roadway. Delk stated the East Ferrell portion will not be constructed in the near future, and it is just a line on a map. He stated the Town cannot undertake a Town-initiated annexation, so the only way the road will be constructed in this area is if redevelopment occurs, meaning the property owners sell their properties, a subdivision is developed, and they request annexation into Cary.

Weinbrecht stated for the entire road to be constructed, each parcel will have to develop. Delk concurred that each parcel will have to redevelop, and he added they will also have to request to be annexed into Cary.

Bush asked if parks, recreation and cultural resources staff has reviewed this proposal. Delk stated they have been involved in the process and have had unsuccessful conversations with DOT about grade-separated crossings. Bush cannot imagine the trail users trying to cross four lanes of traffic.

**ACTION:**

**Motion:** Adcock moved to send 13-CPA-03 back to staff and request that staff work with the neighbors and come back to council with a plan that does not disrupt the current homeowners and the land itself.

**Second:** Bush

Yerha will support the motion. He will also support denying the proposal so it does not come back to council.

Weinbrecht asked what happens to the Weldon Ridge subdivision proposal. Delk stated the most recent proposal was declined because it did not include an appropriate road alignment, although they attempted to work it out with DOT. He stated the applicant will have to provide options before staff considers the plan again.
3. ANNEXATION PETITION 13-A-13

Property Owner: Derby Downs LLC
Location: 1,430 feet east of Morrisville Parkway and Green Hope School Road intersection
Zoning: Planned Development District (PDD) Major - Copperleaf PDD
Contiguous to Primary Corporate Limits: Yes
Existing Use: Vacant
Proposed Use: Single-family Residential (subdivision)
Proposed Council Action: Council may take action
Speaker: Ms. Debra Grannan

AN ORDINANCE ANNEXING LANDS CONTIGUOUS TO THE MUNICIPAL BOUNDARIES OF THE TOWN OF CARY

WHEREAS, on 5/9/2013, the Town Council has been petitioned under G.S. 160A-31 to annex the area described below:

Derby Downs LLC; Wake County Parcel Identification #0724543298; including 5.51 acres, plus 0.00 acres of adjacent right-of-way; which are 0.5 to the existing municipal limits of the Town of Cary; and
WHEREAS, on 6/27/2013, the Town Clerk of the Town of Cary certified the sufficiency of said Petition, the same being duly made after investigation; and
WHEREAS, on 6/27/2013, the Town Council of the Town of Cary ordered a public hearing on the question of said annexation and Notice of a Public Hearing was published in the newspaper of general circulation as required by law; and
WHEREAS, the matter came for public hearing before the Town Council of the Town of Cary on 7/25/2013 at which time all persons opposed and all persons in favor of said annexation were allowed to be heard; and
WHEREAS, the Petition above mentioned meets all the requirements of G.S. 160A-31.

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

Section 1. The area described in the petition and depicted on the map (which is on file in the Planning Department), is hereby annexed to and made a part of the Town of Cary, effective on 7/25/2013 with a condition that the property owner connect to the Town of Cary sewer/water line based upon the Town’s policy(ies) in place on the effective date of this ordinance.

LEGAL DESCRIPTION: Wake County Parcel Identification #0724543298

Section 2. That from and after the effective date of this ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Cary, and shall be entitled to the same privileges and benefits as other parts of the municipality. Said annexed territory shall be subjected to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the Town of Cary shall cause an accurate map of the newly annexed territory together with a copy of this ordinance, duly certified, to be recorded in the Office of the Register of Deeds of Wake County and in the Office of the Secretary of State of North Carolina.

Section 4. Pursuant of G.S. 160A-22, the Town Clerk is directed to update the Official Town Map by drawing in the territory annexed, or setting out the boundaries in a written description, or showing the current Town boundaries by a combination of these techniques. Such a map shall also be delivered to the Wake County Board of Elections as required by G.S. 163-288.1
Section 5. Pursuant of G.S. 160A-23, the boundaries of Electoral District A are hereby revised to account for and include the territory annexed, and the Official Town Map of Electoral Wards is hereby amended to include the annexed territory in the said Electoral District.

Staff presented the information herein. Weinbrecht opened the public hearing.

Mr. Chris Ellington stated he resides in the Copperleaf subdivision, and he is opposed to this annexation. He stated their tree buffers that were part of the original site plan are gone. He spoke about ongoing issues they have with the contractors, and the developer's response that they cannot control them (i.e., construction debris, noise violations, eroding sidewalks, etc.). He stated the developer has told current homeowners that the homes will use existing amenities, will be on smaller lots, and will diminish existing home values. He urged council to table the annexation in hopes that the developer will work with existing homeowners to rectify these issues.

Weinbrecht closed the public hearing.

Adcock appreciates Ellington’s comments, but she stated the only issue before council is the annexation request. Town Planner Grannan stated council has previously approved the rezoning, and there is a separate site plan issue – Copperleaf Reserve – across the street. She concurred that the annexation is the only issue before the council this evening, and the site plan will undergo a staff approval process if council approves the annexation. She stated annexation is required for the development to connect to Town utilities. She stated this public hearing is the first that staff has heard of Ellington’s concerns, and staff will investigate those concerns to ensure the buffers comply with the approved site plan. She stated this annexation has no impact on the concerns stated by Ellington across the street from this site. She stated they are two separate properties and two separate developers.

ACTION:
Motion: Frantz moved to approve the annexation.
Second: Adcock
Vote: Unanimous

Weinbrecht called for a short recess.

F. QUASI-JUDICIAL PUBLIC HEARINGS

1. MINOR ALTERATION 13-MA-113 (Kitchen and Bath Creations)
   Location: 108 East Chatham Street
   Current Zoning: Town Center
   Request: Appeal of the administrative denial of a Minor Alteration application to paint the building façade
   Proposed Council Action: Council may take action
   Speaker: Mr. Kevin Hales

REQUEST
Dick and Jean Ladd, the owners of the property located at 108 East Chatham Street, are appealing the administrative denial of a minor alteration application to paint the exterior brick masonry of the building. The proposed minor alteration was denied because staff determined that the Town’s architectural standards do not permit the painting of exterior masonry materials. Section 3.10.3 of the LDO establishes that appeals of minor alteration decisions made by the Development Review Committee shall be made to the Town Council, consistent with the requirements of Section 3.9.2(G). In accordance with Section 3.9.2(G)(4) of the Land...
Development Ordinance (LDO), the Town Council may affirm, reverse, or modify the Planning Director’s denial following a quasi-judicial hearing.

### SUBJECT PARCELS

<table>
<thead>
<tr>
<th>Property Owner</th>
<th>Wake County Parcel Identification Number (PIN) (10-digit)</th>
<th>Real Estate ID Number</th>
<th>Deeded Acreage</th>
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<tbody>
<tr>
<td>G. Richard and Jean Hobby Ladd</td>
<td>0764419467</td>
<td>0031397</td>
<td>0.24</td>
</tr>
<tr>
<td>P.O. Box 760</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cary, NC 27512</td>
<td></td>
<td></td>
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<td>Total Area</td>
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### BACKGROUND INFORMATION

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Guy Richard Ladd</th>
<th>208 Glasgow Road</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>Cary, NC 27511</td>
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<tr>
<td></td>
<td></td>
<td>(919) 467-8155</td>
</tr>
<tr>
<td></td>
<td></td>
<td><a href="mailto:dickladd@me.com">dickladd@me.com</a></td>
</tr>
<tr>
<td>General Location</td>
<td>108 East Chatham Street, at intersection with South Academy Street</td>
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<tr>
<td>Land Use Plan Designation</td>
<td>High-Intensity Mixed Use (HMXD) in the Town Center Area Plan</td>
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<td>Zoning Districts</td>
<td>Town Center (TC) in the HMXD sub-district</td>
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<tr>
<td>Within Town Limits</td>
<td>Yes</td>
<td></td>
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<tr>
<td>Staff Contact</td>
<td>Kevin A. Hales, Senior Planner</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Town of Cary Planning Department</td>
<td></td>
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<tr>
<td></td>
<td>P.O. Box 8005</td>
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<tr>
<td></td>
<td>Cary, NC 27512-8005</td>
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<tr>
<td></td>
<td>(919) 462-3944</td>
<td></td>
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<tr>
<td></td>
<td><a href="mailto:kevin.hales@townofcary.org">kevin.hales@townofcary.org</a></td>
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### LIST OF EXHIBITS

The following documents incorporated into this staff report by reference are maintained by the planning department according to the Records Retention and Disposition Schedule:

- Exhibit: 13-MA-113 Application (2 pages)
- Exhibit: 13-MA-113 Letter of Denial (1 page)
- Exhibit: 13-MA-113 Letter of Appeal (2 pages)

### PROJECT DESCRIPTION/SUMMARY OF REQUEST

On June 11, 2013, Town staff was made aware that painting of the exterior brick masonry façade of the building located at 108 East Chatham Street was occurring. Zoning Compliance staff made contact with the property manager and advised that approval of a Minor Alteration application was required for any exterior changes to a building façade. A Minor Alteration application to paint the building was submitted and subsequently denied by the Town. This denial was based on the application’s inconsistency with the architectural design requirements of Cary’s Community Appearance Manual (CAM).

### SITE CHARACTERISTICS

The building to which the changes have been requested is an existing brick masonry building located on a 0.24-acre parcel in downtown Cary. There are no stream buffers, wetlands, or...
floodplains located on the site which impact development of the property. There are also little to no topographical changes across the site.

**Surrounding Land Uses:**
North – Gurkan’s Downtown Auto Repair (opposite side of East Chatham Street)
South – First United Methodist Church
East – The Cary (downtown theatre under construction)
West – Ashworth Drugs (opposite side of South Academy Street)

**SUMMARY OF PROCESS AND ACTIONS TO DATE**
**Minor Alteration Timeline:** On June 11, 2013, the Town of Cary Zoning Compliance staff was made aware of the painting of the exterior brick masonry façade of the building located at 108 East Chatham Street. A Zoning Compliance Officer discovered that painting of the eastern and southern façades had been completed. The property owner was advised that approval of a Minor Alteration application was required for any exterior changes to the building façade.

Later on June 11, 2013, the property owner halted painting of the building and submitted a Minor Alteration application to paint the building exterior. On June 21, 2013, the Planning Department issued a letter denying the request to paint the exterior building façade because it was inconsistent with the architectural design component of the CAM. On June 24, 2013, the property owner submitted a written request to the Town to appeal the administrative denial of his Minor Alteration application.

**Notification:** On July 10, 2013, the Planning Department mailed notification of the public hearing on the appeal to property owners within 400 feet of the subject property. Notification consistent with North Carolina General Statutes was published in the Cary News on July 10 and July 17, 2013.

**Property Posting:** Notice of the public hearing was posted on the property on July 10, 2013.

**CONSISTENCY WITH THE LAND DEVELOPMENT ORDINANCE (LDO)**

In July 2005, the Town Council adopted a new architectural component of the Community Appearance Manual (CAM). This document consists of nine architectural principles and describes how these principles are to be applied to development within the Town. The CAM and all of its requirements are incorporated into the LDO in Section 1.4.4. The applicable architectural principle used in the review and in the subsequent denial of this Minor Alteration was the Color principle. The introductory paragraph of the Color principle (page AD14 in the CAM Architectural component) reads as follows:

Brick, concrete, and stone have their own inherent color and should be left in their natural state to weather over time. Paint can be used to complement and accent other exterior building materials. To ensure that there is consistency, the Town of Cary requires a project-based palette related to color.

The subject building is located within the Town Center zoning district. This zoning district allows flexibility in design and specifically exempts development from certain standards in Section 4.2.2(N)(10)(a) of the LDO:

Considering the unique nature of downtown, certain requirements of the following provisions shall not be applicable within the Town Center district in order to provide the flexibility for downtown development:

1. The required number of off-street parking spaces (see Section 7.8) may be reduced up to fifty (50) percent on a case-by-case basis provided there is adequate on-street parking available in a proximate area. All other parking standards in Section 7.8 shall apply.
2. The perimeter buffer requirements in Section 7.2.3 and streetscaping requirements in Section 7.2.4 may be reduced or waived. Additional provisions from Section 7.2 may

July 25, 2013 Minutes
Minute Book #177, Minute Book Page 118
also be modified on a case-by-case basis provided such modification is consistent with the Town Center Design Guidelines; except that a hardship must be demonstrated before the requirements of Section 7.2.5 related to the retention of champion trees may be modified.

3. The exterior lighting requirements in Section 7.9.3 except in cases where a property is bounded by an existing single-family structure or development.

4. The requirements relating to private open space in Section 8.3.2.

The architectural standards are not listed in the above exemptions; therefore, Section 4.4.2(N)(10)(b) of the LDO would apply to the design of the building. The introductory paragraph of that section of the LDO reads as follows:

Except as otherwise exempted, all new projects or proposed expansion, alteration, or major repair must satisfy the standards set forth in all other applicable town plans, guidelines, codes, and regulations. New development shall be appropriate to the site, taking into account the safety, convenience, and amenity of the surrounding neighborhood, and shall be evaluated in relation to existing adjacent or surrounding buildings that fit the overall intent of this section. Downtown projects must, among other requirements, meet the following general performance standards. (emphasis added)

The architectural standards are not included in the specific enumerations following that introduction; however, the inclusion of “…among other requirements…” is intended to demonstrate that unless specifically exempted, all other requirements of the Town would apply to development in the Town Center area.

The applicant submitted a Minor Alteration application to the Town, which was reviewed in accordance with Section 3.10.3 of the LDO. Upon denial of the application, the property owner provided a written request for an appeal of the administrative denial of the Minor Alteration in accordance with Section 3.9.2(G)(4) of the LDO.

The Town Council is being asked to affirm, reverse, or modify the DRC’s denial of the Minor Alteration based on the approval criteria established in Section 3.9.2(I) of the LDO. Specifically, Town Council must determine whether the DRC’s erred in denying the Minor Alteration application based on the DRC’s determination that the Minor Alteration fails to comply with the first approval criteria [Section 3.9.2(I)(1)], which requires compliance with the LDO.

### DEVELOPMENT PLAN WORKSHEET AND SUGGESTED MOTIONS

Section 3.9.2(I) of the LDO provides the criteria for Town Council’s review of the denial of the Minor Alteration request. The criteria from the LDO are included below in italics, with staff comments included as appropriate in standard text following each criterion.

1. The plan complies with all applicable requirements of this Ordinance, including the development and design standards of Chapters 7 and 8 as well as the dedication and improvements provisions of Chapter 8 as well as all applicable Town specifications. (Note: Plans within Planned Developments may be subject to different requirements based on the approval).

   Staff contends that the CAM, including its architectural components, is incorporated into the implementation of the LDO in Section 1.4.4 of the LDO. As indicated in the staff report, the architectural component of the CAM indicates that masonry material such as brick, concrete, and stone should be left in its natural state to weather naturally. Paint may be used to complement and accent other building materials incorporated into a building façade. In this situation, the predominant material on the building located at 108 East Chatham Street is red brick. Other materials found on the building include, but are not limited to, faux shutters, aluminum storefront, and awnings. It is staff’s contention that the proposed painting is therefore inconsistent with the CAM and therefore inconsistent with the LDO, such that the requested Minor Alteration does not comply with all applicable requirements of the LDO.
2. The plan adequately protects other property, or residential uses located on the same property, from the potential adverse effects of the proposed development; The proposed Minor Alteration is limited to changes in the exterior building façades and would not change the intensity of the existing use within the building. TEST SATISFIED? __ YES __ NO

3. The plan provides harmony and unity with the development of nearby properties; The principal building material used in the surrounding buildings is modular brick that has been left in its natural state. The physical scale (actual dimensions) and the massing of the building would not be affected by the changes and would remain similar to the scale and the massing of the surrounding community. However, the painting of this building would eliminate the visual scale cues of the individual bricks and thereby alter the visual massing of the building. TEST SATISFIED? __ YES __ NO

4. The plan provides safe conditions for pedestrians or motorists and prevents a dangerous arrangement of pedestrian and vehicular ways; The proposed Minor Alteration proposes no changes either to vehicular use areas or to pedestrian walkways. The changes are limited to aesthetic changes to the exterior building façade. TEST SATISFIED? __ YES __ NO

5. The plan provides safe ingress and egress for emergency services to the site; and The proposed Minor Alteration would not alter driveways, vehicular use areas, or pedestrian access to the site. TEST SATISFIED? __ YES __ NO

6. The plan provides mitigation for traffic congestion impacts reasonably expected to be generated by the project. The scope of the proposed Minor Alteration is limited to aesthetic changes to the building façades and would neither increase the intensity nor the amount of traffic generated by the use. TEST SATISFIED? __ YES __ NO

SUGGESTED MOTIONS FOR APPEAL
MOTION TO AFFIRM ADMINISTRATIVE DENIAL
For the reasons discussed, I move that we AFFIRM the administrative denial of the proposed Minor Alteration pursuant to Section 3.9.2(I), as the Minor Alteration does not comply with all applicable requirements of the Land Development Ordinance.

OR
MOTION TO REVERSE ADMINISTRATIVE DENIAL
For the reasons discussed, I move that we REVERSE the administrative denial of the proposed Minor Alteration pursuant to Section 3.9.2(I), as the Minor Alteration does comply with all applicable requirements of the Land Development Ordinance.

OR
MOTION TO MODIFY ADMINISTRATIVE DENIAL
For the reasons discussed, I move that we MODIFY the administrative denial of the proposed Minor Alteration as stated below:
This denial is modified as follows:
1. [Town Council may "step into the shoes" of the administrative official charged with enforcement of the ordinance and take any action the official could have taken.]

The town clerk, in her capacity as Notary Public, administered oaths to the witnesses. (The oaths are maintained in the clerk’s office according to the Records Retention and Disposition Schedule.)
Contractual Attorney Silverstein took Town Attorney Simpson’s seat at the council table. He explained the difference in a quasi-judicial hearing and a regular public hearing.

**Begin verbatim transcript**

Weinbrecht: It’s now time for council members to say if they’ve had any site visits or ex-parte communications. I know that council member Smith has contacted me and made me aware of an issue. I’ll let Mr. Smith have the floor at this time.

Smith: Thank you, mayor. I also talked to our town attorney and got some advice in general. My notice of disclosure is that this past Monday, July 22 I was invited to attend a meeting in Cary where I was asked to give an update just on the Town of Cary. It was a very high level broad brush. I talked about key initiatives. I talked a little about our budget, and some of the activities we’ve been doing. That lasted about 15 to 20 minutes. Afterwards I was asked if I would entertain questions from the audience. During that Q&A, which was quite lengthy, one of the questions was related to this case. At the time I did not know the case was on the agenda nor did I know it was a quasi-judicial proceeding. Therefore, I responded with what I felt was a factual update of the status of the situation as I understood it at that time. Upon that, there were several follow up questions regarding some of my statements, and I did answer those questions. In one case I used an example of a homeowners association and covenants and stuff like that. But, my point is that there was a lot of give and take and a lot of discussion. Again, all of this was going on at a time I did not know the status of this case.

Smith: Now as a member of this board I firmly believe I could make an impartial decision. However, I am concerned that my responses to the questions that evening – that past Monday – could be perceived as having a fixed opinion and I was participating in ex-parte communications. I was very explicit at times about some of those thoughts, and they could be interpreted as my having a fixed opinion. I think it’s important that this proceeding have absolutely no appearance of impropriety. As such, and to preserve the integrity of this proceeding, I’m asking to be recused from this case.

Weinbrecht: Is there a motion to recuse council member Smith from this proceeding?

Adcock: I would ask our attorney if that seems necessary based on Mr. Smith’s explanation.

Silverstein: The mayor asked if he could call on me during the proceedings. I almost wish that he hadn’t asked that particular question. It does prevent a difficult issue. I think Mr. Smith – from a personal standpoint – has basically said he wants to avoid even the appearance of impropriety. At the same time he feels he could make a valid decision based on the evidence presented at the hearing this evening. I think that’s got to be taken at face value. I think frankly I would turn it back to you. You can either honor his request that he be excused from participating in the case, but you really don’t have to based on what he himself said – that he has not developed an opinion on the case, and he can listen to the evidence presented this evening and make a fair and impartial decision.

Weinbrecht: Mr. Smith, did you say that was based on the advice of the town attorney?

Smith: No, I said I sought the advice of the town attorney. That is not based on that. Fundamentally, the point was that I should just state what happened and let all of you know. My concern was strictly that evening there were a lot of questions that were answered, and there was a lot of give and take in those questions. And for some reason, this case — some in the audience were just fixated with — and there was this continual pushing of issues of private rights vs. the Town. So I just kept getting more and more explicit in my response. Some of that response quite clearly had the appearance of defending the Town’s actions. I’m really, really concerned that as explicit as I was that night, that that’s going to affect the integrity of this.
Adcock: I have found Mr. Smith to be a very thoughtful council member. If he is this conflicted, then I'm going to honor his request and make a motion to recuse him from this quasi-judicial hearing.

Weinbrecht: Is there a second?

Yerha: Second

Weinbrecht: Discussion?

Frantz: I was at the same meeting Mr. Smith was at. I, too, engaged in very similar conversation with some of the people that were in attendance at that meeting. I don't believe that I firmly staked out a position. I tried to talk to it about generalities and pros and cons, property rights, and the position of the Town and so forth. I, too, believe that I could make a fair and unbiased judgment in this case, but then I would also go a step further and say I've also been visited by the property owner in this case, well before it was on the agenda as a quasi-judicial hearing. I've also been contacted by a number of others, most specifically in the downtown area, regarding this particular case. I'm starting to wonder if we're going to end up with enough people up here to have the meeting on this case.

Silverstein: Well that's part of the problem. I mean that sincerely, because I believe you should be encouraged to participate if you can. Because if you can't, and too many people recuse themselves, you have the same problem from the other side. You have too few people participating in the decision-making process, and it's suspect from that standpoint. So, really, if you look at some of the treatises on advising members of a board, such as yours, as to how they should proceed on this – obviously if you've got a financial interest you shouldn't participate. If you've made up your mind ahead of time, you shouldn't participate. But if you can consider the evidence and make a decision based on what's presented this evening, you should participate.

Frantz: I believe that I can do that, and I believe Mr. Smith can do that, which is going to make it really hard for me to vote to recuse him.

Adcock: Yeah, then we'll have to recuse you. You haven't asked to be, but you know what I'm talking about.

Weinbrecht: We have a motion on the table. The motion is to recuse Mr. Smith. Any other discussion? All in favor of the motion please say aye, and show your hands. Jack, you're not allowed to vote – I don't think. Is he allowed to vote?

Silverstein: I don't think he should.

Weinbrecht: Those opposed? Motion carries three to two.

( NOTE FROM TOWN CLERK: Frantz and Bush voted no; all others voted aye. Smith did not vote.)

Weinbrecht: We say goodbye to you, Mr. Smith, and we'll welcome you back after this hearing.

Silverstein: I don't know if you've had this happen before, but once you're recused you really are recused. You should actually leave the table and not participate in any way, shape or form.

Smith: I can take a hint.
Weinbrecht: Now we’re going to go down the table. Mr. Frantz has already talked about his ex-parte communications, but we’ll start on my right and work our way down the table.

Adcock: The first week of June the applicant in this case left me a voice mail. I returned a voice mail. We never spoke to each other. He simply said there was a problem and would I please call. I called the Town and asked what was up. They told me. I left a voice mail that said please continue to work with the Town staff. That was the extend of it.

Weinbrecht: I can’t remember any ex-parte communications on my part. Don, do you have anything to add?

Frantz: The other question is site visits. I drive by the thing 10 times a day.

Weinbrecht: Having said that, I drive by it every day, too.

Bush: I have not had contact with any of the owners, but in one of our small group meetings we often have, we were updated by Town staff as to the status of this case before it became quasi-judicial.

Yerha: Although I’d love the opportunity to leave the table, I’ve had no ex-parte activity that I’m aware of.

Weinbrecht: Based on disclosures we’ve heard from council members, I invite anyone to the podium who has been sworn in to speak if you have an objection to a council member’s participation in this hearing. I see no one. At this time I’m going to open the quasi-judicial public hearing. Mr. Hales of our staff will introduce this item. Mr. Hales

Hales: Good evening, council. As you’ve indicated, the next hearing is a hearing on an appeal of an administrative denial of a minor alteration request to paint an exterior brick façade. The building is located right down the street one block away at 108 East Chatham Street. As a point of clarification, it is currently occupied by Kitchen and Bath Galleries. The staff report and slide presentation was taken from the name on the application, which was Kitchen and Bath Creations. The tenant called me earlier today and corrected that and pointed out that mistake.

Hales: The project is located in the southeastern quadrant of the intersection of East Chatham Street and South Academy Street. Both East Chatham and South Academy Streets are thoroughfares on the Town’s comprehensive transportation plan. Gurken's Downtown Auto Repair is located across Chatham Street to the north. The Cary, which is the new downtown theater under construction is located to the east across a small parking lot. First United Methodist Church is located immediately to the south across a narrow alley. Ashworth’s Drugs is located to the west across South Academy Street. The site is at the main downtown intersection, and as such it is located on both C-Tran fixed route and TTA service routes and is within a block of the Cary Depot, which serves as a train station for Amtrak as well as a transit hub for both TTA and C-Tran.

Hales: The Parks, Recreation and Cultural Resources Facilities Master Plan identifies two proposed streetside trails – one along the southern side of East Chatham Street and the other along the eastern side of South Academy Street – both of which would front this property. As part of this development there would be no impact there. They would not be required to make any improvements. Those trails would really take the form of whatever bike or pedestrian plaza the downtown streetscape develops as in the future as that project moves forward.

Hales: Zoning and land use are combined in the town center. The property is in the town center zoning district. As such, the land use plan designation also doubles as the zoning subdistrict. In this case that would be high intensity mixed use. Everything around it up Chatham Street and
South Academy Street for a ways until you cross the train tracks is also high intensity mixed use. Existing conditions: developed as a one-story commercial building; it was developed some time ago. The Town doesn’t actually have any approved site plans on it. Parking is located on the western side of the building along South Academy Street. It backs out directly into the street. There’s also a small alley between the back of the building and First United Methodist Church property. As I mentioned before, it’s a one-story commercial building. This is the current – the original façade. All red brick with (inaudible words) bronze lining the storefront and coping. I mentioned we didn’t have a site plan on file. There was a minor alteration submitted in 2006 for an addition of windows to the rear façade. The tenant was the same at that time – Kitchen and Bath Galleries – and Mr. Ladd was party to the application. I have a copy of that application and approval letter I’ll pass around. The Town, when approving development plans, including minor alterations, has a standard note that goes on them that basically says that no changes to any aspect of the site plan -- and color changes are actually specifically called out. Building elevations shall be (inaudible words) approval for the Town of Cary. I bring this up only because it would seem the procedures would not be unfamiliar to the applicant seeing as they went through it in 2006. That brings us to today. In early June — a little bit before in Ms. Adcock’s email she mentioned — the Town staff was made aware that painting was occurring on the western side of the building facing South Academy Street. At that time staff went out and had a discussion with the painters, and contacted the property owners, and painting was stopped. They were notified they needed to submit a minor alteration, which was then submitted the same day. A couple of weeks later that minor alteration was acted on by Town staff and was denied. Just to bring you up to speed, we found out upon investigation that the eastern and southern facades — the one facing the parking lot toward The Cary – town downtown theater, and the one facing the rear alley had already been completely painted – the color sepia tan. So the minor alteration was denied, and there was an appeal submitted in writing by the applicant. That appeal statement did raise an issue regarding the downtown development manager implied endorsement of the painting. There’s also an affidavit prepared by Jeff Ulma stating that the attached email, which is attached to the affidavit, is a public record maintained by the planning department, and basically, it’s an email from the downtown development manager to both Ben Shivar and Jeff Ulma stating the Ladds were informed that any changes would need planning approval. I want to enter that into the record. (NOTE: Maintained by the planning department according to the Records Retention and Disposition Schedule.)

Hales: As you know, council is basically being tasked with determining whether staff acted incorrectly in denying the minor alteration application to paint the exterior of the building. I’m going to take a few slides to go through what led us from the applicant to staff’s action. As you know, staff is tasked with basically enforcing the requirements of the LDO and any associated specifications and other manuals. We don’t have a lot of discretion in regards to how that gets enforced. Basically, we start with the community appearance manual. In 2005 council adopted the architectural component to the community appearance manual and basically outlined nine design principles, which were required for façade work with the Town. One of those – the last one actually – is the color principle, which deals with the use of color in building facades. The introductory paragraph of that principle in the document reads that brick, concrete and stone have their own inherent color and should be left in their natural state to weather over time, and paint may be used to complement and accent other exterior building materials. Because that’s not part of the LDO, there is a section, 1.4.4 of the LDO, which states that all the other associated standard specifications manual, community appearance manual, design guideline documents – there’s a myriad of instances of this – but the LDO is essentially intended to be administered by staff consistent with the requirements of those other documents, including the community appearance manual.

Hales: The town center, by its virtue of being a focus for the town and encouraging development, was established with certain flexibility in mind. There are specific standards, and they are enumerated in your staff report in more detail, that that zoning district – just by virtue of being located there – the applicants can take advantage of. That includes the implementation of permit...
or buffers and streetscape requirements for parking for various uses, design of exterior parking lot lighting, and the provision of open space for residential and non-residential developments. However, the subsection immediately following those enumerated items says that except as otherwise exempted, all new projects or proposed expansion, alteration or minor repair must satisfy the standards set forth in all other applicable Town plans, including the community appearance manual. This was routed as a minor alteration. Basically it was considered an inconsequential change. It didn’t affect utilities or transportation. It didn’t add more traffic. It didn’t require more parking. The procedure for that is outlined in Section 3.10.3 of the LDO. Basically that says the development review committee, which is a committee made up of several different departments around the Town that deal with development, shall review it and take action on it. However, it does say that appeals of any such decisions will be considered by the town council consistent with the requirements of 3.9.2(g), which is the section governing site plan approvals and appeals. So moving to that section next, it basically says that an appeal must be filed within 10 days in writing – which it was – it was filed the next day. If an appeal is filed, the town council after conducting a quasi-judicial hearing may affirm, reverse or modify the director’s denial based on the approval criteria for site plans. As I mentioned before, we’re charged with enforcing the land development ordinance – not making a lot of discretionary decisions. So, we’ve looked at the approval criteria and determined that really the only one here that applies is the first one, and that is the basis for the denial. The denial letter was attached to your staff report. And that first criteria – 3.9.2(i)(1) – is that the plan complies with all applicable requirements in this ordinance including the development design standards of Chapter 7 and 8 as well as dedications, improvements, provisions in Chapter 8, as well as all applicable Town specifications. Now the other criteria are included in the staff report just for completeness sake. They are the six outlined in the ordinance. But like I said, it’s staff’s contention that really the only one in question on both sides I think is number one.

Hales: I’ve mentioned before council’s options for actions on the administrative denial following the quasi-judicial – the first is if they affirm the administrative denial – that result would be that the minor alteration remains denied, and the building is in violation. There have been some discussions about whether or not the paint could be removed. Pressure washing was mentioned as an option. However, the Town did do some research and had public works contact several paint contractors, and they recommended against pressure washing because it is invasive and may damage the mortar especially, because it’s a softer material than the brick. However, there are chemical treatments, which have proven to be about 98% effective that can be used to remove paint from brick. I don’t know what research has been done on the applicant’s side, but the Town of Cary will be happy to provide that information if he’s interested. The second option would be to reverse the denial. That would mean the minor alteration is approved, and the building may be painted as proposed, which is all sepia tan based on what we have before us. And the third, which is a little unusual, would be to modify the denial, and that would have council stepping into the shoes of the administrative official charged with enforcement of the ordinance, and then taking any action we could have, in theory, taken ourselves. Those are the three options before you. That concludes staff’s presentation at the moment. I will be available if you have any questions following the applicant’s presentation. Thank you.

Weinbrecht: Thank you. At this time we’ll call on the applicant to present arguments in support of the appeal.

We are Dick and Jean Ladd, and we thank you honorable mayor and council members for permitting us to speak tonight. Pursuant to our letter of June 24 – I hope you all received, we had a letter to go to you all – anyway, in that we stated the background of our improvement decision related to a series of meetings we had with Ed Gawf in regard to a facelift for 108 East Chatham Street. The age of the building is approximately 60 years old – probably between 60 and 70. Cracks had developed in the building. I have pictures here I’d like to pass. Because of the cracks in the building and the mortar becoming very loose, and in some places absolutely gone, and graffiti was on the back of the building, we came to the conclusion that painting was a good option,
because, like I say, we had a lot of meetings with Mr. Gawf. There was never, ever a mention of any verbiage that painting was a breaking of a law. This was just totally over the top of anything – we had never been aware. We had never seen a manual; that had never been stated. We certainly wouldn't have done it. We have a tenant of 30 plus years. Steve and his employees approached us to improve the building. They wanted a facelift. They needed a little lift there on the corner. Business had been dragging. In fact, they had strongly considered moving out of our building back in the fall, and we certainly didn’t want that to happen. They knew what was coming with the downtown restructuring, which is all good, but it doesn’t help a merchant many times. We begged Steve to stay and we would work with him, which we have and did. When he and his employees were very serious about the painting, we said fine, let’s do it. We want to make you happy. We really thought we were doing something good. A painter was hired, color and grade of paint was selected, two sides were primed and the painter was stopped in his tracks when he got to the west side of the building and threatened by one of the Town employees – stop right now, or you’re going to be fined. Upon learning of the situation – us, we came down to the town hall and ultimately learned that a law had been adopted in – we thought it was 06 – anyway 5, 6 – we knew nothing about that. This law we were told prohibited painting a masonry surface. Does this also mean cinder block, concrete? Would you leave that unpainted? No one seemed to know of this law that we had spoken with – none of the downtown merchants, citizens, our friends, even some of the Town staff. When we first came over and talked to Sue about talking to you all, one of your employees in that department knew nothing of this. So we are asking for your permission to finish a well thought out plan for improvement. We have a letter from a master painter that Dick is ready to pass out in which he states that painting old brick actually preserves it. It’s a good thing. It’s not a bad thing. It’s a good thing. So please, ladies and gentlemen, please use some common sense here. Don’t cut off our life blood. We love Cary. We’ve been here forever. We’ve been good citizens. We’ve done and given and promoted Cary. We just feel like we’re being called violators, and we don’t think we are. I’ll turn it over to my husband.

Dick Ladd, 208 Glasgow Road in Cary. I’ve been here for 50 some odd years, I’m sure. We did not know anything about this law. Now you may say we should have known. We have never had any kind of literature, notice or anything that you can’t paint a brick building. We know there are other brick buildings that have been painted. I don’t know if you knew about them, but there’s quite a few up and down Chatham Street and other places that have been painted. Like my wife said, I’ve got letters from the master mason, the brick association of NC, the painter – he got chased off, but he has gone through a great deal of documentation about what the paint will do. I will give you all copies of all these letters. Plus the fact that the brick association said – he asked me about the common brick – he’s from Charlotte. I said a truck hit our wall. I don’t know if it was one of your trucks, but I was told by the contractor doing the movie theater that it was a trash truck that had hit that building. You maybe can see that this brick is black. You can tell it’s black. What he told me is that – I said it’s common brick. He asked what color it is. I said it was red at one time. When you’ve got darkness in a brick that means the brick is disintegrating, and he said the only thing you can do is paint it. I can give you a lot of details on letters and this kind of thing. We’ll leave it with Sue. What we want to do, like my wife said, we want to finish the job, do a good job, continue to have staff look at the paint job (inaudible words). We just want to finish that paint job. I know there are a lot of merchants, and they don’t know about this law that you all have on the books. We’d like for you to give us an opportunity – a chance to finish that paint job. Let us finish our job we started. We appreciate any consideration. Thank you.

Weinbrecht: At this time it is time to invite speakers that have been sworn in who wish to speak in support of the applicant.

I’m Cindy Emens, and I guess we’re partly responsible for councilman Smith recusing himself, because I did have some general questions regarding this situation. We wondered how this process proceeds. Jack had told us that the Ladds had signed an agreement, and because of that agreement what they did was illegal, because they were fully knowledgeable. The questions I had forwarded to him, the first one being, is there an addendum to deeds of transfer when
properties are purchased whereby the transfer of ownership acknowledges that the Town of Cary has this CAM – the manual in place. Number two, was when did this covenant process begin? Three, what about property ownership that predates Cary’s Community Appearance Manual? Four, how does the Town maintain its archive of signed CAM covenant agreements? Six, have there been instructional workshops provided by the Town to educate the property owners on these particular do’s and don’ts with ample opportunity for questions and answers? And the next one, how does a property owner defend himself against accusations of purposefully ignoring and violating CAM rules? They were just general procedural questions that had come up. It was certainly not meant to compromise the judicial nature of this proceeding. I do think they need to be addressed. Having talked to some business owners in the downtown area, we did find out that they do not know what these specific rules and regulations are. This is not a structural modification, and painting just did not seem to fit into that category. So that was what I had addressed to my councilman. Thank you.

I’m Jerry Miller, and I’m here to speak on behalf of the Ladds who I’ve known for over 50 years. I met Dick Ladd when we were in the Jaycees together, Cary’s first Jaycee club. And 49 and ½ years ago Dick started the Cary Rotary Club. We’re the largest club in the area except for one in Raleigh. We have about six or seven or eight clubs that have swung off from the Cary Rotary Club. Dick Ladd is also responsible for the YMCA coming to Cary. He managed to get the YMCA to move to Cary. He also was the head of the visual arts in Cary. Just to name a few things they’ve done. Dick was also a town councilman many years ago when the town was beginning to grow. I worked on several committees with Dick – too many to mention, but I will say a couple you’re very familiar with. I worked with Dick on the committee to do the sculpture – Wyth Quarles at the railroad station. I also worked with him when we did the town clock – the Cary Rotary town clock. Dick’s a Christian, and he teaches my Sunday School class every now and then. I know both of them are Christian people. I cannot believe that Dick and Jean Ladd would do anything to disface their property here in Cary. They love Cary. They’ve been here for over 50 years. There’s nothing they would rather do than finish the job they got. I appreciate your letting me talk. I’m very proud to call Dick and Jean Ladd my friends.

My name is Bill Rogers, and I was born in Cary 78 years ago up on 126 West Chatham Street. Just up the street from Ashworths Drug Store. I was born upstairs in a little brick building, and by the way, that building is painted about the same color that Dick wants to paint his building. It was a brick building, and it looks good. I have known Dick since 1960, and Jean was born and lived in Cary all her life. I know they are two people that love and care as much for Cary as any people who live in this town. It reflects in the way they have maintained the property that they have in Cary. I want to say that owning an old building in downtown Cary is not an easy thing to do. The only thing you know for sure is that your taxes are going to come due every year, and you’re going to have insurance bills every year, and you’ve got maintenance on these buildings. It’s not all what it looks like it might be sometimes. I also have that building down at 149 East Chatham Street. I’ve been a close neighbor of Dick’s in that respect, and he also owns a building behind my building on 149 East Chatham Street. He keeps those buildings – they’ve always just been sort of a model for the rest of us in downtown to try to go by. I’ve asked Dick for advice on many occasions, and I respect him so much. He’s a good businessman; he was a good councilman. When they started the YMCA I remember in a restaurant they had a group of people at a big table that came down and had breakfast every morning. He came in and he was so happy that he was starting the YMCA, and he asked for donations. That morning he raised about $1,200 just on the spot to help get that YMCA started. When they started the Veteran’s Park, he was the first person to come see me and wanted me to sign up for a donation. He’s all for Cary, and what he wants to do to his building – and I’m a close neighbor of it, and I would be proud of it. It’s going to look so much better. I know what old bricks are, because that’s what my building was down at 149 East Chatham Street. If it had stayed old brick all these years, that building would be gone. One time we tried to sandblast and take the color off the building. You can’t do it off those old bricks. They’ll come all to pieces. We did the best we could with the property we had down there. That’s what
Dick’s trying to do. I’m proud that I can come here as their friends and ask you to let them continue to do what they want to do there. Thank you very much.

My name is Lee Rothstein. I’m an employee at Kitchen and Bath Galleries. I’ve been there since 1998. I’ve been attending a lot of the Heart of Cary meetings, the downtown merchant meetings. Ed Gawf has constantly made mention about the unsightly building that we occupy. I always had an offensive to that, because I know on the front of the building we always try to keep it very neat. People stop at the stoplights and always look into our windows at night. We keep them lighted. We have cabinet displays so people can see what all we do. Talking with the Ladds, they finally decided to do something about the Academy Street side and pretty much all the building. So they decided to paint it. Unbeknown to them at the time that it was illegal. We try to be good neighbors in downtown. We are a destination company. People come to downtown specifically to come to our business. We then promote downtown Cary, all the restaurants, all the other merchants, because we want to be a good partner. Even though there’s times like even in the next 30 days three street closures on Saturdays, which are one of our busy days that will limit our sales. This weekend with the 5K roundabout streets are closed from 7 to approximately 11. Our normal hours are 10 to 4. On August 10 the bicycle race will close all the streets around us from 2 to 8 that night. And then, of course, lazy daze coming up the 24th of August. We try to be very good partners in downtown Cary, and we hope you all will allow us to have a beautiful building that we can be a part of the downtown, and allow the Ladds to continue painting. Thank you very much.

My name is Bill Lemon. In 1963 my family moved here, and I actually attended school where the Cary arts building is now. I walk by downtown buildings every day for several years. We live down on Chatham Street across from the car wash down there. I can tell you I’ve raised my family here, I’ve had a daughter and a son graduate from Cary High School. My daughter has taught at Cary High School – Spanish. What I have seen – I have seen the brick buildings in downtown Cary deterrioriate. All the Ladds wanted to do was take these aging properties and bring them up to date so they look decent. You have a problem. That problem is the movie theater and the building you’ve got beside it, which is adjacent to us, looks bad. You’re going to have to do something with it. I don’t know exactly what your plans are, whether you’re going to tear down the brick and put new brick up, whatever. Your easiest option is maybe to look into painting it. You can set it up where you can paint buildings and make them look good and preserve them. Maybe you might want to rethink possibly a setup where you can put an ordinance on the books that if a brick building is a certain age, the owner may have the right to paint it, subject to council approval. If you look at the picture you’ve got up on the screen, you’ll notice that it’s got the clock up there. Dick Ladd donated that section of his property to the Town of Cary, and he’s donated much property to the Town of Cary. Cary can be very proud of this citizen, and all he wanted to do was improve the looks of Cary. That’s all I’ve got to say. Thank you.

I’m Peter Emens from Trimble Avenue in Cary. I’m a relative newcomer, having arrived here 14 years ago. My wife designed our little house in the woods on Trimble Avenue, and we’ve enjoyed that after moving from upstate NY, where for 27 years I was on the other side. I was a planner and zoner for the City of Rochester. This is new to me to be in this position. I just wanted to add my sentiments to what you’ve heard about the Ladd’s efforts. From my experience, painting over brick might only be a concern if, number one, the structure had been designated an historic landmark. Or two, their property was located inside an historic preservation zoning district. Or three, their building was built in the 1800s or early 1900s and had some historical significance the Town might wish to preserve. I endorse all the sentiments the others have expressed. I just got to meet the Ladds today, and I fully support their efforts to maintain the appearance of downtown business. Thank you.

I’m Richard Ladd. You’ve heard testimonies of the loyalty of our family in downtown Cary, but I want to get back to the facts. There was an architectural design standard that was adopted in 2006 by an architect out of state that stated that no brick, stone or concrete would be painted. I don’t think when it was adopted it really took into account older buildings within downtown Cary.
Since then you guys have pursued increased development in downtown Cary. You’ve invested millions of dollars in downtown Cary to promote business, to buy property, to build buildings, to create tenants. I think that ordinance that was adopted really doesn’t apply today and what we’re trying to do as a town for the downtown area to create more business. The planning department pulled up the criteria for approval contained in the LDO, and there’s six items out of that. We don’t comply to one of them, but we do comply with item 2, which is the plan adequately protects other properties or residential uses around. Three, the plan provides harmony and unity and the development of nearby properties. The plan provides safe conditions for pedestrians and motorists. The plan provides safe ingress and egress. We’re not changing that. The plan provides mitigation for traffic congestion impacts reasonably expected to be generated by the project. We have complied with five out of the six conditions for this LDO. We have got testimony from the adjacent property owner – the church – that approves our project. We would like to put in the letter from the mason and from the painter as evidence in this case. Thank you.

Silverstein: Those letters are not competent testimony. They’re hearsay, and they’re not allowed to be submitted as exhibits.

Richard Ladd: They can’t be used as evidence or as affidavits?

Silverstein: They can’t be introduced. The evidence has to be presented by an expert in the area. Those letters cannot be cross-examined, so they can’t be introduced.

Richard Ladd: I thought that was the process. It’s hard for us to understand – to go from trying to get a variance to go through a quasi-judicial hearing. We didn’t go back to the planning and zoning board. We didn’t go to the appearance commission. We didn’t go through any process other than filing for an appeal and paid $300 to get in front of the council – with no conversations to go into a quasi-judicial system or a hearing. If it’s judicial, then why can’t evidence be presented and documented as an affidavit. You released councilman Smith without any opposition from the other side. I’m wondering why letters of masons and the painter wouldn’t be considered evidence in this case, if it is a quasi-judicial hearing.

Silverstein: Mr. Ladd, it’s not my intention to argue with you at all about this. It’s just that when you have letters of that nature they are not considered to be competent evidence and cannot be introduced in a quasi-judicial proceeding where the evidence has got to be competent, substantial. They don’t meet that standard because they are letters and they cannot be cross-examined.

Richard Ladd: Ok.

I’m Steve Vaughn, and I’m the actual owner of Kitchen and Bath Galleries. I didn’t know it was a quasi-judicial hearing either. We certainly would have done more research. I’ll just give a few points. The one question I have about the law about painting the concrete, the brick and the stone as being natural elements is that most of those are man-made, and they’re just like this paneling. They’re not natural like the old brick the gentleman from Rochester was talking about. I can certainly understand hand-made brick or natural stone wanting to be preserved. I think we all love the character of that. But this manufactured brick is certainly not in that criteria from a design architectural perspective. We have suffered through living in the 100 block of Chatham Street since 1983, and have seen nothing really happen. It looks the same to me as it did when I came over here in 1983, other than a lot of the businesses have gone out and no what I perceive to be successful business has come in. We’ve stayed in this location for one reason, and I don’t mean to turn this into a memorial to Dick Ladd, but it is because of Dick and Jean Ladd we have stayed here. Many of our clients come from out of town. The percent of our customers that come to our Cary location is probably nimble. In the 30 years we’re talking about we’ve probably done 100 million dollars with of business here, employ 12 people, and help support that block base. Being in the business we’re in, we cannot stay in a building like this and make a good presentation to
our customers, when we are selling design and architectural elements. We have hired a landscape architect to draw up a proposal to go before the architectural committee to try to redo the outside of the building to conform into what you guys are doing with the streetscape, and make the whole thing look a lot better. I'm embarrassed with this picture up if any of these are customers out here, because it's just not that presentable. I don't think any harm or intent was done about painting the building. You see it done constantly in very high end areas. We thought we were improving it and would like to continue to improve the outside. The whole downtown streetscape process had us wanting to move from the area. We agreed to stay not because of the Town of Cary or not because of the customers from in Cary, but because of Dick Ladd. That's the whole reason we're still in this location. We've got five other locations. The problems we have with Cary exceed all five of those combined. It just hasn't been a real business-friendly situation for us. We committed to stay to Dick, and we're going to stay there. We hope we can stay there in a building that can become attractive both in the landscape and the building itself. I hope that makes sense, and thank you for listening.

My name is Roy Gemberling. I'm a citizen of the Town of Cary, but I'm here representing First United Methodist Church of Cary. I'm chairman of the board of trustees, and I'm here representing our pastor, the staff and the trustees of the church. Our main message to give to you tonight is should you approve the painting of the building, we would support that. We face the back of the building right now that's painted. So we've seen it painted like that. We would support any action that you take on that regard. Thank you.

My name is Vicki de Deugd, and my husband is Scott de Deugd. Just to give you a little background, we've been very involved with the Imagine Cary and all the things that are going on in Cary. We started getting involved in January. It upsets me very much about the way the Ladds are being treated. I feel like they own that property, and they should be able to paint that property. They didn't sign a contract according to them. I don't get it. I don't get what Cary's doing. Good people, they have a business, and they want to paint their building. What's wrong with that? Simple. By the way, I'm the reason that Jack Smith left tonight. Just to let you know.

Weinbrecht: Next speaker in support of the applicant. Seeing no one, I'll move on and invite speakers to cross-examine witnesses who testified in support of the request.

Hales: I don't think we'll cross-examine, but staff will just reiterate the fact that the question before council tonight is not whether it's a good ordinance. It's not whether the Ladds are good people or not. The question is really did staff apply the ordinance correctly. In Lisa Glover's absence our attorney, Nick Herman, would like to make a summary of our statements. Thank you.

Nick Herman: I'm with the Brough law firm, and I was retained to represent the staff in this matter. I think it's useful to say at the outset what Kevin ended with, which is, please understand, this isn't about the character of these fine people. That's not what we're talking about here. Everything you've heard and in their demeanor, these are wonderful citizens of Cary. That has nothing – that's all very good, but it has nothing to do with the decision that you all have to make. Secondly, there has been a fair amount of thoughtful commentary just about the wisdom of whether we ought to be painting brick or not painting brick. But that's an issue for another day. It has nothing to do with what you have to decide here. The first thing I want to do is just focus you, if I may, on the precise question that you need to answer. Can you put up that slide that has one through six? What's before you, members of council, are the criteria contained in the LDO that are to be applied by you on certain appeals. In this case, and you may wish, and I urge you at the appropriate time, you may wish to consult with your counsel, Mr. Silverstein, about this. But in this case the only criterion on your screen that you need to look at and decide about is number one. Is number one on your screen. That is, the question is whether the Town's enforcement action here by the staff, whether that was proper under the requirements of the ordinance. That is to say if painting this brick violated the ordinance, then there is no other choice but to approve the staff's action that it took. Criteria two through six deal with all kinds of things – you can see it on your
screen, which is this case are simply not applicable. So I’m sharing with you as counsel for the staff, but this is something you may wish to get guidance on from Mr. Silverstein, that the only criterion you should focus on is number one. And when it says the plan complies, that is whether this change – that is to paint this brick – whether that complies with the LDO.

Herman: Here’s my second point. It seems very clear, and no one has suggested otherwise before you, that in this case the painting of the brick is not permitted by the ordinance. You may decide at some future time to change your ordinance, but your ordinance is very clear. Mr. Hales walked you through all the provisions to show you that as the ordinance exists now, to paint this brick in this location violates your ordinance. There’s absolutely no dispute about that.

Herman: Here’s the third point, which is a little bit more human. I think it’s useful to recognize that this is an unfortunate kind of situation. Mr. and Mrs. Ladd have indicated to you that for one reason or another they didn’t know before they started painting this brick that you could not paint the brick. I think all the evidence indicates that there was no malicious intent on their part to somehow just violate the ordinance. But there’s a problem here. That being said, I say it’s unfortunate because as you know as council members you can’t have an effective ordinance if folks even unwittingly violate it, and then they’re in a position where they come back to you and say, well, I didn’t know at the time so, therefore, exempt me from the ordinance. That’s a very difficult way to run a town or a city or to enforce ordinances if that happens – as unfortunate as it is. It’s worthwhile pointing out, too, that just as there may be citizens within Cary that will unintentionally violate an ordinance, there are many citizens in Cary that, indeed, are able to find out what an ordinance requires, so they don’t put themselves in that position. I say to you that it is unfortunate that the Ladds for reasons that are not exactly clear, that they somehow didn’t know that painting this brick was not proper. But, that’s not – if you will, I don’t mean to be harsh about this – that’s not an excuse. You can’t then just come back and say, well, then exempt me from the ordinance. And one more example to drive this home, because it’s otherwise sympathetic. You may face, if you all haven’t already, but in the future, a situation where someone adds on an addition to a building, whether a residence or commercial building or what, just adds it on – starts constructing it. And it violates your ordinances. And they come before you and say, gee I didn’t know; I just didn’t know. And now I have to undo it. So exempt me from the ordinance. Well again, you can’t run a town that way. So the bottom line here is all your staff has done is to do what you expect of them and what they’re charged with – part of what they’re charged with, which is to enforce if you will – not in a mean way, but enforce the ordinances that you have enacted. And they did that here, once they say that the painting occurred, and then determined that under the ordinance provisions you cannot – you simply cannot paint this building. So they made that determination. They told Mr. and Mrs. Ladd that. And you have this appeal. So the only question is was the staff right in determining that the ordinance does not prohibit the painting of this building. And the answer to that question is that, unfortunately, it is a dead-on violation. There’s no choice here. There’s no choice here but to enforce the ordinance and have the paint removed. Reserve for another day questions for how you can otherwise beautify your town or change your aesthetic regulations and the like. Those may be things that would be interesting to look into. Some of the citizens here that commented today indicate that maybe that’s something that ought to be considered. That’s not before you today. Thank you.

Weinbrecht: Mr. Silverstein, a question of process. The attorney representing the staff, is that considered a witness, and if so, cross-examination is allowed, right?

Silverstein: We you sworn, Mr. Herman? I believe what Mr. Herman was doing was in the nature of argument, and he was not presenting any facts that could be cross-examined.

Weinbrecht: Very good; thank you. So that would take us to the point in the process where we open the public hearing for those who are opposed to the request. I would ask those speakers to approach one at a time, and I would invite the first one forward. I see no one. We’ll move and now
ask anyone sworn if they have objections to any incompetent evidence or testimony. No one? Moving on. Please

Steve Vaughn, Kitchen and Bath Galleries. As far as the competence of the testimony, I don't know. We weren't prepared for this to be a legal issue. But, I don't think the analogy to not getting a building permit for an addition to a building is in any way comparative to painting a building. It's no harm, no foul. It actually is purely aesthetic and not structural in nature. If this ordinance has to be overturned or if we have to get a variance for it – we're dealing with such the letter of the law that we're down to the dots and chittles rather than the spirit of the law, certainly, and it seems to me that there's no harm, there's no foul. Nobody came forward to protest this. It's an improvement to the city, and we haven't broken any law speeding or breaking building permits or anything that could be harmful. We wouldn't want to add on to the building without getting a permit or anything of that nature. Just wanted to make that point. Thank you.

Weinbrecht: Before I close the public comment portion of the meeting I'll ask if either party believes new evidence has been presented tonight that warrants a continuance of this hearing. Please approach.

Vicki de Deugd: I don't understand. I'm not a lawyer; I'm a nurse actually – a neonatal nurse. I don't understand where are the property rights involved here? The people own the property. Don't they have property rights?

Silverstein: I'm not sure what kind of question that is really.

Vicki de Deugd: It's plain and simple.

Weinbrecht: This is NC state law, the process we're following.

Silverstein: The nature of this question doesn't really have anything to do with this proceeding.

Vicki de Deugd: But you're taking their property and telling them what to do. It does have something to do with this, I believe. Do you not? Am I the only one that thinks that way?

Silverstein: I don't believe that issue is presented in this case, so we would have a disagreement on that.

Vicki de Deugd: So Cary can just decide who's going to paint bring or not?

Silverstein: I really don't think this is productive.

Weinbrecht: Thank you. Anyone else? Now I'm going to close the public comment portion of the hearing, and we'll begin the deliberation phase of the hearing and open it up to council members for comments. Ms. Adcock

Adcock: My question is did the Ladds know that they needed to present evidence tonight and the true nature of this quasi-judicial hearing. Because I heard a couple of statements from folks, one about the letters that they wanted to introduce as evidence, and another statement. I would not want anyone to be disadvantaged in any way. I would like an answer to that. If they knew the nature of this and that evidence would need to be presented vs. opinion. If they didn't, then we need to talk about what to do.

Hales: I can't speak to what they did or did not know. I did have a conversation with Mr. Ladd earlier this afternoon around 3 or 4 o'clock. He called, and I did explain that anybody needed to focus on factual testimony, address the approval criteria in the ordinance. Beyond that I can't
Adcock: Kevin, no one’s faulting what was told. To have that question asked and answered at 4 this afternoon, do you think there was a communication about evidence presented and perhaps experts and things like that. Your average citizen – and I know the Ladds are above average, don’t get me wrong you all – would not understand what you just said that what that meant.

Hales: Again, I can’t make suppositions on what they did or did not understand. I mentioned our general guidelines, which is you have to have expert testimony on impacts to adjacent property values and impacts to traffic infrastructure, which is our standard two criteria which state statute requires expert testimony on. I am not a lawyer.

Adcock: Let me ask that question another way. Let me try a different tactic. What does the town usually tell folks who have asked for a quasi-judicial process? What information do we share with them about what their role is? Do we send them written information, do we communicate – how do they know what to do? Because if they weren’t fully aware of what they needed to do, then I think we should continue this hearing. That’s just where I’m heading on this.

Hales: There’s standard language we have in our adjacent property notifications, and I believe there’s a property owner notification as well that talks about ex-parte communication, that talks about expert testimony on the two items I talked about, which were adjacent property values and the other one – traffic infrastructure. It also talks about evidence needs to be competent, substantial and address the approval criteria. I don’t have the language right in front of me, so I can’t read it verbatim. There’s three or four different bullet items that that letter covers.

Adcock: And that’s given to folks in writing when they first ask for the hearing?

Hales: It’s part of the notification process. Property owners within 400 feet get notified of the hearing. There’s also a property owner notification. Same letter, just changes the property you own to the

Adcock: Just remind me, Kevin, how far before the hearing does that usually happen? I’m sorry that I don’t remember. Is it two weeks, is it 10 days?

Hales: Actually, that’s in the staff report. It was mailed

Frantz: The sign’s been posted for a few weeks.

Hales: July 10th, the planning department mailed notification of the public hearing on the appeal to the property owner. It goes out roughly the same time the signs go up. So two weeks.

Adcock: Those are my questions. Just trying to make sure that it’s a level playing field. That’s all.

Weinbrecht: And a follow up to that. It seems like they could have benefitted from advice of an attorney or an attorney presenting their case. Is that recommended?

Adcock: Or suggested or listed as an option.

(Speaker from audience inaudible)

Weinbrecht: We’re in deliberation right now. I don’t think we can

(Speaker from audience inaudible)

Hales: That was the denial letter from the Town. I don’t have a copy – I didn’t think to bring it – of the actual notification letter.
Adcock: I understand. My point is simply — and I think the mayor was trying to say the same thing — simply trying to make sure that when folks come to a situation like this that they know what their responsibilities are. If they want to try to make their case, and based on what Mr. Richard Ladd tried to introduce as evidence, he obviously didn’t understand that. Letters can’t be cross-examined, and they can’t be introduced as evidence. I thought you did a great job of explaining that, Mr. Silverstein. But I wouldn’t want any citizen to not have ample opportunity to make their best case.

Bush: A follow on to that question. Just so that I understand. This is a question for you, Mr. Silverstein. The way that those letters would have been available to be part of an exhibit is if those folks who wrote the letters were here. Is that correct?

Silverstein: Let me try to respond the best way I can, because I don’t really want to get into deliberation of the merits. I think you have to remember that this, again, is an appeal from a staff decision. It’s not a variance case. So they are not coming in and saying we know we violated — the ordinance is violated, but we think we deserve a variance for these reasons. So, what you’re looking at here is that the issues they presented with regard to the brick — the condition of the brick and what happens to brick over time, really are issues that go to the ordinance, not to the violation. So I think that even had they been here, I think an argument could be made that it’s irrelevant, because it’s really not what’s needed to be done to preserve that brick. That’s not the issue before you. That’s the policy issue, that as Mr. Herman pointed out, this council may want to take a look at sometime, because the arguments were good ones. But it’s just not relevant to your proceedings this evening, because you’re looking at — as has been pointed out — just that first it’s not before us right now. But that issue number one, and that was whether or not it complies with all the requirements of the LDO.

Frantz: It’s not whether or not it’s a dumb law or not a dumb law. It’s did they comply with the law. Period. Whether we hate the law, want to change the law, wish the law had never been enacted. Thank God I wasn’t on the council in 06. It’s whether or not they complied with the law. And, unfortunately, as much as I want to take the stand for property rights and the business owner and everybody else, no, they didn’t comply with the law. My question is what would happen if this council wanted to change the law. What’s the process for the property owner, the business owner? Do they have to remove all the paint and then come back for the variance and then repaint it again? If it was granted, what is that process? Could it be left as is for a period of time until we resolve the issue? The one thing I want to hear more about is preservation of brick, old structures, those kinds of things. Because we do have some old structures in downtown that I think we want to make sure we try to preserve as best we can. And to me there’s merit there. But, at the end of the day, what’s before us tonight is solely did they or didn’t they follow the law. Whether they knew about the law or not — my dad always told me that ignorance is no excuse.

Weinbrecht: Let me ask that question a different way. How quick is enforcement (inaudible) as far as making them remove anything.

Ricky Barker: If you vote in favor of staff’s decision, then we would work with the applicant to determine a timeframe for the paint to be removed, and then put that in writing.

Frantz: If say we were to decide on this now and then follow up with further direction of staff to research the issue, find out pros and cons of painting old buildings, brick, not painting old buildings, brick, and come back to us with more information. Would they still be forced — would staff still have to enforce the ordinance immediately and they’d have to start removing the paint?

Barker: Our policy as a Town is if there is an ordinance pending, we put a stay on enforcement until there is action that resolves the decision.
Adcock: I’d like to ask that question a different way. If we uphold the staff’s decision tonight, what other options does the property owner have to seek from us. I think I know the answer to that, but I’m asking you, Mr. Silverstein. It seems like they could

Silverstein: They could request a variance. I don’t want to create more trouble, but what would happen if the council tabled this matter and did not make a decision pending dialog between the business owners and the staff as to whether or not a modification to the ordinance could be made.

Adcock: We actually wouldn’t table; we’d continue the public hearing.

Silverstein: Whatever the proper procedure is so you don’t actually make a decision this evening, but you put off a decision until later.

Frantz: I don’t know that I want to postpone this one decision. I want to make sure this doesn’t happen again, and we have to come and hear this stuff again. I want to know the answer to the question.

Silverstein: Unfortunately, this would be in a much better posture if it were a variance case, but it’s not. So you’ve got to address posture that was brought. These people would have been much better served if they had sought the advice of an attorney, but they didn’t. It’s before you now in the posture that it was brought to you. So you’re going to have to address it in that fashion.

Weinbrecht: So we can continue the public hearing indefinitely? Then, at the same time work on an ordinance or ask staff to investigate an ordinance change/amendment, and then go back to this public hearing after that’s

Silverstein: I think you can do that, unless the staff wants to convince you that that’s not allowed.

Town Clerk Sue Rowland: Can I make a comment about procedure? To continue the public hearing we need a date of that meeting.

Adcock: Date certain.

Silverstein: That’s why I was wondering if there’s some process so instead of continuing the hearing, delay making a decision, and not take any additional evidence, but delay making a decision until some point in the future. So, in fact, enforcement is stayed. That’s sort of what you’re doing. You’re talking about staying enforcement pending the decision.

Weinbrecht: So if we gave a date, and that date came, could we give another date.

Rowland: Yes sir.

Adcock: What I think I’m hearing Mr. Silverstein say is we don’t have to continue the public hearing. We can stay the decision, which gives time to not enforce.

Silverstein: I think what you can do is take the evidence you’ve received this evening under advisement, and then make the decision at some later date. The staff can prepare proposed findings of facts conclusions of law just as you would in any other case. It’s just that you’ve postponed making a decision in this case until something else might occur.

Weinbrecht: This is again back to a procedure. Everything we’re doing here in a quasi-judicial hearing is under public hearing, including a motion to do whatever. We stay this decision; it’s still under the public hearing. Do we go back and revisit all the other process we’ve already been through, or do we pick up where we left off.

July 25, 2013 Minutes
Minute Book #177, Minute Book Page 135
Silverstein: I think you can close the public hearing. It happens in the courts all the time. Evidence is presented to the judge, and the judge says I'll take this under advisement and rule at some later date. That's essentially -- and I may not be articulating it well, but that's essentially what I'm not necessarily recommending, but saying that you might consider as an option. That you take all the evidence that's been presented at this hearing, but you just delay making a decision. And if there's some action, it might render this case moot. In which case it would go away.

Bush: Two questions if I may. The first one is would it be possible for the business owner to come while we're deliberating or waiting for ourselves to make a decision, to come in with a variance request?

Silverstein: I assume they could.

Adcock: What's the advantage of taking this under advisement and making a decision at a later date if the applicant's going to come with a request for a variance anyway? It seems to me we should handle this matter. To me, I'll speak for myself, the evidence is clear that the ordinance wasn't followed. No one's speaking to intent. They still have the option to come for a variance. The staff still has the option to bring a LDO amendment to us as they do all the time.

Hales: We will speak to the variance point in just a second.

Debra Grannan: In regard to our current LDO standards, there's only specific things that you can request a variance on. The Community Appearance Manual is not one of those items at this point in time.

Adcock: Is that per our ordinance?

Grannan: Correct.

Adcock: That's one thing we ought to look at.

Grannan: But there is language that is going to be introduced as part of LDO amendments after October 1 where pretty much anything in the ordinance would be subject to a variance opportunity. But right now it's things like building setbacks, dimensional standards on a piece of property, the size of a sign. There's very specific language in the LDO that limits what you can apply for a variance for. And, again, that's being amended as part of a future LDO round to be consistent with the general assembly direction. But that won't go into effect until after October 1.

Herman: I think I can help you, which is why I'm interjecting. I represent the staff, so I've talked with the staff. The staff has no objection to this if you choose to do it, which is to do what Mr. Silverstein said you could do, which is just stay your decision. That is to say take it under advisement; put it on hold for now. In the interim while it's on hold, you -- as I believe Mr. Silverstein said -- you're free to entertain all kinds of considerations about whether to change the ordinance in any way, whether you ought to be painting brick or not painting brick. Because, if that ends up happening, and you all end up deciding in a month or five or six months from now that you're going to change the ordinance, then this all goes away. Because if you change the ordinance to allow for example what the Ladds did, then there's no issue about the violation. So I'm here to repeat that the staff has no objection to that, if you take that route. That doesn't mean that you should do that, but I'm just saying they have no problem with that.

Adcock: What doesn't go away is a half painted building, because they can't go forward and they can't go backward while we stay this decision. And part of this whole thing is about appearance. That just seems to fly in the face of common sense.
Frantz: I agree, but at the same time I think everybody in regards to appearance downtown is being really patient, given the amount of construction and disarray and mess that we have.

Adcock: So it will just be another part of that.

Frantz: A half painted building for a couple few months is not going to hurt anybody. I would like to see us possibly entertain the option of paint on buildings that are of a certain age. I’m not willing to go on a brand new building, but that’s a later date.

Adcock: I’m happy to make a motion. I move that we take this evidence under advisement and make this decision at a later date.

Frantz: Second

Weinbrecht: Do we have to give a date, Ms. Rowland?
Rowland: If you’re closing the public hearing, no.

Weinbrecht: We are closing the public hearing. We have a motion and second. Further discussion? All in favor please say aye. Those opposed? Motion carries unanimously.

Weinbrecht: Before I close the public hearing, I want to see if I’ve tied up all the loose ends.

Silverstein: I believe you have.

Adcock: And then I have a procedural question.

Weinbrecht: I’ll go ahead and close the public hearing. Ms. Adcock.

Adcock: So my procedural question is if we do take this back up, it doesn’t become moot, do Ms. Robinson and Mr. Smith not participate because they did not hear the evidence on the front end? Do the same five people have to do this, or do we have to go back and hear the case again, because we can’t make a decision if we haven’t heard the evidence.

Silverstein: You don’t need me, because you’ve answered your own question. That’s exactly right. It either has to be the same people who heard the case. Theoretically for Ms. Robinson, since these proceedings are taped, Ms. Robinson could sit, and if she viewed the tape, she could participate in a vote.

End verbatim transcript

Weinbrecht called a short recess.

2. SKETCH SITE PLAN 13-SP-031 (Weston Lakefront Offices)
   Location: North side of Weston Parkway, between Evans Road and Norwell Boulevard
   Proposal: 670,500 square feet of office uses in three buildings
   Proposed Council Action: Council may take action
   Speaker: Mr. Kevin Hales

REQUEST
Piedmont Land Design, LLP, on behalf of the property owners, Highwoods Services, Inc./Papec Weston III, LLC, have requested approval of a sketch site plan to develop approximately 670,000
square feet of office uses on approximately 40 acres in the Weston Planned Development District (PDD).

**SUBJECT PARCELS**

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<th>Property Owner</th>
<th>Wake County Parcel Identification Number (PIN) (10-digit)</th>
<th>Real Estate ID Number</th>
<th>Deeded Acreage</th>
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**BACKGROUND INFORMATION**

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<th>Ron Hendricks</th>
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<tr>
<td></td>
<td>Piedmont Land Design, LLP</td>
</tr>
<tr>
<td></td>
<td>8522 Six Forks Road, Suite 204</td>
</tr>
<tr>
<td></td>
<td>Raleigh NC, 27615</td>
</tr>
<tr>
<td></td>
<td>(919) 845-7600</td>
</tr>
<tr>
<td></td>
<td><a href="mailto:ronh@piedmontlanddesign.com">ronh@piedmontlanddesign.com</a></td>
</tr>
<tr>
<td>General Location</td>
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<td>Land Use Plan Designation</td>
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<td>Within Town Limits</td>
<td>Yes</td>
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<tr>
<td>Staff Contact</td>
<td>Kevin A. Hales, Senior Planner</td>
</tr>
<tr>
<td></td>
<td>Town of Cary Planning Department</td>
</tr>
<tr>
<td></td>
<td>P.O. Box 8005</td>
</tr>
<tr>
<td></td>
<td>Cary, NC 27512-8005</td>
</tr>
<tr>
<td></td>
<td>(919) 462-3944</td>
</tr>
<tr>
<td></td>
<td><a href="mailto:kevin.hales@townofcary.org">kevin.hales@townofcary.org</a></td>
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</table>

**LIST OF EXHIBITS**

The following documents incorporated into this staff report are to be entered into the record for the development plan application (records are maintained in the planning department according to the Records Retention and Disposition Schedule):

- Exhibit A: 13-SP-031 Application (2 pages)
- Exhibit B: 13-SP-031 Plan Set (4 pages)
- Exhibit C: TIA Executive Summary (5 pages)
- Exhibit D: Minor Modifications Justification Statement (4 pages)

**PROJECT DESCRIPTION/SUMMARY OF REQUEST**

The proposed development would consist of 670,500 square feet of office floor space distributed between three buildings, each with seven stories totaling 223,500 square feet. Parking for the office buildings would be provided in three parking decks with limited surface parking. The applicant has proposed several Minor Modifications to the Town’s development standards, including: averaging of the Weston Parkway streetscape and of the eastern perimeter buffer; waiving of connectivity to the east and to the west; increasing the allowable parking; allowing the
use of a hardscape edge in a stormwater BMP; reducing the width of a greenway easement; and, modifying the minimum spacing distance for the median openings on Weston Parkway.

**SITE CHARACTERISTICS**

**Streams:** Town of Cary GIS maps indicate several stream buffers which define the available land area for development. A final field determination will be required at the time of site plan submittal and all subject features will be buffered as required.

**Floodplain:** Town of Cary GIS maps indicate a limited amount of floodplain located at the eastern end of the site, as well as floodplain just north of the property associated with Lake Crabtree.

**Wetlands:** The sketch plans identify a small pocket of wetlands associated with the stream buffers at the eastern end of the property.

**Topography:** The site contains significant topography, consisting of a series of three radial ridges that rise approximately 90 feet above Lake Crabtree located to the north of the site.

**Surrounding Land Uses:**
- North – Lake Crabtree
- South – Office uses (across Weston Parkway)
- East – Office use
- West – Office use

**SUMMARY OF PROCESS AND ACTIONS TO DATE**

**Pre-application Conference:** The applicant attended a pre-application conference with the Town of Cary Development Review Committee (DRC) on May 1, 2013, regarding the development plan.

**Notification:** The Planning Department mailed notification of the public hearing on the development plan to property owners within 400 feet of the site on July 9, 2013. Notification consistent with North Carolina General Statutes was published in the Cary News both on July 10 and July 17, 2013.

**Property Posting:** Notice of the public hearing was posted on the property on July 10, 2013.

**CONSISTENCY WITH THE LAND DEVELOPMENT ORDINANCE (LDO)**

**Traffic:** The repeal of the Town’s Adequate Public Facilities for Roads ordinance, which became effective on March 1, 2013, no longer requires a traffic study to be prepared by the Town; therefore, the applicant has prepared their own traffic impact analysis (TIA) as supporting testimony for their site plan. The TIA was performed by the applicant’s traffic consultant, Kimley-Horn and Associates, Inc.

The TIA evaluated several intersections in the vicinity of the proposed project to determine the project’s overall impact on the transportation network. The TIA indicated that there are some impacts to the intersection performance at both the Weston Parkway/Evans Road intersection and the Weston Parkway/Centregreen Way intersection. The applicant has voluntarily elected to mitigate the project’s transportation impacts as outlined in the TIA. The following improvements to those intersections are summarized below:

**Weston Parkway/Evans Road**
- Provide a 2nd left-turn lane for the southbound approach on Evans Road with shared storage of 600 feet. This would require the existing left-turn lane into the First Citizens Bank site to be shortened to 100 feet to accommodate the new lane and storage.
- Provide advance signal heads for the eastbound and the westbound approaches on Weston Parkway to address concerns about limited sight distance for the signals.
- Provide an exclusive right-turn lane for the westbound approach on Weston Parkway with at least 150 feet of storage and restripe the existing through-right lane to create an exclusive through lane. This development would not make this improvement since it is also identified in and committed to by the Weston Corners project (intersection of Weston Parkway and Chapel Hill Road).
Weston Parkway/Centregreen Way/Weston Lakefront Access A (full-access)
- Extend the left-turn lane for the eastbound approach on Weston Parkway to provide 225 feet of storage.
- Convert the existing secondary access to Centregreen Park east of Centregreen Way to a right-in/right-out.
- Restripe the existing right-turn lane for the northbound approach on Centregreen Way to create a shared through-right lane.
- Provide an exclusive left-turn lane with 200 feet of storage, a through lane, and a 50-foot channelized right-turn lane for the southbound approach on Weston Lakefront Access A.
- Signalize the intersection per the Manual of Uniform Traffic Control Devices (MUTCD) standards.

Weston Parkway/Weston Lakefront Access B (full-access)
- Provide an exclusive left-turn lane for the eastbound approach on Weston Parkway with 100 feet of storage.
- Provide an exclusive U-turn lane for the westbound approach on Weston Parkway with 50 feet of storage.
- Provide an exclusive left-turn lane with 100 feet of storage and an exclusive right-turn lane for the southbound approach on Weston Lakefront Access B.

No significant traffic congestion impacts to the Weston Parkway/Norwell Boulevard intersection were indicated in the TIA and a good level of service can be maintained. The TIA also evaluated the intersection of Weston Parkway at North Harrison Avenue. No improvements were voluntarily offered by the applicant other than a recommendation for signal timing adjustments to achieve a level of service "D". The study indicated that there were no other reasonably constructable improvements that could be made to the intersection in order to improve its functionality. The constraints in improving that intersection include right-of-way constraints on all three approaches, as well as the existing topography and geometry of the intersection.

The Average Daily Traffic (ADT) volume for Weston Parkway in the vicinity of the site at project build-out stated in the TIA is 20,000 vehicles per day with the roadway capacity estimated at approximately 35,000 vehicles per day.

The applicant also looked at the crash history along the corridor and has summarized it as follows:
- Weston Parkway – 37 reported crashes between Evans Road and North Harrison Avenue since April 2010.
- Weston Parkway/Evans Road Intersection - seven reported crashes in the last three years. The applicant is voluntarily electing to install advance signal heads at this intersection since this section of Weston Parkway contains curves affecting the sight distance and that may be a contributing cause of crashes at this intersection.
- Weston Parkway/North Harrison Avenue Intersection – 10 reported crashes in the last three years, with no correctible crash pattern identified.
- Weston Parkway/Harrison Oaks Boulevard – five reported crashes in the last three years involving vehicles turning left from Weston Parkway and the opposing through movement.

The applicant provided an executive summary of the TIA, which is attached to this report as an Exhibit. The executive summary includes a level of service summary for all of the studied intersections and a committed and recommended roadway laneage plan.

Comprehensive Transportation Plan (CTP) Improvements: The subject property has approximately 1,740 feet of frontage along Weston Parkway.

Weston Parkway is designated in the CTP as a Thoroughfare.
Existing Section: 4-lane, median-divided roadway within approximately 110 feet of right-of-way
Required Section: 4-lane, median-divided roadway within 100 feet of right-of-way
Sidewalks: The Weston PDD was approved with a system of off-road sidewalks and trails interconnecting the overall office park in-lieu of traditional roadside sidewalk along Weston Parkway.

Bicycle Lanes: 14-foot-wide outside lanes

Transit: A future C-Tran route is under consideration for Weston Parkway.

Consistency with the Standards and Specifications Manual

The proposed development would be designed in accordance with the Town’s Standards and Specifications Manual with the exception of a request by the applicant to modify the median opening spacing on Weston Parkway along the project frontage. The Town has a median opening spacing standard of 1,000 feet on local streets and of 1,200 feet on collectors and thoroughfares. The applicant has requested that the Town Council consider a reduction of the spacing between the proposed signalized entrance into the project and the un-signalized full service entrance from the requirement of 1,200 feet to approximately 850 feet.

The applicant’s traffic consultant, Kimley-Horn and Associates, Inc., has prepared a justification statement (attached to this report as an Exhibit) for this request based on the request being an improvement over the existing situation and difficulties with the site topography. Currently, the eastern entrance to Centregreen is located approximately 540 feet east of the main Centregreen entrance. The proposed Weston Lakefront Offices project would align their main entrance with the main Centregreen entrance, close the existing median opening, and create a new median opening approximately 863 feet east of the main entrance. These improvements will make the existing eastern Centregreen entrance into a right-in/right-out movement and would increase the median spacing by 59% of the current dimension. This would not be consistent with the Town’s standards, but does represent a significant improvement.

As mentioned earlier, there is significant elevation change as one moves across the site. This creates practical difficulties in meeting the Town’s median spacing requirements. The main entrance to Weston Lakefront Offices would be required to align with the main entrance to Centregreen and would be the logical choice for signalization. A median opening spaced 1,200 feet east of that intersection would place the second full-service entrance for Weston Lakefront Offices in an area with steeper topography that would result in an approach grade for the on-site driveway in excess of 10%. The Town generally prefers drives to not exceed 10% with a maximum of 5% for the 30 feet of driveway closest to the intersection.

The applicant’s TIA studied the site with the requested median opening spaced at 863 feet as proposed and found that the functionality of Weston Parkway was acceptable as proposed.

Connectivity with Adjacent Properties: The applicant for the proposed Weston Lakefront Offices has requested two Minor Modifications to the standards requiring vehicular connectivity between adjacent parcels containing compatible uses. The applicant has requested that Town Council consider elimination of the requirement to provide vehicular connections to the parcels located to both the east and the west of the proposed development. The applicable section of the LDO, Section 7.10.3(C), reads as follows:

All non-residential development shall be designed to allow for cross-access to adjacent properties to encourage shared parking and shared access points on public or private streets. A minimum distance of one hundred (100) feet shall be required between a cross-access way and an intersection or driveway entrance. This requirement may be modified pursuant to Section 3.19.1 provided that appropriate bicycle and pedestrian connections are provided between adjacent developments or land uses. A cross access easement must be recorded prior to issuance of a Certificate of Occupancy for the development.

The applicant has proposed no connections to the adjacent properties. The property located east of the proposed development is significantly impacted by stream buffers and flood plain, severely limiting the future development potential on that parcel. In addition to the environmental sensitivity of the area, the topography on the eastern end of the site is severe and would make any vehicular connection to the adjacent property very difficult to construct.

The parcel located to the west of the Weston Lakefront Offices project is currently developed as an 185,000-square-foot office use. No stub to the Weston Lakefront Offices site
was provided when that site was developed; however, there is parking located in very close proximity to the shared property line. The site is principally accessed through a full-service, non-signalized intersection located in an S-curve west of the proposed access to Weston Lakefront Offices. In addition, the site has a single right-in/right-out access located between the full-service entrances for each respective site.

The proposed main entrance for Weston Lakefront Offices would be signalized, unlike the entrance on the adjoining site. One of the purposes of the requirement for vehicular interconnections is to encourage shared parking and access onto public roadways. While both sites do have their own full-service entrances, it is important to consider that the proposed main entrance for Weston Lakefront Offices would be signalized. This is a significant improvement over the existing, non-signalized entrance for the adjacent property, especially given the location of the entrance in an S-curve.

The applicant's justification statement for the request provides several reasons that they feel their request is justified. As mentioned earlier, there is no stub to the Weston Lakefront Offices provided on the adjacent office site. A physical connection would not be made between the two properties until such time as the adjacent property either proposed to make said connection or submitted a development plan the scope of which would be commensurate with the Town requiring the connection to be made. Making the physical connection would result in loss of parking on the adjacent site; however, the loss would likely be less than 10 spaces, which represents a negligible percentage of the overall parking available on the site. It is also important to note that unlike many of the other justifications provided for other Minor Modifications on this site, the topography on this portion of the site is not as severe as elsewhere and would be unlikely to impede the provision of a connection in the future.

The chief concern expressed by the applicant is that of security for the Weston Lakefront Offices campus. As proposed, there would be no restriction on the ability of anyone to access the proposed site via any of the main entrances along Weston Parkway. Therefore, staff cannot see any validity in a concern about providing a vehicular connection to the adjacent office development.

**Parking:** The LDO establishes parking ratios for allowed uses in Section 7.8.2. Professional office uses require parking spaces at a rate of one space per 300 square feet of gross floor area proposed. This would result in a requirement of 2,235 parking spaces for the proposed Weston Lakefront Offices development. However, since professional office is listed under the commercial heading in the parking table, Section 7.8.2(C)(4) of the LDO establishes the 2,235 parking spaces as a maximum amount of parking as well. The applicable language is included below:

> For uses classified as commercial, the number of spaces shown in Table 7.8-1 shall be considered the maximum allowed for such uses for the purpose of reducing unnecessary/rarely-used parking and decreasing the amount of impervious surface on sites. The maximum number of allowable parking spaces may only be exceeded by the Planning Director provided that adequate information needed to determine the cumulative parking needs for a site is provided by the applicant.

The applicant has indicated in the justification statement that their prospective client requires a parking ratio in excess of the Town's requirement. However, no detailed information was provided to give staff any indication of what those requirements would be. The applicant's proposed parking ratio is approximately one space per 200 square feet of gross floor area, or 3,389 parking spaces, which is analogous to the Town's requirements for retail space.

The reasoning behind the institution of parking caps is, in part, the reduction of impervious surface area on the site by reduction in the amount of unused parking spaces. The applicant's request, while not clearly consistent with that intent on the surface, would not result in an increase of impervious surface area used for unnecessary parking. The proposed development plan provides the majority of the parking provided, approximately 89%, in structure parking decks. By doing so, the impervious surface area on the site would be reduced to approximately 30% of the surface area required for an equivalent amount of surface parking.

**Buffers and Streetscapes:** The proposed development is located in the Weston PDD, on tracts O&I-7a and O&I-7b. The Weston PDD is, therefore, the governing document in terms of buffers
and of streetscapes. The PDD document directs that reasonable efforts should be made to retain the required buffers in an undisturbed state; however, due to topography and building layouts, the buffers may be disturbed and re-vegetated per the PDD.

The Weston PDD requires a 40-foot landscape buffer intended to perform at a Type A (opaque) planting standard along both the subject property’s northern and eastern property lines. The proposed sketch site plan would provide the required 40-foot buffer along the entirety of the northern property line. However, the proposed layout includes a stormwater device located at the eastern end of the site that would encroach into the 40-foot buffer required along the eastern property line. The applicant has proposed to average the width of the buffer along the eastern property line to preserve the required amount of vegetation, while allowing the stormwater device to be located as proposed. The minimum depth of the streetscape provided would be approximately 11 feet where the retaining wall approaches the eastern property line. The maximum depth of the perimeter buffer would be 80 feet in the area just south of the stormwater device encroachment.

The Weston PDD also identifies a 50-foot landscape buffer (streetscape) along Weston Parkway. The topography of the site and the multiple stream buffers located on the site constrain the size and shape of the developable portion of the property. In order to accommodate the proposed office square footage and the parking structures proposed to serve the users of the space, the applicant has requested to average the streetscape to provide a minimum depth of 25 feet and a maximum depth of 100 feet. The applicant has proposed to average the landscape buffers mentioned above such that their average widths meet or exceed the widths required by the Weston PDD. When reviewing administratively approved plans, the Development Review Committee restricts the maximum width to no more than twice the required buffer width, a practice with which this proposed buffer averaging is consistent.

The plan under consideration is a sketch site plan that includes insufficient details to assess the consistency with the LDO requirement either for additional vegetation or for hardscape elements. The applicant would be required to demonstrate compliance with these requirements at the time of the full site plan submittal.

Architectural: The sketch site plan under consideration includes no architectural detail for the proposed office buildings or the parking structures. The Town of Cary Community Appearance Manual (CAM) requires that any building façades that are reasonably expected to be visible from a vehicular conveyance meet the nine standards for façade design. It appears that all four façades of the proposed office buildings would be visible to vehicular traffic and, therefore, would be subject to the requirements of the CAM architectural section.

Utilities: The sketch site plan includes a conceptual utility layout that would be adjusted once the details of the utility services are reviewed as part of the full site plan submittal. Preliminary layout indicates that sewer service would be provided by an existing 48-inch sewer line just north of the property line adjacent to Lake Crabtree. Water and reclaimed water services would be provided...
via an existing 12-inch water line and an existing 16-inch reclaimed water line located in the Weston Parkway right-of-way.

**BMP Wall:** The Town recently adopted a restriction in the use of hardscape edges for stormwater devices outside of designated mixed use centers. Some flexibility in this restriction was accorded by establishing design standards for walls when used outside of mixed use centers. (Refer to Section 7.2.8 of the LDO).

The proposed development plan includes a stormwater device located at the eastern end of the site that would be supported by a proposed retaining wall. The intent of the ordinance language above was to prevent the aesthetic concerns caused by the concrete-walled stormwater devices that have been installed in the Town. The proposed stormwater device would have sloped banks around the entire circumference, while being supported by a retaining wall on the down-slope face of the impoundment. The retaining wall would be facing a stream buffer and the adjacent Wake County property, severely limiting public visibility; therefore, it is likely that the applicant will propose to use a split-faced, modular concrete masonry unit (CMU) in the wall design.

**Parks, Recreation, and Cultural Resources (PRCR) Facilities Master Plan:** The PRCR Facilities Master Plan indicates a future greenway (Crabtree Creek Greenway) corridor running along the northern and eastern property lines. The Town requires a maximum of a 50-foot easement in locations for which the greenway has not been designed to preserve flexibility in greenway location and to deal with topography, wetlands, stream buffers or other constraints. Typically, the Town minimum easement width is 30 feet for future greenway corridors. The developer has proposed to provide a 50-foot greenway easement for the majority of the length of the corridor. However, the developer has requested Town Council consideration of a reduced easement width in the same location as the proposed buffer reduction.

The applicant has proposed a segment of greenway easement along the stormwater device’s retaining wall that would be seven feet in width. According to the applicant’s justification statement, the location of the proposed stormwater device and its retaining wall are necessary due to the topography in the eastern end of the site. The reduction is for a minimal length of the total easement length, representing approximately 9% of the total length of greenway easement to be dedicated.

The reduction in the width of the greenway easement would require the Town to acquire the necessary easements from the adjacent property owner, Wake County, before the greenway could be constructed. The Town does not feel that this would represent a difficulty in implementation of the trail at such time as the Town chooses to move forward with this project. The adjacent property is significantly impacted by stream buffers and flood plain associated with Lake Crabtree, limiting the options for future development of any non-recreational uses on the site.

The proposed greenway easement is located coincidental with the required 40-foot landscape buffers. Pedestrian walkways are considered an allowable encroachment in required perimeter buffers and streetscapes. However, the provision of a 50-foot greenway easement located within a 40-foot landscape buffer would mean that at the time of construction, some of the mature vegetation in the buffer would be removed to allow construction of the greenway. The Town would then be responsible for revegetating the buffer to ensure it would meet the required Type A (opaque) buffer standard.

### DEVELOPMENT PLAN WORKSHEET AND SUGGESTED MOTIONS
Section 3.9.2(I) of the LDO states that a development plan may be approved by the Town Council only if it meets six listed criteria. As part of determining whether the first criterion is satisfied, council must determine whether to grant minor modifications to the development standards requested by the applicant. Staff comments are included as appropriate in italics following each criterion. A roadmap of the decisions council must make is provided below:
WORKSHEET 1

2. Does the plan comply with all applicable requirements of the LDO, including the development and design standards of Chapters 7 and 8 as well as the dedication and improvements provisions of Chapter 8 as well as all applicable Town specifications?

As indicated in the staff report, the proposed development is not in complete compliance with the requirements of the LDO. The applicant has requested approval of several Minor Modifications to the standards of the LDO. Council must find that the requested modifications: (1) advance the goals and purposes of the LDO; and (2) either result in less visual impact or more effective environmental or open space preservation, or relieves practical difficulties in developing the site.

Once council has made a decision on each minor modification, it can then turn to the remaining site plan approval criteria:

WORKSHEET 2

2. Does the plan adequately protect other property, or residential uses located on the same property, from the potential adverse effects of the proposed development?
3. Does the plan provide harmony and unity with the development of nearby properties?
4. Does the plan provide safe conditions for pedestrians or motorists and prevent a dangerous arrangement of pedestrian and vehicular ways?
5. Does the plan provide safe ingress and egress for emergency services to the site?
6. Does the plan provide mitigation for traffic congestion impacts reasonably expected to be generated by the project?

WORKSHEET 1

1. Does the plan comply with all applicable requirements of this Ordinance, including the development and design standards of Chapters 7 and 8 as well as the dedication and improvements provisions of Chapter 8 as well as all applicable Town specifications? (Note: Plans within Planned Developments may be subject to different requirements based on the approval).

Town Council should consider and approve the Minor Modification requests below pursuant to section 3.19.1(C)(2) of the LDO. Council may approve a Minor Modification to the development standards at any point before it approves the associated development plan. However, in order to approve a requested Minor Modification, the council must find the following:

(1) That the modification advances the goals and purposes of this Ordinance and
(2) That the modification either
   A. Results in less visual impact or more effective environmental or open space preservation, or
   B. Relieves practical difficulties in developing a site. In determining if “practical difficulty” exists, the factors set forth in Section 3.20.5, “Approval Criteria” (for Variances) shall be considered.

The criteria for determining whether or not ‘practical difficulty’ exists include the following:
   a. Whether there can be any beneficial use of the property without the variance;
   b. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
   c. Whether the variance would adversely affect the delivery of public services such as water and sewer;
   d. Whether the applicant purchased the property with knowledge of the requirement; and
   e. Whether the applicant's predicament can be mitigated through some method other than a variance.
In granting a Minor Modification, council may require conditions that will substantially secure the objectives of the standard that is being modified and that will substantially mitigate any potential adverse impact on the environment or on adjacent properties, including but not limited to additional landscaping or buffering.

1. Request that the Town Council allow the averaging of the Weston Parkway streetscape to an approximate width of 25 feet at the minimum and to 100 feet at the maximum per Section 7.2.10(D) of the LDO.

   (1) Does the modification advance the goals and purposes of this Ordinance?

   The requested averaging of the streetscape serves to preserve the same area of existing vegetation on the site as the provision of the typical 50-foot streetscape, while allowing flexibility in the design and in the layout of the site. The four stream buffers running radially through the site constrain the developable area and have necessitated the location of the parking structures and surface parking closer to Weston Parkway. Additionally, the topography of the site would require the installation of a number of retaining walls, including a couple of walls adjacent to the Weston Parkway streetscape. In order to access the walls during construction and for maintenance, the streetscape has been reduced in the areas immediately adjacent to the walls and additional streetscape area would be provided to maintain the same square footage of vegetation.

   TEST SATISFIED? __ YES __NO

   (2) Does the modification result in less visual impact or more effective environmental or open space preservation or relieve practical difficulties in developing a site?

   The averaging of the streetscape would not result in either an increase or a decrease in the amount of streetscape area protected on the site, but would simply relocate the area to be protected. As mentioned earlier in this report, the topography and the presence of several stream buffers on the site constrain the size and the shape of the developable area.

   TEST SATISFIED? __ YES ___NO

2. Request that the Town Council allow the averaging of the eastern perimeter buffer to an approximate width of 11 feet at the minimum and to 80 feet at the maximum per Section 7.2.10(D) of the LDO.

   (1) Does the modification advance the goals and purposes of this Ordinance?

   The requested averaging of the eastern perimeter buffer serves to preserve the same area of existing vegetation on the site as the provision of the required 40-foot buffer, while allowing flexibility in the design and in the layout of the site. The topography of the site falls in elevation to the east, making the location ideal for a stormwater BMP. The scale of the development and the size of the necessary BMP would require a retaining wall to support the proposed BMP. That wall is proposed within the eastern perimeter buffer. The portion of the adjacent property to the east in the area of the requested reduction in width is subject to stream buffer impacts and to wetland regulations. Therefore, the width reduction would not be anticipated to affect the visual separation between the properties.

   TEST SATISFIED? __ YES __NO

   (2) Does the modification result in less visual impact or more effective environmental or open space preservation or relieve practical difficulties in developing a site?

   The averaging of the eastern perimeter buffer would not result in either an increase or a decrease in the amount of streetscape area protected on the site, but would simply relocate the area to be protected. The topography of the site dictates, to a certain extent, the locations available for stormwater BMPs. The wall would be necessary to support the BMP, which in turn is sized to support the proposed scale of development on the site.

   TEST SATISFIED? __ YES ___NO
3. **Request that the Town Council waive the requirements of Section 7.10.3 of the LDO, which requires vehicular interconnection with the adjacent property located to the east.**

(1) Does the modification advance the goals and purposes of this Ordinance?  
The properties located immediately to the east of the proposed Weston Lakefront Offices development are owned by Wake County as part of Lake Crabtree. The properties contain several stream buffers, and a large proportion is within the floodplain and the flood hazard areas associated with the lake. The requested modification would eliminate the opportunity for future vehicular connectivity between the two office sites; however, the modification would also serve to provide protection both for the environmentally sensitive stream buffers and the floodplain areas on the adjacent properties, consistent with the General Purposes established in Section 1.3 of the LDO.

**TEST SATISFIED? __ YES __NO**

(2) Does the modification result in less visual impact or more effective environmental or open space preservation or relieve practical difficulties in developing a site?  
The removal of the connectivity requirement to the east would result in more effective environmental preservation. The provision of a vehicular connection in the future would require significant grading and significant disturbance within multiple stream buffers and the floodplain, which would be avoided should Town Council approve this modification.

**TEST SATISFIED? __ YES ___NO**

4. **Request that the Town Council waive the requirements of Section 7.10.3 of the LDO, which requires vehicular interconnection with the adjacent property located to the west.**

(1) Does the modification advance the goals and purposes of this Ordinance?  
The intent of providing interconnections, especially between compatible uses such as two office complexes, is to support the creation of a highly connected transportation system within the Town to provide choices for drivers, for bicyclists, for public transit passengers, and for pedestrians. The elimination of the required vehicular connection between the two projects as part of the proposed Weston Lakefront Offices would eliminate any opportunity for future access by the adjacent office building to the signalized intersection onto Weston Parkway.

**TEST SATISFIED? __ YES __NO**

(2) Does the modification result in less visual impact or more effective environmental or open space preservation or relieve practical difficulties in developing a site?  
Vehicular and pedestrian connections are an allowable disturbance within a perimeter buffer or streetscape. However, the removal of the connection would result in fewer disturbances in the ten-foot Type C buffer required between the two offices. The buffer runs coincidentally with a stream buffer shown on the Town’s GIS maps. That buffer was cleared and paved on the adjacent property, minimizing the environmental benefits of the remainder. In fact, the applicant’s plan now shows the buffer to be two disconnected sections due to the disturbances on the adjacent site.

**TEST SATISFIED? __ YES ___NO**

5. **Request that the Town Council allow an increase to the maximum allowable parking for the site from 2,235 (1 sp/300 sf) spaces to 3,389 (1 sp/198 sf) spaces per Section 7.8.2 of the LDO.**

(1) Does the modification advance the goals and purposes of this Ordinance?  
The LDO establishes maximum parking ratios for non-residential uses to reduce the amount of unused parking spaces and to reduce the amount of site area being covered with impervious surfaces. The proposed development plan would reduce the amount of impervious surface area on the property by proposing
approximately 89% of the parking in parking structures. The impervious footprint of parking on the site would be reduced approximately 70% over the provision of standard surface parking.

TEST SATISFIED? __ YES __ NO

(2) Does the modification result in less visual impact or more effective environmental or open space preservation or relieve practical difficulties in developing a site?

The requested modification alone would not result in less visual impacts or in more effective environmental protection. However, the applicant has proposed to provide the additional parking in three multi-story parking structures. The use of parking structures to house the additional parking would result in a decrease of approximately 70% of the impervious area as would be required by the same number of surface parking spaces.

TEST SATISFIED? __ YES __ NO

6. Request to use a hardscape (modular CMU) wall in the design of a stormwater device outside of a Mixed Use Center per Section 7.2.8(A) of the LDO.

(1) Does the modification advance the goals and purposes of this Ordinance?

The intent of restricting the use of hardscape transitions in the design of stormwater devices was to minimize the adverse aesthetics associated with many devices that use such transitions. In general, the walls create the visual impression of a concrete pit that collects and holds debris and detritus from around the site. In the applicant’s proposed plan, the wall is used in the design of the stormwater device in a manner frequently not seen on other sites. The proposed modular retaining wall is located on the downstream side of the stormwater device impoundment, thereby supporting the entire stormwater device above the adjacent stream buffers.

The proposed wall would not be visible from the office development due to the design of the stormwater device and to the adjacent stream buffer. Perimeter buffers would also limit the public visibility of the wall from the adjacent Weston Parkway right-of-way. In cases such as this, the LDO allows the use of modular concrete masonry units (CMU) in lieu of the brick or the stone that would otherwise be required for hardscape transitions located outside of Mixed Use Centers.

TEST SATISFIED? __ YES __ NO

(2) Does the modification result in less visual impact or more effective environmental or open space preservation or relieve practical difficulties in developing a site?

The requested utilization of a modular CMU wall on the downstream side of the stormwater impoundment would allow the development to treat their required stormwater quantities while minimizing the amount of grading that would otherwise be required in the adjacent stream buffers and/or perimeter buffers. The stormwater device at the eastern end of the site is located uphill of the environmentally-sensitive wetlands and the floodplain on the adjacent Wake County properties. The grading necessary to make the stormwater device work without the use of the wall would result in a significant increase to the disturbed area around the stormwater device and would potentially impact the preservation of the adjacent lowlands.

TEST SATISFIED? __ YES __ NO

7. Request to provide less than the minimum 30 feet of greenway easement required by Section 7.10.4(D) of the LDO.

(1) Does the modification advance the goals and purposes of this Ordinance?

The requested reduction would be located in the same location considered for Minor Modifications two and six. The applicant has proposed to dedicate an easement located five feet from the base of the retaining wall supporting the proposed stormwater device. The wall would be located a minimum of 11 feet
from the property line, resulting in a greenway easement width of approximately seven feet. The width alone would be insufficient for the future greenway, irrespective of any associated shoulder grading. Town would work with Wake County in the future to acquire any necessary easements on the adjacent property. The location of the trail on the Wake County property would be consistent with the Weston PDD pedestrian layout, which indicates a pedestrian trail in the vicinity of the proposed greenway easement as a part of the Weston pedestrian network. The provision of any width of easement would promote the creation of a highly connected transportation network with the reduction in width complicating the ultimate installation of the future greenway.

**TEST SATISFIED? __ YES __NO**

(2) Does the modification result in less visual impact or more effective environmental or open space preservation or relieve practical difficulties in developing a site?

The proposed request regards the dedication of an easement and not the construction of the associated greenway, so the applicant's requested Minor Modification would result in no more or no less environmental protection than the provision of a full 50-foot easement. The proposed request would allow the applicant to retain the stormwater device in the proposed location, which is in response to the existing topography of the site.

**TEST SATISFIED? __ YES __NO**

8. Request to reduce the median opening spacing on Weston Parkway from the required 1,200 feet to 850 feet.

(1) Does the modification advance the goals and purposes of this Ordinance?

Medians serve to reduce interference with side street traffic movements, to increase capacity of a road, to reduce crash potential, and to improve the overall mobility of a facility. Adequate spacing of median breaks along a roadway helps overall traffic progression along the corridor, especially if signals are needed. The applicant has provided a TIA that indicates a median spacing of less than the required 1,200 feet can be supported and would not affect traffic operations.

**TEST SATISFIED? __ YES __NO**

(2) Does the modification result in less visual impact or more effective environmental or open space preservation or relieve practical difficulties in developing a site?

The requested modification allows more choices in accessing the site for tenants and for customers. The placement of the median opening would result in reducing the approach grade for Access B, which in turn would result in less clearing and grading to install the access, particularly in the Weston Parkway streetscape.

**TEST SATISFIED? __ YES __NO**

### SUGGESTED MOTIONS FOR MINOR MODIFICATION REQUEST

The Town Council may approve each request for a minor modification; approve some requests and deny others; or deny each minor modification request. Sample motions are included below.

**MOTION TO APPROVE ALL MINOR MODIFICATION REQUESTS:**

For the reasons discussed, I move that we APPROVE each of the eight minor modification requests made by the applicant as the requests each meet all the approval criteria of Section 3.19.1.

**This approval is conditioned upon the following:**

1. [insert any conditions necessary to bring the project into compliance with the LDO or other standards]

**MOTION TO APPROVE INDIVIDUAL MINOR MODIFICATION REQUESTS:**
For the reasons discussed, I move that we APPROVE minor modification requests numbers __________________ as the requests each meet all the approval criteria of Section 3.19.1.

MOTION TO DENY ALL MINOR MODIFICATION REQUESTS:
For the reasons discussed, I move that we DENY each of the eight minor modification requests made by the applicant as the requests do not meet all the approval criteria of Section 3.19.1

MOTION TO DENY INDIVIDUAL MINOR MODIFICATION REQUESTS:
For the reasons discussed, I move that we DENY minor modification requests numbers __________________ as the requests do not meet all the approval criteria of Section 3.19.1.

WORKSHEET 2

2. Does the plan adequately protect other property, or residential uses located on the same property, from the potential adverse effects of the proposed development?
   The proposed plan is generally consistent with the requirements of the LDO except as indicated above. Buffers would be provided as required by both the Weston PDD and by the LDO. The property is located within a much larger office park; therefore, there are no residential developments in the immediate vicinity of the project that would be potentially affected by the proposed Weston Lakefront Offices.
   TEST SATISFIED? __ YES __ NO

3. Does the plan provide harmony and unity with the development of nearby properties?
   The proposed office development would be consistent with the theme of the Weston PDD. Large portions of the site would be retained as open space and off-street pedestrian circulation would be provided consistent with the Weston pedestrian circulation plans. The proposed office buildings would be subject to the Town’s architectural standards, which would produce building similar in design to existing buildings in the surrounding office park.
   TEST SATISFIED? __ YES __ NO

4. Does the plan provide safe conditions for pedestrians or motorists and prevent a dangerous arrangement of pedestrian and vehicular ways?
   The proposed development would be required to be consistent with the roadway design standards of the LDO and with the pedestrian designs of the Weston PDD. Additional sidewalk and other pedestrian facilities will be required as the plan progresses through the full site plan process, particularly to serve the proposed transit stop to ensure that users from Centregreen can access the southbound route safely and efficiently.
   TEST SATISFIED? __ YES __ NO

5. Does the plan provide safe ingress and egress for emergency services to the site?
   The proposed development plan would provide multiple points of safe ingress and egress for emergency service vehicles and personnel. The applicant has requested that Town Council waive the requirement for connectivity to the adjacent office building located to the west of the subject parcel. This waiver would reduce options for emergency response in the event that one or more of the entrances to the project were impacted by an event.
   TEST SATISFIED? __ YES __ NO

6. Does the plan provide mitigation for traffic congestion impacts reasonably expected to be generated by the project?
   The applicant’s consultant, Kimley-Horn and Associates, Inc., prepared a TIA in which several intersections in the vicinity of the proposed development were evaluated for impacts to the transportation network associated with the proposed site plan. The applicant has voluntarily elected to mitigate the project’s transportation impacts as outlined in the executive summary of the TIA.
   TEST SATISFIED? __ YES __ NO
SUGGESTED MOTIONS FOR SITE PLAN

MOTION TO APPROVE THE SITE PLAN
For the reasons discussed, I move that we APPROVE the proposed sketch site plan with conditions as stated below, as it meets all of the approval criteria set of Section 3.9.2(I). This approval is conditioned upon the following:

2. The applicant must satisfactorily address any remaining Development Review Committee comments on the master plan set submitted for signature.
3. [insert any additional conditions necessary to bring the project into compliance with the LDO or other standards]

OR

MOTION TO DENY THE SUBDIVISION PLAN
For the reasons discussed, I move that we DENY the proposed sketch site plan, as it does not meet all of the approval criteria set forth in Section 3.9.2(I).

Smith rejoined the council.

The clerk administered oaths to witnesses (on file in the clerk’s office according to the Records Retention and Disposition Schedule).

Weinbrecht: At this time we’ll start on my left and go left to right and ask council members if they’ve had any site visits, ex-parte communications, financial relations, special knowledge or close relationship to an affected person to disclose.

Yerha: No sir I have not.
Bush: No
Frantz: Thank goodness no
Weinbrecht: I’ve had none
Smith: No. I’ve had none
Adcock: None, mayor.

Weinbrecht: Okay; based on the disclosures we’ve heard from council members, I would invite anyone to the podium who has been sworn in to speak if you have an objection to any council member’s participation in this hearing. I see no one making a move; I’m going to continue. At this time I’ll open up the quasi-judicial public hearing and recognize Mr. Hales of our staff who will introduce the hearing. Mr. Hales.

Hales: Thank you. The next item on tonight’s agenda is a request by Weston – it’s actually Weston Lake Front Offices. This was an old title when it was originally developed. It’s located on approximately 40 acres -- located on Weston Parkway adjacent to Lake Crabtree Park. As you can see, a sandwich between Weston Parkway and the lake. Weston Parkway is identified as a thoroughfare on the Cary Comprehensive Transportation Plan. The large office development to the south of the four buildings is Centre Green and Weston. And actually I believe they’re getting ready to start a fifth building there. There’s also the Lucy Daniels Foundation, which is the small parcel cut out of the Centre Green parcel. Office uses -- both to the east and the west. There’s a small strip of Wake County land located to the east, which will be discussed in more detail later.

Hales: The Town’s transit plans don’t show a future route on Weston Parkway; however, in talking with transit planners in the planning department there is a lot of consideration being given to creating a new transit route along Weston Parkway to serve the large amount of office square
footage along that route. In fact, if you look in the sketch plan there’s a small future bus stop--transit stop--identified kind of half way across the site along Weston Parkway. The Town’s Parks, Recreation and Cultural Resources Facilities Master Plan indicates a future greenway that runs along the northern property line in between the property and Lake Crabtree and then down long eastern property line to tie into Weston Parkway. In addition to being on the PRCR Facilities Master Plan, this also appears on the Weston PDD Master Pedestrian Plan. As you may know, the Weston PDD was approved. There’s not a lot of sidewalk along Weston Parkway. That was because of the extensive trail network, which was designed to serve pedestrian needs in lieu of traditional sidewalk. Stream buffers and floodways: there are four stream buffers identified in the Town of Cary GIS maps that kind of run radially across the depth of the site. There are very minor floodway and flood hazard area impacts associated with Lake Crabtree that actually impact the property. However, you can see here in the green and red the floodplain and flood hazard area completely surrounds the property to the north and east on the Wake County property of Lake Crabtree. The proposed land use plan is office & institutional. There’s a small section of commercial, probably from an older lot line, and there’s a commercial land use designation to the west that ties in with the Weston Commons development, which is four kind of commercial overlay portions of the Weston PDD at the intersection of Evans Road and Weston. The majority of the property around this site otherwise is office & institutional. The property is currently zoned PDD major. It’s within the Weston PDD as I’ve already mentioned. All surrounding area is also in the Weston PDD. The Silverton PDD picks up a little bit to the southwest. The Lake Crabtree property owned by Wake County to the north -- not the small portion to the east -- is zoned resource recreational. The property is currently vacant and is predominantly wooded with deciduous tree cover. There is a significant amount of topography, and there was a preliminary existing grading plan included in the sketch plans submittal. We don’t have the actual proposed grading plan yet. But basically the three ridges that run radially from Weston Parkway out toward Lake Crabtree -- the elevation change from the top of those ridges down to the lake elevation is approximately 90 feet. So there’s significant amount of topography the development’s dealing with. The sketch plan that’s under consideration tonight consists of three buildings, each seven stories with approximately 223,500 square feet for a total square footage of office on the tract of approximately 670,500 square feet. That will require a lot of parking. They have proposed that the predominant parking will be provided in parking structures. The three lighter gray areas are multi-level parking structures. There’s a small amount of surface parking located there in the asphalt area. Stormwater is being routed to two BMPs, one at the northwestern end of the site, the other at the eastern end of the site. There’s a significant amount of open space being preserved in the center northern portion of the tract adjacent to the lake. That would be improved with proposed pedestrian trails to provide access down to the lake for employees.

Hales: In association with the proposed sketch plan, there are eight minor modification requests, which we’ll go over individually in more detail. The first of those minor modification requests is a request to average the depth of the streetscape along Weston Parkway. The Weston PDD calls for a 40 foot streetscape along the entire length of the Weston Parkway frontage. Due to the topography and the need to create a maximum grade you can deal with with drive isles and parking, so in order to accommodate the size of the development being proposed, some of those parking areas, retaining walls and structures were beginning to encroach into that streetscape area. In lieu of requesting an outright reduction, which may require a rezoning because of the nature of the PDD, they propose to average that streetscape, which means it’s reduced in the areas of red and increased in width in the areas shown in green. The minimum being provided is 25 feet -- approximately 25 feet, which is in the area of parking located in the center of this map. Where there’s a retaining wall they’re needing to install. Some of that would be revegetated. A lot of the encroachment is for grading to access the retaining wall for construction.

Hales: The second request is to average the perimeter buffer width along the northern and eastern property lines. Again, dealing with some of the required topography in the way the property falls off to the east where the Wake County property is very low lying and has multiple stream and stream buffers and floodplain -- that’s the logical place for water to run, because water
runs downhill. So there’s a BMP located at the far eastern end of the site. To get that to work, again with their proposed plan they needed to install the retaining wall, which we’ll go over in more detail with another minor modification. The retaining wall holding that BMP is essentially on the side of the hill. In order to get all that in and make their numbers work, they had to encroach into that buffer. This one goes down from the 40 to a minimum of approximately 11 feet right where the BMP wall pinches against the property line with Wake County. It’s kind of important to note that the adjacent property is – I won’t say completely, because that’s a hard number – but, over 90% of the property is undevelopable with stream buffers and floodplain. So, that’s essentially going to remain open space. So there’s not a lot of impact to adjacent properties or potential for future development there.

Hales: The next request is to waive vehicular connectivity going to the east. As I mentioned before, the adjacent property owned by Wake County is very low lying. There are multiple stream buffers. You saw earlier the floodplains and flood hazard areas. That property is very, very, very unlikely to develop ever in the future. In addition, because of the grade – you can see the grades falling off here – each of those contour lines is a two foot line. Significant grade falling off toward that lower lying area, and the retaining wall really makes a vehicular connection in that direction impractical. In contrast to that, they’ve also requested to waive vehicular connectivity to the west. The property adjacent to the west is already developed as 185,000 square foot office building with parking – as you can see here – that comes very close to the shared property line. That property is currently served by a couple of accesses, neither of which are signalized onto Weston Parkway. They’re kind of in a “S” curve, which somewhat limits visibility. There’s not a lot of concern there, but it just should be pointed out. They did not provide a stub for connectivity when that was developed, which means what we’re asking the Weston Lakefront development to do is provide a driveway stub to their property line, which may be connected in the future. Unlike the other side, you can see that that drive running right here next to the arrow runs up kind of along the ridge line. So topography is not as big a concern on this side as it is on the other. We would have to take a closer look at their proposed grading at the time the plan comes in to make sure it would work with our grades. If there was a significant topographical issue, we could revisit it at the time of full site plan construction drawings. But, for a sketch plan, we feel – as staff – that that connection really should be made. Their justification they provided involved loss of parking spaces. And that was included in your staff report. It involved the loss of parking spaces on the adjacent property. However, we feel that’s going to be very limited. Again, we don’t have detailed construction drawings, but just looking at the grades and the way it would tie into that drive isle, we don’t think a significant amount of parking would be lost. In addition, the public already has access to their campus via the signalized intersection at Centre Green and every other entrance. There are no privileged gates, so we don’t see how this would enhance any concerns about security they may have.

Hales: The next request involves an increase to the maximum parking. The Town requires one space per 300 square feet of office. That would result in approximately 2,235 parking spaces per Code. Their proposal includes one space for about 200 square feet, which is more consistent with commercial parking, which will result in about 3,389 parking spaces, which is a 52% increase. The intent of limiting parking maximums on site was to reduce the amount of impervious surface on developing areas and to reduce the amount of unused parking – parking that’s very seldom used, like holiday parking in shopping centers. With them proposing three parking decks, which are again shown here in yellow, 89% of the parking proposed on this site is in structured parking. That results in – if you were to take the same amount of proposed parking spaces – 3,389 – and do that surface parking, it results in approximately 70% more impervious surface that would be required. So you’re looking at 30% of the required surface area that would otherwise be required by traditional surface parking. So, staff feels it’s consistent with the intent of reducing impervious surface, whether or not the applicant has provided significant justification as the need for the additional parking – they didn’t provide that level of detail with their request.
Hales: The next request is to provide a hardscape edge in a BMP. Council may remember in 2012 they adopted new site design standards. One of those was to eliminate or restrict the ability to use hardscape edges in BMPs outside of activity centers. The intent was to avoid the appearance of concrete pits – for lack of a better description. Just basically an aesthetic concern. If council did decide or staff was allowing BMP edge/BMP wall, the Town also adopted standards that apply to that, meaning it would have to be brick or stone or high quality masonry material – had to be tiered. It couldn’t just be a standard straight wall. However, we did build in some flexibility to allow the use of concrete masonry units (inaudible words) where public visibility is limited. This situation is a little unusual. Typically when you think hardscape edge in a BMP you think the water surface area going right up to the wall and then there being a hard edge there. Because of the topography on the site, what they’ve essentially done is created a standard looking BMP and then provided an impoundment on the back side – or a wall on the back side of the impoundment – the downhill side – basically to hold the entire structure uphill. The wall would be behind the streetscape and behind significant stream buffers and adjacent resource recreational land owned by Wake County. So, the public visibility will be significantly limited, so keystone may be appropriate in that instance. And, the prominent public view would be of a standard BMP. It really wouldn’t appear as a BMP wall.

Hales: The next request is a reduction in the greenway easement. If you remember, the proposed greenway plan or master plan showed a greenway running the entire length of the northern and eastern property lines. That same pitch point where the BMP and wall are being proposed, they have sought a reduction in the width of that easement. Typically when a greenway has not been designed, the Town requires a 50 foot easement, which they have provided along 91% of the required property line length. They have requested about a 200 or 210 foot length that that be reduced down to a minimum again of 11 foot where that pinch point is adjacent to the Wake County property. What this means from a Town perspective is that when the Town goes to install that greenway, they would need to need to negotiate with Wake County to get a greenway easement on the Wake County property to make up the difference.

Hales: The last request is to decrease the median opening spacing along Weston Parkway. If you can see right here, this is the existing secondary access to Centre Green Park at Weston. Here’s an existing median opening here. And obviously the full service intersection would be aligning with the main entrance to Centre Green. And that’s the obvious choice for signalization, so that would be the one driving the spacing. The Town standard specifications manual requires along thoroughfares and connectors a spacing of approximately 1,200 feet. The applicant has requested approximately 850 or 860 feet, which would have the effects of rendering (inaudible words) the existing secondary access to Centre Green into a right-in/right out, and moving that full service access farther down Weston Parkway, which would be improving the existing conditions. It represents approximately a 59% increase over the existing median opening space. The intent of limiting the spacings is to reduce interference with side traffic movement, increase facility capacity, reduce crash potential, and improve overall mobility. As part of the TIA prepared by the applicant, they did look at whether or not that reduced opening spacing would impede traffic or cause any traffic issues. I believe their report says – and the applicant can offer more testimony – but I believe their report says that there were no adverse impacts. One of the other justifications they used for reducing that spacing is if you’re looking at about the 1,200 feet, any kind of driveway that was located in that location would be essentially bucking grade and having to perform a whole lot more grading to get up to required elevations. There’s a retaining wall shown here in red. It’s actually breaking grade. Where their proposed driveway is, you can see the ridge kind of runs this direction. So, it basically reduces the approach slopes along their driveways to a more acceptable slope from a Town perspective.

Hales: As I mentioned briefly, the applicant did perform a traffic impact analysis. Kimley Horn was their traffic consultant. It did show an average daily trips of approximately 20,000 trips at build-out. The capacity of this section of Weston Parkway is currently estimated at approximately 35,000 ADTs, and they’re significantly below that. They also voluntarily looked at some crash
data along the subject corridor, and determined some improvements that could be made at Cary Parkway and Evans to maybe reduce some of those based on some site distance concerns. There’s been a lot of discussion in past cases about the intersection of Weston Parkway and North Harrison Avenue. Based on the existing geometry of that intersection and the right-of-way constraints of all the development there, there were no physical improvements that were practical that could be made. They did recommend some minor signal timing changes there to maintain functionality at the current levels. So proposed mitigations at the Weston Parkway and Evans Road – essentially they’d be providing a second left turn lane for the southbound approach on Evans with a shared storage of 600 feet – so 300 each or however that works out – as shown here coming southbound and turning left. That would also have the effect of reducing the existing left turns. A left turn lane into Weston Commons – this is First Citizens Bank, I believe – it’s some sort of bank – reducing that storage lane to 100 foot. Right now that’s not used as much as it could be if future development would occur. So, we didn’t see a problem. They also, as I mentioned earlier, proposed advanced signal heads. As you can see, this intersection’s kind of in a large curve. There have been some concerns expressed about visibility of the signal as you’re approaching it. So, providing advanced signal heads should hopefully reduce some crash instances along that corridor. There’s also – and I showed them here in dotted red lines – there are two improvements identified in the plan, which is a right turn lane of 150 foot of storage exclusive going onto Evans from the westbound approach on Weston, and to restripe the existing through right to a dedicated through lane. The reason I showed those dotted is they’re also identified in a traffic impact analysis, and have been committed to by the Weston Corners development, which is a mixed use project located at the intersection of Chapel Hill Road and down at the end of Weston. That was approved several years ago, and due to the downturn they delayed development. But, that is now moving forward again. So they would be making those improvements based on their proposal. Looking at the main entrance into the site, which is their entrance A, as I mentioned before would be converting the secondary entrance into Centre Green into a right-in/right-out and closing the existing median opening. They’d be signalizing the intersection, so it would have a signalized intersection to handle the additional traffic, restriping the right turn lane coming out of Centre Green to a through right, extending the existing left turn storage on the eastbound approach to the intersection on Weston to have at least 225 foot of storage, and then providing a left turn exclusive through and a channelized right turn lane coming out of the proposed development. And finally, their second full service access into Weston Lakefront would be slightly north of the existing Centre Green secondary access, where they’re proposing their new median cut. Improvements there would include a left turn and right turn lane out of the development, an exclusive U-Turn lane for westbound traffic on Weston with approximately 50 foot of storage, and then a left turn lane headed eastbound on Weston into the site with 100 foot of storage.

Hales: That concludes staff’s presentation. Staff is available for questions following the hearing if you would have any. Also, I’ve provided a summary of the actions. We’ve prepared a different set of motions for the minor modifications. I’ll go over that after the hearing.

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

Mr. Jason Barron: Thank you Mr. Mayor and members of the council. Jason Barron here on behalf of the applicant, Highwoods Properties. I’m excited to finally get up here tonight. As Kevin touched on, this is a request for a sketch plan approval with associated modifications for roughly 670,000 square feet of office located on 40 acres off of Weston Parkway. As you all know this is a quasi judicial proceeding, so we have evidentiary standards that we have to satisfy, and we intend on presenting evidence in support of the application as quickly as we can, but recognizing that this is an evidentiary hearing. You will hear from three primary witnesses on our behalf tonight – Mr. Skip Hill of Highwoods Properties, he’s the vice president there, Mr. David Lasley, principal with Piedmont Land Design, and then Mr. Richard Adams of Kimley-Horn and Associates, who provided traffic guidance and the report that Kevin alluded to previously. We
believe that that evidence that you will hear from those three witnesses combined with the additional justifications provided in the staff report as well as the staff report itself show that we satisfied the requirements of the ordinance for approval of the sketch plan and the associated modifications. At this time I will call Mr. Skip Hill.

Mr. Skip Hill: Thank you Mr. Mayor, members of council. Again my name is Skip Hill; I'm the vice president of Highwoods Properties and have been in the real estate development business for over 25 years and have seen various developments like this. We are absolutely thrilled to be bringing this application tonight. I’d like to make a couple brief remarks and then hand it off to our engineers to do the heavy lifting on the development plan itself. As an initial matter and on behalf of Highwoods and their development team, I would like to let you know our appreciation for the professionalism demonstrated by the Town staff throughout this process. I've sat in many different jurisdictions and I’ve said this to folks at the planning conferences and here, that we work at a number of jurisdictions and personally the Town of Cary has a staff that is of the highest quality. Their work on this plan is no exception. With respect to this plan, we've been working through the plan review process, while at the same time negotiating with a potential tenant that will be the sole occupant of this site. As of today I am not at liberty to disclose the identity of the tenant. However, we’re optimistic that if the Town approves this plan as presented, the deal we have structured for this site will be one that the potential tenant finds very attractive and will continue to move forward. We hope the council shares our excitement for this proposal, and I respectfully request your approval. At this time I’ll turn it over to David Lasley, who can present the details of our submittal.

Mr. David Lasley: Thank you, Skip. Good evening Mayor and members of the council. My name is David Lasley, principal, Piedmont Land Design. We’re the land planners, the civil engineers and landscape architects for the project. I’ve been providing design and expert testimony for area projects such as this for over 30 years now. I’m here tonight representing Highwoods Services, Inc. and Pat Papec Weston III, LLC as they pursue Town approval of the Weston Lakefront office project; they are the two property owners of the proper. Kevin’s done an excellent job of presenting the project. At the risk of being redundant though, I would like to reiterate some of the high points of the project. The project is located on a 40.14 acre lot within Highwoods’ Weston plan development project. The site has approximately 1,800 lineal feet of frontage along the north side of Weston Parkway and backs up to Lake Crabtree to the north with approximately 2,300 lineal feet of lake frontage. The site is prime and according to Highwoods has been preserved for a large corporate campus, such as being proposed tonight. Nestled within this wooded site we’re proposing the construction of three seven story office buildings, each consisting of approximately 223,500 square feet each. The buildings are oriented in a semicircular pattern with emphasis on the views of the lake. Parking is being provided by a combination of three individual parking structures and surface parking. Access to the site will be provided to the property by four proposed driveways from Weston Parkway. Two of the drives will be full access, one will be restricted to right-in/right out movements, and one restricted to right-out only -- that would be coming out of the lower or southern most deck. Improvements to Weston Parkway are proposed to facilitate safe ingress and egress to the site. Stormwater management is to be provided by two proposed stormwater wetlands. These are located in the eastern and western corners of the property. The siting of the buildings has proven to be a challenge due to the topographical constraints of the site. It’s impacted by five separate Neuse riparian buffers and significant sloping topography rising from the lake to a height of 90 feet. Overall the proposed design of the Weston Lakefront project has made positive efforts to minimize these environmental impacts caused by the constraints, and it will maintain the feel and look that’s made the Weston development such a success. This has only been able to be accomplished though by implementing a provision of the Town’s land development ordinance, which allows minor modifications to the strict compliance of the Town’s LDO. Which brings us to our next part, as part of the applicant’s request for approval tonight is your approval of several minor modifications as permitted by the Town’s land development ordinance. These requested modifications are summarized in the staff’s report and in our firm’s letter dated June 27, 2013. I
would like to review our justification for each of these modifications at this time in the same order as presented in the staff report. Number one: request that the Town council allow the averaging of the Weston Parkway streetscape. This is justified. By averaging, it does not reduce the buffered area; it just merely varies the width. We’re still providing the same area. It’s also justified because the averaging is only being requested to alleviate topographical constraints of the site, and is being applied only in areas absolutely necessary to accommodate the improvements. Trying to keep that to a minimum where we’re needing this exception. Number 2: request that the Town council allow the averaging of the eastern perimeter buffer. This area again is a small portion of the perimeter buffer that is being provided. But again, averaging does not reduce the required buffer area; it merely varies the width. The averaging is only being requested to alleviate topographical constraints of the site, and is being applied only to areas that are absolutely necessary to accommodate the improvements. Number 3: request that the Town council waive the requirements of section 7.10.4(d) of the LDO, which requires vehicular interconnection with the adjacent property located to the east. The adjacent property is owned by Wake County and essentially part of the Lake Crabtree facility. The adjacent property will most likely never be developed due to the existing Neuse River riparian buffers. There are significant topographical hardships and conflicts with the proposed retaining walls and stormwater management devices that make a connection at this location infeasible. Number 4: request that the Town Council waive the requirements of section 7.10.3 of the LDO, which requires vehicular interconnection with the adjacent property located to the west. As Kevin had mentioned, currently there is no drive stub that exists on the adjacent property for which two connect. There is an existing parking lot on the adjacent property, and a connection would result in the loss of parking for this particular use. Both properties have multiple access points to Weston Parkway to adequately serve each development. The new Weston Lakefront project is designed and planned to be a self contained campus. The reduction of access points to the site makes security monitoring and enforcement easier. It is a desire of the tenant to preserve the integrity of this campus by not allowing crossover parking and traffic from the adjacent property. There are a couple points that I want to make that really apply to both three and four. The Weston PDD is a central part of the Town’s ordinances applicable to this site. When they approved the PDD, that became Town ordinance. Development of the site did not include cross access, but actually allowed the property to develop in a manner that is in harmony with the other parcels within Weston PDD. I don’t know of any case where there is any cross access between parcels right now in the Weston PDD. Accordingly, this granting of this minor modification advances the goals and purposes of the Town’s ordinances. The approval of the modification also results in less visual impact, because we’re not taking out existing vegetation -- that’s one of the findings. Not to mention the increase in the grading and the increase impervious surface area created by the additional connector. I’ll move on to number five: request that the Town Council allow an increase to the maximum allowable parking for the site from 2,235 spaces to 3,389 spaces. The tenant has determined their use requires the parking being proposed by this plan. You don’t build expensive parking structures because you don’t need parking places. Efforts have been made to reduce the environmental impacts of the added parking. By constructing structure parking, it does result in reduced tree removal, grading and impervious surface area. Providing adequate onsite parking avoids potential traffic conflicts that could occur on Weston Parkway and/or internally in non designated parking area onsite, which could prevent emergency vehicles access to the property. Number 6: request to use a hardscape wall in the design of a stormwater device outside of a mixed use center. The retaining wall is absolutely necessary due to the existing topography. This is an area that really drops off at the site, it’s our low area, and it’s an area that has got to receive the stormwater in the BMP. There’s a 40 foot elevation difference in this area, and the wall installation helps minimize the extent of tree removal. The wall is located adjacent to property owned by Wake County, that will most likely never be developed. There are Neuse River riparian buffers located east of the retaining wall and a streetscape located south of the wall that will provide an excellent natural screen. Item 7: request to provide less than the minimum 30 foot of greenway easement required by section 7.10.4(d) of the LDO. The retaining wall and encroachment into the greenway easement are needed due to the extreme topography in this area. It’s the same area with the BMP; it’s just a pinch point that we have on the site. The
greenway trail will most likely be located on the lake property in this area; however, adequate width is still being dedicated to provide room for a greenway trail. The reduction has been minimized to a section that is less than 230 foot long, or less than nine percent of the total greenway that is being dedicated. Now we have an item 8, that item is reduced for median open spaces. I want to save that one for our traffic engineer to go over the justifications for that. In summary, based upon the foregoing, it is my professional opinion that the proposed plan adequately protects the other property from the potential adverse effects of the proposed development, because among other things, the plan provides buffers consistent with the terms of the LDO as well as the Weston PDD. The proposed plan provides harmony and unity with the development of the nearby properties, because the site will develop in a manner entirely consistent with the theme of the Weston PDD. The proposed plan provides safe conditions for pedestrians and motorist, and prevents a dangerous arrangement the pedestrian and vehicular ways in that the plan will provide access points and vehicular ways consistent with the LDO and the Weston PDD. I thank you for your time, and I would now like to present Richard Adams with Kimley–Horn. Thank you.

Mr. Richard Adams: Good evening, I'm Richard Adams, 3001 Weston Parkway here in Cary. I am a traffic engineer on the project, and just a little background. I have a Bachelor of Science in civil engineering from North Carolina State as well as a Master of Science in civil engineering and a Master of Science in management from the Georgia Institute of Technology. I am a registered P.E. here in North Carolina and in South Carolina – a professional engineer. And I've been practicing as a traffic engineer for approximately 19 years. A little more on the project. We collaborated with the Town’s transportation engineering staff and performed a traffic impact analysis for the development proposed as was previously mentioned. As indicated in the staff report, the applicant has voluntarily elected to mitigate the traffic impacts of this development, specifically at Weston Parkway’s intersections with Evans Road, Centre Green Way and what we're calling full movement access point B as shown on the site plan. Based upon my review of the development plan and our findings in the traffic impact analysis, along with the applicant’s commitment to provide mitigation as identified in the TIA and in the staff report, it's my expert opinion that the plan provides mitigation for traffic congestion impacts reasonably expected to be generated by the project. Further, I've reviewed the access points onto Weston Parkway that have been previously described and that will be serving the development, and it is my expert opinion that the plan provides safe ingress and egress for emergency services to the site. Finally, the plan requires a reduction -- as been previously mentioned -- to the Town’s standard specifications for median opening spacing from the required 1,200 feet to approximately 850 feet. It is my expert opinion that this modification is justified for the following reasons. The proposed median opening spacing will still result in an improved median opening spacing versus the current conditions, since the existing median opening is closer to the Centre Green Way, and that will be closed. Additionally, the proposed median opening spacing will provide safe ingress and egress and efficient traffic operation in and around the site and on Weston Parkway as demonstrated in the traffic impact analysis. Thirdly, the topography of the site -- as also has been mentioned -- makes locating access points to allow for 1,200 foot spacing of the median openings a practical impossibility. And finally, your engineering staff have reviewed the proposed median opening spacing as well as the traffic impact analysis, and are in concurrence with the proposed layout. And that concludes my testimony, and I will turn it back over to Mr. Barron.

Barron: Thanks, Richard. At this time we would like to formally summit into evidence copies of the Piedmont Land Design request for modification justifications statement, the Kimley–Horn and Associates traffic impact analysis, copies of the application as well as the plan set, and the other materials contained in the staff report. Finally, I would ask the council to take judicial notice of the contents of the Town’s Land Development ordinance as well as the Town’s other adopted plans. Based on the forgoing evidence that you all have heard as well as the evidence that I’ve just submitted into the record, we believe that we’ve satisfied the requirements for approval of the sketch plan along with the associated modifications and we respectfully request your support for the same. Thank you.
Weinbrecht: Thank you. At this time I am going to go through the process as quickly as I can. We’ve heard from the applicant’s attorney, his witnesses. If there are any others that have been sworn in to speak in favor of this application, I would ask that you come forward at this time. Seeing no one we’ll continue. I will invite cross examination of any witnesses who testified in support of the request. Seeing no one. We’ll now open the hearing to those who are opposed to the request. Anyone at all? Seeing no one. I’ll call on the Town staff for any testimony they wish to add.

Hales: We’re fine as presented.

Weinbrecht: Before I close the public hearing I’d ask — well, there is no other party that’s talked. So we’re good for this point. Moving right along, I’ll ask our Town Attorney, Mr. Silverstein, if there is any objection to moving on to the deliberation phase of this.

Silverstein: No, mayor.

Weinbrecht: Council, it’s open to you for deliberations. Comments?

Frantz: I am incredibly excited about this project. I think it’s a fantastic fit. Good gosh, this much office coming to Cary; this is awesome.

Adcock: And a great place for it. I would just add that the coordination between our staff’s work and the applicants is great.

Bush: It’s been a long time since someone say they wanted more parking spaces and they wanted to put them in a structured parking.

Yerha: Eight minor modifications seems like a lot when you listen to each one individually. For something this large, it’s amazing -- just eight minor modifications.

Weinbrecht: It sounds like we’re ready for a motion, so I am going to ask for Mr. Hales to walk us through the series of motions.

Hales: We did something a little different this time and wrote motions so if you were inclined you could approve or deny eight minor modifications at one time. One motion instead of eight individual motions. However, you may, if you choose, also approve or deny each one individually or in any grouping you choose. Just to remind you, the approval criteria for the minor modifications are shown on the screen and in worksheet one of your staff report. And that’s that the modification advances at the goal of the ordinance, and that the modification results in either less visual impact and more effective environmental preservation, or relieves practical difficulty in developing a site.

Frantz: for the reasons discussed, I move that we approve each of the eight minor modification requests made by the applicant. As a request, each meet all of the approval criteria of section 3.19.1.

Bush: Second

Weinbrecht: There’s a motion and a second. I’ll ask Mr. Silverstein if everything seems to be in order.

Silverstein: It does.
Weinbrecht: Any other discussion from council? All in favor of the motion, please say I. Any opposed? The motion carries unanimously, and I believe that would allow us to close public hearing. Thank you, Mr. Hales.

Hales: We need to take action on the site plan.

Weinbrecht: So we haven’t closed the public hearing.

Frantz: For the reasons discussed, I move that we approve the proposed sketch site plan with the conditions, as it meets all the approval criteria of section 3.9.2(i).

Bush: Second

Weinbrecht: There’s a motion and second. Discussion? I said I’d close the public hearing, but I opened it back. Any problem with that, Mr. Silverstein?

Mr. Silverstein: No, there is not.

Weinbrecht: All in favor of the motion, please say I. Any opposed? Motion carries unanimously. Any other business before I close the public hearing? Seeing none, I’ll close the public hearing. Thanks to all involved.

End verbatim transcript

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

1. Lewter Shop Road Annexation and Rezoning

   a. ANNEXATION PETITION 13-A-01
      Property Owner: Galaxy Investments LLC; Highway 54 Partners LLC
      Location: Lewter Shop Road (South of the intersection of Lewter Shop Road and W Ferrell Road)
      Zoning: Residential 1 (R-1) (Chatham County)
      Contiguous to Primary Corporate Limits: No
      Existing Use: Residential
      Proposed Use: Residential, recreation, park, religious institution or school
      Proposed Council Action: Council may take action
      Speaker: Ms. Debra Grannan

      AN ORDINANCE ANNEXING LANDS NOT CONTIGUOUS TO THE MUNICIPAL BOUNDARIES OF THE TOWN OF CARY, NORTH CAROLINA
      WHEREAS, on 12/27/2012, the Town Council has been petitioned under G.S. 160A-58.1 to annex the area described below:
      Galaxy Investments LLC; Highway 54 Partners LLC; Chatham County Parcel Identification #0714-00-83-1153; including 76.38 acres, plus 0.00 acres of adjacent right-of-way; which are Non-contiguous to the existing municipal limits of the Town of Cary; and
      WHEREAS, on 2/27/2013, the Town Clerk of the Town of Cary certified the sufficiency of said Petition, the same being duly made after investigation; and
WHEREAS, on 2/27/2013, the Town Council of the Town of Cary ordered a public hearing on the question of said annexation and Notice of a Public Hearing was published in the newspaper of general circulation as required by law; and

WHEREAS, the matter came for public hearing before the Town Council of the Town of Cary on 3/28/2013 at which time all persons opposed and all persons in favor of said annexation were allowed to be heard; and

WHEREAS, the Town Council hereby finds that the area described herein meets the standards of G.S. 160A-58.1(b), described as follows:

a. The nearest point on the proposed satellite corporate limits is not more than three miles from the corporate limits of the Town.

b. No point on the proposed satellite corporate limits is closer to another municipality than to the Town.

c. The area described is so situated that the Town will be able to provide the same services within the proposed satellite corporate limits that it provides within the primary corporate limits.

d. No subdivision, as defined in G.S. 160A-376, will be split up by this proposed annexation.

e. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, does not exceed ten percent (10%) of the area within the primary corporate limits of the Town.

f. The public health, safety, and welfare of the Town and of the area proposed for annexation will be best served by annexing the area described herein;

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

Section 1. By virtue of the authority granted by 160A-58.1, the area described in the petition and depicted on the map (which is on file in the planning department), is hereby annexed to and made a part of the Town of Cary, effective on 7/25/2013 (tentatively) with a condition that the property owner connect to the Town of Cary sewer/water line based upon the Town’s policy(ies) in place on the effective date of this ordinance. A map and description of the annexed area are on file in the Planning Department, Cary Town Hall.

METES AND BOUNDS DESCRIPTION

Beginning at an existing iron pipe in the southern right-of-way of Lewter Shop Road, said point also being the northeast corner of the James and Bonnie Mills property recorded in Deed Book 1179, Page 1081 in the Chatham County Registry; thence with the southern right-of-way of Lewter Shop Road N 82° 01’ 31” E a distance of 60.00 feet to a point; thence leaving the southern right-of-way of Lewter Shop Road S 07° 17’ 40” E a distance of 238.98 feet to a point; thence S 88° 19’ 42” E a distance of 40.47 feet to an existing iron pipe; thence S 88° 21’ 26” E a distance of 81.71 feet to an existing iron pipe; thence S 88° 21’ 26” E a distance of 152.73 feet to an existing iron pipe; thence S 02° 20’ 55” W a distance of 127.79 feet to an existing iron pipe; thence S 02° 23’ 00” W a distance of 204.80 feet to an existing iron pipe; thence S 02° 23’ 33” W a distance of 45.51 feet to an existing iron pipe; thence S 02° 22’ 30” W a distance of 140.62 feet to an existing iron pipe; thence

S 88° 55’ 01” E a distance of 7.12 feet to an existing iron pipe; thence S 88° 55’ 01” E a distance of 123.16 feet to an existing iron pipe; thence S 88° 55’ 01” E a distance of 359.50 feet to an existing iron pipe; thence S 88° 55’ 01” E a distance of 197.16 feet to an existing iron pipe; thence S 88° 55’ 01” E a distance of 15.34 feet to a point in the centerline of a tributary of the Rocky Ford Branch; thence with centerline of the tributary the following courses: S 03° 01’ 37” E a distance of 46.97 feet to a point; S 10° 09’ 47” E a distance of 20.22 feet to a point; S 42° 32’ 56” W a distance of 17.07 feet to a point; S 31° 37’ 51” W a distance of 45.07 feet to a point; S 68° 46’ 55” W a distance of 14.07 feet to a point; N 77° 13’ 22” W a distance of 31.01 feet to a point; S 60° 48’ 21” W a distance of 47.43 feet to a point; S 45° 40’ 43” W a distance of 32.55 feet to a point; S 68° 46’ 55” W a distance of 18.47 feet to a point; S 01° 24’ 22” E a distance of 7.12 feet to an existing iron pipe; thence

July 25, 2013 Minutes
Minute Book #177, Minute Book Page 161
40.88 feet to a point; S 22° 46’ 31” E a distance of 58.65 feet to a point; S 11° 35’ 15” E a distance of 36.41 feet to a point; S 35° 37’ 45” E a distance of 15.82 feet to a point; S 23° 06’ 20” E a distance of 4.18 feet to a point; S 80° 33’ 48” E a distance of 29.18 feet to a point; S 83° 31’ 43” E a distance of 5.54 feet to a point; S 23° 37’ 25” E a distance of 52.98 feet to a point; S 55° 41’ 23” E a distance of 3.84 feet to a point; S 04° 04’ 36” W a distance of 22.10 feet to a point; S 43° 50’ 19” E a distance of 12.31 feet to a point; S 13° 14’ 14” W a distance of 7.46 feet to a point; S 13° 49’ 06” W a distance of 21.51 feet to a point; S 79° 42’ 24” W a distance of 33.72 feet to a point; S 19° 36’ 49” W a distance of 30.82 feet to a point; S 62° 14’ 09” W a distance of 25.86 feet to a point; N 72° 48’ 44” W a distance of 34.12 feet to a point; S 70° 43’ 14” W a distance of 7.46 feet to a point; S 13° 57’ 47” W a distance of 19.29 feet to a point; S 10° 50’ 02” W a distance of 22.09 feet to a point; S 07° 58’ 31” E a distance of 18.48 feet to a point; S 62° 33’ 53” E a distance of 14.84 feet to a point; S 33° 23’ 03” W a distance of 20.96 feet to a point; S 04° 50’ 53” W a distance of 22.74 feet to a point; S 16° 05’ 16” E a distance of 49.25 feet to a point; S 20° 38’ 52” E a distance of 25.66 feet to a point; N 69° 34’ 07” E a distance of 14.78 feet to a point; S 80° 50’ 16” E a distance of 3.99 feet to a point; thence S 11° 17’ 07” E a distance of 15.65 feet to a point; S 40° 09’ 57” E a distance of 32.88 feet to a point; S 01° 42’ 03” E a distance of 12.55 feet to a point; S 52° 02’ 59” W a distance of 22.22 feet to a point; S 28° 12’ 17” E a distance of 24.50 feet to a point; S 41° 36’ 21” E a distance of 31.61 feet to a point; S 16° 26’ 04” W a distance of 39.90 feet to a point; S 60° 24’ 22” E a distance of 25.78 feet to a point; S 27° 44’ 44” W a distance of 4.71 feet to a point; S 49° 40’ 50” W a distance of 24.48 feet to a point; S 33° 18’ 41” W a distance of 12.54 feet to a point; S 62° 50’ 03” W a distance of 31.80 feet to a point; S 85° 03’ 34” W a distance of 56.10 feet to a point; N 35° 02’ 26” W a distance of 18.54 feet to a point; S 46° 48’ 58” W a distance of 27.13 feet to a point; S 08° 56’ 39” E a distance of 13.69 feet to a point; S 22° 40’ 26” E a distance of 22.54 feet to a point; S 40° 20’ 52” W a distance of 5.79 feet to a point; S 39° 02’ 07” E a distance of 13.49 feet to a point; S 27° 16’ 00” E a distance of 12.45 feet to a point; S 16° 09’ 22” W a distance of 38.21 feet to a point; S 29° 27’ 09” E a distance of 42.07 feet to a point; S 49° 57’ 29” E a distance of 5.96 feet to a point; N 32° 29’ 51” E a distance of 14.31 feet to a point; S 78° 38’ 23” E a distance of 9.47 feet to a point; S 17° 03’ 42” E a distance of 9.38 feet to a point; S 10° 57’ 29” W a distance of 26.23 feet to a point; N 88° 01’ 55” W a distance of 20.97 feet to a point; S 31° 50’ 11” W a distance of 40.27 feet to a point; S 77° 21’ 08” W a distance of 16.12 feet to a point; S 07° 27’ 59” E a distance of 27.27 feet to a point; S 50° 27’ 47” E a distance of 25.65 feet to a point; thence leaving the tributary N 89° 19’ 42” W a distance of 325.34 feet to an existing iron pipe; thence S 88° 16’ 54” W a distance of 167.38 to an existing iron pipe; thence S 88° 16’ 54” W a distance of 91.07 feet to an existing iron pipe; thence S 88° 15’ 29” W a distance of 106.54 feet to an existing iron pipe; thence S 88° 15’ 29” W a distance of 293.46 feet to an existing iron pipe; thence S 88° 16’ 35” W a distance of 324.02 feet to an existing iron pipe; thence S 88° 16’ 35” W a distance of 197.61 feet to an existing iron pipe; thence N 02° 06’ 49” E a distance of 263.76 feet to an existing iron pipe; thence N 02° 06’ 49” E a distance of 517.10 feet to an existing iron pipe; thence N 02° 06’ 49” E a distance of 275.96 feet to an existing iron pipe; thence N 02° 06’ 49” E a distance of 67.09 feet to an existing iron pipe; thence N 04° 37’ 43” E a distance of 235.85 feet to an existing iron pipe; thence N 04° 37’ 43” E a distance of 200.20 feet to an existing iron pipe; thence S 88° 20’ 56” E a distance of 845.65 feet to an existing iron pipe; thence N 07° 17’ 36” W a distance of 228.80 feet to the Point of Beginning; said tract containing 76.3886 acres, as shown on survey prepared by Bass, Nixon & Kennedy, Inc. dated March 16, 2012, last revised January 29, 2012 entitled “Boundary Survey for Galaxy Investments LLC and Highway 55 Partners, LLC.”
Section 2. That from and after the effective date of this ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Cary, and shall be entitled to the same privileges and benefits as other parts of the municipality. Said territory shall be subjected to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the Town of Cary shall cause an accurate map of the newly annexed territory together with a copy of this ordinance, duly certified, to be recorded in the Office of the Register of Deeds of Wake County and in the Office of the Secretary of State of North Carolina.

Section 4. Pursuant of G.S. 160A-22, the Town Clerk is directed to update the Official Town Map by drawing in the territory annexed, or setting out the boundaries in a written description, or showing the current Town boundaries by a combination of these techniques. Such a map shall also be delivered to the Wake County Board of Elections as required by G.S. 163-288.1

Section 5. Pursuant of G.S. 160A-23, the boundaries of Electoral District A are hereby revised to account for and include the territory annexed, and the Official Town Map of Electoral Wards is hereby amended to include the annexed territory in the said Electoral District.

b. **Rezoning 12-REZ-33 (Lewter Shop Road)**
   
   **Location:** 1500 Block of Lewter Shop Road; South of W. Ferrell Road
   
   **Current Zoning:** Chatham County R-1
   
   **Proposed Zoning:** Residential 8 Conditional Use (R-8-CU) with conditions offered by the applicant that include a maximum density of two dwelling units per acre.
   
   **Planning & Zoning Board Recommendation:** Voted 6-3 to recommend approval
   
   **Proposed Council Action:** Council may take action
   
   **Speaker:** Ms. Debra Grannan

**Changes Since the Public Hearing:** The applicant has offered new conditions to increase the minimum lot sizes and to provide a buffer between the proposed development and the existing neighborhood to the south.

**Planning and Zoning Board Meeting (May 20, 2013):** Staff provided an overview of the request and noted that concerns about lot sizes had been raised at the initial Town Council public hearing, and that the applicant had offered new zoning conditions in response to those concerns. During the public hearing, Glenda Toppe, representing the applicant, provided a summary of the new zoning conditions that had been submitted by the property owner. An adjacent property owner expressed concern about lighting and noise if athletic fields were allowed on the subject property. The owner of the subject property, Roy Mashburn, spoke and indicated that he was willing to add a zoning condition to address the neighbors' concerns. The board asked for clarification regarding density limits. Staff explained that if a school or other use was allowed on a portion of the property, the density limits would be applied to the residual land area. One board member expressed concern about the proposed lot size and asked if athletic fields were allowed under the current zoning. Staff verified that athletic fields were not permitted under Chatham County's R1 district; however, public athletic fields were allowed in R8 zoning districts and private fields could be considered with a Special Use permit. The board asked if traffic mitigations to provide a traffic signal were needed. The engineering staff noted that there was not sufficient volume to justify a signal at this time. The board made a motion for approval and stated that their expectation was that the applicant would submit a condition regarding athletic fields to the town. The board forwarded the request to Town Council with a recommendation for approval by a vote of 6-3.

**Changes Since the Planning and Zoning Board Meeting:** The applicant submitted a zoning condition to address the concerns about possibility of a school or athletic field being located on the subject property.

**Summary Observations**
The case seems generally consistent with the overall land use recommendations of the Chatham-Cary Joint Land Use Plan.

Since the initial public hearing, the applicants have added conditions aimed at addressing the Joint Plan’s recommendations for density transitions, by (a) providing a minimum 17,500 sq. ft. lot size adjacent to the southern and western property boundaries, and (b) providing a 40-ft. Type B buffer adjacent to the southern property boundary. Whether or not these conditions satisfy the Joint Plan’s recommendation for “acceptable transitions” is a matter to be evaluated by the Town’s governing boards. The zoning conditions have been shared with the Chatham County Planning Department and staff has not received any word of objections from them or the Chatham County Commissioners.

In evaluating whether or not the case conforms with the Growth Management Plan, the governing boards may wish to evaluate the location of the site with respect to the location of the nearest utilities and Town Limits, as well as proximity to RTP and major employers.

ORDINANCE FOR CONSIDERATION
12-REZ-33 Lewter Shop Road
AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE TOWN OF CARY BY APPLYING INITIAL ZONING OF RESIDENTIAL 8 CONDITIONAL USE (R8-CU) TO APPROXIMATELY 76 ACRES LOCATED IN THE 1500 BLOCK OF LEWTER SHOP ROAD, OWNED BY GALAXY INVESTMENTS, LLC AND 54 PARTNERS, LLC.
BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CARY:

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

<table>
<thead>
<tr>
<th>Property Owner(s)</th>
<th>Chatham County Parcel Number (10-digit)</th>
<th>Real Estate ID</th>
<th>Deeded Acreage</th>
</tr>
</thead>
</table>
| Galaxy Investments, LLC  
4208 Six Forks Road Suite 1400 Raleigh NC 27609  
and 54 Partners, LLC  
PO Box 130  
Cary, NC 27512 | 0714831153 | 0019999 | 76.4 ± |

Total Area 76.4 ±

Section 2: That this Property is rezoned from a Chatham County designation of R1 to Residential 8 Conditional Use (R-8-CU) and to the Watershed Protection Overlay District (Jordan Lake sub-district) subject to the individualized development conditions set forth herein, if any, and to all the requirements of the Cary Land Development Ordinance (LDO) and other applicable laws, standards, policies and guidelines, all of which shall constitute the zoning regulations for the approved district and are binding on the Property.

Section 3: The conditions proposed by the applicant to address conformance of the development and use of the Property to ordinances and officially adopted plans, to address impacts reasonably expected to be generated by the rezoning, and to promote the public health, safety and general welfare, and accepted and approved by the Town are:
1. The density shall be limited to two (2) dwelling units per acre
2. Permitted uses shall be limited to single-family-detached, neighborhood recreation, park (public or private), religious institutions, school (public or private)
3. No person shall commence or proceed with the construction of any buildings or structures, other than roads or infrastructure, on the subject property until an eastbound right-turn lane and a westbound left-turn lane, are provided on Lewter Shop Road at the entrance to the subject property. The design and location of the turn lanes shall be subject to NC DOT approval and shall be shown on a development plan as approved by the Town of Cary Development Review Committee.
4. All lots adjacent to the southern and western boundaries of the subject property shall be a minimum of 17,500 square feet. All remaining lots shall be a minimum of 12,000 square feet. (Exhibit A)

5. A 40-foot-wide, Type B (Semi-opaque) buffer shall be provided adjacent to the southern property line.

6. No school, park, public or private athletic field or any related lighting, parking or ancillary uses, shall be located within 500 feet of the southern property line adjacent to the parcels identified by Chatham County Parcel ID numbers 0714-71-7568.000, 0714-81-2549.000 and 0714-81-6592.000.

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

c. Comprehensive Plan Consistency

Subject: In accordance with N.C.G.S. 160A-383, Town Council will approve a statement of consistency and reasonableness for Rezoning 12-REZ-33.

Proposed Council Action: Council may take action (Option A if council approves the rezoning; Option B if council denies the rezoning)

Speaker: Ms. Debra Grannan

Staff presented the requests and reported that the applicant has added a new condition and requests that council table the request to give staff time to review the condition. Staff stated the LDO requires the planning board to deliver their recommendation to council within 90 days, so it is important that council receive their recommendation this evening. P&Z Chair Swanstrom outlined the board’s recommendation (as contained herein).

Adcock asked the applicant why they are not proposing any mitigation at 751 and Lewter Shop Road. Mr. Roy Mashburn stated they would like to do this, but they do not want to agree to a condition that is outside their control and the Town’s control. He stated if the Town can assist them with this endeavor, then he is happy to propose language to address it.

Town Attorney Simpson stated the applicant asked the Town about providing condemnation assistance. Mashburn stated 751 at Lewter Shop Road is a two-lane road, and there is a prescriptive easement. He stated DOT does not even own the right-of-way and has not been able to procure it. He stated this development will add four cars to the morning peak hour and 14 to the afternoon peak hour, which is a small amount of traffic. He stated the improvement is in Chatham County and is about 1.5 miles from their property. However, he is happy to consider it if it is possible and legal.

Simpson stated staff can review it. She thinks the Town can accept such a condition if the applicant offers it, since the property is in the joint planning area and the development generates impacts to that location.

Frantz understands there may be a problem acquiring right-of-way to make the improvements. Bailey stated the council has considered requests for assistance with acquisitions only when developers have extended all their efforts to obtain the property. He believes the Town has authority under the law to obtain right-of-way at this location. However, he thinks it is premature to consider this request at this time. He added that evaluating this in conjunction with a rezoning can be complicated.

Frantz stated the applicant can commit to the improvements and work towards that, and if needed, they could seek the Town’s involvement at a later date. Bailey stated that would be a council decision. He stated there often is a note on site plans that states off-site improvements are required, assuming property can be obtained. He stated if they are unable to obtain the property and if the Town fails to assist, then the condition goes away. He stated all this language would have to be added, and it is frequently done with site and subdivision plans but added that at this time the applicant had not submitted any language to review. He stated it could be crafted.
that way for this case as well so it would not be a condition that prevented the development from moving forward if the situation was beyond their control.

Mashburn stated given the complexity of the Chatham County situation, he supports the council tabling the case. He stated he supports the structure Bailey described above.

**ACTION:**
Motion: Adcock moved to table rezoning 12-REZ-33 and the associated annexation and comprehensive plan consistency statement.
Second: Frantz

Adcock asked if staff can bring this back to council at the next meeting. Grannan requested that council table it until such time as staff has reviewed the language proposed by the applicant. She indicated it may take longer than two weeks to ensure sufficient review time, but will definitely move forward as quickly as possible.

**ACTION:** Adcock and Frantz agreed to Grannan’s suggestion as part of the motion and second.
**Vote:** Unanimous

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2. Jones House Rezoning

   a. **REZONING 13-REZ-05**

      **Location:** 324 S. Academy Street
      **Current Zoning:** Town Center zoning district with General Commercial Conditional Use (GC-CU) sub-district
      **Proposed Zoning:** Town Center zoning district with High Intensity Mixed Use (HMXD) sub-district
      **Planning & Zoning Board Recommendation:** Unanimously recommended approval, but the recommendation includes changes
      **Proposed Council Action:** Council may take action
      **Speaker:** Ms. Mary Beerman

**Planning and Zoning Board Meeting (July 15, 2013)**

Several Planning and Zoning Board members expressed concern with removal of the existing zoning condition which states “Exterior appearance of the building not to be changed.” Phil Smith, Comprehensive Planning Manager, pointed out that the Town has received bids and is preparing to start construction including replacing the existing vinyl siding with wood, removing the glass enclosure on the porch, and making other modifications to restore the building to a more historic condition. Board members expressed concern that other changes could be made if the property was sold at a later date. The board recommended approval of the rezoning with addition of a zoning condition specifying that the architectural features be substantially maintained in historic condition.

Subsequent to the Planning and Zoning Board meeting, staff determined that the Land Development Ordinance does not provide the option to create conditional use zoning districts from the Town Center sub-districts. For this reason, the recommendation of the Planning and Zoning Board cannot be fulfilled by creating a zoning condition. Recordation of a deed restriction by the Town prior to any future sale of the property could be used as a means to meet the intent of the Planning and Zoning Board recommendation.
ORDINANCE 0-2013-25
13-REZ-05 Jones House

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE TOWN OF CARY TO
CHANGE THE ZONING OF 324 S ACADEMY STREET OWNED BY THE TOWN OF CARY BY
REZONING FROM TOWN CENTER DISTRICT WITH GENERAL COMMERCIAL CONDITIONAL
USE (GC-CU) SUB-DISTRICT, TO TOWN CENTER DISTRICT WITH HIGH INTENSITY MIXED
USE (HMXD) SUB-DISTRICT

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

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

PARCEL & OWNER INFORMATION

<table>
<thead>
<tr>
<th>Property Owner</th>
<th>County Parcel Number(s) (10-digit)</th>
<th>Real Estate ID(s)</th>
<th>Deeded Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Town of Cary</td>
<td>0764407068</td>
<td>0037143</td>
<td>0.39</td>
</tr>
<tr>
<td>316 N Academy Street</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cary, NC 27513</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Section 2: That this Property is rezoned from Town Center District with General
Commercial Conditional Use (GC-CU) Sub-district to Town Center District with High Intensity
Mixed Use (HMXD) Sub-district subject to the individualized development conditions set forth
herein, if any, and to all the requirements of the Cary Land Development Ordinance (LDO) and
other applicable laws, standards, policies and guidelines, all of which shall constitute the zoning
regulations for the approved district and are binding on the Property.

Section 3: This ordinance shall be effective on the date of adoption.

Staff presented the request. Planning Board Chair Swanstrom stated the Board’s intent was to
request that the interior façade of the property be restored and maintained to its historical roots.
Although they trust the Town to do this, they suggested this condition which they later learned
they did not have the authority to suggest this condition. He does not think it is an important
issue.

ACTION:
Motion: Frantz moved to approve 13-REZ-05 as recommended by staff.
Second: Adcock
Vote: Unanimous

b. Comprehensive Plan Consistency
   Subject: In accordance with N.C.G.S. 160A-383, Town Council will approve a
   statement of consistency and reasonableness for Rezoning 13-REZ-05.
   Proposed Council Action: Council may take action (Option A if council approves
   the rezoning; Option B if council denies the rezoning)
   Speaker: Ms. Mary Beerman

Option A (recommended if rezoning 13-REZ-05 is approved):

CONSISTENCY AND REASONABLENESS STATEMENT
13-REZ-05 – Jones House

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: Rezoning 13-REZ-05 is consistent with the Comprehensive Plan.

Section 2: Based upon information presented at the public hearings and by the applicant,
and based upon the recommendations and detailed information developed by staff and/or
the Planning & Zoning Board contained in the staff report, and considering the criteria of
Section 3.4.1(E) of the Town of Cary Land Development Ordinance, rezoning **13-REZ-05** is reasonable and in the public interest.

**ACTION:**
Motion: Frantz moved to approve Option A.
Second: Bush
Vote: Unanimous

H. COMMITTEE REPORTS (discussion items)

1. Operations Committee, July 3, 2013 (any item pulled from the committee consent agenda for discussion [agenda item B.3.] will be discussed during this portion of the agenda) (Council Member Smith)

   N/A

2. Planning and Development Committee, July 11, 2013 (any item pulled from the committee consent agenda for discussion [agenda item B.3.] will be discussed during this portion of the agenda) (Council Member Frantz)

   N/A

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

1. **Council-Initiated Request**
   Subject: Consideration of directing staff to provide options for increasing the amount of material diverted from the landfill.
   Proposed Council Action: Council may take action
   Speakers: Council Member Robinson and Mayor Pro Tem Adcock

   Council removed this item from the agenda.

2. **Council-Initiated Request**
   Subject: Consideration of directing staff to investigate the formation of new citizen boards/commissions in the following areas. (1) Historic Preservation Commission; (2) Senior Issues; (3) Disabled Population; and (4) Bike and Pedestrian Advisory Board to address Cary’s “walkable community” needs.
   Proposed Council Action: Council may take action
   Speakers: Council Member Yerha and Mayor Pro Tem Adcock

   On Jul 15, 2013, at 11:55 AM, “Ed Yerha” <Ed.Yerha@townofcary.org> wrote:

   Hi All, Looking for a 'second' to place this request on the Council Agenda (Gale has already given a verbal second, by the way, but we need one in writing).....
   Since the discussion concerning the possible need for new Boards or Commissions began at the January 2012 Retreat and since two follow-up work sessions were conducted in 2012 and 2013 and since needs have presented themselves on an on-going basis since then...I suggest
that we ask the Staff to investigate the formation of new citizen boards/commissions in the following areas which, in my opinion, require our attention:

1. Historic Preservation Commission: This commission was already recommended as part of the Historic Preservation Master Plan which was approved by Council in May 2010. It was recommended that a Commission be formed in Year 2 of the Plan. It's now Year 4. The possible duties/responsibilities for this group can be found in the HPMP itself. An additional point….all 6 of NC cities larger than Cary have such a Commission.

2. Senior Issues: It was made clear to us at the 2013 Retreat that Cary’s population is aging fast….faster than surrounding communities. We have received additional supporting statistics since that time. There are needs for the ‘boomers’ who are reaching ‘senior’ status as we speak as well as the needs of our current seniors. Some areas of concern: housing, recreation, transportation, other programming. The Board would function in an advisory capacity.

3. Disabled population: During the Budget public hearings it was evident that disabled adults form an important part of our community. We already have the unofficial Mayor’s Task Force on Disabilities to give us a head start in this area but they have no actual advisory authority. We also just approved a new Staff position in this area. An official advisory board can be used to coordinate these needs/efforts and to demonstrate our real concern for this vital segment of Cary’s diverse population...

I am certain that we would have no trouble getting volunteers to serve on any of these. We just had a record number of applicants for this year’s annual Board/Commission volunteer period. Not to mention the overwhelming response to the Committee for the Future a few months ago. There are many, many citizens looking for opportunities to serve. I also don’t think that there would be an issue with Staff/ Council liaisons.

I checked with Sue who confirmed (depending on the Staff recommendation, of course) that we can start boards/commissions in mid-year. Don’t have to wait until next year’s annual cycle.

I’m aware that we have cut back on the number of boards/commissions in recent years but the items above are worthy replacements for those we have eliminated. For your information…all six NC cities larger than Cary have anywhere between 22 and 36 Citizen Boards and Commissions. 9 or 10 for Cary is certainly not out of line.

Yes, there will be a fiscal element to all this especially in the area of staff time but that's the type of information that the Staff can provide for us if we ask them to investigate. I would be happy to work with the Staff on mission, expectations, etc. Again, this is just to ask the Staff to investigate. I realize we cannot have 3 new Boards overnight but I’d like to get the ball rolling before next year.

Do we have a ‘second’?
Thanks!
Ed Yerha

From: Gale Adcock
I will provide a second for this pink slip item. Gale

From: Lori Bush
I know you have already had your request seconded, and not to deliberate on this at all, but I would appreciate it if you would amend your request to also include the other highly requested input in that work session, for a BPAC, a bike and pedestrian committee to address our "Walkable Community" needs. I believe that that was ranked just as high in our work session as the others that you mention.

Lori

On Jul 16, 2013, at 3:29 PM, "Ed Yerha" <Ed.Yerha@townofcary.org> wrote:

After several conversations, I concur to adding Lori’s request to my original one since the bike and pedestrian issue was a notable element of the work sessions referenced. I did not include it originally because I thought that this issue, albeit an important one, could be addressed without the need for a new stand-alone board/commission (as I believe is required for the other
items). It is, however, entirely appropriate to allow the Staff to have the opportunity to investigate and make a recommendation. So please consider the request amended. We just need an amended 'second' from Gale.

Thanks,
Ed Yerha

... From: Gale Adcock
Amended second!
...

Yerha and Adcock outlined the request (herein). Weinbrecht stated if council approves this direction to staff, he wants to understand how these boards fit into Town processes (i.e., when would they review items, are they structured to be “think tanks”, etc.).

Smith wants staff to investigate whether these should be ad-hoc task forces with a given purpose and life span, similar to the technology task force, in lieu of permanent boards.

Frantz stated the Imagine Cary process is underway. He thinks this issue is premature, and believes the Image Cary process should conclude before considering new boards. He stated Cary does not need more boards just because other cities have more.

ACTION:
Motion: Yerha moved to direct staff to investigate the formation of the new citizen boards and commissions in the areas of historic preservation, senior issues, disabled population, and bike and pedestrian advisory board.
Second: Adcock
Vote: Smith and Frantz voted no; all others voted aye. The motion carried by majority vote.

J. CLOSED SESSION

ACTION:
Motion: At 11:27 p.m., Bush read the following motion for closed session.
Second: Adcock
Vote: Frantz voted no; all others voted aye. The motion carried by majority vote.

PURSUANT TO G.S. 143-318.11(A)(4), (5) AND (3), I MOVE THAT WE HOLD A CLOSED SESSION TO:

1. DISCUSS MATTERS RELATING TO THE LOCATION OR EXPANSION OF INDUSTRIES OR OTHER BUSINESSES IN THE TOWN, INCLUDING AGREEMENT ON A TENTATIVE LIST OF ECONOMIC DEVELOPMENT INCENTIVES THAT MAY BE OFFERED BY TOWN IN NEGOTIATIONS.
2. INSTRUCT THE TOWN STAFF CONCERNING THE POSITION TO BE TAKEN BY OR ON BEHALF OF THE TOWN IN NEGOTIATING THE PRICE AND MATERIAL TERMS OF CONTRACTS OR PROPOSED CONTRACTS FOR ACQUISITION OF PROPERTIES OWNED BY:
   - ANNE B. MILLS, 2428 CARPENTER UPCHURCH ROAD, CARY, NORTH CAROLINA 27519
   - CAROLE M. PATTERSON, 2436 CARPENTER UPCHURCH ROAD, CARY, NORTH CAROLINA 27519
3. CONSULT WITH ATTORNEYS EMPLOYED BY AND/OR RETAINED BY THE TOWN IN ORDER TO PRESERVE THE ATTORNEY-CLIENT PRIVILEGE BETWEEN THE ATTORNEYS AND THE TOWN. AMONG
OTHER THINGS, THE COUNCIL EXPECTS TO RECEIVE ADVICE CONCERNING THE FOLLOWING LAWSUITS:

- BLYTHE CONSTRUCTION, INC. V. TOWN OF CARY
- PANTHER CREEK-RALEIGH, L.P. V. TOWN OF CARY

4. TO PREVENT THE DISCLOSURE OF INFORMATION THAT IS MADE PRIVILEGED OR CONFIDENTIAL BY G.S. 143-318.10(E).

K. ADJOURNMENT

**ACTION:**
Motion: At 12:20 a.m., Adcock moved to adjourn.
Second: Bush
Vote: Unanimous to approve