Cary Town Council  
Thursday, August 22, 2013, 6:30 PM  
Council Chambers, 316 N. Academy Street, Cary, NC

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

A. COMMENCEMENT

1. Call to Order (Mayor Weinbrecht)

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

2. Ceremonial Opening (Council Member Smith)

Smith provided the ceremonial opening.

3. Adoption of agenda (Town Council)

Weinbrecht suggested adding the following item to the consent agenda, which ratifies the council action from a previous council meeting:

- B.1.c.: Consideration of ratifying a resolution granting sketch site plan approval for Weston Lakefront Offices.

ACTION:
Motion: Frantz moved to approve 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)

   a. Consideration of approval of the minutes of the regular town council meeting held on August 8, 2013. (Town Council)

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

   b. Consideration of approval of the August 2013 tax report. (Mr. Ben Shivar)

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<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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<tr>
<td>Refunds of taxes, interest and penalties</td>
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<tr>
<td>Relief of late list penalty</td>
<td>2</td>
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<tr>
<td>Relief of late filed application</td>
<td>0</td>
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<td>Non-cash rebates</td>
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August 22, 2013 Minutes
Minute Book #177, Minute Book Page #220
ACTION:
Motion: Adcock moved to approve the consent agenda.
Second: Bush
Vote: Unanimous

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c. Consideration of ratifying a resolution granting sketch site plan approval for Weston Lakefront Offices.

Summary: On July 25, 2013, Council reviewed the sketch site plan for Weston Lakefront Offices (13-SP-031) and granted the applicant’s request for approval of the sketch site plan. All the attorneys involved in the hearing have consented to the form of the attached Resolution. Council should review the Resolution to ensure the Resolution adequately represents Council’s decision in the matter. Any questions about the content of the Resolution should be directed to John Silverstein, who was the attorney representing the Council in this matter on July 25, 2013.

Staff Recommendation: Staff recommends that Council ratify the Resolution Approving Sketch Site Plan.

TOWN OF CARY RESOLUTION APPROVING SKETCH SITE PLAN
WESTON LAKEFRONT OFFICES (13-SP-031)

Subject Property: Weston Lakefront (0 Weston Parkway)
PIN10#: 0755-97-8384 and 0755-97-2015
Total lot/tract size: 40.14 acres
Property Owners: Highwoods Services, Inc. (0755-97-8384)
3100 Smoketree Court, Suite 600
Raleigh, NC 27604
Papec Weston III, LLC (0755-97-2015)
3100 Smoketree Court, Suite 600
Raleigh, NC 27604
Applicant: Highwoods Properties, Inc.
3100 Smoketree Court, Suite 600
Raleigh, NC 27604

At its meeting on July 25, 2013, after conducting a duly advertised quasi-judicial hearing and after considering the application materials, testimony, exhibits and evidence presented at the hearing or otherwise appearing in the record, and the approval criteria of Section 3.9.2(l) and 3.19.1 of the Town of Cary Land Development Ordinance (the “LDO”), the Cary Town Council voted 8-0 to APPROVE the sketch site plan with minor modifications based upon the following findings and conditions:

Findings:
1. The applicant is seeking sketch site plan approval to develop 670,500 square feet of office floor space distributed between three buildings, each with seven stories.
2. The property consists of approximately 40.14 acres of land located along the north side of Weston Parkway near Centregreen Drive in the Town of Cary, NC.
3. The property contains approximately 1,800 linear feet of frontage along the north side of Weston Parkway and backs up to Lake Crabtree, with approximately 2,300 square feet of frontage along the lake.
4. The property is located within the Weston Planned Development District.
5. Per the testimony of the applicant, the property has been reserved for a corporate campus such as the one contemplated by this application.
6. The application and other records pertaining to the sketch site plan application are part of the record.
7. Notice has been provided as required by law.
8. Pursuant to the Town’s Land Development Ordinance (LDO), a sketch site plan is required to be approved by the Town Council in order to develop the non-residential uses contemplated by this application.

9. On May 1, 2013, the Applicant conducted a pre-application conference with the Town of Cary Development Review Committee (DRC) regarding the sketch site plan.

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

11. The property is currently vacant.

12. The sketch site plan is included in the record.

13. As indicated in the sketch site plan and the other testimony presented by the applicant:
   a. The applicant intends to construct three (3), seven (7) story office buildings each consisting of approximately 223,500 square feet;
   b. The buildings are oriented in a semi-circular pattern with emphasis on the views of Lake Crabtree;
   c. Parking is provided by a combination of three parking structures and surface parking;
   d. 89% of the parking for the site will be located within parking structures;
   e. Access to the site will be provided by four (4) proposed driveways from Weston Parkway: two full movement access drives, one right-in/right out drive, and one right-out only drive;
   f. Improvements to Weston Parkway, as outlined in the materials provided in the staff report, are proposed to facilitate safe ingress and egress to the site;
   g. Stormwater management is being provided by two stormwater wetlands located at the eastern and western corners of the property;
   h. The siting of the buildings is a challenge due to topographical constraints of the site;
   i. The property is impacted by five separate Neuse Riparian Buffers;
   j. The property slopes significantly from Weston Parkway to Lake Crabtree, dropping a total of approximately 90’; and
   k. The proposed design is intended to minimize environmental impacts caused by these environmental constraints and maintain the feel and look that has made Weston such a success.

14. The applicant performed a traffic impact analysis for the sketch site plan.

15. The applicant has voluntarily elected to mitigate traffic impacts identified at Weston Parkway’s intersection with each of Evans Road, Centregreen Way and Access B as shown on the sketch site plan.

16. The sketch site plan provides mitigation for traffic congestion impacts reasonably expected to be generated by the project.

17. The access points onto Weston Parkway proposed by the sketch site plan will provide for safe ingress and egress for emergency services to the site.

18. The applicant requested certain minor modifications from the Town’s standards for development pursuant to LDO section 3.19.1. The Council determined the minor modification requests satisfy the requirements of LDO section 3.19.1 and should be granted as follows:
   a. As a result of topographical constraints associated with the property, the Weston Parkway streetscape should be averaged with a minimum width of approximately
25’ and a maximum width of 100’ as permitted by Section 7.2.10(D) of the LDO. This averaging will not reduce the overall required buffer area.
b. In order to alleviate topographical constraints associated with development of the site, the eastern perimeter buffer should be averaged with a minimum width of approximately 11’ and a maximum width of 80’ as permitted by Section 7.2.10(D) of the LDO. This averaging will not reduce the overall required eastern perimeter buffer area.
c. As a result of topographical constraints and consistent with the goals and purposes of the LDO as evidenced by the development of other sites within the Weston PDD, the requirements of Section 7.10.3 of the LDO, which require vehicular interconnection with the property located to the east of the site, should be waived.
d. In order to maintain safety and security for the future tenant of the subject property and consistent with the goals and purposes of the LDO as evidenced by the development of other sites within the Weston PDD, the requirements of Section 7.10.3 of the LDO, which require vehicular interconnection with the property located to the west of the site, should be waived. The Council finds that there are sufficient access points to and from the site to Weston Parkway, such that the interconnection contemplated by Section 7.10.3 of the Ordinance is not required.
e. Because 89% of all parking for the subject property will be located within structured parking facilities, an increase in the maximum parking requirements of Section 7.8.2 of the LDO should be permitted and the new maximum parking allowable for the site shall be 3,389 spaces (or 1 space per 198 square feet).
f. As a result of the existing topography for the site, development of the site should be permitted to use a hardscape (modular CMU) wall in the design of a stormwater device outside of a Mixed Use Center as otherwise required per Section 7.2.8(A) of the LDO. The Council finds that, because the adjacent site is owned by Wake County, the use of hardscape features as contemplated will not adversely impact the adjacent site and that, further, as a result of the topography of the site the hardscape features will likely not be visible from the public domain.
g. As a result of the extreme topography for the site, the sketch site plan should be permitted to provide less than the minimum 30’ width of greenway easement as otherwise required by Section 7.10.4(D) of the LDO. The reduction in greenway width has been minimized to a section that is less than 230’ long or less than 9% of the total greenway being dedicated.
h. The sketch site plan should be permitted to include median spacing along Weston Parkway of 850 feet rather than the 1,200 feet otherwise required by the LDO. The proposed median opening spacing will still result in an improved median spacing compared to the current conditions, since there is an existing median opening closer to Centregreen Way that will be closed. The proposed median spacing will provide safe and efficient traffic operation in and around the site and on Weston Parkway. The topography of the site makes locating access points to allow for 1,200 foot median opening spacing a practical impossibility.

19. Based upon the uncontroverted competent, substantial and material evidence submitted into the record, the approval criteria for issuance of a sketch site plan contained in Section 3.9 of the LDO have been met, specifically:
a. Except as modified hereby, the sketch site plan will 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;
b. The sketch site plan adequately protects other property from the potential adverse effects of the proposed development;
c. The sketch site plan provides harmony and unity of development with the development of nearby properties;
d. The sketch site plan provides safe conditions for pedestrians or motorists and prevents a dangerous arrangement of pedestrian and vehicular ways;
e. The sketch site plan provides safe ingress and egress for emergency services to the site; and
f. The sketch site plan provides mitigation for traffic congestion impacts reasonably expected to be generated by the project.

**CONDITIONS**
The approval of this Sketch Site Plan is made subject to the following condition:
a. The applicant must satisfactorily address any remaining Development Review Committee comments on the master plan set submitted for signature.

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

2. Consideration of adoption of certificates of sufficiency and resolutions calling for public hearings on the following annexations:

- **Annexation 13-A-15**  
  Property Owner(s): Linda Ann Wilson  
  Location: 1540 Wilson Road  
  Acreage: 5.07 plus 0.00 acres of adjacent right-of-way = 5.07 total deeded acres  
  Zoning: Transitional Residential-Conditional Use (TR-CU)  
  Contiguous to Primary Corporate Limits: Yes  
  Existing Use: Vacant  
  Proposed Use: Single-family Residential (subdivision)  
  Associated Case: 13-SB-009 (Wilson Place Subdivision)  
  Speaker: Ms. Debra Grannan

**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 Linda Ann Wilson;  
Wake County Parcel Identification #0754787885;  
5.07 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 8/22/2013.

**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
Linda Ann Wilson;
Wake County Parcel Identification #0754787885;
5.07 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 9/26/2013 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 #0754787885
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.
ADOPTED 8/22/2013

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

b. Annexation 13-A-16
Property Owner(s): Multiple (see report)
Location: South of the intersection of Green Hope School Road and
Twyla Road
Acreage: 58.98 plus 13.70 adjacent right of way = 72.68 total deeded
acres
Zoning: Residential 12 Conditional Use (R-12 CU); Transitional
Residential-Conditional Use (TR-CU); and Residential 40 (R-40)
Contiguous to Primary Corporate Limits: Yes
Existing Use: Vacant; Residential (detached dwelling)
Proposed Use: Residential
Associated Case: 13-SB-007 (Batchelor Tract)
Speaker: Ms. Debra Grannan

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
Shirley H. Stover; Brenda L. Batchelor; Susan H. Mann; James Neal & Patricia B.
Ansley; Jamie Carol Batchelor; Christian & Laura Campbell; Steven & Angela
Rose; Billie Joe Batchelor; James Batchelor
Wake County Parcel Identification #0734360623, 0734264996;
58.98 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.
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 Shirley H. Stover; Brenda L. Batchelor; Susan H. Mann; James Neal & Patricia B. Ansley; Jamie Carol Batchelor; Christian & Laura Campbell; Steven & Angela Rose; Billie Joe Batchelor; James Batchelor
Wake County Parcel Identification #0734360623, 0734264996;
58.98 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 9/26/2013 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 #0734360623, 0734264996

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.
ADOPTED 8/22/2013

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

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 Alston Properties LLC;
Wake County Parcel Identification #0736029301;
4.21 acres plus 0.69± 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 8/22/2013.

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 Alston Properties LLC;
Wake County Parcel Identification #0736029301;
4.21 acres plus 0.69 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 9/26/2013 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 #0736029301
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.
ADOPTED 8/22/2013

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

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<tr>
<td><strong>Annexation 13-A-19</strong></td>
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<tr>
<td>Property Owner(s): Phillip A. &amp; Frances S. Ferrell</td>
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<tr>
<td>Location: 1,160 feet northwest of Green Hope School Road and Morrisville Parkway intersection</td>
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<td>Acreage: 4.15</td>
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<td>Zoning: Wake County Residential 40 Watershed (R-40W)</td>
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<td>Contiguous to Primary Corporate Limits: Yes</td>
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<td>Existing Use: Vacant</td>
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<td>Proposed Use: Residential</td>
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<td>Associated Case: 13-REZ-12 (Ferrell Property)</td>
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<td>Speaker: Ms. Debra Grannan</td>
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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
Phillip A. & Frances S. Ferrell;
Wake County Parcel Identification #0724352702;
4.15 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.

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 Phillip A. & Frances S. Ferrell; Wake County Parcel Identification #0724352702; 4.15 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 9/26/2013 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 #0724352702

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.

ADOPTED 8/22/2013

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

3. 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)

a. Park at West Lake Open Space

(1) Annexation Petition 13-A-09
Property Owner: Winslow Properties Development Company
Location: 120 feet west of Dayton Ridge Drive and Moneta Lane intersection
Zoning: Wake County Residential 20 (R-20)
Contiguous to Primary Corporate Limits: Yes
Existing Use: Open Space (Active Recreational Area)
Proposed Use: Open Space (Active Recreational Area)
Proposed Council Action: Council may take action
Speaker: Ms. Mary Beerman

Ordinance O-2013-26
AN ORDINANCE ANNEXING LANDS CONTIGUOUS TO THE MUNICIPAL BOUNDARIES OF THE TOWN OF CARY

August 22, 2013 Minutes
Minute Book #177, Minute Book Page #228
WHEREAS, on 4/15/2013, the Town Council has been petitioned under G.S. 160A-31 to annex the area described below:

**Winslow Properties Development Company; Wake County Parcel Identification #0679022995;** including 0.60 acres, plus 0.26 acres of adjacent right-of-way; which are contiguous to the existing municipal limits of the Town of Cary; and

WHEREAS, on 5/23/2013, the Town Clerk of the Town of Cary certified the sufficiency of said Petition, the same being duly made after investigation; and

WHEREAS, on 5/23/2013, 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 6/27/2013 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 8/22/2013 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 #0679022995

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 C** 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.

Adopted on 8/22/2013

**ACTION:**

Motion: Adcock moved to approve the consent agenda.
Second: Bush
Vote: Unanimous
(2) **Annexation Petition 13-A-10**

Property Owner: Winslow Properties Development Company  
Location: 160 feet northwest of Moneta Lane and Serene Forest Drive intersection  
Zoning: Wake County Residential 20 (R-20); Wake County Residential 30 (R-30)  
Contiguous to Primary Corporate Limits: Yes  
Existing Use: Common Open Space (Greenway)  
Proposed Use: Common Open Space (Greenway)  
Proposed Council Action: Council may take action  
Speaker: Ms. Mary Beerman

**OrdinanceO-2013-27**

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

WHEREAS, on 4/15/2013, the Town Council has been petitioned under G.S. 160A-31 to annex the area described below:

**Winslow Properties Development Company; Wake County Parcel Identification #0669855049, 0669837849; including 20.90 acres, plus 0.16 acres of adjacent right-of-way; which are contiguous to the existing municipal limits of the Town of Cary; and**

WHEREAS, on 5/23/2013, the Town Clerk of the Town of Cary certified the sufficiency of said Petition, the same being duly made after investigation; and

WHEREAS, on 5/23/2013, 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 6/27/2013 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 8/22/2013 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 #0669855049, 0669837849

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 C 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.

Adopted on 8/22/2013

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

________________________
(3)

**REZONING 13-REZ-03**

Location: South of Optimist Farm Road, west and south of Moneta Lane
Current Zoning (Wake County): Residential 20 (R-20) and Residential 30 (R-30)
Proposed Zoning (Town of Cary): Resource/Recreation (R/R)
Planning & Zoning Board Recommendation: Voted unanimously to recommend approval
Proposed Council Action: Council may take action
Speaker: Ms. Mary Beerman

**ORDINANCE O-2013-28**

13-REZ-03 The Park at West Lake Open Space (parcels included in 13-A-09 and 13-A-10)

**AN ORDINANCE TO ESTABLISH ZONING FOR APPROXIMATELY 21.50 ACRES LOCATED IN VARIOUS PHASES OF THE PARK AT WEST LAKE BY APPLYING RESOURCE/RECREATION (R/R) ZONING TO PROPERTY CURRENTLY ZONED WAKE COUNTY RESIDENTIAL 30 AND WAKE COUNTY RESIDENTIAL 20 AS SPECIFIED IN THE ACCOMPANYING TABLE OF PARCEL AND OWNER INFORMATION**

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>Associated Annexion Case</th>
<th>County Parcel Number (10-digit)</th>
<th>Real Estate ID</th>
<th>Existing Use</th>
<th>Proposed Zoning District</th>
<th>Deeded Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Winslow Properties Development Co.</td>
<td>13-A-09</td>
<td>0679022995</td>
<td>0373884</td>
<td>Private recreation</td>
<td>R/R</td>
<td>.60</td>
</tr>
<tr>
<td></td>
<td>10-A-10</td>
<td>0669837849</td>
<td>0075853</td>
<td>Open space/ greenway</td>
<td>R/R</td>
<td>17.24</td>
</tr>
<tr>
<td></td>
<td></td>
<td>0669855046</td>
<td>0374826</td>
<td></td>
<td>R/R</td>
<td>3.66</td>
</tr>
<tr>
<td><strong>TOTAL DEEDED ACREAGE</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>21.50</strong></td>
</tr>
</tbody>
</table>

**Section 2:** That initial Town of Cary zoning of Resource/Recreation is applied to this property 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.

Adopted and effective: August 22, 2013

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

(4) 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-03 (Option A if council approves the rezoning; Option B if council denies the rezoning.)

Proposed Council Action: Council tabled this at the July 25, 2013 council meeting. After removing this item from the table, council may take action.

Speaker: Ms. Mary Beerman

Option A (recommended if rezoning 13-REZ-03 is approved):

CONSISTENCY AND REASONABLENESS STATEMENT
13-REZ-03 – Park at West Lake Open Space

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: Rezoning 13-REZ-03 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-03 is reasonable and in the public interest.

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

C. RECOGNITIONS, REPORTS, AND PRESENTATIONS

1. Recognition of the Town's Honorary Town Crier John Webster and Mary Webster, our visitors from our Sister City, Markham, Canada. (Council Member Smith)

Smith recognized the Webster's, welcomed them to Cary and thanked them for participating in Lazy Daze. Town Crier Webster issued an official town crier greeting to Cary.

D. PUBLIC SPEAKS OUT (one hour time limit)
Mr. Roger Ehrlich thinks the council should have a public hearing on the Veteran’s Park contract, because he believes it has been a closed process with no citizen input to-date. He stated the Public Art Advisory Board has not been involved in planning the park. He believes in honoring all veterans, but he believes the word “Freedom” in the name excludes many veterans who do not support that terminology. He suggested the council have a public process to name the public amenity.

Ms. Lauren Schafer, on behalf of the Heart of Cary Association, thanked council and staff for their efforts to revitalize downtown. She stated the art center is a tremendous facility, and 157,000 patrons have visited that facility in the past year. She provided council the results of their Association’s July 2013 Speed Networking Survey results:

- One favorite thing downtown: (1) Cary Arts Center; (2) Ashworth’s; (3) Laze Daze TIED Academy Street Bistro; and (4) Thursday Night Concerts (7 O’Clock rock) TIED Events at the Page Walker
- One thing missing downtown: (1) Nightlife/upscale bar/microbrewery; (2) Gourmet grocery store; (3) More retail boutiques and destination retailers; (4) Coffee shop TIED parking

E. PUBLIC HEARINGS

1. Slade Property

   a. ANNEXATION PETITION 13-A-14
      Property Owner: James D. Slade
      Location: 4,450 feet southwest of Pittard Sears Road and O’Kelly Chapel Road intersection
      Zoning: Chatham County Residential 1 (R-1)
      Contiguous to Primary Corporate Limits: No
      Existing Use: Residential (detached dwelling)
      Proposed Use: Residential
      Proposed Council Action: No action necessary; it will be on a future agenda for council action
      Speaker: Ms. Mary Beerman

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

WHEREAS, on 6/5/2013, the Town Council has been petitioned under G.S. 160A-58.1 to annex the area described below:

James D. Slade; Chatham County Parcel Identification #0725-29-0405.000 (portion); including 37.77 acres, plus 0.95 acres of adjacent right-of-way; which are non contiguous to the existing municipal limits of the Town of Cary; and

WHEREAS, on 7/25/2013, the Town Clerk of the Town of Cary certified the sufficiency of said Petition, the same being duly made after investigation; and

WHEREAS, on 7/25/2013, 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 8/22/2013 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-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 10/24/2013 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. 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, 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 of less.

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.

b. **REZONING 13-REZ-04 (Slade Property)**  
Location: Rezoning 37.77 acres out of 38.2 total acres at 925 Pittard Sears Road  
Current Zoning: Chatham County Residential-1 (R-1)  
Proposed Zoning: Residential-12 Conditional Use (R-12-CU) with zoning conditions limiting residential density and unit type; and Watershed Protection Overlay District (Jordan Lake sub-area)  
Proposed Council Action: Refer to the planning & zoning board  
Speaker: Ms. Mary Beerman

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**REQUEST**

To amend the Town of Cary Official Zoning Map by establishing initial Town of Cary zoning on approximately 37.77 acres located at 925 Pittard Sears Road in Chatham County. The current zoning is Chatham County R-1. The applicant has proposed a Cary zoning designation of Residential 12 Conditional Use (R-12-CU), Zoning conditions proposed by the applicant would limit the use to detached residential units with a density not to exceed two dwellings per acre, and require addition buffer area along the northern property line.

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**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>James B. Slade</td>
<td>0725-29-0405 Portion (Chatham Co.)</td>
<td>N/A</td>
<td>37.77 ±</td>
</tr>
<tr>
<td>719 Pittard Sears Road</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Durham, NC  27713</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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**PROJECT SUMMARY**

The applicant is requesting that initial Town of Cary zoning be applied to the subject property. The property is currently zoned Chatham County Residential-1 (R-1). The proposed zoning district is R-12 Conditional Use (R-12-CU), with zoning conditions to limit use of the property to detached residential dwellings, and limit density to two dwelling units per acre.

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**BACKGROUND INFORMATION**

<table>
<thead>
<tr>
<th>Applicant &amp; Agent</th>
<th>Glenda Toppe, Glenda S. Toppe and Associates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acreage</td>
<td>37.77 ±</td>
</tr>
<tr>
<td>General Location</td>
<td>925 Pittard Sears Road; (portion of the property located east of the right of way for the American Tobacco Trail)</td>
</tr>
<tr>
<td>Schedule</td>
<td><strong>Public Hearing</strong> August 22, 2013</td>
</tr>
<tr>
<td></td>
<td><strong>Planning &amp; Zoning Board</strong> TBD</td>
</tr>
<tr>
<td></td>
<td><strong>Town Council</strong> TBD</td>
</tr>
<tr>
<td>Land Use Plan Designation</td>
<td>LDR (Low Density Residential per Chatham-Cary Joint Land Use Plan)</td>
</tr>
<tr>
<td>Existing Zoning District</td>
<td>Chatham County Residential 1 (R-1)</td>
</tr>
<tr>
<td>Existing Zoning Conditions</td>
<td>None</td>
</tr>
<tr>
<td>Proposed Zoning District</td>
<td>Residential-12 Conditional Use (R-12-CU); Watershed Protection Overlay (Jordan Lake sub-area)</td>
</tr>
</tbody>
</table>
Proposed Zoning Conditions

1. The use on the site will be limited to detached dwellings.
2. The maximum density is two dwelling units per acre.
3. There will be a 40-foot Type A buffer along the north property line beginning in the NE corner of the property and extending 250 feet west at which point the buffer is reduced to a 20-foot opaque buffer continuing to the NW corner of the property.

Town Limits

The subject property is located outside the corporate limits and the Town of Cary ETJ. An owner-initiated annexation petition, 13-A-14, has been submitted by the property owner in conjunction with this rezoning request.

Valid Protest Petition

In accordance with NC General Statutes, protest petitions are not applicable to a map amendment (rezoning) that initially zones property that is being added to the Town’s jurisdiction by annexation.

Staff Contact

Mary W. Beerman
(919) 469-4342
mary.beerman@townofcary.org

SITE CHARACTERISTICS

Streams and Floodplains: According to Chatham County GIS maps, the property is impacted by two stream buffers. Field determination of these features will be made at the time of site plan review.

Adjacent Land Use:
North -- Chatham Glen Subdivision (Existing development in Chatham County)
South – Permanent open space owned by U.S. Army Corps of Engineers and associated with Jordan Lake
East – Single-family residential
West -- American Tobacco Trail (ATT)

CONSISTENCY WITH LAND DEVELOPMENT ORDINANCE

Land Use: The applicant has offered a zoning condition to limit use of the property to detached dwellings. Detached dwellings are one of the residential use types permitted in the R-12 zoning district.

Density and Dimensional Standards

<table>
<thead>
<tr>
<th></th>
<th>R-12 Zoning District</th>
<th>Proposed R-12-CU Zoning District</th>
</tr>
</thead>
<tbody>
<tr>
<td>Max. Gross Density</td>
<td>3.63 du/acre</td>
<td>2.0 du/acre</td>
</tr>
<tr>
<td>Min. Lot Size</td>
<td>12,000 square Feet</td>
<td>Same as R-12 District</td>
</tr>
<tr>
<td>Min. Lot Width</td>
<td>80 feet (90 feet for corner lot)</td>
<td>Same as R-12 District</td>
</tr>
<tr>
<td>Min. Roadway Setback</td>
<td>20 feet from Pittard Sears Road and from internal streets</td>
<td>Same as R-12 District</td>
</tr>
<tr>
<td>Min. Side Yard Setback</td>
<td>10 feet</td>
<td>Same as R-12 District</td>
</tr>
<tr>
<td>Min. Rear Yard Setback</td>
<td>25 feet</td>
<td>Same as R-12 District</td>
</tr>
<tr>
<td>Max. Building Height</td>
<td>35 feet (may be increased by one foot per foot of building setback above minimum required)</td>
<td>Same as R-12 District</td>
</tr>
</tbody>
</table>

Landscape Buffer: A 40-foot Type A (opaque) landscape buffer is required adjacent to the ATT. A 20-foot Type B landscape strip is required adjacent to existing residential development. The applicant has offered a zoning condition to increase the width of the buffer along the northern
property line as follows:  \textit{There will be a 40-foot Type A buffer along the north property line beginning in the NE corner of the property and extending 250 feet west at which point the buffer is reduced to a 20-foot opaque buffer continuing to the NW corner of the property.}

**Streetscape:** Pittard Sears Road is designated as a local street, and no streetscape is required.

**Traffic:** The proposed zoning would allow for two single-family dwelling units per acre. The parcel is 37.7 acres, so the maximum number of dwelling units would be 75 single-family homes, which would generate 63 am trips and 82 pm trips. The threshold to perform a traffic study is 100 peak hour trips, therefore a traffic study is not required.

**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.

### SUMMARY OF PROCESS AND ACTIONS TO DATE

**Notification:** On August 7, 2013, the Planning Department mailed notification of a public hearing on the request to property owners within 400 feet of the subject property. Notification consistent with General Statutes was published in the Cary News on August 7 and 14, 2013. Notice of the public hearing was posted on the property on August 7, 2013.

**Neighborhood Meeting:** According to the applicant, a neighborhood meeting for the proposed rezoning was held on May 16, 2013. According to the information submitted by the applicant, 10 residents attended the meeting. According to the meeting minutes, resident questions and concerns included impact of traffic on Carolina Preserve and O'Kelly Chapel Road, the potential for a cell tower in the area, the effect on water pressure and potential need for an elevated storage tank, and fire service and future fire stations. The owner of property adjacent to the northeast corner of the site expressed concern with the effect on the adjacent well, and requested a buffer to screen the development from the adjacent property.

### APPLICABLE COMPREHENSIVE OR AREA PLAN REQUIREMENTS

**Land Use Plan**

**Future Land Use Recommendations:** The property is within the Chatham-Cary Joint Land Use Plan (Joint Plan), with a plan designation of Low Density Residential (LDR). The Joint Plan defines LDR as including residential development at up to two dwellings per acre. Appropriate housing types include single-family-detached, duplex, patio home, semi-detached/attached dwelling, and townhouses. Multi-family housing is not envisioned. The plan document also notes that “a variety of neighborhood-compatible and complimentary civic, institutional, and utility uses may also be considered within any LDR area, such as churches, parks, schools, libraries, daycare facilities, telecommunication towers, utility pump stations, and electric utilities.”

**Planning History:** Prior to adoption of the Joint Plan in June 2012, future land use recommendations for the subject parcel were provided by Cary’s Northwest Area Plan, adopted in 2002. At that time, the Northwest Plan recommended the parcel for Very Low Density Residential (VLR) development, at no more than one dwelling per acre. Prior to the 2002 Northwest Area Plan, land use recommendations for the subject parcel were provided by Cary’s townwide Land Use Plan, adopted in 1996. The 1996 Plan recommended an acceptable range of “Very Low to Low Density Residential” (“VLR to LDR”) uses, which covered an acceptable density range of up to three dwellings per acre.

**Land Use Recommendations for Adjacent Parcels**

1. **East:** Properties east of the site share the same LDR land use designation as the subject parcel.
2. **West:** Along the subject parcel's western property line, the southern half of that boundary is adjacent to land that is also designated as LDR. The northern half of that boundary is
adjacent to the 100-foot right-of-way for the American Tobacco Trail (ATT). West of the ATT is the Old Chatham Golf Club, designated in the Joint Plan for “Parks, Open Space, and Golf” uses.

3. **North:** The subject parcel is bordered to the north by the existing Chatham Glen subdivision, a Chatham County large-lot subdivision, having an average lot size of about 5 ½ acres. The Chatham Glen subdivision is designated as Very Low Density Residential (VLDR) on the Joint Plan. VLDR describes residential uses at no more than one dwelling per acre, single-family-detached.

4. **South:** To the south, the subject property borders the U.S. Army Corps of Engineers property along Nancy Branch, as part of the Jordan Lake project. This land is permanently protected open space. These federal lands are also designated as “state game lands” (see below).

**State Game Lands:** The U.S. Army Corps of Engineers land south of the property is also designated as State Game Lands, and is open for hunting seasons. Since late 2009, the game lands located in this area (east of the ATT) have been restricted to bow hunting. In the past, the NC Wildlife Resources Commission staff has recommended buffers for any residential uses adjacent to the gamelands, as well as signage and owner disclosure. Chapter 6, Section 6.4, of the Joint Plan Document recommends development of a “homebuyer notification requirement” for new development next to these state game lands. (Note: the portions of the nearby Amberly PDD that are adjacent to the state gamelands have a 50-foot buffer, dating to the 2002 PDD approval.)

**Density Transitions:** Chapter 3, Section 3.5, of the Chatham-Cary Joint Plan Document addresses transitions between residential density categories, stating that “Within the plan area, all new development should provide appropriate transitions.” Further, Section 3.6 (Principles of Interpretation) states that: “Planning boards may exercise discretion and judgment in determining whether they believe that the transition proposed by an applicant is sufficient and appropriate.” Some final guidance is given in Section 3.2 (Land Use Category Definitions): in describing the LDR land use category, the text includes the statement that “larger lots and/or lower densities may be used when needed to form acceptable transitions” (for example, to adjacent large-lot subdivisions or farms.)

In the case of the subject parcel, it is bounded to the north by an existing large-lot rural subdivision, Chatham Glen. At present, there are no special zoning conditions that address this point of transition. As such, Cary’s existing buffer standards would require a minimum 20-foot perimeter buffer adjacent to the Chatham Glen subdivision.

**Growth Management Plan:** The Growth Management Plan includes the following Guiding Principles which may be relevant to this case:
- Guiding Principle R1: Ensure that adequate infrastructure and services are available concurrently with new development.
- Guiding Principle L1: Concentrate growth near existing and planned employment centers and available and planned infrastructure to minimize costly service-area extensions.
- Guiding Principle L2: Ensure that future growth protects sensitive natural resources and protects open space.

**Analysis:** The proposed rezoning seems to satisfy the above principles, and is therefore generally consistent with the Growth Management Plan.

**Affordable Housing Plan:** The Affordable Housing Plan includes the following goals that may be relevant to this case:

Goal #3. 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.

Goal #6. 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.

Comments:
Based on the proposed zoning, and current zoning conditions, the proposed rezoning does not compromise the Affordable Housing Plan, but neither does it advance the goals of the plan.

Comprehensive Transportation Plan
Pittard Sears Road is designated as a local road.
Existing Section: 2-lane undivided; approximately 50-foot right of way (ROW)
Future Section: 2-lane undivided; 50-foot ROW
Sidewalks: Required on at least one side
Bicycle Lanes: N/A
Status of Planned Improvements: None planned by the Town

Transit: The nearest existing transit service is provided by Triangle Transit Route 311 on NC Hwy 55, approximately 2.4 miles east of the site. There is no current C-Tran service in this area. Long-range C-Tran expansion plans envision a potential future route on Green Level Church Road, approximately 1.9 miles east of the site; however, such expansion is not yet funded, and no future service date has been set.

Parks, Recreation & Cultural Resources Facilities Master Plan: According to the Parks, Recreation and Cultural Resources Facilities Master Plan a street-side trail is proposed along the south side of Pittard Sears Road along this property’s road frontage. The northern portion of this property is adjacent to the existing American Tobacco Trail corridor. A recreation fund payment will be required for residential development in accordance with the Land Development Ordinance. These comments were reviewed and approved by the Town’s Greenway Committee at its July 18, 2013 meeting, and by the Parks, Recreation & Cultural Resources Advisory Board at its August 5, 2013 meeting.

Open Space Plan: According to the Open Space Plan there is an approximate 7- acre area on the north end of the property with mixed upland hardwood forest and mixed hardwood/conifer forest.

Historic Preservation Master Plan: The property contains an older farm house on the south side of Pittard Sears Road, described in the Chatham County tax records as being built in 1900, and about 1,697 square feet (heated), with a condition or “quality grade of D +/-.” However, the structure is not listed in the state’s Historic Survey and Inventory for Chatham County, or in the Town’s draft Survey Update. Documentation is not available to assess the house.

<table>
<thead>
<tr>
<th>OTHER REFERENCE INFORMATION</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Schools</th>
<th>Type</th>
<th>Projected Range of Additional Students</th>
</tr>
</thead>
<tbody>
<tr>
<td>The subject property is located within the Chatham County School District. The projections are based on multipliers provided by the Wake County Board of Education.</td>
<td>Elementary School</td>
<td>21-31</td>
</tr>
<tr>
<td></td>
<td>Middle School</td>
<td>4-11</td>
</tr>
<tr>
<td></td>
<td>High School</td>
<td>5-14</td>
</tr>
<tr>
<td>Total Projected range of additional students²</td>
<td></td>
<td>31-56</td>
</tr>
</tbody>
</table>

Ms. Glenda Toppe, the applicant, stated Mr. Slade, the property owner, was born in the house on the property in 1926 and has lived full time on the property since 1943. She stated the current zoning condition caps the density at two units per acre. She added that they recently received stream buffer information, and as a result of that information, they are proposing a revised condition to reduce the density to 1.4 units per acre and a maximum of 50 units. She stated they are limiting the use by condition to single family detached. She thinks the plan addresses proper
transitioning. She stated to the north they are providing a 40 foot Type A undisturbed buffer, and the 20 foot buffer is also opaque. She stated both buffers will be in common area and are not part of the lot. She thinks making them separate from the lot and allowing the homeowners’ association to maintain them allows for more protection of the buffer area and provides additional protection to adjacent property owners to the north. She stated this development will cause little to no adverse impact to surrounding properties. She stated the development will meet all ordinance requirements. Toppe stated a traffic study was not required, and she added the traffic numbers in the report will be reduced since the units are reduced from 75 to 50. She stated a good portion of the land to the south is impacted by stream buffers and will not be developed, and she will work with staff to address that issue. She stated the rezoning meets the joint plan requirements. She believes the plan and the new conditions adequately protects adjacent property owners.

Weinbrecht opened the public hearing.

Mr. Jeff Longston, the owner of Hearthstone Luxury Homes, spoke in support of this project on behalf of future Cary residents. He stated he is one of the builders in the project adjacent to this one. He spoke about that project’s success, which is popular because of its location, the privacy, trees and lot sizes. He stated this proposal will be similar. He stated this housing product appeals to active retirees. He stated this project allows them to continue serving that particular buyer group.

Mr. Chris Raisig stated he is concerned with density and transition. He stated a lot of good work was done with the joint Chatham/Cary plan. He stated the applicant wants to put 50 homes on 37 acres as compared with the six homes on 37 acres in the vicinity. He stated the average lot size will be about 15,000 square feet as compared to the existing lot size of more than six acres. He stated people hunt with guns in this area, which should be considered. He stated his well house is about 12 feet from the northeast property line, and any building in this vicinity might have a negative impact on his well. He stated this area has a rural character (i.e., sawmill, barns, etc.), and they want this development to be in keeping with existing uses. Raisig stated traffic is another concern for an area that just a few years ago was a gravel road.

Weinbrecht closed the public hearing.

Yerha asked for an explanation of the difference in the buffer width along the adjacent gamelands to the south, as recommended by the Army Corps of Engineers (50 feet) and the Wildlife Resources Commission (150 yards). Town Planner Mary Beerman stated that she had been unable to obtain more information from the Wildlife Commission, but would continue her efforts to contact them prior to the planning board meeting. She stated the Army Corps of Engineers owns the property.

Robinson is happy the request fully complies with the joint land use plan, and she urged the applicant to be considerate of the neighbors.

Bush stated she has seen on several occasions that multiple small developments do not individually trigger a traffic study, even though cumulatively they can have a significant traffic impact. Town Traffic Engineer Jerry Jensen stated this is a local road on the transportation plan. He stated staff will take a look at this area with a future update of the transportation plan.

ACTION: Referred the rezoning to the planning and zoning board

2. H-7 High School (Roberts Road)
   a. ANNEXATION PETITION 13-A-17
      Property Owner: Wake County Board of Education
Location: At the intersection of Green Level Church Road and Roberts Road  
Zoning: Wake County Residential 40 (R-40)  
Contiguous to Primary Corporate Limits: Yes  
Existing Use: Vacant; Residential  
Proposed Use: Public High School  
Proposed Council Action: No action necessary; it will be on a future agenda for council action  
Speaker: Ms. Mary Beerman

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

WHEREAS, on 7/2/2013, the Town Council has been petitioned under G.S. 160A-31 to annex the area described below:

Wake County Board of Education; Wake County Parcel Identification #0733150700, 0733060430, 0733066539, 0723964723; including 87.85 acres, plus 0.00 acres of adjacent right-of-way; which are contigous to the existing municipal limits of the Town of Cary; and

WHEREAS, on 7/25/2013, the Town Clerk of the Town of Cary certified the sufficiency of said Petition, the same being duly made after investigation; and

WHEREAS, on 7/25/2013, 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 8/22/2013 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 10/10/2013 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 #0733150700, 0733060430, 0733066539, 0723964723

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.

b. REZONING 13-REZ-10
Location: Northeast corner of the Green Level Church Road and Roberts Road intersection
Current Zoning: Wake County Residential 40 (Watershed) (R-40W)
Proposed Zoning: Residential 40 (R-40); Watershed Protection Overlay (Jordan Lake Watershed); Conservation Residential Overlay District, LCR sub-district.
Proposed Council Action: Refer to the planning & zoning board
Speaker: Ms. Mary Beerman

REQUEST
To amend the Town of Cary Official Zoning Map to apply initial zoning of Residential 40 (R-40) to 87.85 acres located on the north side of Roberts Road, east of Green Level Church Road. There is an owner-initiated annexation petition, 13-A-17, associated with the rezoning. Annexation must be approved prior to application of a Cary zoning district.

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>Wake County Board of Education</td>
<td>0723964723 0733060430 0733066539 0733150700</td>
<td>0374148 0374147 0369694 0114161</td>
<td>22.01 30.51 24.22 11.11</td>
</tr>
<tr>
<td>Total Acreage:</td>
<td></td>
<td></td>
<td>87.85 ±</td>
</tr>
</tbody>
</table>

BACKGROUND INFORMATION

<table>
<thead>
<tr>
<th>Applicant &amp; Agent</th>
<th>CLH Design (Zachary Pierce)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acreage</td>
<td>87.85 ±</td>
</tr>
<tr>
<td>General Location</td>
<td>Northeast corner of Green Level Church Road and Roberts Road intersection</td>
</tr>
<tr>
<td>Schedule</td>
<td>Public Hearing August 22, 2013 Planning &amp; Zoning Board TBD Town Council TBD</td>
</tr>
<tr>
<td>Land Use Plan Designation</td>
<td>Conservation Residential Low Density (LCR)</td>
</tr>
<tr>
<td>Existing Zoning District(s)</td>
<td>(Wake County) Residential 40 (watershed) (R-40W)</td>
</tr>
<tr>
<td>Existing Zoning Conditions</td>
<td>None</td>
</tr>
<tr>
<td>Proposed Zoning District(s)</td>
<td>Residential 40 (R-40); Watershed Protection Overlay (Jordan Lake Watershed); Conservation Residential Overlay District, LCR sub-district.</td>
</tr>
<tr>
<td>Proposed Zoning Conditions</td>
<td>None</td>
</tr>
<tr>
<td>Town Limits</td>
<td>The subject property is located outside the corporate limits and the Town of Cary ETJ. An owner-initiated annexation petition, 13-A-17, has been submitted by the property owner in conjunction with this rezoning request.</td>
</tr>
<tr>
<td>Valid Protest Petition</td>
<td>In accordance with NC General Statutes, protest petitions are not applicable to a map amendment (rezoning) that initially zones property that is being added to the Town’s jurisdiction by annexation.</td>
</tr>
<tr>
<td>Staff Contact</td>
<td>Mary W. Beerman (919) 469-4342 <a href="mailto:mary.beerman@townofcary.com">mary.beerman@townofcary.com</a></td>
</tr>
</tbody>
</table>
SITE CHARACTERISTICS

Floodplain, Streams and Wetlands: According to Cary GIS maps, the property is impacted by several stream buffers associated with flood plain and designated wetlands indicated along the northern boundary of the site. Field determination of these features will be made at the time of site plan review.

Surrounding Land Uses:
North - Floodplain and open space owned by Town of Cary
South - Single-family residential and agricultural (Apex Jurisdiction)
West - Vacant (Apex Jurisdiction)
East - Single-family residential and (future) Roberts Road Park

CONSISTENCY WITH LAND DEVELOPMENT ORDINANCE

Land Use
Uses allowed in the R-40 zoning district are listed in the table below:

<table>
<thead>
<tr>
<th>USES ALLOWED IN R-40 DISTRICT</th>
</tr>
</thead>
<tbody>
<tr>
<td>PERMITTED USES</td>
</tr>
<tr>
<td>-----------------</td>
</tr>
<tr>
<td>Detached dwelling</td>
</tr>
<tr>
<td>Manufactured home</td>
</tr>
<tr>
<td>Day care home, small</td>
</tr>
<tr>
<td>Public safety station</td>
</tr>
<tr>
<td>Public utility facility</td>
</tr>
<tr>
<td>Town owned/operated facilities and services</td>
</tr>
<tr>
<td>Athletic field, public</td>
</tr>
<tr>
<td>Community garden</td>
</tr>
<tr>
<td>Park, public</td>
</tr>
<tr>
<td>Neighborhood recreation center, public</td>
</tr>
<tr>
<td>Resource conservation facility</td>
</tr>
<tr>
<td>Utility substation, minor</td>
</tr>
<tr>
<td>Agri-Tourism</td>
</tr>
<tr>
<td>Farming, general</td>
</tr>
<tr>
<td>Forestry</td>
</tr>
<tr>
<td>Produce stand</td>
</tr>
<tr>
<td>Neighborhood recreation center, indoor/outdoor, private</td>
</tr>
<tr>
<td>Athletic field, private</td>
</tr>
<tr>
<td>Antenna co-location on existing tower</td>
</tr>
</tbody>
</table>

PERMITTED USE OR SPECIAL USE, DEPENDING ON APPLICABLE USE-SPECIFIC STANDARDS

<table>
<thead>
<tr>
<th>PERMITTED USES REQUIRING ZONING COMPLIANCE PERMIT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boarding house</td>
</tr>
<tr>
<td>Religious Assembly</td>
</tr>
<tr>
<td>School</td>
</tr>
</tbody>
</table>

*Allowed in all residential dwellings as otherwise permitted by law, and may not be prohibited through zoning conditions

Density and Dimensional Standards

<table>
<thead>
<tr>
<th>Standard</th>
<th>Proposed R-40 Zoning District</th>
</tr>
</thead>
<tbody>
<tr>
<td>Max. Residential Density</td>
<td>1.08 units/acre</td>
</tr>
<tr>
<td>Min. Lot Size</td>
<td>40,000 square feet</td>
</tr>
<tr>
<td>Standard</td>
<td>Proposed R-40 Zoning District</td>
</tr>
<tr>
<td>--------------------------------</td>
<td>------------------------------------------------------------------</td>
</tr>
<tr>
<td>Min. Lot Width</td>
<td>135 feet</td>
</tr>
<tr>
<td>Min. Roadway Setback</td>
<td>50 feet</td>
</tr>
<tr>
<td>Min. Side Yard Setback</td>
<td>15 feet</td>
</tr>
<tr>
<td>Min. Rear Yard Setback</td>
<td>30 feet</td>
</tr>
<tr>
<td>Max. Building Height</td>
<td>35 feet, plus one foot for every foot provided in addition to the minimum building setback</td>
</tr>
</tbody>
</table>

**Landscape Buffer** Assuming the site is developed for a school, a 40-foot Type A (opaque) buffer will be required adjacent to the residential property to the east, and a 20-foot Type B (semi-opaque) buffer will be required adjacent to the future Roberts Road Park.

**Streetscape**: A 50-foot opaque streetscape is required along both Roberts Road and Green Level Church Road.

**Traffic**: The existing zoning is R-40 in Wake County and the proposed zoning is Town of Cary R-40. There is no net difference in the number of trips since the request is primarily a jurisdictional change. The two jurisdictions are similar, so there is no substantive change with respect to the use allowed. The applicant is aware that they will be going through the quasi-judicial process at site plan (assuming that the size of the proposed project exceeds 100,000 square feet) and they will be conducting a traffic study as a part of that process.

**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.

**SUMMARY OF PROCESS AND ACTIONS TO DATE**

**Notification**: On August 7, 2013, the Planning Department mailed notification of a public hearing on the request to property owners within 400 feet of the subject property. Notification consistent with General Statutes was published in the Cary News on August 7 and 14, 2013. Notice of the public hearing was posted on the property on August 7, 2013.

**Neighborhood Meeting**: According to the applicant, a neighborhood meeting for the proposed rezoning was held on May 22, 2013. According to the information submitted by the applicant, 12 residents attended the meeting. According to the meeting minutes submitted by the applicant, resident questions and concerns included lighting, traffic, potential road improvements, pedestrian access, and use of the existing pond.

**APPLICABLE COMPREHENSIVE OR AREA PLAN REQUIREMENTS**

**Land Use Plan**: The subject property is located within the Southwest Area Plan where it is designated as appropriate for Low Density Conservation Residential (LCR) development. The LCR designation means the property can be developed either using conventional R-40 subdivision design, with a minimum lot size of 40,000 square feet, or using conservation subdivision design, which allows lot sizes to be reduced in proportion to the amount of additional permanent open space provided, with gross density capped at 2.5 dwelling units per acre. Throughout the LCR (and VLCR – Very Low Density Conservation Residential) areas of the Southwest Area Plan, it is assumed that the underlying property has R-40 District base zoning, and that the options for Conservation Residential will operate as an incentive-based option in lieu of the R-40 base zoning. With this assumption underlying all of the plan’s recommendations for LCR and VLCR, the applicant’s rezoning request for R-40 District is clearly supported by the area
plan. (The R-40 base district zoning requested by the applicants also constitutes a typical “default zoning” applied to initial annexations into Cary from outside of the ETJ.)

About schools in LCR: When the Southwest Area Plan was adopted in 2004, the definitions provided for the LCR and VLCR land use categories did not include the statement that “uses that are compatible and complementary to the character of the surrounding neighborhood may also be considered, including uses such as religious institutions, schools, libraries, and daycare facilities.” This statement would have been consistent not only with all the other land use categories used in the Southwest Area Plan, but also with other area plans. The statement would also have reflected uses allowed through the underlying Wake County and Town of Cary base zoning (R-40) in the area. The Southwest Area Plan acknowledges this situation in a text box included in Section 2.4, Chapter 2 of the plan. Therefore, while the Southwest Plan’s strict definition for LCR does not accommodate schools, the plan does acknowledge the effect of R-40 District base zoning, which includes an allowance for schools.

Planning History: Prior to adoption of the Southwest Area Plan in 2004, future land use recommendations for the site were provided by Cary’s townwide Land Use Plan, adopted in 1996. At that time, the site was recommended for Low Density Residential (LDR) or Traditional Neighborhood Development (TND), at densities of about 1-3 units per acre.

Land Use Recommendations for Adjacent Parcels
   East: Properties east of the site have the same LCR land use designation as the subject site.
   North: Properties north of the site are designated as Parks and Open Space, being part of the White Oak Creek floodplain and conservation area. The White Oak Greenway runs east-to-west along this corridor.
   West and South: The areas both west and south of the site are within the Town of Apex’s planning jurisdiction, and are designated as “Low Density Residential” by the Apex Comprehensive Plan, which includes residential development of up to three dwellings per acre.

Growth Management Plan: The Growth Management Plan includes the following Guiding Principles which may be relevant to this case:
   - Guiding Principle R1: Ensure that adequate infrastructure and services are available concurrently with new development.
   - Guiding Principle L1: Concentrate growth near existing and planned employment centers and available and planned infrastructure to minimize costly service-area extensions.
   - Guiding Principle L2: Ensure that future growth protects sensitive natural resources and protects open space.

Analysis: The proposed rezoning seems to satisfy the above principles, and is therefore generally consistent with the Growth Management Plan.

Affordable Housing Plan: The Affordable Housing Plan includes the following goals that may be relevant to this case:
   Goal #1. Provide for a full range of housing choices for all income groups, families of various sizes, seniors, and persons with special challenges.
   Goal #3. 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.
   Goal #6. 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.

Comments: Based on the proposed zoning, and the absence of zoning conditions, it is unlikely that the proposed rezoning will advance the affordability goals of the Affordable Housing Plan.
Comprehensive Transportation Plan
Roberts Rd. is designated as a Minor Thoroughfare.
Existing Section: 2-lane undivided in approximately 60-foot right-of-way (ROW)
Future Section: 3-lanes in 70-foot ROW
Sidewalks: Sidewalks do not currently exist and will be required on both sides
Bicycle Lanes: Bicycle facilities do not currently exist, 14-foot-wide outside lanes will be required on both sides
Status of Planned Improvements: N/A

Green Level Church is designated as a Major Thoroughfare.
Existing Section: 2-lane undivided in approximately 60-foot ROW
Future Section: 4-lanes with landscaped median in 100-foot ROW.
Sidewalks: Sidewalks do not currently exist and will be required on both sides
Bicycle Lanes: Bicycle facilities do not currently exist, 14-foot-wide outside lanes will be required on both sides.
Status of Planned Improvements: N/A

Transit: The nearest existing transit service is provided by Triangle Transit Route 311 on NC Hwy 55, east of the site. From the closest points on the site, the distance to the 311 route is approximately 1.4 miles via Roberts Road, or 2.2 miles via Green Level West Road, or 1.5 miles via the White Oak Greenway. There is no current C-Tran service in this area. Long-range C-Tran expansion plans envision a potential future route on Green Level West Road and Green Level Church Road, approximately ½ mile north of the site at the closest point. However, such expansion is not yet funded, and no future service date has been set.

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. Agreements have previously been reached between the Town and the Wake County Public School System regarding the shared use of facilities on site and the construction by WCPSS of a trailhead parking area along Green Level Church Road in the northwest portion of the property. An approximate 20.4-acre conservation easement along White Oak Creek at the northern boundary of this property was purchased by the Town of Cary in 2004 with help from an NC Clean Water Management Trust Fund grant. The conservation easement has since been conveyed to and is currently held by the State of North Carolina, a requirement of the grant. The Town of Cary retains the right to construct a greenway trail within the conservation easement.

Open Space Plan: According to the Open Space Plan there are areas of bottomland forest and hardwood swamp along the northern property boundary and the riparian buffers that extend up into the site. Most of these areas are located within an approximate 20.4-acre Conservation Easement on the property which was purchased by the Town with the help of Clean Water Management Trust Fund grant money in 2004. The easement is currently held by the State of North Carolina.

Historic Preservation Master Plan: The site includes two old houses. Parcel #0723964723 (PIN) includes a 1,260-square-foot house built ca. 1910. This house appears dilapidated and was not included in the original 1992-94 Wake County Architectural and Historic Inventory or in subsequent inventory updates. Parcel #0733060430 (PIN), addressed as 7610 Roberts Road, includes a ca. 1901 house known as the Lassiter-Sloan House that is listed in the Wake County/Cary Architectural and Historic Inventory. This 1 ½-story, 1,928-square-foot, Triple-A cottage faces Roberts Road and appears to be in good condition. The “triple-A” cottage was a common early-twentieth-century house form in Wake County, so named for its distinctive roof with two end gables and a third, decorative gable on the front elevation. But while some of the original architectural features remain, the doors and windows of the house have been replaced and one of the interior rear chimneys removed. Two associated outbuildings are in poor condition. Based on current knowledge, the house would not qualify for a special historic designation.
Ms. Christine Hilt, a landscape architect representing Wake County Public Schools, stated the school board identified a target ring in 2006 showing the need for a high school in this area. She stated the school system and the Town in 2008 jointly developed a master plan for this 87 acre site that includes a high school and Town park. She stated they will submit a site plan in November, and she understands it will be a quasi-judicial hearing. She stated the school board conducted a public hearing at the end of May with adjacent property owners, and they will have additional public meetings. She stated the school system plans to be a good neighbor. She stated the rezoning request to R-40 Town zoning allows a school and park.

Hilt stated a traffic impact analysis has been submitted to the NC Department of Transportation, and they are having conversations with the Towns of Cary and Apex. She stated they are adjacent to Apex’s ETJ. She stated they have identified six intersections to review as part of the traffic study. She stated they will make full improvements to Green Level Church Road and Roberts Road as required by the Town. She stated they understand this proposal will impact the area, and they also realize the school is an important and much needed amenity in this community.

Ms. Betty Parker of the school system voiced their support for this project. She looks forward to working with the Town to provide trail connections and a park.

Beerman stated staff has outstanding questions about the timing of the traffic impact analysis, and staff will review the ordinance and make a procedural determination.

Weinbrecht opened the public hearing.

Mr. Krishna Yendamori questioned the placement of the school, parking lot, etc. He is concerned with the buffer proposed between the school stadium and the adjacent homes and the parking lot and adjacent homes.

A gentleman who did not submit his name to the clerk stated Green Level and Roberts Roads do not have medians, which he believes are necessary with young drivers traveling to and from this school. He stated young drivers often come to this area to practice their driving skills, and he thinks this practice might continue after the high school is built. He thinks the road should be improved and the park layout should be designed before the school is built.

Weinbrecht closed the public hearing. He mentioned to the public hearing speakers that the site plan process will provide specific information on the development features.

Yerha stated the staff report mentions some old structures on the property, including the Lassiter Sloan house. He has contacted Gary Roth of Capital Area Preservation, who states the house is worth saving. He stated this may be a site plan issue, but he stated if anyone anticipates demolishing the house, they should first contact Roth.

Adcock mentioned that the annexation creates a donut hole, because it does not include a piece of property owned by another entity.

**ACTION: Referred the rezoning to the planning and zoning board**
The alignment of future collector street between Ten Ten Road and Arthur Pierce Road is proposed to move from its current location to facilitate neighborhood connectivity between Grenadier and future Ashton Woods subdivisions.

Proposed Council Action: Refer to the planning & zoning board
Speaker: Mr. Todd Delk

REQUEST

The proposed amendment will shift a portion of the alignment of the proposed collector between Ten Ten Road and Arthur Pierce Road east of Kildaire Farm Road and change the designation from collector avenue to collector street.

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>Ryan David Jones</td>
<td>3325 Arthur Pierce Rd. Apex NC 27539-9136</td>
<td>0760286360</td>
</tr>
<tr>
<td>Jones Family Farm LLC</td>
<td>3325 Arthur Pierce Rd. Apex NC 27539-9136</td>
<td>0760386433</td>
</tr>
<tr>
<td>Kylee &amp; Grant Sainsbury</td>
<td>4029 Chaumont Dr. Apex NC 27539-9337</td>
<td>0760398014</td>
</tr>
<tr>
<td>Parvinder &amp; Kiran Ahluwalia</td>
<td>4036 Chaumont Dr. Apex NC 27539-9335</td>
<td>0760399259</td>
</tr>
<tr>
<td>Bryan L &amp; C Dawn Skelton</td>
<td>4033 Chaumont Dr. Apex NC 27539-9337</td>
<td>0760387867</td>
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<tr>
<td>Arthur R &amp; Mary E Depuew Kamm</td>
<td>4036 Chaumont Dr. Apex NC 27539-9335</td>
<td>0760480748</td>
</tr>
<tr>
<td>Alan R &amp; Shirley Williams</td>
<td>4037 Chaumont Dr. Apex NC 27539-9337</td>
<td>0760388701</td>
</tr>
<tr>
<td>John &amp; Jennifer Paige Cullen</td>
<td>4801 Millens Bay Ct. Apex NC 27539-5194</td>
<td>0760491057</td>
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</tbody>
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BACKGROUND INFORMATION

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<thead>
<tr>
<th>Applicant &amp; Agent</th>
<th>Town of Cary Engineering Department</th>
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<tbody>
<tr>
<td>Acreage</td>
<td>N/A</td>
</tr>
<tr>
<td>General Location</td>
<td>Near 4029 Chaumont Drive south to Jones Family Farm property, east to Arthur Pierce Road</td>
</tr>
<tr>
<td>Land Use Plan Designation</td>
<td>LDR</td>
</tr>
<tr>
<td>Existing Zoning District(s)</td>
<td>R-8 Conditional Use</td>
</tr>
<tr>
<td>Town Limits</td>
<td>The alignment within the Jones Family Farm property is located</td>
</tr>
</tbody>
</table>
The current alignment of the proposed collector across the Jones Family Farm property in the CTP is a generalized corridor aimed at providing connectivity for local residential neighborhoods to both Ten Ten and Arthur Pierce Roads between Kildaire Farm and Holly Springs Roads. The connection was developed on the principle of providing collectors every ¼ to ½ mile. When originally developed, the Grenadier subdivision was not constructed in the area.

At the June 13, 2013 meeting, Town Council approved the annexation and zoning of the Jones Family Farm property owned by Ashton Woods Homes (Staff Report 12-REZ-24). The developer has met with Town staff and presented an alternative alignment for the proposed collector based on a conceptual subdivision site plan. Upon review of the current alignment, the homes constructed on Chaumont Drive prevent the collector connectivity intended in the CTP. The alternative alignment moves the northern connection east to Chaumont Drive running south from near 4029 Chaumont Drive to a new collector that would run east/west through the Ashton Woods development. The new collector would run west to Arthur Pierce Road and provide the intended connectivity with the construction of the new subdivision. A short collector stub would be provided approximately mid-way on the new collector to meet the proposed alignment across the parcel to the south.

The new collector road would be approximately 1950 feet in length, compared to approximately 1100 feet with the current alignment. Based on the additional length and narrow width of the parcel, the developer proposed that the designation be changed from collector avenue to collector street to allow for residential driveways to access the street. Town staff supports the developer request to shift the alignment and change the designation of the roadway from a collector avenue to collector street.

The developer has contacted and discussed the proposal with the residents along Chaumont Drive where the local street would be redesignated as a future collector street. Based on correspondence from the developer, they have collaborated with the neighbors on concerns with the site plan design and the neighbors are not opposed to the realignment and the designation change.

**COMPREHENSIVE PLAN SUMMARY**

**A. Land Use Plan**

The Townwide Land Use Plan recommends Low Density Residential (LDR) as the future land use for the subject property. Low Density Residential is defined as detached single-family dwellings at densities ranging from one to three units per acre. Council approved the rezoning (Staff Report 12-REZ-24) of R-8-CU that includes a condition that limits the use of the +/- 65.22-acre property to a maximum gross density of 2.1 dwelling units per acre.
B. Parks, Recreation & Cultural Resources Facilities Master Plan

According to the Parks, Recreation and Cultural Resources Master Plan, a park site is proposed in the vicinity of this proposed development. In Rezoning Case 12-REZ-24, Council approved accepting a payment-in-lieu for this development with the intent to direct this funding towards the purchase of parkland when the adjacent properties are developed.

In addition, approximately 0.5 miles of the Camp Branch Greenway is proposed to pass through this development. The Camp Branch Greenway is designated as a primary corridor, and is the only greenway connection between the Middle Creek Greenway and Park in the southern part of town and the rest of the Town greenway network. At the time of development plan review the developer will be required to provide greenway easements.

A street-side trail is proposed along the collector road proposed through the site and will be required to be constructed in lieu of standard sidewalk in accordance with the LDO.

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.
5. A2 Guiding Principle: Ensure that the overall amount of development in Cary is consistent with the Town’s growth management goals.

D. Comprehensive Transportation Plan

Arthur Pierce Road is designated as a Major Thoroughfare

Existing Section: 2-lane, 22-foot roadway on approximately 60-foot right-of-way (ROW)
Future Section: 3-lane, 45-foot roadway, including center turn lane and curb & gutter, on 70-foot ROW
Sidewalks: None existing; required on both sides
Bicycle Lanes: 14-foot-wide outside lanes required
Transit: None existing or planned
Status of Planned Improvements: The Ashton Woods development proposes to improve the roadway along their frontage to the future section.

Proposed collector avenue
Existing Section: N/A
Future Section: 2-lane, 49-foot roadway with 11-foot median on 70-foot ROW (58-foot ROW with no median allowed if driveways and on-street parking are restricted)
Proposed Section: 2-lane, 35-foot roadway on 60- or 65-foot ROW (driveways allowed; on-street parking allowed with additional roadway width)
Sidewalks: Sidewalk required on both sides, street side trail required on one side for a portion
Bicycle Lanes: 4-foot bike lanes on both sides
Transit: None existing or planned
Status of Planned Improvements: The Ashton Woods development proposes construction of approximately 1,950 feet of collector street connected to both Arthur Pierce Road and Grenadier neighborhood in lieu of approximately 1,100 feet of collector avenue with no connections on either end.

E. Open Space Plan: According to the Open Space Plan there is a large area of mixed upland hardwoods along the eastern portion of the property.

F. Historic Preservation Master Plan: No documented historic resources are on the subject property.

CRITERIA FOR CONSIDERATION IN INITIATING AND REVIEWING COMPREHENSIVE PLAN AMENDMENTS
Section 3.2.2(A)(1)(a) of the Land Development Ordinance states the Director of any Town department may propose a substantive amendment to the Comprehensive Plan at any time. 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 Ashton Woods subdivision provides the opportunity to realign the proposed collector to increase short- and long-term connectivity and to minimize future property impacts to residents of Chaumont Drive. In addition, three private homes have been built on parcels along the corridor in unincorporated Wake County since the collector alignment was designated in the CTP.
- 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;  
  **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 a portion of the alignment of the proposed collector between Ten Ten Road and Arthur Pierce Road east of Kildaire Farm Road to the proposed corridor and change the designation to a collector street.

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 August 22, 2013 Town Council meeting with a public hearing to follow at the next possible Planning and Zoning Board meeting.

Weinbrecht opened the public hearing.

Mr. Jason Barron on behalf of Ashton Woods stated they fully support the request.

Weinbrecht closed the public hearing.

Robinson stated council has a policy that discourages driveway cuts on collectors, but she sees a lot of driveway cuts on this major thoroughfare. Town Engineer Todd Delk stated the policy discourages driveway cuts on collector avenues, and this is a collector street, which has less traffic than an avenue.

**ACTION:** Referred to the planning and zoning board

4. Public hearing and consideration of adoption of the following annexation ordinance:

**ANNEXATION PETITION 13-A-07**

Property Owners: 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
Zoning: Residential 40 (R-40) and Conservation Residential Overlay District
AN ORDINANCE ANNEXING LANDS CONTIGUOUS TO THE MUNICIPAL BOUNDARIES OF THE TOWN OF CARY

WHEREAS, on 3/14/2013, the Town Council has been petitioned under G.S. 160A-31 to annex the area described below:

Betty T. Williams; William L. Tunstall; Betty T. and James L. Williams; Wake County Parcel Identification #0724954144; 0724856372; including 45.23 acres, plus 1.34 acres of adjacent right-of-way; which are contiguous to the existing municipal limits of the Town of Cary; and

WHEREAS, on 7/25/2013, the Town Clerk of the Town of Cary certified the sufficiency of said Petition, the same being duly made after investigation; and

WHEREAS, on 7/25/2013, 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 8/22/2013 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 8/22/2013 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 #0724954144; 0724856372

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. No one spoke, and he closed the hearing.

**ACTION:**
Motion: Frantz moved to approve 13-A-07.
Second: Robinson
Vote: Unanimous

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**F. QUASI-JUDICIAL PUBLIC HEARINGS**

1. **SUBDIVISION AND SITE PLAN 13-SP-021 (Verizon Wireless)**
   Location: 2000 Walnut Street (Lowes Home Improvement)
   Proposal: 24% parking reduction for Lowes Home Improvement parcel to allow development of a 5,520-square-foot retail store on new outparcel
   Proposed Council Action: Council may take action
   Speaker: Mr. Kevin Hales

**REQUEST**
Freeland and Kauffman, Inc., acting as agent for the property owner, Lowe’s Home Centers, Inc., and on behalf of the developer, Concord Properties, LLC, has requested approval of a subdivision and site plan to create a 1.1-acre outparcel at the intersection of Walnut and Meeting Streets. In addition to the subdivision, the proposal includes development of a 5,529-square-foot commercial building. In order to accommodate the new outparcel and commercial development, the applicant has requested Town Council consideration of a 25 percent reduction to the number of parking spaces required for the existing Lowe's store.

**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>Lowes Home Centers, Inc.</td>
<td>0773602677</td>
<td>0053394</td>
<td>13.19</td>
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<tr>
<td>PO Box 1111</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Wilkesboro, NC 28659</td>
<td></td>
<td></td>
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<tr>
<td><strong>Total Area</strong></td>
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**BACKGROUND INFORMATION**

<table>
<thead>
<tr>
<th>Applicant’s Agent</th>
<th>Charles Garcia</th>
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<tbody>
<tr>
<td></td>
<td>Freeland and Kauffman, Inc.</td>
</tr>
<tr>
<td></td>
<td>209 West Stone Avenue</td>
</tr>
<tr>
<td></td>
<td>Greenville, SC 29609</td>
</tr>
<tr>
<td></td>
<td>(864) 672-3426</td>
</tr>
<tr>
<td></td>
<td><a href="mailto:cgarcia@fk-inc.com">cgarcia@fk-inc.com</a></td>
</tr>
<tr>
<td>General Location</td>
<td>2000 Walnut Street, Lowes Home Improvement parking lot</td>
</tr>
<tr>
<td>Land Use Plan Designation</td>
<td>Commercial (COM)</td>
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<tr>
<td>Zoning Districts</td>
<td>General Commercial – Conditional Use (GC-CU)</td>
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<tr>
<td>Within Town Limits</td>
<td>Yes</td>
</tr>
<tr>
<td>Staff Contact</td>
<td>Kevin A. Hales, Senior Planner</td>
</tr>
</tbody>
</table>

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LIST OF EXHIBITS
The following documents were entered into the record for this hearing; the planning department maintains them according to the records retention and disposition schedule:
Exhibit A, 13-SP-021 Application (3 pages)
Exhibit B, 13-SP-021 Plan Set (26 pages)
Exhibit C, Parking Study (3 pages)

PROJECT DESCRIPTION/SUMMARY OF REQUEST
The applicant has proposed to subdivide a 1.1-acre outparcel from the existing 13.19-acre parcel that would be located at the intersection of Meeting and Walnut Streets. The proposed development on the outparcel would consist of a 5,520-square-foot commercial building. In order to create the outparcel and construct the proposed building, the applicant has also requested Town Council consideration of a parking reduction of 25% on the remaining Lowe's Home Improvement parcel.

SITE CHARACTERISTICS
Streams: There are no stream buffers that impact development of the property.
Floodplain: There is no floodplain or flood hazard area impacting development of the property.
Wetlands: There are no wetlands impacting development of the property.
Topography: There is little elevation change across the portion of the site being proposed for development.
Surrounding Land Uses:
North – McDonalds (across Meeting Street)
South – Centrum shopping center (across Dillard Drive)
East – Crossroads Shopping Center (across Walnut Street)
West – Centrum Station (across Meeting Street)

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 January 9, 2013, regarding the development plan.
Notification: The Planning Department mailed notification of the public hearing on the subdivision and site plan to property owners within 400 feet of the site on August 7, 2013. Notification consistent with North Carolina General Statutes was published in the Cary News both on August 7 and August 14, 2013.
Property Posting: Notice of the public hearing was posted on the property on August 9, 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 for development plans under consideration for approval. Instead, the applicant is responsible for providing material, substantial, and competent testimony at the hearing to demonstrate that the project would not generate congestion or negative impacts that are not mitigated by the proposed plan. No information regarding the potential traffic impacts of the proposed development were provided for staff review prior to the preparation of this report. Staff offers the following data regarding current conditions for council’s information:
Signalized Intersections: Existing Level of Service (LOS)
- Walnut Street at Meeting Street – LOS C in morning peak-hour, LOS D in evening peak-hour
- Dillard Drive at Meeting Street – LOS A in morning peak-hour, LOS C in evening peak-hour

Average Daily Traffic Volumes (all volumes noted are from NCDOT and counted in 2011)
- Walnut Street – 29,000 vehicles/day between Meeting Street and Dillard Drive
- Walnut Street – 40,000 vehicles/day between northbound US1 ramps and Piney Plains Road
- Dillard Drive – 11,000 vehicles/day just west of Walnut Street

Comprehensive Transportation Plan (CTP) Improvements
The Lowe’s property has approximately 1,000 feet of frontage along Walnut Street and approximately 700 feet of frontage along Dillard Drive. The proposed 1.1-acre outparcel would have approximately 224 feet of frontage along Walnut Street and no frontage along Dillard Drive.

Walnut Street is designated in the CTP as a Thoroughfare.
**Existing Section:** 6-lane, median-divided roadway within approximately 126 feet of variable-width right-of-way
**Required Section:** 6-lane, median-divided roadway within 124 feet of right-of-way
**Sidewalks:** Existing on both sides
**Bicycle Lanes:** Existing 14-foot-wide outside lanes
**Transit:** C-Tran routes 1 and 2 utilize this corridor.

Dillard Drive is designated in the CTP as a Thoroughfare.
**Existing Section:** 5-lane roadway within approximately 110 feet of variable-width right-of-way
**Required Section:** 5-lane roadway within 91 feet of right-of-way
**Sidewalks:** Existing on both sides
**Bicycle Lanes:** Existing 14-foot-wide outside lanes
**Transit:** C-Tran routes 1 and 2 utilize this corridor.

Buffers and Streetscapes: Section 7.2.4 of the LDO establishes a requirement for a 30-foot-wide streetscape for non-residential development located along thoroughfares or collectors. A 15-foot-wide streetscape is required for non-residential development located on local or private streets. The proposed plan is consistent with these requirements, providing a 30-foot-wide streetscape along Walnut Street and a 15-foot-wide streetscape along Meeting Street, which is a private street.

Architectural: The proposed Verizon Wireless facility would be 5,520 square feet in area. The structure would be 1-story with a flat roof. The predominant material used in the building façade would be a reddish brick with black canvas awnings used as accents above the storefront system. Architectural lighting would be provided on the building façade to accent the pilasters repeated across the façades.

Parking: Section 7.8.2 of the LDO establishes parking requirements for any uses located in the Town. Retail Store uses require one parking space per 250 square feet of gross floor area of the building. The latest approved development plan for Lowe’s requires 457 parking spaces for the site. This number represents a 10 percent reduction in the number of parking spaces required by the LDO. This reduction was approved administratively, in part, to accommodate outdoor sales and display which occurs seasonally in portions of the parking lot. The total parking count on site is approximately 508 spaces, exceeding the minimum amount of parking required by the approved plan.

The proposed outparcel and retail building would be located in an existing corner of the Lowe’s parking lot and would eliminate some existing spaces. Additionally, the proposed commercial building would increase the parking requirement commensurate with the size of the proposed
building. Therefore, the applicant has requested that the required parking for Lowe’s be further reduced from 457 spaces to 381 spaces, representing a 25 percent reduction to the current LDO requirements. Section 7.8.2(H) allows the Town Council to grant a reduction in the required parking up to 25 percent upon finding that the reduced number of spaces "will be sufficient to satisfy the demand for parking expected for the use, based on the nature of the use, the number of trips generated, the times of day when the use generates the most trips, and the extent to which other establishments are located on the same property and may reduce the number of vehicle trips required between different establishments."

The proposed outparcel would contain 31 parking spaces. A 5,520-square-foot retail store would require 22 parking spaces. This represents a 41 percent increase in the parking on the Verizon Wireless site. The proposed layout for the outparcel utilizes the access and circulation established in the Lowe’s parking lot. Both the Lowe’s and the Verizon site would provide a total of 412 parking spaces. This represents a 22 percent reduction in the required parking for the combined retail tracts.

The developer provided a parking study performed by Ramey Kemp & Associates (Exhibit C) in support of the parking reduction request. The report analyzed the number of spaces occupied during 1-hour time periods compared to the total number of spaces located on the Lowe’s site. The report indicates that approximately 291 parking spaces are occupied during the store’s peak operational period (Saturday afternoon). In addition, 14 spaces were occupied by non-vehicular obstructions (outdoor storage/display) for a total utilization of approximately 305 parking spaces during peak operations. This represents approximately 60 percent of the available parking (508 spaces) on the site. Compared to the required parking on the site (457 spaces), the utilization percentage would climb to 67 percent.

Council is being asked to consider a reduction from 457 parking spaces to 381 required parking spaces for the Lowe’s site. The parking reduction, if approved, would result in a 22% reduction in the required amount of parking on the Lowe’s site. This does not take into account the 31 additional spaces that would be located on the Verizon outparcel.

### 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

1. 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 above, the proposed development plan is not in compliance with the parking requirements of the LDO. The applicant has requested approval of a Minor Modification to reduce the number of parking spaces required on the Lowe’s parcel by 25%. Council must find that the requested modification: (1) advances the goals and purposes of the LDO; and (2) either results in less visual impact or more effective environmental or open space preservation, or relieves practical difficulties in developing the site. In addition, when considering a reduction in required parking, council must consider whether the reduced parking requirement will be sufficient to satisfy the parking demands of the proposed use.

Once council has made a decision on the 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.

   In addition, there is specific direction given to council in consideration of a parking reduction in Section 7.8.2(H)(1) of the LDO. It reads as follows:

   As part of its review and approval of a site plan for a development, the Town Council may allow a reduction of up to twenty-five (25) percent in the number of designated parking spaces upon finding that the such reduced number will be sufficient to satisfy the demand.
for parking expected for the use, based on the nature of the use, the number of trips generated, the times of day when the use generates the most trips, and the extent to which other establishments are located on the same property and may reduce the number of vehicle trips required between different establishments.

1. Request that the Town Council reduce the number of required parking spaces for Lowe’s Home Improvement from 457 spaces (a previously approved 10% reduction) to 381 spaces (a 25% reduction from the LDO requirement).

   (1) Does the modification advance the goals and purposes of this Ordinance?
   Section 7.8.2(A)(1) requires that all uses or establishments within the Town provide sufficient off-street parking for all residents, employees, customers, or visitors that may spend time at the establishment. The LDO also establishes that the rate specified for commercial uses is to be considered, in addition to the minimum, a maximum number of spaces in an effort to reduce the amount of unused surface parking and impervious surface area. The applicant’s parking study supports their conclusion that the reduced parking requirement would still be sufficient to satisfy the current demands for parking on the Lowe’s site. In addition, the new retail store will generate additional parking demand that would potentially reduce the amount of unused parking spaces on 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 requested Minor Modification would result in more effective use of existing impervious surface area through a potential reduction in the amount of unused parking spaces. The integration of the new outparcel into the existing Lowe’s parking lot would reduce the amount of land disturbance and impervious surface area that would otherwise be required for a traditionally designed outparcel. By eliminating parking and travel aisles on the Walnut Street and Meeting Street sides of the retail building, more pervious area would be preserved on the property.
   TEST SATISFIED? __ YES ___ NO

   (3) Does the modification result in sufficient parking spaces to satisfy the demand expected for the existing use based on the nature of the use, on the number of trips generated, on the times of day when the use generates the most trips, and on the extent to which other establishments are located on the same property and may reduce the number of vehicular trips required between uses?
   The applicant’s traffic engineer prepared a parking study for the Lowe’s site that indicated a peak usage of approximately 305 parking spaces during the study period. This represents approximately 67 percent occupancy for the current number of parking spaces required on the site. The requested reduction would increase the utilization of the new parking requirement to approximately 80 percent. That utilization does not consider the additional 31 parking spaces on the new outparcel, nine of which are in excess of the required parking for the Verizon building.
   TEST SATISFIED? __ YES ___ NO

SUGGESTED MOTIONS FOR MINOR MODIFICATION REQUEST

MOTION TO APPROVE MINOR MODIFICATION REQUEST:
For the reasons discussed, I move that we APPROVE the minor modification request made by the applicant as the request meets all the approval criteria of Section 3.19.1 and Section 7.8.2 of the LDO.
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 DENY MINOR MODIFICATION REQUEST:
For the reasons discussed, I move that we DENY the minor modification request made by the applicant as the request does not meet all the approval criteria of Section 3.19.1 and/or 7.8.2 of the LDO.

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. Streetscapes and other landscaping would be provided as required by the LDO. The property is located within a Regional Mixed Use Center and no residential developments are located in the immediate vicinity of the project to be potentially affected by the proposed retail use.

   TEST SATISFIED? __ YES __ NO

3. Does the plan provide harmony and unity with the development of nearby properties?
   The proposed development is located in the Crossroads Regional Mixed Use Center and is surrounded by other retail and restaurant uses. The building would be similar in scale and character to other outparcels located along this stretch of Walnut Street.

   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 share parking lot and travel aisle space with the existing Lowe’s site. No new intersections or driveways would be created, retaining the existing access and traffic patterns internal to the site. Additional sidewalk would be provided to bring pedestrians safely into the site from the Walnut Street Corridor, improving pedestrian safety.

   TEST SATISFIED? __ YES __ NO

5. Does the plan provide safe ingress and egress for emergency services to the site?
   The proposed development plan would change neither the ingress to nor egress from the site. The new outparcel would be located adjacent to and share access with the Lowe’s parking lot.

   TEST SATISFIED? __ YES __ NO

6. Does the plan provide mitigation for traffic congestion impacts reasonably expected to be generated by the project?
   The applicant did not provide any information to address this criterion prior to the preparation of this staff report. Staff has provided general information in regards to the signal functionality and trip volumes in the surrounding area in the body of this report.

   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 subdivision and site plan with conditions as stated below, as it meets all of the approval criteria set of Section 3.9.2(l).

This approval is conditioned upon the following:
1. The applicant must satisfactorily address any remaining Development Review Committee comments on the master plan set submitted for signature.
2. [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 subdivision and site plan, as it does not meet all of the approval criteria set forth in Section 3.9.2(l).  

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The clerk administered oaths to speakers. These oaths are maintained in the town clerk’s office according to the records retention and disposition schedule.

**Begin verbatim transcript**

Weinbrecht: That takes us to item F.1. That’s a Quasi-Judicial hearing, Subdivision and Site plan 13-SP-021, Verizon Wireless. At this time we are going to say goodbye to our Town attorney and hello to Attorney John Silverstein, and invite him to the table. And as he comes to the table I will continue. As I said, this is a Quasi-Judicial hearing. An overview of the hearing procedures and detailed rules are attached to the printed agenda. Speakers who want to speak during this public hearing must be administered an oath by the Town Clerk. We are going to pause just a moment so that if you plan to speak and you have not been given an oath, at this time, go to the Town Clerk at this time and receive that oath. While that is going on, I am going to go from my right to left and ask council members if they have had any site visits, ex-parte communications, financial relationships, special knowledge, or close relationship to an affected person to disclose.

Adcock: no sir

Robinson: no

Smith: no

Weinbrecht: I can say that I drive by that several times a day, so I have seen the sign, I know exactly where it is. I did receive an email, and as soon as I saw the first sentence of it I closed it and did not read it, but I know it was pertaining to that.

Frantz: I was at Lowe’s this weekend, and I have a Verizon phone.

Bush: I received the same email and did not read it.

Yerha: I received the same email also and did not read it, and I have an AT&T.

Weinbrecht: Everyone appears to have been sworn in, so I am going to open the Quasi-Judicial hearing and recognize Mr. Hales of our staff who is going to introduce this item. Mr. Hales.

Hales: Thank you, and good evening council. You mentioned the next item on tonight’s agenda is a request for approval of a subdivision and development plan for a new commercial outparcel at the existing Lowe’s Home Improvement Center located on Walnut Street. The current site is about 13 acres, and the proposed subdivision is about a 1.1 acre outparcel. The property is located in the southwestern quadrant of the intersection of Walnut and Meeting Streets. Walnut Street and Dillard Drive are both identified as thoroughfares on the Town’s Comprehensive Transportation Plan. According to the plans, both of those roads are consistent with the current CTP requirements, and no additional road widening or payment of liens are required as far as this development. The parcel is surrounded by other commercial retail/restaurant users. McDonalds is a directly to the north as well as HHGregg, which took the old Circuit City. Centrum at Crossroads is across Dillard Drive to the south of Crossroads -- obviously across Walnut Street to the east. Both Walnut Street and Dillard Drive are served by regional transit services, including the Triangle Transit and C-Tran. Town of Cary Parks, Recreation and Cultural Resources Facilities Master Plan does not indicate any improvements necessary on this parcel as part of this development plan; however, just to update the council, there is a proposed street side trail along the southern side of Dillard Drive, which would be across the Centrum and Crossroads frontage, as well as on the southern side of Piney Plains Road, which is a couple parcels away to the north. Current land use designations of the property is commercial. As you can see here, it is surrounded by other commercial uses with a few office/institutional uses in the area. It is located within the Crossroads mixed use overlay district, which is identified as a regional activity center in...
the comprehensive plan. Current zoning on the property is general commercial conditional use. This dates back to the early 90s, and the conditions on the property have some minor use restrictions in regards to no more than one restaurant, which would be McDonald’s. There is some signage restrictions and some conditions in there that relate to the streetscape along Walnut Street. The property is currently developed as a big box retail store -- Lowe’s Home Improvement Center. Parking is located to the north of the building towards the intersection of Walnut and Meeting Street. Currently, there’s approximately 508 parking spaces on the site. The western portion of the parking lot for Lowe’s is often used for seasonal outdoor display and sales. We recently changed the ordinance a year and a half ago or so to allow between March and June outdoor display and sales in parking lots. That is going to factor in heavily to the parking reduction, which we will talk about a little bit later. In relation to that there is 10% reduction in the requirement for Lowe’s. So while there are 508 parking spaces actually on the site, only 457 of those are considered required. The areas that they are proposing to impact, like I say, is at the intersection of Walnut Street and Meeting Street. Approximately 60 parking spaces would be affected; part of that is just saw cutting the asphalt and repaving it and moving some landscape islands. Approximately half of those 60 parking spaces would be replaced. The Verizon site includes 31 parking spaces on the proposed outparcel. This is the proposed layout. The building is located between the revised parking lot and the intersection. As I said before, it is about a 1.1 acre outparcel. The property lines they are proposing are shown here in blue. The store itself is approximately 5,500 square feet. They will be adding an additional sidewalk along the southern side of Meeting Street to increase pedestrian connectivity within the area. McDonald’s on the opposite side of Meeting Street just did the same thing. Dumpster enclosure will be located on the Meeting Street side. Giving the orientation of this new outparcel toward the intersection, there is visibility really on all the sides of the building. The least visually intrusive side we can come up with is on the farther end to the Meeting Street side. The architectural rendering of the property is basically a one story flat roof with a parapet brick building. Accent would be limited to the black canvas awnings and some accent lighting along the pilasters. All three of the facades, the one facing the parking lot, the one facing to the south, and the one facing Walnut Street, will have store frontage, as you can see here. The facade you can’t really see -- there’s a service façade, and that is the one that is facing diagonally away from Walnut Street toward Meeting Street. It will have all the required architectural treatment -- just won’t have windows.

Hales: The reason we are here tonight, the applicant has requested as part of the site plan a 25% reduction to the parking requirement for Lowe’s. I will take a few minutes to go into this in a little more details, because the staff report -- it was very difficult to explain in writing. As I mentioned before, there are 508 parking spaces on the site, of those only 457 of those are considered required by the current site plan, and that does represent a 10% reduction. With the development of the site, the building and its associated changes will impact the parking obviously, and that does -- in addition to removing some of the parking -- approximately 30 or so parking spaces, it also increases the parking demand on the site. You end up with two retail sites. The new Verizon location with the 5,500 square foot building would require 21 parking spaces; however, they’re providing 31 just because of the way the property lines got drawn. That is 141% parked. The new Lowe’s site actually ends up with 432 spaces, but a requirement of only 381. The 381 spaces represents 75% of what is required by the ordinance based on their square footage and uses. That is the technical request -- a 25% in the actual parking requirement. If you take the amount of parking spaces that will be provided, take out the 51 parking spaces that they were allotted to use for outdoor storage, which is staying the same, it represents overall between the two sites a 22% parking reduction in the requirement. Outside of March to June when the outdoor display and sales isn’t really permitted, it only represents a 12% parking reduction in the two together. The majority of the year it is really only a 12% reduction, but from a technical standpoint it is a 25% reduction in the Lowe’s parcel alone. Hopefully that didn’t confuse anybody, but if so, we’ll get it fixed. That concludes staff’s presentation at the moment. The applicant will be here to present their case. Following that, I have slides summarizing the motions. There is only the one minor modification request, so it’s a fairly straightforward worksheet this time. Thank you.
Weinbrecht: Thank you. We’ll call on the applicant’s attorney to present the arguments and evidence in support of the application by addressing the applicable approval criteria.

Mr. Mayor, members of the council, I am John Cooke. I represent Lowe’s Home Centers. My address is 150 Fayetteville Street, Raleigh, NC, 27601. I am going to hand to Ms. Rowland what has already been marked as Exhibits D through I, and I will just tell you quickly what they are. They are the resumes of the people who are testifying. I am not sworn in to testify. I am just trying to organize the information for you along with an illustrative exhibit that tries to organize who is going to speak on which these items that’s before you. I have about three or four things I want to mention to you, and they are principally just to try to organize and put this into context. Mr. Hales did a very nice job with all the details and facts, and I am not going to get into that. I just want to explain to you that some time ago Lowe’s Home Centers entered into a contract with a company called Concord Properties, and the contract was that they would sell this portion -- this proposed site plan -- subject to the conditions that Concord Properties get whatever approvals they need from the Town to build what they want to build on that property. Lowe’s hasn’t been working on this project in that sense; they’ve carried the ball here, and they have been looking at the staff’s files and have been working on this since about December 2012 I think. Once they answered all the staff’s concerns about the proposed site plan, then it ripened the issue for the question of how many parking spaces should there be on the Lowe’s site if the site plan is approved. My principal focus here is Lowe’s Home Centers, which right now owns both tracts, but the contract contemplates that they would be a separate tract and separate site plan. That is why Lowe’s is here, and really this hearing did not come to Lowe’s attention until about two weeks ago, and I got a call about a week ago saying we have a hearing, and we need somebody to represent us, because under your policy rules Lowe’s cannot represent itself; it has to retain counsel and a Quasi-Judicial proceeding. That is why we’re here tonight.

(Note: Exhibits D-I referenced above are on file in the town clerk’s office according to the Records Retention and Disposition Schedule.)

Cooke: The second thing I would like to talk to you about is that the minor modification. The first criteria is worded as modifications in that guideline that you got. I just want to mention that there really is only one modification that is being sought for the Lowe’s site plan, and that is regarding parking spaces, which under your LDO you’re able to grant this modification upon showing a certain information and evidence. The staff report does a very nice job in explaining that. Attached to the staff report is a parking study that we will have the person who prepared that testify about. Lowe’s position in this matter is very simple, and that is we view this as a compatible infill. The Verizon store is located across Walnut Street; they would move to this site. It enhances pedestrian safety, that is what your staff report says, and it eliminates unnecessary parking spaces, which is just dead use, which better utilizes this particular block of profit. Hopefully you have received or will receive Exhibit A, which is just illustrative, but that basically took the guidelines that were attached to your agenda and said here are the people that are going to speak about each one of these criteria and what the evidence is going to be, and I won’t go through that. But I will say to you that our plan is just to come up here one witness at a time to testify about everything that they need to testify to and sit down, so that we don’t do this in a piecemeal fashion. We are going to try to do this as efficiently as we can. In summary, Mr. Irvin is the Concord Properties witness; he is the officer; he can testify about this. But everybody else is a Professional Engineer licensed in the state of North Carolina that has experience in the fields that they are going to be testifying to. The witness order is going to be Mr. Stephenson is going to be first, he is the traffic engineer, and he is the one who sealed the traffic of the parking study report, and he will speak to those various items that deal with transportation and traffic. Next will be Mr. Rollins. Mr. Rollins is in-house engineer for Lowe’s; his purpose will be to testify about Lowe’s experience regarding needing parking and also to testify as to the property owner’s position regarding these requests. Mr. Irvin is the officer in Concord Properties. He is simply going to testify that they are seeking this site plan, and they have tried to comply with the LDO. And then finally, Mr. Garcia, who is the civil engineer that drew the plan that is part of the plan.
that's the site plan before you tonight. And that is the order of our testament. Thank you very much.

Good evening. My name is Rynal Stephenson, I am the traffic engineer with Ramey Kemp & Associates, 5808 Barrington Place, Raleigh, NC. I have a Bachelor’s of Science degree and Master’s of Civil Engineering degree from North Carolina State, and I am a registered Professional Engineer in the state of North Carolina. My profession is I work as a traffic engineer doing traffic engineering studies, transportation planning studies, parking studies for Ramey Kemp & Associates, and I have been doing that for a little over 12 years now. My profession is included. I believe it’s Exhibit G. That resume was prepared by me and our firm and is true and accurate representation of my working experience. We prepared a parking study for this existing Lowe’s site that you have seen, and the purpose of that study was to look at and determine the number of parking spaces that are utilized at that facility during its peak time. We went out and did this inventory study on a typical weekday as well as a Saturday, and we felt like Saturday would be the highest use time. We did this in April, and we did it on days where the weather was really good. We thought there would be a lot of folks there to visit the outdoor section. We did it on those days to try to capture the true worse time. As you heard, the facility currently has over 500 spaces, and the peak parking space occupancy that we determined in our study was 291 spaces, and that was occupied parking spaces. That happened on a Saturday afternoon. If we have a 25% reduction, it would go down to 381 spaces required by the Town for the Lowe’s. Given the 291 spaces that were actually occupied, it would leave about 90 spaces remaining that were not occupied by vehicles. I know some of those spaces were occupied by seasonal sales and outdoor sales, but there is 90 additional that could be utilized by vehicles. The Verizon store as you heard would provide an additional 31 spaces, which is also as you heard is more than enough to accommodate its demands. We really have a total of 421 parking spaces between Lowe’s and Verizon. As was indicated earlier, that is about a 22% reduction. There is adequate parking here for this item. In addition to that, the Verizon store is a relatively low traffic generator, and on its own is not expected to generate a lot of trips that would really impact the roadways. As is indicated in the staff report, the surrounding roadways are built out based on the comprehensive plan, and they generally are operating pretty well. This additional traffic that would be generated by the Verizon store would not be expected to have an impact on the surrounding roadways. Based on the parking study that we've looked at, it is my opinion that this proposed plan would provide for mitigation for traffic congestion, impacts reasonably expected to be generated by the Verizon store. Thank you.

Mr. Mayor, council members, good evening. My name is Rip Rollins. I am Lowe’s in-house attorney, 1605 Curtis Bridge Road, Wilksboro, NC. My resume has also been provided in the exhibits. I am here representing Lowe’s. I reviewed the parking study prepared by Ramey Kemp & Associates. That report and the findings are consistent with what we have seen at this location and other locations throughout the country. Generally, the need for parking is much less than ordinances and what is often installed. Lowe’s does not want to create a negative impact or take away parking spaces that customer demands would require so that customers are not serviced by the store. We have looked at it, and at the same time we don’t want an excess of parking. We can better use this area for infill developments, such as the Verizon. And this is something that we have done throughout the country. The LDO has offered opportunity for the parking reduction. We feel like those criteria are met. Of course, none of this is possible without council’s support, and Lowe’s in general is supporting the project. Thank you.

Hello, I am Jeff Irvin. I am with Concord Property, and I am a partner in the firm. We do retail development pretty much throughout the eastern United States. Our interest is developing the plan as shown on behalf of Verizon Wireless. The reason they are interested in doing it and we are excited about working with the Town of Cary is because they feel it will enhance the customer experience at this location, and also it is going to really increase the site awareness for them in this location. That is pretty much all I have to say. We do and will do and have worked with the city and more importantly the staff pretty much as they have requested. But on a personal note it is important for me to tell you folks sitting up here this has been a fairly rigorous process. It has

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been a little while in the making. Your staff throughout this entire process has been extraordinarily informative and responsive and courteous. As a developer who runs into all types, I just wanted to let you guys and ladies know that it is greatly appreciated. Thank you. Charles Garcia with Freeman and Kauffman will answer all the technical questions.

Hello, Charles Garcia with Freeman and Kauffman, Civil Engineering firm out of Greenville, South Carolina. Graduate of Clemson University. You have my resume there. I am a PE in various states, work all over the country. Specifically to this project, I am registered in North Carolina, and I have been with Freeman and Kauffman for 18 years doing similar things, not in the same role, but I have a good bit of experience. We attended a pre-application meeting with staff and as I said earlier, I work in all kinds of places throughout the country, and this is not an easy process by any stretch, but it is laid out and staff has been great. It has been lengthy but it has been fair. And that is all we ask for. Through the various submittals with staff -- by the way, I like the electronic filing -- that is great -- we have worked through all of the issues. The plan now meets the various aspects of the Land Development Ordinance, specifically excluding this issue in front of us tonight. We have made our resubmittal just this past week, which addresses two or three comments including adding an approval signature block on one of the plans, but we believe we are there. As you know, the site is within a commercial district; there is no residential around. We do not have any adverse impacts in that regard. We maintain and/or enhance both the vehicular and pedestrian access in the area and maintain safe circulation for pedestrians and vehicles in that area. The staff report is accurate. We agree with the fact that we believe we meet the Land Development Ordinance and look forward to moving forward with this. Appreciate it.

Weinbrecht: Anyone else to speak in support of the application? I think that might be all of the witnesses. I’ll let Mr. Cooke come back.

Cook: Mr. Mayor, all I want to do is formerly move into evidence Exhibits D through I that have been testified to. Thank you.

Weinbrecht: At this time I would invite anyone to cross examine the witnesses who testified in support of the request. I guess that would be the Town.

Assistant Town Attorney Lisa Glover: Good evening. The Town -- we don’t feel the need to cross examine anybody, and we do not have any further comments on the matter at this time.

Weinbrecht: Thank you. At this time I would invite those who would wish to speak in opposition to the request. Anyone? I see no one. Any additional information from Town staff or the Town attorney? Now I will ask the representative for the Town, who is currently seated in the Town Attorney seat if everything is in order.

Silverstein: I believe it is Mr. Mayor.

Weinbrecht: Before I close the public hearing I will ask either party if they believe any new evidence warrants a continuance of the hearing or any reason to continue this hearing. No one. Moving forward. I will 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 their comments.

Smith: I have one question, more related to traffic, and I do not know if it is to you or to engineering. When we create the criteria for parking spaces -- we heard about the busy day on Saturday -- but we did not hear anything about the busy days during the Christmas holidays. When you look in aggregate to the whole area over there, there is a chronic parking problem. I guess the question I have is it just understood and a given that you cannot plan for a whole year for a limited seasonal activity. I guess I was a little surprised there was not any push back to the fact that the area gets so congested during the season, especially the holiday season.
Jerry Jensen, Town Engineering Department: I'll take a stab at it. They did a sample size of two days in April. Statistically, I'm not sure that's a big sample size as you eluded to. There are other seasons of the year that may be more peaking. I think that question may be more appropriate for them as testimony, is why did they feel that was the peak day during the year that represents their peak parking area time of the year.

Smith: It is funny to ask that question, but I guess the bigger surprise is that as a staff trying to protect the community over there, why aren't we asking that question?

Hales: Our parking standards are not written to park Christmas Eve.

Smith: I understand, that is the point I was trying to make. We do not write them that way, and there is no way that we factor that in.

Hales: Correct. The intent of some of our parking requirements are actually to reduce unused parking, and if you have parked to the maximum day you end up with unused parking for the majority of the year.

Smith: You understand the concern of a death of a thousand cuts; it's a zoo over there.

Weinbrecht: The additional parking out of season also helps with the holiday parking. Is that right?

Hales: Correct. There is an additional 51 spaces that do not appear in the required number. They are only allowed to use March through June.

Smith: A fair point. I am trying to understand our guidelines and understand why that was not pushed a little bit.

Hales: We actually just reduced our parking standards. It used to be one per 200; now it is one per 250. So it went from five per thousand to four per thousand, because we had so much unused parking at these large shopping centers.

Frantz: I think that one of the overhead images we saw in the presentation really spoke to how much the site can be over parked. You asked a fair question, Jack, you really did, but I do not think there is a lot of people going to Lowe's to buy mulch and trees and plants and things on Christmas. There might be more people going to Verizon to buy a phone for Christmas, or people may be buying a washer and dryer or something.

Smith: I was just trying to get an understanding of the criteria, because if you go around and you look at certain places to park -- and I was just at a place the other day and for the life of me I cannot remember it right now, I wish I could -- but the parking stalls were so narrow that there is no normal car that can fit in. We have not quite reached the smart car stage where everybody has these little mini cars. So what is happening is that you are creating smaller lots, less parking, and you create a lot of problems with parking where all it takes is one to take a third of another stall -- and you know the drill; we have all experienced it.

Robinson: But the sizes of our spots have not changed.

Hales: Correct. Standard parking spaces is 9 x 18; it has not changed.

Smith: I just wanted to understand our rational. I get the message.

Hales: Lowe’s is also one of the instigators of us going back and looking at our parking standards. Lowe’s functions a little differently. It’s a large warehouse store. Their racking system -- they have wider aisles. It is not your traditional Walmart where you have very tight
aisles jammed packed with goods. On this particular site that might also play into some of their needs or their perceived needs. More so than on another site in the Crossroads where it is more traditional retail.

Frantz: One question I have is – is this Verizon site replacing the existing Verizon site across the street?

Hales: I will defer to applicant, but that is my understanding.

Weinbrecht: That's what they said.

Frantz: At the end of the day really, how much extra traffic is being generated, because it is already there across the street.

Smith: That’s fair, and then the argument is it's safer over there. I understand the point.

Weinbrecht: I do have a traffic question. It is probably not the fault of anybody, but it’s the existing design over there. Like I said, I am over there a lot because I live about a mile from there, and I am going to be waiving my hands. But if you are coming out of the McDonald’s and make a left onto Meeting, or the HHGregg making a left -- this is in a busy time -- and you have somebody across the way, and the roads are like this -- not lined up – one’s here, one’s here and one’s there -- and they are making a right, and you have people coming both ways -- that is a hazard. When you add more to that mix, that concerns me. But again, I do not think that is the fault or responsibility -- that was the original design of this area.

Hales: Correct, and those plans have some of those curve lines.

Weinbrecht: It’s a concern I have with that area.

Smith: With the new McDonald’s you have less trees so you can now see the traffic coming on.

Robinson: I would just say that I have felt for a long time that the Town has over parked its commercial buildings, and I am really glad to see this. I wish more developments would take a look at how many spots are really used and make wise use of our commercial places rather than going and taking new land to make into a commercial place with a very large parking lot. I am actually very excited about this. I am glad to see it, and I hope that it is the beginning of more of these to come. I actually shop on black Friday, and I observe the parking spots, and Crossroads has an excessive amount of parking spots. If they don’t get used on black Friday, they don’t get used. With that, unless somebody else wants to say something, I would go ahead and make a motion.

Weinbrecht: I do have another question. You mentioned trees, Jack, and there is a big tree on that site, and we are already getting complaints about the other side of Meeting Street. Are we going to lose that tree too?

Hales: There are two big trees on the site. There is one at the intersection in this area right here underneath this text. That tree is being saved; there is a tree protection fence going up around it. Some of the reasons the sidewalk design is the way it is in relation that tree and trying to work around existing pedestals. There is a second large tree that sits right here. That tree is in excess of 30 inches; however, it was evaluated by a forester, and I have been out there because I went and posted the sign. It is in decline, and the tree is not in the best of health. It has tipped but died back. There are large structural branches in the ground that are broken. Staff looked at that when we looked at this plan and made the determination that given it is in a regional activity center, we’d be better served -- given the nearness of this plantable island -- we would be better served by improving the pedestrian connectivity now that we have the opportunity and planting
additional trees to hopefully have large trees in the future. There are two trees, one of them is coming out, one of them is not. It is not considered a champion due to the health.

Weinbrecht: The sick one is coming out. Okay, got you. Do you need Mr. Hales to walk you through the motion?

Bush: I know this is not a site review. Will the site plan review come to staff, or will it come to council for this particular parcel?

Hales: This is the site plan.

Bush: So, if we have questions, for instance about the dumpster and its location and what screening might be -- because it is right next -- that is a sidewalk, right?

Hales: Correct

Bush: That dumpster is right up on that sidewalk. No screening, no

Hales: The enclosure is next to the sidewalk. We require an eight foot masonry wall, and then there is landscape screening of the masonry wall. So, we'll have screening of the screening -- solid metal gates. I just need to include that.

Robinson: As long as they keep their door closed to their dumpster, because there is nothing worse than pulling right into a retail spot and seeing the dumpster doors wide open. It's like, hello, welcome to my business; here is my trash.

Bush: That is how I see the doors.

Robinson: Those doors are feeding right into the driveway, so they just need to be diligent about keeping their doors shut.

Bush: And the two sidewalks that I see. Do those actually empty onto a sidewalk?

Hales: Yes, there is an existing sidewalk here. I have just colored what they are proposing to make it clear.

Bush: Okay, because I did not see it colored on the map.

Hales: It's existing

Weinbrecht: Anyone else before I turn it over to Mrs. Robinson?

Robinson: Do you have the slide up, or do you want me to fumble my way through it?

Silverstein: Mr. Mayor, before you make the motion you probably should close the public portion of the hearing and then make the motion.

Weinbrecht: I thought I stated that before.

Silverstein: You took additional comments.

Weinbrecht: This time I'm closing it for real. I'm closing the comment portion of the hearing and giving it to Ms. Robinson for the motion.

Hales: I would quickly point out, and it is in the staff report and on the slide. There is an additional criteria for the parking reduction, and that is the reduced number is adequate to satisfy
the proposed parking demands based on the nature of the use, the availability of shared parking. It’s all listed in the worksheet. It’s all covered in your suggested motion.

Robinson: It is covered, okay, because I could specify if you want me to. And that ordinance being referenced there. Is that 7.8.2(a)(1)?

Hales: That is correct.

Robinson: Okay. I make a motion to approve the minor modification based on the fact that the modification advances the goals of ordinance 7.8.2(a)(1), and the modification results in less visual impact and I believe more effective environmental preservation, and it relieves a practical difficulty in developing this site.

Frantz: Second.

Weinbrecht: There’s a motion and second. Further discussion? All in favor of this motion please say aye. Any opposed? Motion carries unanimously, and with that I will close the public hearing.

Hales: We need a motion on the site plan.

Weinbrecht: We need a motion on the site plan before I close the public hearing.

Silverstein: That is okay. You can close the hearing. The hearing is closed for the purpose that you’ve closed the hearing, you don’t take additional evidence. You can discuss it all you want to after you close the hearing.

Weinbrecht: Ok, so I’ll entertain further motions.

Adcock: I move approval of the site plan, because it complies with all applicable requirements of the LDO, adequately protects other property. It’s harmonious with surrounding development, provides safe circulation for vehicles and pedestrians, provides safe access for emergency services, and provides mitigation for traffic impacts expected to be generated.

Bush: Second

Hales: Can I clarify for just a second? The suggested motion has a condition on it that the applicant adequately addresses the remaining DRC comments.

Adcock: What you said.

Weinbrecht: So, you’re amending your motion to include his comments?

Adcock: I am.

Bush: I’m amending the second.

Weinbrecht: We have a motion and second. Further discussion? All in favor please say aye. Any opposed? Motion carries unanimously. Thank you, Mr. Hales, and thanks everyone for this Public Hearing. Thank you, Mr. Silverstein.

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**

   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 tabled this at the July 25, 2013 council meeting. After removing this item from the table, council may take action.
   Speaker: Ms. Debra Grannan

   **Ordinance O-2013-30**

   **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 8/22/2013 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. 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 88° 19′ 42″ E a distance of 123.16 feet to a point; 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 88° 55′ 01″ 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 69° 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 123.16 feet to a point; S 54° 40′ 43″ W a distance of 32.55 feet to a point; S 88° 42′ 58″ W a distance of 18.47 feet to a point; S 50° 38′ 45″ W a distance of 9.22 feet to a point; S 25° 51′ 52″ E a distance of 53.91 feet to a point; S 47° 31′ 29″ E a distance of 21.94 feet to a point; S 87° 57′ 21″ E a distance of 20.65 feet to a point; S 01° 24′ 22″ E a distance of 40.88 feet to a point; S 22° 46′ 31″ E a distance of 58.65 feet to a point; S 35° 15′ 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 83° 31′ 43″ 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 30.18 feet to a point; N 79° 37′ 55″ W a distance of 21.09 feet to a point; S 54° 34′ 39″ W a distance of 23.96 feet to a point; S 75° 13′ 40″ W a distance of 27.96 feet to a point; S 29° 40′ 51″ W a distance of 29.95 feet to a point; S 17° 48′ 22″ W a distance of 48.94 feet to a point; S 21° 09′ 36″ W a distance of 37.52 feet to a point; S 25° 09′ 44″ W a distance of 23.08 feet to a point; S 25° 09′ 44″ W a distance of 29.49 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; 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 01° 42′ 03″ E a distance of 10.08 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 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 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 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 268.50 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 02° 06' 49" E a distance of 215.68 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 subject 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 includes a maximum density of two dwelling units per acre.

August 22, 2013 Minutes

Minute Book #177, Minute Book Page #271
Planning & Zoning Board Recommendation: Voted 6-3 to recommend approval
Proposed Council Action: Council tabled this at the July 25, 2013 council meeting. After removing this item from the table, 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): 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.

Town Council Meeting (July 25, 2013): Staff presented the case and the Planning and Zoning Board Chair delivered the recommendation for approval. The applicant verbally offered to consider additional zoning conditions to address off-site road mitigations. Council voted unanimously to defer action until the specified language and affidavits regarding those conditions could be submitted and reviewed by staff.

Changes Since the Town Council Meeting: The applicant has offered new zoning conditions that address all the traffic mitigations suggested by the Traffic Study 13-TAR-359. The new conditions are contained within this report.

ORDINANCE O-2013-31
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:

<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>
<tbody>
<tr>
<td>Galaxy Investments, LLC 4208 Six Forks Road Suite 1400 Raleigh NC 27609 and 54 Partners, LLC PO Box 130</td>
<td>0714831153</td>
<td>0019999</td>
<td>76.4 ±</td>
</tr>
</tbody>
</table>
**Property Owner(s)**  | **Chatham County Parcel Number (10-digit)** | **Real Estate ID** | **Deeded Acreage**
---|---|---|---
Cary, NC 27512 | | | 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. The proposed access driveway will be aligned with West Ferrell Road.
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.
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.
7. **Morrisville Parkway and Green Level Church Road:** A full signal warrant analysis shall be provided by the developer or owner of the subject property prior to the initial subdivision plat submittal for review. In the event the analysis warrants a signal, and the signalization plan is approved by the Town of Cary and the North Carolina Department of Transportation, the Owner shall construct and install a traffic signal (per Town of Cary standards) at the intersection of Morrisville Parkway and Green Level Church Road as recommended by the TIA on file with the Town of Cary dated June 13, 2013 (13-TAR-359). If a signal is not warranted in the warrant analysis stated above, then the obligation to construct the signal contemplated by this condition shall expire and this condition shall be deemed satisfied.
8. **NC 751 Highway and Lewter Shop Road:** Prior to submitting an application for subdivision plat approval, the Owner shall construct and install a 50-foot-long northbound right-turn lane with associated taper onto NC 751 Highway at its intersection with Lewter Shop Road as recommended by the TIA on file with the Town of Cary dated June 13, 2013 (13-TAR-359). (“751 Improvements”). The Owner shall exercise its best efforts to acquire necessary right of way (together with construction and other easements “Necessary Right of Way”) for the NC 751 Highway improvements, including obtaining appraisals and providing written offers to landowners. If the Developer/Owner is not able to acquire Necessary Right of Way after exhausting its best efforts, the Owner may request the assistance of any governmental entity at the state or local level with condemnation powers for Necessary Right of Way. If Developer/Owner makes such a written request on all state or local governmental entities with appropriate condemnation powers and can show written documentation that no governmental entity with appropriate condemnation
power agrees to assist with the acquisition of Necessary Right of Way in accordance with such entities’ standard policies and procedures, then Owner’s obligation to construct the NC 751 Highway improvements shall expire and this condition shall be deemed satisfied.

**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 (Option A if council approves the rezoning; Option B if council denies the rezoning.)

Proposed Council Action: Council tabled this at the July 25, 2013 council meeting. After removing this item from the table, council may take action.

Speaker: Ms. Debra Grannan

**Option A** *(recommended if rezoning 12-REZ-33 is approved):*

**CONSISTENCY AND REASONABLENESS STATEMENT**

12-REZ-33 – Lewter Shop Road

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: Rezoning 12-REZ-33 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 12-REZ-33 is reasonable and in the public interest.

**ACTION:**

Motion: Bush moved to remove these issues from the table.

Second: Adcock

Vote: Unanimous

**ACTION:**

Motion: Adcock moved to approve annexation 13-A-01.

Second: Frantz

Bush stated this is the first major rezoning before council since the joint plan was adopted, but it is land in the far western portion of the plan. She stated fire and police services do not exist in this area to allow a five-minute response time. She stated council should keep the health and safety and level of service issues in mind. She stated this land is in Chatham County, there are no Chatham County public schools on this side of Jordan Lake and there are no plans for new schools in this area. She stated it will take children about an hour by bus to access the nearest public school. She understands that it is the responsibility of homebuyers to research and understand these school issues.

Robinson agrees that the school issue is a problem in this area. She stated every homebuyer must do this research and be cognizant of these issues. She is happy that this rezoning complies with the joint land use plan. She stated the applicant has exceeded ordinance requirements and is being a good neighbor to the residents to the south by adding additional buffer and conditions. She appreciates the applicant being sensitive about developing in Chatham County.

**ACTION:**

Vote: Bush voted no; all others voted yes. The motion carried by majority vote.
ACTION:
Motion: Adcock moved to approve 12-REZ-33.
Second: Frantz
Vote: Bush voted no; all others voted yes. The motion carried by majority vote.

ACTION:
Motion: Adcock moved to approve the statement of reasonableness and consistency, Option A.
Second: Frantz
Vote: Bush voted no; all others voted yes. The motion carried by majority vote.

H. COMMITTEE REPORTS (discussion items)

Planning and Development Committee, August 15, 2013 (Council Member Frantz)

1. LDO Amendments (Round 27)
   Committee unanimously recommended bringing this item to full council for further consideration.

EXECUTIVE SUMMARY

On June 13, 2013, Town Council directed staff to explore amending the LDO and any related policies and procedures to allow additional single-family-detached housing in the HMXD sub-district in downtown Cary. Staff has evaluated the request and has concerns related to consistency with the TCAP. The next round (Round 27) of amendments to the LDO is being prepared. If so directed by Council, draft text regarding this issue could be presented at the P&D Committee meeting on September 19, 2013.

OVERVIEW

Staff has received the following two inquiries, as described below, from property owners in the Town Center’s HMXD sub-district concerning the potential for allowing additional single-family residential development.

SUMMARY OF INQUIRIES REGARDING DETACHED DWELLINGS IN HMXD

1) Subdivision to Allow Construction of a New Detached Residence Behind an Existing Business
   Request: The owner of a parcel with an existing business would like to subdivide the parcel and construct a detached dwelling on a new lot to be created behind the existing commercial building. (While the immediate intent is to live in the new residence and work in the adjacent commercial building, the business lot and residential lot could be sold separately in the future, and there would be no assurance that the business and residence would continue to function as a “live-work” arrangement in the future).
   Conceptual Approach to Amending LDO
   This request can be addressed by adding detached dwellings to the list of uses allowed in the HMXD sub-district. However, neither the lot which generated this request, nor many other similar lots within the HMXD sub-district, have sufficient road frontage, or area available for new road construction, to meet current subdivision regulations regarding access for new residential lots. Dimensional standards such as minimum lot area, lot width and building setbacks applicable to lots used for detached dwellings would need to be developed if this use is added to the sub-district. Such standards would need to include provisions to provide a “flag lot” option in order to provide driveway access to a public street.

2) Creation of Additional Dwellings With No Subdivision of Land
   Request: The owner of an existing parcel with a historic residence requested the ability to develop 2 or 3 attached residences in the rear portion of a lot. The applicant’s intent was to
sell the new residences such that there would be no subdivision of the lot (which could affect the historic designation of the property).

**Conceptual Approach to Amending LDO**

This request can be addressed (subject to meeting parking and applicable site development standards) by adding a new use to the table of permitted uses in the Town Center that would allow multiple detached dwellings on a single parcel of land, and require associated development standards comparable to those applicable to patio homes. Such dwellings could be under the same ownership, or in a condominium form of ownership.

**STAFF EVALUATION**

New detached residential dwellings are not currently permitted in the HMXD sub-district, which is focused on the downtown core area, because the Town Center Area Plan (TCAP) calls for a mix of commercial, office, and medium to high-density residential uses for that sub-district. It is stated in the TCAP that the focus of the HMXD is on “encouraging commercial uses that add to vibrancy in the downtown, and create a shopping, dining, and entertainment destination for the entire town, as well as serving local downtown needs”.

Generally speaking, allowing new detached dwellings represents a fundamental, philosophical change to the existing provisions of the HMXD sub-district, and is inconsistent with the goals of the district, as expressed both in the Town Center Area Plan and previous actions by Town Council. Implementation of the TCAP to date includes significant financial investment in downtown by the Town, as a catalyst for more independent private redevelopment in the future. Staff believes that in most cases, allowing the creation of more lower-intensity land parcels or housing units would comprise the potential for land acquisition and/or assemblage for future redevelopment, thereby reducing the long-term economic return on the Town’s investment.

However, staff’s general concerns related to allowing detached dwellings in the HMXD sub-district does not apply to historic properties in the downtown area. Property owners are generally not seeking to assemble or redevelop such properties. Allowing additional residential use at the rear of such lots may in fact contribute to the financial viability of maintaining and preserving the historic features of the property. Increasing the number of dwelling units, coupled with preservation of historic properties, does meet the goal of providing more rooftops in the downtown.

**STAFF RECOMMENDATION:** Staff recommends that new detached dwellings be allowed in the Downtown Historic District portion of the HMXD sub-district and requests input and feedback on the conceptual approaches listed in items 1 and 2 above. Consideration will also be given to whether the location should be further limited to only those parcels containing contributing structures. *(Both parcels generating this request meet these criteria).*

Committee Chair Frantz explained the request (herein). He is not comfortable expanding this to cover the entire downtown historic district. Instead, he thinks each request should be a separate council decision. He thinks it is important to consider the uniqueness of each lot in the downtown area, and one size does not fit all.

Yerha stated the staff has creatively come up with a way to accommodate the two requests. He is opposed to allowing this for any historic district in the downtown area.

Adcock agreed that staff came up with a creative solution to the requests. She supports all requests coming to council for decision instead of applying it to the entire downtown historic district. She supports moving this forward and obtaining public input.

Smith asked for more information on pursuing this on a case-by-case basis. Town Planner Mary Beerman stated a public hearing would be required to amend the land development ordinance to apply it to the entire downtown historic district or on a case-by-case basis.
Frantz stated if council decided to hear these requests on a case-by-case basis at quasi-judicial hearings, then council has the right to grant or not grant a special use. Beerman concurred and stated the issue may be whether council wants to allow it by right or as a special use.

**ACTION:**
Motion: Frantz moved to direct staff to work on a process focusing on the historic district in downtown, but not looking to make it a by right use; instead possibly making it a special use or other options staff develops.
Second: Bush
Vote: Yerha voted no; all others voted yes; the motion carried by majority vote.

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**2. Retreat 2013 Changes to Development Processes** (PL14-003)
Committee unanimously recommended supporting proposed recommendations for potential changes to the planning, zoning, and development review processes as follows: A) proceed with short-term implementation of the simple changes (A2, A3, A4, B5, B6, B10, B11, B13, C15, C17), and, B) do not pursue changes that may conflict with State law or that may be deferred and handled through other planning initiatives already under way (A1, B8, B9, C16). Committee further recommended considering the more complicated changes and associated recommendations at a future work session before any additional work continues (B7, B12, C14).

**Executive Summary:** Council and staff reviewed and evaluated the existing development processes for (1) plan amendments, (2) rezonings, and (3) development plans. A set of guiding goals for all development processes were prepared, and nearly 20 potential changes were identified for further study and evaluation. After reviewing and assessing these items, this report presents staff’s recommendations regarding these potential changes.

**Background:** A major session at the 2013 Council/Staff Retreat involved a review of Cary’s planning, zoning, and development processes. This was designed to allow a discussion of possible improvements to those various processes. The following description of the session and its objectives was prepared prior to the Retreat:

> This session will allow staff and council to review the primary development decisions – comprehensive plan amendments, rezonings, and development plans – so we can clarify council’s goals for these processes, focus in on key concerns about the procedures that tend to cause the most confusion, and begin to identify areas for future change and improvement so that the system meets objectives and gives everyone a better understanding of the “Ins and Outs” of development in Cary.

> The purpose of this session is to review the plan amendment, rezoning and development plan processes to identify and respond to concerns that have been voiced about the complexity of our planning, zoning, and development process. An important aspect of the session will be to clearly set forth council’s goals for these processes so that the process can be evaluated and designed to better meet them. This session is also intended to identify issues and potential solutions to ensure that development “on the ground” matches community expectations regarding what was approved.

At the retreat, staff started with a review of comments about our processes, followed by some reasons why the Town’s systems might be viewed as complicated and confusing. Next, council was given the opportunity to brainstorm goals for such processes, such that potential changes could be evaluated against those goals.

Subsequently, each phase of the process was described and discussed, with the sequence of steps, facts and figures, potential issues and possible solutions provided by staff. For the portion
of the session on achieving desired results, several case studies were presented, and council had the opportunity to participate in a mock meeting of the Development Review Committee (DRC).

**Discussion**

**Process Goals**

As a result of this session, council generated a set of goals which should be considered when any development processes are established or modified. These included the following (in priority order based on number of “votes”):

1. Results in desired look and feel of Cary; High standards (7)
2. Citizen friendly (6)
3. Predictable; Consistent (5)
4. Understandable; Have a FAQ; Have all information needed; Self explanatory (4)
5. Simple (3)
6. Fair (1)
7. Equitable (1)
8. Opportunities for meaningful resident input (1)
9. Defensible; Legal; Enforceable
10. Efficient; Timely
11. Harmonious
12. Sustainable process
13. Safe
14. Balanced

**Potential Process Changes**

The major outcomes of the session were an extensive set of potential changes or refinements to each of the major development processes generated during brainstorm and discussion sections of the Retreat session. Those are the subject of this report.

Over the past few months, a staff team from the Planning and Legal Departments has met several times to review and discuss all of these topics. The table herein lists each of the development process categories and the specific items identified for further study at the Retreat. In the table, staff offers comments, observations, and specific recommendations for how to proceed with each item. Additionally, the table itself is followed by preliminary, explanatory information regarding new or revised processes, and an example of one item (a comparison of uses allowed under existing versus proposed zoning districts) is linked from within the table.

These potential changes fall into three main categories. First, a few of them have already been implemented or can be accomplished quickly with simple changes to existing procedures. Second, staff recommends that some of these process changes identified at the retreat not be pursued any further. Finally, others will need further work and preparation of Land Development Ordinance (LDO) text changes before they could be put in place.

**Fiscal Impact:** There is no direct fiscal impact from the recommendations contained in this report. However, there are future resource and budget implications for some of the potential changes staff has outlined, especially as they relate to additional meetings to be conducted by staff, the cost of public notices, and preparation of amendments to the LDO.

**Staff Recommendation:** Staff recommends that council support staff’s recommendations on how to handle simpler changes and those that should not be pursued further, as well as provide direction to staff on the suggested changes that require additional follow-up work. Specifically, staff requests Council:

1) Agree that we should proceed with short-term implementation of the simple changes (A2, A3, A4, B5, B6, B10, B11, B13, C15, C17);
2) Agree with staff’s recommendation not to pursue some of the changes that may conflict with State law or that may be deferred and handled through other planning initiatives already under way (A1, B8, B9, C16); and

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3) Give guidance on the more complicated changes and associated recommendations before any additional work continues (B7, B12, C14).
## A. Comprehensive Plan Amendment Process

<table>
<thead>
<tr>
<th>Item/Description</th>
<th>Staff Comments</th>
<th>Action Required</th>
<th>Recommendation</th>
<th>Status/Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Comprehensive Plan (including Area Plans) needs to be as current as possible</strong></td>
<td>Agree. The new community plan will bring all existing plans “under one roof” (except 2012 PRCR Master Plan) and will yield an updated comprehensive plan.</td>
<td>This will be handled with the new/updated Cary Community Plan. No other action to update plans is warranted at this time.</td>
<td>Rely upon updated Cary Community Plan.</td>
<td>Phase I of Imagine Cary is well under way. Target completion is the fall of 2014.</td>
</tr>
<tr>
<td><strong>2. Allow CPA’s and rezonings to start the hearing process concurrently</strong></td>
<td>This is existing practice. Allows for timely processing of applications, but sometimes causes confusion about the stage of the process.</td>
<td>No further action needed.</td>
<td>Continue with existing practice of concurrent applications.</td>
<td>Staff will continue to explain the distinctions between the two processes and/or look for ways to clarify them in staff reports and presentations.</td>
</tr>
<tr>
<td><strong>3. Provide information about effects of a particular plan amendment to a larger geographic area or the Town as a whole</strong></td>
<td>Will require broader assessment and evaluation. Will be extra work when impacts are minor, negligible. May wish to set a threshold for when such info is included.</td>
<td>Staff reports will need to contain this additional information. Staff will also continue to identify associated plan amendments for nearby property(ies) when an individual request is submitted and it may make sense to consider an amendment for a larger geographic area.</td>
<td>Add a standard section to staff reports.</td>
<td>Staff can begin adding such information for CPA cases beginning September 1, 2013.</td>
</tr>
<tr>
<td><strong>4. Advise council of date of plan adoption</strong></td>
<td>Simple change.</td>
<td>Staff reports will need to contain the additional information.</td>
<td>Add a standard section to staff reports.</td>
<td>Staff can begin adding such information for CPA cases beginning September 1, 2013.</td>
</tr>
</tbody>
</table>
## B. Rezoning Process

<table>
<thead>
<tr>
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<th>Recommendation</th>
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</tr>
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<tr>
<td>6. Inform Town Council when rezoning applications are filed</td>
<td>Simple procedural change.</td>
<td>Evaluate ways to accomplish such a notification process.</td>
<td>Staff will develop a formal notification process and send such information via email to council.</td>
<td>Staff can initiate this notice beginning September 1, 2013.</td>
</tr>
<tr>
<td>7. Explore Use of Additional Public Meetings (e.g., community information meetings)</td>
<td>Requires considerable discussion and review.</td>
<td>Evaluate possible ways to achieve this objective. Will require LDO amendments to codify this requirement.</td>
<td>Suggested approach to incorporate a town-sponsored “information meeting” as the first step in the rezoning process has been developed. Staff also recommends clarification of requirements (B) for already-required community meeting conducted by rezoning applicant.</td>
<td>See explanation (A) for details of recommendation for this new “information meeting”.</td>
</tr>
<tr>
<td>8. Explore the requirement for a 2/3 vote of council to override a P&amp;Z Board recommendation for denial</td>
<td>May conflict with State law.</td>
<td>Review with Legal staff. Would require an LDO amendment.</td>
<td>Staff does not recommend pursuing this change since it would be inconsistent with legal authority contained in North Carolina enabling legislation.</td>
<td></td>
</tr>
<tr>
<td>9. Allow property owners outside of the protest area to sign a petition.</td>
<td>State law prescribes legal requirements for official protest petitions. Property owners can provide an informal “protest” separately.</td>
<td>Review with Legal staff.</td>
<td>Staff does not recommend pursuing this change for official protest petition forms since it would be inconsistent with legal authority contained in North Carolina enabling legislation.</td>
<td></td>
</tr>
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<td><strong>10. Provide council with a list of valid and invalid protest signatures so council knows who expressed an opinion</strong></td>
<td>Due to timing (the legal deadline for receipt of protest petitions is only 72 hours before a council public hearing), there is not ample time for staff to prepare &amp; link this to council's web materials in advance of the hearing.</td>
<td>Evaluate and develop a mechanism to provide this information.</td>
<td>Staff recommends continuation of the existing practice of providing a map that illustrates valid &amp; invalid signatures during rezoning presentations.</td>
<td></td>
</tr>
<tr>
<td><strong>11. Link rezoning applications and notifications to the VIP (Virtual Interactive Planner) information system on the web</strong></td>
<td>Simple change to institute.</td>
<td>Modifications to documents needed.</td>
<td>Staff will add appropriate links to staff reports to direct interested persons to the rezoning area of VIP.</td>
<td>This change can be instituted on September 1, 2013.</td>
</tr>
<tr>
<td><strong>12. Consider requiring a sketch plan for rezonings</strong></td>
<td>Requires considerable discussion and review to consider level of detail, degree of change after approval, etc. Other communities already incorporate into their processes in some form or fashion.</td>
<td>Assess procedure. LDO amendment will be required.</td>
<td>Staff recommends allowing this as an option for conditional use rezoning cases.</td>
<td>See explanation (C) below for more details.</td>
</tr>
<tr>
<td><strong>13. Provide more information about what a rezoning might yield:</strong></td>
<td>Staff reports already include some of this information, but will need to contain additional information.</td>
<td>Procedural change.</td>
<td>Staff recommends adding such information to rezoning staff reports and/or linking to VIP explanations of allowed uses by zoning district.</td>
<td>This change can be instituted on September 1, 2013.</td>
</tr>
</tbody>
</table>
C. “On-The-Ground” Results

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<td>14. Review administrative threshold for development plan approvals.</td>
<td>This is applicable at two stages of the development process: (a) initial plan approval and (b) amendments of development plans over time.</td>
<td>Review and assessment is needed.</td>
<td>Initial Plan Approval: Some LDO changes have already been enacted which will require more site and subdivision plans to be reviewed by Town Council (e.g., waivers and interim transportation requirements). Thus, no further changes are suggested at this time. Future Changes to Already-Approved Plans: Staff recommends that a more in-depth study of this issue be conducted and that potential LDO language to guide future changes be developed for future consideration by council.</td>
<td>Work needed on changes allowed for already-approved plans.</td>
</tr>
<tr>
<td>15. Review LDO for changes to better clarify/regulate council’s vision for Cary.</td>
<td>Extensive work will be required.</td>
<td>Assessment and changes will be needed.</td>
<td>Staff recommends continued incremental amendments to LDO to reflect issues raised by council. Staff also recommends that council consider a complete update of the LDO following adoption of the new Cary Community Plan.</td>
<td></td>
</tr>
<tr>
<td>16. Explore potential changes to the site design guidelines to address issues such as building orientation and windows.</td>
<td>Constant effort to monitor and improve site design guidelines occurs as they are used and applied.</td>
<td>Amend site design and architectural guidelines as appropriate. Council approval will be required.</td>
<td>Changes to architectural guidelines for building façade materials and window transparency adopted by council on April 18, 2013.</td>
<td>FY14 Budget includes funding for update to architectural design standards. Will need additional direction from Town Council to know what other requirements are not meeting expectations. This will be done as an initial step when this project is</td>
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C. “On-The-Ground” Results

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<td>17. Research what others jurisdictions are doing.</td>
<td>This is an ongoing practice. Staff continually evaluates approaches used by other communities.</td>
<td>Continue such activity.</td>
<td>No special action required.</td>
<td>begun.</td>
</tr>
</tbody>
</table>
Table Supplement: Explanation of Potential Process Changes for Rezonings

A. Rezoning Informational Meeting (New Procedure)
   1) Held 4 Weeks After Rezoning Submittal
   2) Covers All Rezoning Cases Submitted That Month
   3) Hosted By The Planning Department Staff
   4) Surrounding Property Owners Within 400 Feet Mailed Notice (Council District Representative(s) Also Copied On Notice)
   5) Staff Presentation To Orient The Public To The Process And How Opportunities For Their Involvement
   6) After Staff Presentation, The Public Can Meet With Each Rezoning Applicant For A Brief Introduction
   7) Time Of The Meeting (Between 6 And 7 Pm) And Held In Council Chambers
   8) Potential To Broadcast On Web For Those Who Cannot Attend

B. Neighborhood Meeting With Applicant (Revised Guidelines for Existing Procedure)
   1) Held At Least 14 Days Before Initial Public Hearing
   2) Hosted By Each Applicant (Staff Does Not Attend)
   3) Applicant Sends Out Notice Letter To Property Owners Within 400 Feet Of Site
   4) Meeting Must Be Held After Normal Work Hours In A Convenient Location
   5) No New Conditions Should Be Provided Unless Reviewed By Staff To Ensure They Are Legal And Enforceable
   6) After Meeting, Applicant Must Submit The Notice Letter, The Mailing List, A Sign-in Sheet, Minutes, And A List Of Changes To The Application In Response To Concerns (Must Be Submitted 10 Business Days Prior To Initial Hearing)

C. Optional Submittal Of A Sketch Plan With Conditional Rezoning Cases (New Procedure)
   1) If A Sketch Plan Is Provided To Staff And/Or The Public, It Needs To Be Submitted As A Condition
   2) Plan Is Conceptual; However The Undeveloped Portions Of The Site Cannot Change (Buffers, Open Space Areas Must Remain The Same).
   3) Developed Portions (Building, Parking Area, Lot Configuration) May Change After The Rezoning Is Approved Unless Otherwise Stated On The Plan
   4) Intensity Of The Development (Density, Square Footage) And/Or Uses Cannot Change

ACTION:
Motion: Frantz moved to approve the committee’s recommendation.
Second: Adcock
Vote: Unanimous

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. Veterans Freedom Park – Final Agreement (PR14-03)
      Consideration of an agreement between the Town of Cary, SAS Institute and the National Veterans Freedom Park Foundation for the Veterans Freedom Park
      Speaker: Mr. Doug McRainey

Executive Summary: The purpose of this staff report is to present to Council for approval the final agreement between SAS Institute and the National Veterans Freedom Park Foundation, Inc.
(NVFPF) for the acceptance of both the National Veterans Freedom Park monument and the 12.57 acre Veterans Freedom Park property.

**Background:** In May 2010, Town Council approved for SAS to proceed with the site plan process for the construction of a 120 foot monument spire to be located at the current location of the Veterans Freedom Park on North Harrison Avenue. It was approved with the understanding that upon completion of construction, both the monument and the park site would be donated to the Town of Cary. As part of this approval process, Town Council also granted waivers for road, sidewalk improvements, pedestrian trail improvements, utility line extensions and street lighting. Council authorized staff to finalize negotiations with SAS and the NVFPF on the proposed transfer of the park site and monument to the Town of Cary and to bring this agreement back for Council’s approval.

In October 2011, Council approved the final agreement between SAS and National Veterans Freedom Park Foundation. Upon approval of the agreement, SAS delayed signing the agreement, deciding instead to making adjustments to the spire and resubmit. In early April 2013, they resubmitted the site plan as a “Minor Alteration” which was approved on May 30, 2013. The Public Art Advisory Board also reviewed and approved the changes to the art elements of the plan. Ultimately, the only change to the plan has been to reduce the height of the spire from 120 feet to 90 feet. The existing monument elements were retained, including a bronze sculpture of the “boots and gun.” The name “Veterans Freedom Park” was also retained as the official name of the park.

**Discussion:** SAS is ready to begin construction of Veteran’s Freedom Park. All that is remaining is to sign the agreement between the Town, SAS, and the National Veteran’s Board. This agreement is substantially the same agreement that Council approved in October 2011, but due to the time lag between the initial approval and SAS’s readiness to move forward, staff is bringing the agreement back to Council to reaffirm its approval. The only changes are that the name “Veterans Freedom Park” is explicit now and there is a provision that the Town will provide standard park signage. Major elements of the agreement include:

1. SAS agrees to plan, design and construct the monument and surrounding infrastructure in accordance with approved site plan.
2. Upon completion of construction of the monument, NVFPF agrees to transfer the property to the Town of Cary.
3. Cary agrees that if there are any improvements or material changes recommended to be made to the site that both the NVFPF and SAS shall be notified and be allowed to serve in an advisory role regarding those changes.

If Council reaffirms the agreement, SAS is expected to immediately begin construction with an expected completion date in late spring 2014.

**Fiscal Impact:**

**Operating Impact:** The annual estimated cost to maintain Veterans Freedom Park is $15,000 to $20,000 per year. This includes mowing, mulching, pruning as well as yearly cleaning and inspecting of the sculpture.

**Funding:** There is no capital funding required from the Town to complete this project.

**Staff Recommendation:** Staff recommends approval of the Veterans Freedom Park Agreement between SAS Institute and the National Veterans Freedom Park Foundation, Inc. for the acceptance of both the National Veterans Freedom Park Monument and the 12.57-acre Veterans Freedom Park property.

Weinbrecht and Adcock disclosed they are employed by SAS and that they have no conflict of interest or financial interest in the contract.
Adcock asked staff to address the points made by the speaker about this issue at the public speaks out portion of this meeting. Parks, Recreation and Cultural Resources Department Director Doug McRainey responded with the following information:

- The process began in 2010.
- SAS held a neighborhood meeting at Cary Academy, and he and a number of residents in the adjoining neighborhoods attended.
- The Public Art Advisory Board reviewed this issue twice: this past year and originally in December 2010.
- The Public Art Advisory Board solicited public comments at one of those meetings. Both meetings were open to the public.
- This is the fourth staff report on this issue since 2010.
- If the council approves this item, any future planning, improvements or capital funding will involve the typical Town public input process, which will include staff from SAS and the Foundation as well as the Town.

Adcock thanked McRainey and reiterated that the public has been involved, and this has not been a closed process.

Frantz supports keeping “Freedom” in the name of the park.

Bush stated this shows the Town’s continued respect and commitment to Cary’s veterans. She mentioned that the council recently added flags from the military branches in its council chambers.

**ACTION:**
Motion: Bush moved to continue the process and move forward with the Veterans Freedom Park agreement.

Adcock stated that Smith, as the veteran on the council wants to make the motion for this item.

**ACTION:** Bush withdrew her motion.

Smith stated the Town, SAS and the Foundation want the park to be subtle and reflective. He stated it is very respectful to all points of views. He stated the American Legion has more than three million members who donated over four million community hours of public service last year alone. He stated they have raised over four million dollars to help disabled veterans struggling with transition issues. He stated the Veterans of Foreign Wars (VFW) is another great organizations with more than two million members. He stated these two broad-based organizations represent every component of our society.

**ACTION:**
Motion: Smith moved to accept the staff report as presented.
Second: Adcock
Vote: Unanimous

J. CLOSED SESSION

**ACTION:**
Motion: Frantz read the following motion to conduct a closed session.
Second: Bush
Vote: Unanimous
PURSUANT TO G.S. 143-318.11(A)(3), (4) AND (5), I MOVE THAT WE HOLD A CLOSED SESSION TO:

1. CONSULT WITH ATTORNEYS EMPLOYED BY AND/OR RETAINED BY THE TOWN IN ORDER TO PRESERVE THE ATTORNEY-CLIENT PRIVILEGE BETWEEN THE ATTORNEYS AND THE TOWN.

2. 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.

3. 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

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 9:50 p.m. Adcock moved to return to open session and adjourn.
Second: Bush
Vote: Unanimous