January 12, 2013

Cary Town Council
Thursday, September 12, 2013
6:30 PM
Council Chambers
316 N. Academy Street, Cary, N.C

Present: Mayor Harold Weinbrecht, Mayor Pro Tem Gale Adcock, Council Members Lori Bush, Don Frantz, Jennifer Robinson, 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 (Mayor Weinbrecht)

Weinbrecht provided the ceremonial opening.

3. Adoption of agenda (Town Council)

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<td>Motion: Frantz moved to approve the agenda.</td>
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B. CONSENT AGENDA

The council pulled the following items from the consent agenda and agreed to discuss them immediately after the consent agenda:

B.2.a. Rezoning 13-REZ-07 (Mills-Patterson Property)

B.2.b. Comprehensive Plan Consistency

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

a. Consideration of approving the following minutes: August 20, 2013 work session and August 22, 2013 council meeting. (Town Council)

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<td>Motion: Bush moved to approve the consent agenda</td>
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b. Consideration of ratification of the 2013 board/commission and Economic Development Committee appointments. (NOTE: The public hearing to add an alternate to the Zoning Board of Adjustment will be conducted at the September 26 council meeting, and that appointment will be ratified after the public hearing.) (Town Council)
Economic Development Committee (Council Liaison: Weinbrecht)
Reappoint Ian Henshaw to a 2nd term, expiring 9/30/16

Environmental Advisory Board (Council Liaison: Yerha)
- Reduce the membership by eliminating the extra position that was added in 2012 for one year only due to an administrative error with the applications (this position is eliminated through natural attrition)
- Move Danna Widmar from an alternate to a regular member, 1st term, expiring 9/30/16 (citizen/technical expert category)
- Reappoint Rajit Ramkumar to a 2nd term, expiring 9/30/16 (partner representative category)
- Waive absences and allow Reid Miner to continue his 1st term, expiring 9/30/14 (technical category)
- Appoint John Nichols to a 1st term, expiring 9/30/16 (partner representative category)
- Appoint Caitlin Burke as an alternate member, term expiring 9/30/16 (citizen category)
- Appoint Dan McFarland as Chair

Information Services Advisory Board (Council Liaison: Bush)
- Waive absences and allow Mary Margaret Barnes to continue her 2nd term, expiring 9/30/14 (marketing category)
- Reappoint Trish Morgan to a 2nd term, expiring 9/30/16 (general public category)
- Appoint Jeffrey Smith to a 1st term, expiring 9/30/16 (internet/general public category)
- Appoint Cornelius van Dijk to a 1st term (unexpired vacancy), expiring 9/30/14 (internet category)
- Appoint Fillmore Bowen to a 1st term, expiring 9/30/16 (marketing category)
- Appoint John Tramo to a 1st term, expiring 9/30/16 (general public category)
- Appoint Jamie Dixon as Chair

Parks, Recreation and Cultural Resources Advisory Board (Council Liaison: Frantz)
- Appoint Cameron Sweeney to a 1st term, expiring 9/30/16
- Appoint Kathleen Lynch to a 1st term, expiring 9/30/16
- Appoint Lindsey Dougherty to a 1st term, expiring 9/30/16
- Appoint Andrew Crook to a 1st term, expiring 9/30/16
- Appoint David Lindquist as Chair

Planning & Zoning Board (Council Liaison: Adcock)
- Waive absences and allow Michelle Muir to continue her 2nd term, expiring 9/30/15
- Reappoint Wayne Rogers to a 2nd term, expiring 9/30/16
- Recommend to the Wake County Commissioners reappointing William Gascoigne to a 2nd term as an ETJ member, expiring 9/30/16
- Appoint Mark Evangelista to a 1st term, expiring 9/30/16
- Appoint Al Swanstrom as Chair

Public Art Advisory Board (Council Liaison: Smith)
- Reappoint Thomas Gruber to a 2nd term, expiring 9/30/16 (artist/architect category)
- Reappoint Clarenda Stanley to a 2nd term, expiring 9/30/16 (general public category)
- Appoint Pat Hudson to a 1st term (unexpired vacancy), expiring 9/30/14 (local visual art organization/general public category)
- Appoint Nancy van Dijk to a 1st term (unexpired vacancy), expiring 9/30/14 (local visual art organization/general public category)
- Appoint Cathi Cass to a 1st term, expiring 9/30/16 (general public category)
- Appoint Janice Verdon as an alternate member, term expiring 9/30/16 (general public category); NOTE: This is the first alternate appointed to this board; council has the authority per Town Code Section 2-175(b) to appoint an alternate to this board.
- Appoint Thomas Gruber as Chair

Zoning Board of Adjustment (Council Liaison Jack Smith)
- Reappoint Richard Roddy to a 2nd term, expiring 9/30/16
- Recommend to the Wake County Commissioners reappointing William Upchurch to a 2nd term as an ETJ member, expiring 9/30/16
• Move Richard Morris from an alternate to a regular member, 1st term, expiring 9/30/16
• Appoint Jerry ‘Mike’ Dorezas as an alternate member, term expiring 9/30/16 (NOTE: Staff confirmed that this applicant resides in the Cary corporate limits in Chatham County, not in the ETJ as indicated on the application)
• Appoint Barry Shuster as Chair

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

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c. Consideration of appointing Council Member Robinson as Cary’s voting delegate and Town Manager Ben Shivar as the alternate for the NC League of Municipalities Annual Business Meeting. (Council Member Robinson)

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

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d. Consideration of adopting a resolution ratifying council’s August 22 approval of Subdivision and Site Plan 13-SP-021 (Verizon Wireless). (Mr. Kevin Hales)

Summary: On August 22, 2013, Council reviewed the subdivision and site plan for Verizon Wireless (13-SP-021) and granted the applicant’s request for approval of the subdivision and 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 August 22, 2013.

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

RESOLUTION APPROVING SUBDIVISION AND SITE PLAN
VERIZON WIRELESS (13-SP-021)

**Subject Property:** 2000 Walnut Street
**PIN10#:** 0773602677
**Total lot/tract size:** 13.19 acres
**Property Owner:** Lowe’s Home Centers, Inc. Concord Properties, Inc.
PO Box 1111 1338 Harding Place, Suite 100
North Wilkesboro, NC 28659 Charlotte, NC 28204
(contract vendee 1.1. acre)

**Applicant:** Charles Garcia
Freeland and Kauffman, Inc.
209 West Stone Avenue
Greenville, SC 29609

At its meeting on August 22, 2013, after conducting a duly advertised quasi-judicial hearing and after considering the application materials, testimony, exhibits A-I and evidence presented at the hearing or otherwise appearing in the record, and the approval criteria of Sections 3.9.2 and 3.19.1 of the Town of Cary Land Development Ordinance, the Cary Town Council voted 7-0 to
APPROVE the requested parking space reduction and voted 7-0 to APPROVE the subdivision and site plan, based upon the following findings and conditions:

Findings:

1. The applicant is seeking approval to construct a Verizon Wireless store on a portion of the property at 2000 Walnut Street, Cary, NC, the Subject Property.
2. The Subject Property is a 13.19 acre tract bounded by Walnut Street on the East, Meeting Street on the North and West and Dillard Drive on the South. The owner of the Subject Property is Lowe’s Home Centers, Inc. Concord Properties, Inc. is a contract vendee and has a right to purchase the portion of the Subject Property shown as the proposed site plan for Verizon Wireless. Lowe’s Home Centers, Inc. and Concord Properties, Inc. are both referred to herein as “Applicant.”
3. The Subject Property is currently improved as a Lowe’s Home Center with a requirement of 457 parking spaces. The total parking count on site is approximately 508 spaces. The latest approved development plan for Lowe’s requires 457 parking spots for the site.
4. The Subject Property is currently zoned General Commercial – Conditional Use (GC-CU) per the Town’s Official Zoning map.
5. The application and other records pertaining to the subdivision and site plan are part of the record of the hearing.
6. Notice has been provided as required by law.
7. On January 9, 2013, the Applicant conducted a pre-application conference with the Town of Cary Development Review Committee (DRC) regarding the overall plan of development and the subdivision and site plan.
8. By application dated March 14, 2013, the Applicant submitted to the Town a complete Site Plan Application.
9. The Planning Department mailed notification of the public hearing on the minor modification of a parking space reduction and on the subdivision and site plan to the owners of property within 400 feet of the site on August 7, 2013. Notification consistent with the North Carolina General Statutes was published in the Cary News both on August 7 and August 14, 2013. Notice of the public hearing was posted at the Subject Property on August 9, 2013.
10. LDO Sec. 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.”
11. The proposed outparcel would be developed as a Verizon Wireless store, and would contain 31 parking spaces for a 5520 square foot retail store, which is 41 percent more than the 22 spaces required by the LDO.
12. Together, the Lowe’s site and the Verizon site would provide a total of 412 parking spaces.
13. The evidence presented at the hearing shows that approximately 291 spaces were occupied during Lowe’s peak operational period on Saturday afternoon, and another 14 spaces were utilized for outdoor storage/display, for approximately 60 percent of the available parking on site, without consideration of the Verizon parking. The total reduction for the parking required for the Lowe’s site would be 22 percent.
14. The evidence presented at the hearing, including but not limited to the parking study of actual conditions on the Subject Property prepared by Ramey Kemp & Associates (Exhibit C), shows that requiring 381 parking spaces to be located on the Lowe’s site plan is adequate to relieve traffic congestion, minimize any detrimental effects of off-street parking areas on adjacent properties and is sufficient to satisfy the demand for parking expected by the Lowe’s store based upon the nature of the Lowe’s store, the number of trips generated by the Lowe’s store, the times of day when the Lowe’s store 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.
15. The evidence presented at the hearing shows that the requested modification of the Lowe’s site plan to require 381 parking spaces advances the goals and purposes of the Town’s Land Development Ordinance because the Town’s Land Development Ordinance (1) favors eliminating unnecessary/rarely-used parking spaces on commercially-used land, See, LDO § 7.8.2(C)(4) and (2) fosters convenient, compatible and efficient arrangements among land uses. LDO § 1.3.2 By granting the minor modification reducing the number of parking spaces on the Lowe’s site plan to 381 spaces, unnecessary parking spaces are eliminated and the new site plan for establishment of a Verizon Wireless store fosters a compatible and efficient arrangement of uses.

16. The evidence presented at the hearing shows that the requested minor modification results in less visual impact and more effective environmental or open space preservation by integrating a new outparcel into the existing Lowe’s parking lot which reduces 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 Lowe’s building, more pervious area would be preserved on the Subject Property.

17. The evidence presented at the hearing shows that the requested minor modification relieves practical difficulties in developing the Subject Property so that it could be beneficially used as a main lot and outparcel and this configuration fosters a more convenient, compatible and efficient relationship among land uses as well as mitigates any potential adverse impact on the environment or on adjacent properties. The beneficial use of the Subject Property would not be practically possible unless the minor modification is granted and granting this minor modification does not (1) substantially alter the essential character of the neighborhood or cause a substantial detriment to adjoining properties, nor (2) adversely affect the delivery of public services. No other practical means exists to address this practical difficulty. Lowe’s Home Centers, Inc. purchased the property with knowledge of the requirements as to parking spaces at the time of purchase; however, the Town Land Development Ordinance has changed and encourages elimination of unnecessary or rarely-used parking spaces. Allowing the commercial infill shown on the proposed Verizon Wireless site plan is consistent with the Town’s current Land Development Ordinance and the Town’s Comprehensive Plan as it promotes appropriately compact commercial development within an existing Regional Mixed Use Center.

18. The minor modification reducing the number of required parking spaces on the Lowe’s site plan to a total of 381 spaces satisfies the requirements of the Town of Cary Land Development Ordinance Section 3.19.1 and no other minor modification of the Lowe’s site plan is necessary to approve the proposed Verizon Wireless site plan.

19. The Verizon Wireless subdivision and site plan adequately protects other property or residential uses located on the Subject Property from the potential adverse effects of the proposed development because (1) the Verizon Wireless site plan is consistent with the Town of Cary Land Development Ordinance including providing streetscapes and landscaping as required by the Land Development Ordinance, (2) the Subject Property is located within a Regional Mixed Use Center and (3) no residential developments are located on or in the immediate vicinity of the Subject Property to be potentially affected by the proposed Verizon Wireless retail use.

20. The Verizon Wireless subdivision and site plan provides harmony and unity with the development of nearby properties because (1) the Subject Property and proposed development is located in the Crossroads Regional Mixed Use Center and surrounded by other retail and restaurant uses and (2) the 5520 square foot one story Verizon Wireless building would be similar in scale and character to other outparcels located along this stretch of Walnut Street.

21. The Verizon Wireless subdivision and site plan provides safe conditions for pedestrians and motorists and prevents a dangerous arrangement of pedestrian and vehicular ways because (1) the proposed Verizon Wireless development shares the parking lot and travel aisle space with the existing Lowe’s Home Center, (2) no new intersections or driveways are created, retaining the existing access and traffic patterns internal to the
Subject Property and (3) the additional paved sidewalks provided as part of the proposed Verizon Wireless site plan bring pedestrians safely into the Subject Property from the Walnut Street Corridor, improving pedestrian safety.

22. The Verizon Wireless subdivision and site plan provides safe ingress and egress for emergency services to the site because the proposed site plan does not change either the ingress to or egress from the Subject Property and the new Verizon Wireless building is located adjacent to and shares access with the existing Lowe’s Home Center.

23. The Verizon Wireless subdivision and site plan provides mitigation for traffic congestion impacts reasonably expected to be generated by the Verizon Wireless site plan because (1) it utilizes existing driveways that already connect to the public transportation system and (2) the Verizon Wireless store is 5520 square feet and is being relocated from a site across Walnut Street from the Subject Property. Even if Verizon Wireless was a new use in the Crossroads Regional Mixed Use Center, the number of additional trips generated by this proposed store is insignificant when compared to the number of trips already occurring in the vicinity of the Subject Property. Further mitigation is unnecessary because of the extensive existing roadways and other transportation improvements already existing in the Crossroads Regional Mixed Use Center and the intersections in the vicinity of the Subject Property function at acceptable levels of service.

24. The subdivision and site plan meets the requirements of Town of Cary Land Development Ordinance Section 3.9.2(I).

25. This approval is conditioned upon the following: The applicant must satisfactorily address any remaining Development Review Committee comments on the master plan set submitted for signature. Based upon the evidence presented, there is no need to impose other conditions on approval of the subdivision or site plan or the minor modification.

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

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

a. Rezoning 13-REZ-07 (Mills-Patterson Property)
Location: 2428 and 2436 Carpenter Upchurch Road and a 0.48-acre tract located in the 1500 block of Louis Stephens Road
Current Zoning: Residential 40 (R-40)
Proposed Zoning: Residential Multi-family Conditional Use (RMF-CU) Conditions submitted by the applicant include limiting the density to eight (8) dwelling units per acre and limiting permitted uses.
Planning & Zoning Board Recommendation: Voted unanimously to recommend approval
Proposed Council Action: Council may take action
Speaker: Mr. Wayne Nicholas

b. Comprehensive Plan Consistency
Subject: In accordance with N.C.G.S. 160A-383, Town Council will approve a statement of consistency and reasonableness for Rezoning 13-REZ-07 (Option A if council approves the rezoning; Option B if council denies the rezoning.)
Proposed Council Action: Council may take action.
Speaker: Mr. Wayne Nicholas
**ACTION:**
Council pulled Land Development Consent Agenda items 2.a. and 2.b from the consent agenda for discussion immediately following public speaks out.

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3. Operations Committee, September 3, 2013 (any committee consent agenda item pulled for discussion will be discussed at the end of the committee discussion portion of the agenda, which is item H on this agenda) (Council Member Robinson)

   a. Cape Fear Sewer System Extension Project (EN14-015)
   Committee unanimously recommended approval and execution of condemnation resolutions to secure necessary easements for the Cape Fear Sewer System Extension Project.

**Executive Summary:** Staff has been working with property owners to secure easements necessary for construction of the SW 1132 Cape Fear Sewer System Extension Project. To minimize disruption to the construction schedule, staff requests approval and execution of the attached resolution authorizing condemnation.

**Background:** On May 9, 2013 Town Council approved the Town of Cary and Wake County entering into an interlocal agreement for construction of Phase 2- Cape Fear Sanitary Sewer Facilities in RTP South (see EN13-069). This project will upgrade sewer capacity in RTP and extend into the Town of Morrisville inside the Kitts Creek Subdivision. The Town and Wake County have completed plans for the project. The SW 1132 Cape Fear Sewer System Extension Project includes construction of 6,500 feet of 8”-16” gravity sewer in the Research Triangle Park (RTP) across the Triangle Expressway and ultimately to a Town of Cary maintained pump station in the Kitts Creek Subdivision. The pump station within the Kitts Creek Subdivision will be abandoned and removed as part of this project.

**Discussion:** Staff has been working towards reaching an amicable settlement with the affected owner. Staff is hopeful that a settlement will be reached; however, in order to maintain the project schedule condemnation is necessary. Staff will continue negotiations to reach a mutually agreeable settlement while continuing condemnation procedures.

The owners and property affected is as follows: Nathaniel Mayo Heirs are: Ruby P. Mayo (widow), Nathanette L. Mayo and husband, Gregory Angaza Laughinghouse, Rita J. Ballentine and husband, Arthur R. Ballentine, Esther Dunnegan and husband, Hubert T. Dunegan, Mary Branch and husband, Eddie N. Branch, and Carolyn Pearson (single), et al.; PIN# 0746181372; 6601 Kitt Creek Rd.; Morrisville, N.C. 27560-9360.

**Fiscal Impact:** For a parcel where condemnation does become necessary, the Town will incur the cost of eminent domain proceedings which are estimated to be initially between $1,200 and $5,000 and will be paid from existing and available funding within the SW 1132 project.

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

RESOLUTION AUTHORIZING CONDEMNATION TO ACQUIRE CERTAIN PROPERTY OF NATHANIEL MAYO HEIRS FURTHER IDENTIFIED AS FOLLOWS: RUBY P. MAYO (WIDOW), NATHANETTE L. MAYO AND HUSBAND GREGORY ANGAZA LAUGHINGHOUSE, RITA J. BALLENTINE AND HUSBAND, ARTHUR R. BALLENTINE, ESTHER DUNNEGAN AND HUSBAND, HUBERT T. DUNNEGAN, MARY BRANCH AND HUSBAND, EDDIE N. BRANCH, AND CAROLYN PEARSON (SINGLE), et al.

WHEREAS, the governing body of the Town of Cary hereby determines that it is necessary and in the public interest to acquire certain property owned by Nathaniel Mayo Heirs further identified...
as follows: Ruby P. Mayo (widow), Nathanette L. Mayo and husband, Gregory Angaza Laughinghouse, Rita J. Ballentine and husband, Arthur R. Ballentine, Esther Dunnegan and husband, Hubert T. Dunnegan, Mary Branch and husband, Eddie N. Branch, and Carolyn Pearson (single), et al., for the following public purposes:

To protect the public health, to provide the public with an adequate and sound wastewater system, and to improve such system to meet the need for expanded or upgraded services, the Town of Cary is condemning the herein described property interests, specifically, to construct and maintain the SW 1132 Cape Fear Sewer System Extension Project.

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

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

1. The Town of Cary shall acquire by condemnation, for the purposes stated above, the property and easement interest in a portion of certain tracts described in Deed Book 1613, Page 577, Wake County Registry, and Wake County Clerk of Courts Office Estate File 2004-E1112.

The easement area taken is more particularly described as follows:

**UTILITY AND PIPELINE EASEMENT:**
Beginning at a 3/4” iron pipe set on the common boundary of Nathaniel Mayo Heirs (Deed Book 1613, Page 577, Wake County Registry) and Kitts Creek Homeowner’s Association, Inc. property (Deed Book 13811, Page 247, Wake County Registry); said iron pipe marking the intersection of said properties common east-west boundary and the northern limit of the Utility and Pipeline Easement herein described; thence from said beginning point; the following twelve (12) calls: South 00°17’55” East a distance of 42.03 feet to a new iron pipe set on the common boundary of Nathaniel Mayo Heirs (Deed Book 1613, Page 577, Wake County Registry) and Kitts Creek Homeowner’s Association, Inc. property (Deed Book 13811, Page 247, Wake County Registry); thence from said beginning point; the following six (6) calls: North 04°00’25” East a distance of 41.37 feet to a new iron pipe set on the eastern right-of-way margin of the Triangle Parkway (variable width right-of-way); thence North 25°24’43” East a distance of 151.92 feet to a point; thence North 00°17’55” East a distance of 452.19 feet to a point; thence South 72°23’54” West a distance of 107.39 feet to the point of beginning, containing 0.75 acres (32,585 square feet) more or less and being identified as a Variable Width Public Town of Cary Utility and Pipeline Easement according to a map prepared by Taylor Land Consultants, PLLC entitled “Easement Plat for the Cape Fear Sewer System Extension” (Sheet 4 and 5), last revised May 20, 2013.

**TEMPORARY CONSTRUCTION EASEMENT:**
Commencing at a 3/4” iron pipe set on the common boundary of Nathaniel Mayo Heirs (Deed Book 1613, Page 577, Wake County Registry) and Kitts Creek Homeowner’s Association, Inc. property (Deed Book 13811, Page 247, Wake County Registry); said iron pipe marking the intersection of said properties common east-west boundary and the northern limit of the Utility and Pipeline Easement herein described; thence from said point of commencement, North 72°23’54” West a distance of 107.39 feet to the point of Beginning; thence from said beginning point, the following six (6) calls: North
49°41'50" West a distance of 17.50 feet; thence South 40°18'10" West a distance of 
454.48 feet; thence South 25°24'43" West a distance of 163.00 feet; thence North 
88°44'45" East a distance of 19.58 feet; thence North 25°24'43" East a distance of 
151.92 feet; thence North 40°18'10" East a distance of 452.19 feet to the point of 
beginning, containing 0.25 acres (10,689 square feet) more or less and being identified 
as a Temporary Construction Easement according to a map prepared by Taylor Land 
Consultants, PLLC entitled "Easement Plat for the Cape Fear Sewer System 
Extension" (Sheet 5), last revised May 20, 2013.

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

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

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**b. Amendment to Wake County Tax Collection Contract (FN14-03)**
Committee unanimously recommended adopting a resolution and authorizing the 
Mayor to execute a proposed amendment to the Wake County contract regarding tax 
billing and collection to address the new State of NC system for vehicle billing 
through the tax and tag system.

**Executive Summary:** With the implementation of the North Carolina Tax and Tag system of 
billing and collection for vehicle taxes, amendments to our contracts with Wake and Chatham 
County for billing and collection of property taxes are recommended to accurately reflect the new 
process and fees.

**Background:** Under a new program titled “Tax and Tag”, the North Carolina Department of Motor 
Vehicles (“DMV”) has assumed responsibility for state wide property tax billing for vehicles in 
congratulations with registration renewals. Under the old system, DMV managed the registration renewal 
offer and payment. After vehicle owners renewed their registration with DMV, the County issued 
the tax bill for both county and municipal taxes. Beginning with September 2013 registration 
renouncements the tax bill is included with DMV’s registration renewal offer and vehicle owners must 
pay the vehicle property tax bill in full together with the registration fee. Under the new system 
vehicle owners can only pay DMV online or in person at a license plate agency. Real estate and 
personal property bills issued by Wake County can still be paid in person by cash or check at 
municipal sites, including the Cary Finance Department.

**Discussion:** Our current contracts with Wake and Chatham counties to bill and collect motor 
vehicle taxes should be amended to reflect the new State Tax and Tag system.

The Wake County contract amendment includes a few housekeeping items as well as language 
to document the new state vehicle tax system. The Wake County original contract was signed by 
the Mayor, so the amendment must be approved by the Council and signed by the Mayor. State 
law also requires a council resolution for intergovernmental agreements. The contract changes 
include:

1. The change to Section II specifies that Wake will bill and collect special district taxes for 
Municipalities whereas the former contract specifically excluded tax billing and collection for 
special districts. Cary does not levy any special district taxes at this time.
2. The change to Section IV removes reference to registered motor vehicles but does not 
change the current administration fees.
3. The change to Section V differentiates how taxes for registered motor vehicles have been 
historically handled and how they will be handled going forward, but most importantly how
fees withheld by the State for the tax they collect in the future will be proportionally allocated per the reports available from the State system. This paragraph also reserves the right for Wake County to charge an administration fee if applicable; however Wake does not have any plans to charge any additional cost currently for listing of the vehicles and preparing them for the renewal offers or distribution of net proceeds.

4. The change to Section XIX specifies that Wake will continue to distribute taxes to municipalities at least weekly for taxes collected, but registered vehicle taxes collected by the State will be distributed monthly.

Contract amendments regarding the tax and tag system have not been finalized by Chatham County but will be similar in scope to the Wake County amendment to address the role of the County in sharing revenues and related fees passed through by the State.

**Fiscal Impact:** The legislation establishing the Tax and Tag system set forth the fees that the State will charge for the tax billing and collection. Wake County municipalities may be the only governments in the state that see an increase in tax collection fees for vehicles because Wake County has only charged its municipalities the marginal cost of billing and collection municipal taxes over the cost of billing and collecting county taxes. The DMV collection fees are significantly higher. Cary’s vehicle tax collection costs were budgeted to increase by $160,000 in FY14, approximately 94% over prior year collection costs. Since the Town’s budget was adopted, additional legislation was passed to raise the fees that DMV will pay license plate agencies for collecting at their locations. Cary tax collection costs could increase by another $65,000 assuming a pattern of choices that our taxpayers make about how and where to renew their registration and pay the related vehicle taxes. Our fees will reflect taxpayer choices because if they pay online with a credit card, our costs for credit card fees will increase, or if they pay at the license plate agency, our costs will increase with the new legislation that raised the fees that the license plate agency earns for taking the payment. Staff will monitor tax collection costs as the new system begins to operate and will request additional appropriations later in the fiscal year when the amount needed is better known.

**Staff Recommendation:** Staff recommends that Council adopt the resolution and authorize the Mayor to execute the proposed contract amendment to the Wake County contract regarding tax billing and collection to address the new State of NC system for vehicle billing through the Tax and Tag system.

A RESOLUTION OF THE CARY TOWN COUNCIL AUTHORIZING THE RATIFICATION OF THE FIRST AMENDMENT TO CONTRACT TO CONSOLIDATE TAX DEPARTMENTS

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

The Town of Cary and Wake County entered into a Contract to Consolidate Tax Departments and desire to amend such agreement to reflect changes in the motor vehicle tax system.

This resolution ratifies the First Amendment to Contract to Consolidate Tax Departments.

Adopted this 12th day of September, 2013

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

September 12, 2013 minutes
Minute Book #177, Minute Book Page #365
c. **Recognition of Federal Forfeiture Funds** (PD14-003)

Committee unanimously recommended recognizing $130,672 in funds received through the Federal Equitable Sharing Program and the appropriation of those funds to the Police Department’s Small Equipment account to be used for the purchase of police equipment.

**Executive Summary:** The police department requests the Cary Town Council recognize a total of $130,672 in Federal Equitable Sharing funds into the General Fund for police related expenses. Funding will be used to purchase new police equipment.

**Background:** Equitable Sharing is a program administered by the United States Department of the Treasury. The purpose of this program is to share federally forfeited property with participating federal, state, and local law enforcement agencies. Any of these agencies that directly participate in an investigation or prosecution that results in a federal forfeiture by a Treasury fund participating agency may request an equitable share of the net proceeds of the forfeiture. By federal law the shared funds must be used to increase, enhance or supplement the resources of the receiving law enforcement agency.

**Discussion:** The Cary Police Department proposes to spend $130,672 in funds received from this program to upgrade some of our existing police equipment and add additional equipment to the department.

The use of Federal Drug Forfeiture Funds allows us to enhance or increase police equipment without impacting the existing department budget. The Police department proposes to purchase the following items using Federal Drug Forfeiture Funds:

- **Surveillance and Cyber Crimes Equipment:** Upgrade the Department’s surveillance equipment and Cyber Crimes forensic tools. This equipment is used to gather evidence in criminal cases. This equipment will enhance our current abilities and further our efforts in fighting crime. The cost of this purchase is $55,618.
- **Rifle Scopes and Night Vision Equipment:** Purchase three (3) patrol rifles and two (2) night vision devices for our police K9 teams. The cost of this purchase is $20,000.
- **Emergency Response Team Equipment:** Purchase forward observation equipment and new simunition weapons training devices. Simunitions is simulated ammunition that can be used to train officers in more real world scenarios. The cost of these purchases is $38,950.
- **Traffic Safety Equipment:** Purchase of specialized software to use for advanced traffic crash reconstruction by our Traffic Team and increase the number of stopstick devices available to patrol units out in the field. Stopstick devices are spike strip tools used to deflate tires on cars. The cost of this purchase is $16,104.

**Fiscal Impact:** The only operational cost would be future maintenance and/or repair expenses for the equipment purchased, if warranted. This equipment will be purchased with the expectation of replacing the items in the future with additional forfeiture funds approved by Cary Town Council.

**Staff Recommendation:** Staff recommends that the council recognize and appropriate $130,672 in federal funding received from the Federal Equitable Sharing program to the Police Department’s Small Equipment account.

**ACTION:**

*Motion: Bush moved to approve the consent agenda*
*Second: Adcock*
*Vote: Unanimous*
d. Proposed Amendment to Town Code of Ordinances (PD14-005)
Committee unanimously recommended approving a proposed amendment to Chapter 22 of the Town of Cary Code of Ordinances, Offenses and Miscellaneous Provisions.

Executive Summary: Recent changes in NC General Statute 14-415.23 require removal of “playgrounds” as areas that can be prohibited from lawful concealed carry of a firearm. In addition, staff recommends modification of Town ordinances to clarify requirements for open carry of firearms.

Discussion: In general, any person who has a concealed handgun permit may carry a concealed handgun unless otherwise specifically prohibited by law. The person shall carry the permit together with valid identification whenever the person is carrying a concealed handgun, shall disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun when approached or addressed by the officer, and shall display both the permit and the proper identification upon the request of a law enforcement officer.

In 2011, the legislature substantially revised the statutes governing local government authority to regulate the locations in which handguns may be lawfully carried concealed with a proper permit. The legislature revised the statutes again this session in Session Law 2013-369 effective October 1, 2013, making the following relevant changes: (1) removing “playgrounds” as areas in which local governments can prohibit lawful concealed carry of a firearm; and (2) limiting the circumstances in which lawful concealed carry can be prohibited at athletic fields to only those times in which the field is scheduled for use through the Town for an “organized athletic event.” Staff proposes amendments to Town Code of Ordinances Section 22-51(a)(1) to comply with this amendment.

Staff further proposes to clarify Section 22-51(b). Questions regarding the Town’s regulation of “open carry” of firearms have increased in recent years. State law allows local governments to “regulate the display of firearms on the streets, sidewalks, alleys, or other public property” (NCGS 160A-189) and to prohibit “the possession of firearms in public-owned buildings, on the grounds and parking areas of those buildings, or in parks and recreation areas” (NCGS 14-409.40(f)). Staff proposes to update and clarify the current ordinance by creating a new section regarding open carry of firearms; prohibiting open carry in all Town buildings and parks and recreation areas, including greenways; and limiting open carry on other public property including streets and sidewalks.

Regulation or prohibition of both concealed and open carry of firearms on private property is the responsibility of individual property owners.

Ordinance 2013-Code-03
Town of Cary, NC

An Ordinance Amendment of the Town of Cary, North Carolina amending Chapter 22 of the Cary Code of Ordinances, Offenses and Miscellaneous Provisions, as follows:

Chapter 22
Offenses and Miscellaneous Provisions*

Sec. 22-51. Prohibition of the carrying and display of handguns, firearms and other weapons at certain public locations.
(a) Concealed handguns.
(1) Possession prohibited. No person shall carry a concealed handgun in town-owned buildings, on the appurtenant premises of those buildings, or in town recreational facilities as defined by G.S. 14-415.23, which are all town playgrounds, athletic
fields and athletic facilities. A list of recreational facilities shall be set out in a Schedule of Recreational Facilities at which Concealed Handguns are Prohibited which shall be updated as necessary and retained permanently in the office of the Director, Parks, Recreation and Cultural Resources. Notwithstanding the foregoing, nothing in this section shall prohibit a concealed handgun permittee from securing the handgun within an enclosed compartment of a locked motor vehicle.

(2) Posting required. The director of public works or designee is hereby authorized and instructed to post conspicuous signage at appropriate locations on or within each recreational facility and each building and the grounds and parking areas of such buildings owned, leased as lessee, operated, occupied, managed or controlled by the town, as well as any other appurtenant premises to such buildings, indicating that carrying a concealed handgun on the properties and locations described in this section is prohibited therein and thereon unless specifically permitted or authorized by state law or the provisions of the town’s code of ordinances. The director of public works or designee shall exercise discretion in determining the number and appropriate location of signs to be placed.

(b) Other firearms and weapons.

(1) No person shall display any firearm in public-owned buildings, on the grounds or parking areas of those buildings, or in public parks and recreation areas, including town greenways. On all other public property within the town, including public streets, alleys, and sidewalks, display of firearms shall comply with the following:
(a) no firearms other than handguns, as defined in NCGS 14-409.39, may be displayed;
(b) the handgun shall be holstered such that firing of the weapon is not possible;
(c) the handgun shall be clearly visible and not concealed or partially concealed;
(d) display of handguns is prohibited for any person while consuming alcohol or at any time while the person has remaining in the person's body any alcohol or in the person's blood a controlled substance previously consumed, but a person does not violate this condition if a controlled substance in the person's blood was lawfully obtained and taken in therapeutically appropriate amounts.
(e) display of handguns is prohibited on any public streets, including adjacent sidewalks, that have been closed by the chief of police or designee pursuant to Section 34-74; and
(f) display of handguns is prohibited within the area and boundaries of the Lazy Daze Arts & Crafts Festival during the times listed in Section 24-18, and within the area and boundaries of any other town-sponsored event to which the provisions of 24-18 are made to apply by the town council.

(2) No person shall display any firearm or other deadly weapon as defined in G.S. 14-269(a), or any knife having a blade of three inches or longer, BB gun, air gun, paintball gun, airsoft gun, bow and arrow or any type of lethal weapon, while on any public street, alley, sidewalk or other public property within the town, including town greenways, unless specifically permitted or authorized by law. No person shall carry or have possession of a knife having a blade of three inches or longer, a BB gun, air gun, paintball gun, airsoft gun, bow and arrow or any type of lethal weapon in any park, including town greenways.

(3) This subsection (b) is not applicable to concealed handguns, which are governed by subsection (a) above.
(c) **Exceptions.** The possession or display of a firearm or other weapon is exempt from the provisions of this section 22-51 in the following situations:

1. If the chief of police, or designee, has authorized the public possession or display of a firearm, or other weapon, as part of an official program or event sponsored or sanctioned by the town.
2. If the possession or display of the firearm, or other weapon, was the result of an individual(s) exercising his or her legitimate right to self defense or the defense of others as allowed by law.
3. If the possession or display of the firearm, or other weapon, was conducted by a person(s) authorized to carry and display such items as part of their official or otherwise recognized lawful duties (e.g., law enforcement officers, military personnel, security guards, etc.).
4. If the possession or display of the firearm, or other weapon, was necessary for the temporary transport and securing of the item and was not otherwise in violation of existing statutes or ordinances (e.g., recent purchase and movement to vehicle for transport, securing of firearm by CCH permit holder in vehicle, found item to be turned in to authorities, firearm in approved vehicle gun rack, etc.).
5. The possession or display of a knife with a blade longer than three inches in Symphony Lake park property and Fred G. Bond Metro Park when used for fishing purposes only.
6. The possession or display of a knife with a blade longer than three inches for the performance of the duties of a town employee or contractor.

(d) **Violation.** The carrying of concealed handguns or the possession or display of any firearm or other weapon as defined in this section, in or upon any of the locations specified by this section, shall constitute a misdemeanor and subject any violator(s) so convicted to such penalties as may be imposed by the court.


**State law reference**—Local regulation of firearms, G.S. 14-415.23; 14-409.40; 160A-189.

Adopted: 9/12/2013
Effective: 10/1/2013

**Fiscal Impact:** There are no operating or capital budget impacts associated with the recommendations contained in this staff report. Staff will remove signs at playgrounds prohibiting concealed carry of handguns on or before October 1, 2013.

**Staff Recommendation:** Staff recommends amending Chapter 22 of the Code of Ordinances as proposed.

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**ACTION:**

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

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**e. NC Governor’s Highway Safety Program Grant Award** (PD14-006)
Committee unanimously recommended approving a resolution recognizing $8,000 funds awarded by the North Carolina Governor’s Highway Safety Program, and appropriating the $8,000 to the Police Department’s capital equipment account for the purchase of a light tower.
Executive Summary: Staff requests the Cary Town Council approve a resolution to receive funding for an equipment grant awarded by the North Carolina Governor’s Highway Safety Program providing qualifying reimbursements up to $8,000, which is expected to cover the entire cost of this item. The grant is specifically for the purchase of a light tower to be used during nighttime “Driving While Impaired” (DWI) enforcement checkpoints.

Discussion: The Town of Cary Police Department conducts and participates in about twenty DWI checkpoints every year. Currently, the town only has light towers used town wide by the Public Works Department. Because this is not assigned to the Police department, use is very limited and can even be removed during a checkpoint, if an emergency arises elsewhere. Based on this situation, we applied for help with a light tower that can be solely dedicated to our DWI enforcement efforts.

This equipment will greatly assist in keeping our officers safe while working the roadways at night. In addition to DWI enforcement, a new focus on nighttime seatbelt enforcement is underway in our community. Without the use of a light tower during nighttime enforcement efforts, violations are much harder to observe.

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

Staff Recommendation: Staff recommends that the council approve the resolution accepting the grant and recognize and appropriate the $8,000 in GHSP grant funds to the Police Department’s capital equipment account for the purchase of a light tower. The resolution is attached to and incorporated herein as Exhibit A.

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

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f. Amendments to Traffic Schedules 8 and 15 (PD14-008)
Committee unanimously recommended approving proposed ordinance amendments to Traffic Schedule 8: Prohibited Parking – All Times, and to Traffic Schedule 15: Speed Limits in School Zones.

Executive Summary: Staff recommends that council amend Traffic Schedule 15, speed limits in school zones, and Traffic Schedule 8, prohibited parking.

Discussion: To provide for better traffic flow and to protect pedestrians and students in the area of the charter school, Triangle School of Math and Science, staff recommends amending the Traffic Schedules to create a reduced school zone speed limit on Gregson Drive and MacKenan Drive and no parking on Gregson Drive. Additionally, staff recommends a clean-up amendment to Traffic Schedule 8 to remove the old schedule for Carpenter Elementary School that was replaced when the school zone speed limit on Morrisville Parkway was reduced to 25 mph.

Ordinance 2013-TSO-02
A TRAFFIC SCHEDULE OF THE TOWN OF CARY, PROVIDING THAT THE TOWN OF CARY, NC TRAFFIC SCHEDULES, BE AMENDED AS FOLLOWS:

Traffic Schedule 15: Speed Limits in School Zones

Add:
Gregson Drive from a point 100’ west of MacKenan Drive to a point 150’ south of MacAlyson
Court, in effect for the Triangle School of Math and Science charter school, from 30 minutes before to 30 minutes after school begins and ends on school days only - 25 mph.

MacKenan Drive from a point 650’ north of Gregson Drive south to Gregson Drive, in effect for the Triangle School of Math and Science charter school, from 30 minutes before to 30 minutes after school begins and ends on school days only - 25 mph.

Delete:
Morrisville Parkway 0.10 miles from Carpenter Upchurch Rd. to its intersection with Louis Stephens Road, in effect for Carpenter Elementary School zone from 30 minutes before to 30 minutes after school begins and ends on school days only - 35 mph.

Traffic Schedule 8: Prohibited Parking – All Times
Add:
The north side of Gregson Drive from MacAlyson Court to MacKenan Drive.

North and south sides of Optimist Farm Road (SR 1390) from its intersection with West Lake Road (SR 1387) to a point 0.509 miles west of SR 1387.

Fiscal Impact: The charter school will provide the school zone flashers as well as No Parking signs. The equipment will then be owned and maintained by the Town of Cary.

Staff Recommendation: Staff recommends that council amend Traffic Schedule 15, speed limits in school zones, and Traffic Schedule 8, prohibited parking.

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

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g. “Watch for Me NC” Resolution (PL14-006)
Committee unanimously recommended approving a resolution of support for the “Watch for Me NC” Campaign.

Executive Summary: The Watch for Me NC campaign, led by NCDOT, is geared towards increasing awareness of bicycle users and pedestrian safety. NCDOT is asking that municipalities pass resolutions supporting the campaign. Staff recommends approval of the attached “Watch for me NC” Resolution.

Background: North Carolina and the Triangle area in particular, routinely rank as one of the most dangerous places for pedestrians. Each year in the Triangle, more than 400 people are hit while walking and 180 are hit while bicycling.

Discussion: Watch for Me NC is a comprehensive campaign aimed at reducing the number of pedestrians and bicyclists hit and injured in crashes with vehicles. The program is a collaborative effort with state and municipal police, transportation, planning, and engineering departments.

The campaign consists of safety and educational messages directed toward drivers, pedestrians and bicyclists, and a concentrated effort by area police, including, to enforce safety laws.

The campaign will run through the end of October 2013. It is anticipated that the materials, messaging and enforcement efforts inspired by the campaign will become a regular part of the local, regional and state safety programs.

Fiscal Impact: None
Staff Recommendation: Staff recommends approval of the attached “Watch for me NC” Resolution.

RESOLUTION OF THE TOWN OF CARY SUPPORTING PARTICIPATING IN THE WATCH FOR ME NC PEDESTRIAN / BICYCLE SAFETY CAMPAIGN IN COOPERATION WITH THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

WHEREAS, it is a priority of the Cary Town Council to protect human health and safety; and
WHEREAS, the Cary Town Council recognizes bicycling and walking as important and viable modes of transportation and recreation; and
WHEREAS, the Cary Town Council recognizes the importance of educating pedestrians, bicyclists and drivers on how to safely share the road; and
WHEREAS, the North Carolina Department of Transportation is leading a pedestrian and bicycle safety campaign for the Triangle region, known as Watch for Me NC, and is seeking commitments from Triangle communities to participate in the Watch for Me NC 2013 campaign; and
WHEREAS, the Watch for Me NC campaign includes safety education for pedestrians, bicyclists and drivers, and provides training to police officers to support enforcement activities.

NOW, THEREFORE, BE IT RESOLVED THAT THE CARY TOWN COUNCIL pledges to join with the North Carolina Department of Transportation to participate in the 2013 Watch for Me NC campaign, with involvement by the municipality’s police department to carry out enforcement activities in support of the campaign.

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

h. Bid Award – 2013 Sewer Rehabilitation Project (PWUT14-02)
Committee unanimously recommended awarding the 2013 Sewer Rehabilitation Project to Layne Inliner, LLC for $3,444,177.50. The recommendation of award by Council represents a preliminary determination as to the qualifications of the bidder and no legally binding acceptance of the bid or offer occurs until the Town has executed a written agreement.

Executive Summary: This project involves rehabilitation of sewers from 6 inches in diameter to 30 inches in diameter by installation of cured-in-place pipe (CIPP) liners and rehabilitation of manholes using high strength corrosion-resistant mortar. Bids for this project were received from four firms, with the lowest responsive, responsible bid being submitted by Layne Inliner, LLC. This contract may be extended to utilize future allocations of sewer rehabilitation capital project funds for FY2015, FY2016 and FY2017.

Discussion: Work on this project consists of two main categories: A) Rehabilitation of 9,600 feet of large diameter sewers (15 inches and larger) and over 80 manholes and B) miscellaneous sewer rehabilitation and repairs for sewers up to 12 inches in diameter, including 31,500 feet of sewer line rehabilitation, 1500 vertical feet of manhole rehabilitation, and associated items of work. Large diameter sewers proposed for rehabilitation include portions of the Black Creek Interceptor, Indian Creek Interceptor, and the Holly Springs Road gravity sewer south of Ten-Ten Road. Rehabilitation of large diameter sewer lines requires significant planning and expense associated with bypass pumping of wastewater flows during construction. Rehabilitation of small diameter sewer lines can typically be performed by the general contractor without specialty pumping subcontractors, and is more routine in nature. This enables the establishment of unit
prices that can cover this type of work without being location-specific, and for this reason the rehabilitation of small diameter sewers is eligible for contract extension.

The Town of Cary Public Works and Utilities Department received bids for the 2013 Sewer Rehabilitation Project on August 20, 2013. The Public Works and Utilities Department prepared the contract documents and will be responsible for project management throughout construction. The Engineering Department will provide construction inspection services.

The Engineer’s estimated cost for this project was $3,922,830. Below is a summary of the bids received for this project.

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Bid Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Layne Inliner, LLC</td>
<td>$3,444,177.50</td>
</tr>
<tr>
<td>Insituform Technologies, LLC</td>
<td>$3,676,365.20</td>
</tr>
<tr>
<td>Tri-State Utilities Co.</td>
<td>$3,877,106.40</td>
</tr>
<tr>
<td>Am-Liner East, Inc.</td>
<td>$4,149,422.69</td>
</tr>
</tbody>
</table>

**Fiscal Impact:**

**Operating Impacts:**

**Short term:** Personnel impacts include providing construction administration and inspections. Inspections will be performed by the Engineering Department with support from Public Works and Utilities. Construction administration responsibilities will be handled by the Public Works and Utilities Department.

**Long term:** Public Works and Utilities staff will continue to maintain the wastewater collection infrastructure following repairs and rehabilitation. No additional funding or staffing will be required to maintain the sewer system infrastructure as a result of this project.

**Funding: Cost Breakdown:**

<table>
<thead>
<tr>
<th>Project Section</th>
<th>Cost</th>
<th>Project Funding</th>
<th>Funds Available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indian Creek Interceptor</td>
<td>$692,215</td>
<td>SW1134</td>
<td>$1,004,200</td>
</tr>
<tr>
<td>Holly Springs Road Gravity Sewer</td>
<td>$291,440</td>
<td>SW1259</td>
<td>365,000</td>
</tr>
<tr>
<td>Black Creek Interceptor and Miscellaneous</td>
<td>$475,663</td>
<td>SW1167, SW1194, SW1212, SW1232, SW1245</td>
<td>$201,702, $138,943, $1,222,093, $500,000, $1,294,052</td>
</tr>
<tr>
<td>Sewer Rehabilitation</td>
<td>$2,460,523</td>
<td>SW1245</td>
<td>$3,356,790</td>
</tr>
<tr>
<td>Total Cost (all sections)</td>
<td>$3,444,178</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Staff Recommendation:** Staff recommends awarding the project to Layne Inliner, LLC for $3,444,177.50. The recommendation of award by Council represents a preliminary determination as to the qualifications of the bidder and no legally binding acceptance of the bid or offer occurs until the Town has executed a written agreement.

**ACTION:**

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

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i. **Street Light Policy Revisions** (EN14-014)

Committee unanimously recommended approving a proposed update to Policy
Statement 13 to change the Town standard street light to LED. Committee further recommended implementing a project with Duke Energy Progress to replace all Town-leased street light fixtures with LED replacement fixtures under their LED Basic Rate, with $1,000,000 be returned to General Fund Fund Balance to be used for other future needs.

Executive Summary: The Town of Cary leases approximately 7,700 street lights from Duke Energy Progress, at an annual cost of approximately $1.1 M, with a Light Emitting Diode (LED) replacement option. LED replacement fixtures are more cost effective, provide improved quality of light and reduced environmental impacts. Town and Duke Energy Progress staffs have been working on details for a potential project to replace our current fixtures with LEDs. The project does not currently include replacement of street light poles due to cost and constructability implications. Staff recommends Council approval to update Policy Statement 13 to change the Town standard street light to LED and implement a project with Duke Energy Progress to replace all Town leased street light fixtures with LED replacement fixtures under their LED Basic Rate (Standard Option – Option A). Staff further recommends that if Option A (Standard Option) is selected, $1,000,000 be returned to General Fund Fund Balance to be used for other future needs.

Background: In 2010 the Town partnered with Duke Energy Progress (formally Progress Energy) and created a pilot project using EECBG (Energy Efficiency and Conservation Block Grant) funding as part of the ARRA (American Recovery and Reinvestment Act) to install LED street light options available at that time. The pilot project included the Town purchasing 34 LED fixtures from approved manufacturers and Progress Energy installing our LED fixtures on their poles. At the time of the pilot project, it was not cost effective to lease LED fixtures from Progress Energy. Since the installation, the Town has saved approximately $5,000 a year, received positive feedback from the public and experienced reliable service from the LED fixtures.

Discussion: Duke Energy Progress now offers two viable options for municipalities to replace street lights with LED fixtures as detailed on their Street Lighting Service Schedule SLS-24. These options are:

A. LED Basic Rate (Standard Option) – Under this option the Town leases the LED fixtures similar to how we currently lease non-LED fixtures.

B. LED Basic Rate (Customer-Ownership Option) – Under this option the Town must purchase the LED fixtures from approved manufacturers and Duke Energy Progress installs our LED fixtures on their poles.

The current Town standard street light is a High-Pressure Sodium fixture. Effective June 1, 2013, under the LED Basic Rate (Standard Option), Duke Energy Progress provided a lease rate for LED fixtures that is more cost effective than the lease rates for our current non-LED fixtures. The approved FY13 budget included $3,267,048 for the Town to purchase approximately 7,700 LED street light fixtures to be installed on Duke Energy Progress poles, similar to the pilot project detailed above and under the LED Basic Rate (Customer-Ownership Option). Staff analyzed both options as detailed below:

<table>
<thead>
<tr>
<th></th>
<th>A. LED Basic Rate (Standard Option)</th>
<th>B. LED Basic Rate (Customer-Ownership Option)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upfront Cost</td>
<td>$385,000</td>
<td>$3,267,048</td>
</tr>
<tr>
<td>Annual Savings</td>
<td>$207,860</td>
<td>$572,253</td>
</tr>
<tr>
<td>Payback</td>
<td>1.9 years</td>
<td>5.7 years</td>
</tr>
</tbody>
</table>

The chart above shows Option B results in a higher annual savings but requires a more substantial initial investment and a longer payback period. Option B also requires:

Developers to pay more upfront costs to purchase LED fixtures
More resources from Town staff to manage LED fixture installations
More resources from Town staff to manage annual street light maintenance
Budgeting considerations for replacing fixtures after their expected 15 – 20 year life cycle

The project duration under Option A is anticipated to take one year. Initial discussions include beginning the project inside the Maynard loop in the first quarter of 2014.

**Fiscal Impact:** GG1117 has a balance of $3,267,048 to replace most Town street lights fixtures using LED technology. This project was initially set up to purchase replacement fixtures under Option B. Option A provides an upfront cost reduction of $2,882,048 over Option B. If Option A (Standard Option) is selected, staff believes that $1,000,000 could be returned to the General Fund Fund Balance at this time. Additional funding may be returned to the General Fund Fund Balance as we advance through construction of the project.

**Staff Recommendation:** Staff recommends Council approval to update Policy Statement 13 to change the Town standard street light to LED and implement a project with Duke Energy Progress to replace all Town leased street light fixtures with LED replacement fixtures under their LED Basic Rate (Standard Option – Option A). Staff further recommends that if Option A (Standard Option) is selected, $1,000,000 be returned to General Fund Fund Balance to be used for other future needs.

**POLICY STATEMENT 13**

**STREET LIGHTING**

Prepared by: Engineering Department  
Supersedes: 8/8/2013  
Adopted by Council:  
Effective:

**POLICY PURPOSE**
The purpose of this statement is to adopt an official policy for the Town of Cary pertaining to the installation of street lights for the purposes of traffic safety and crime control.

**COVERAGE**
This policy, upon adoption, shall apply to all public rights of way within the municipal limits of the Town of Cary and any public rights of way annexed in the future until such time that the Policy Statement is altered, modified, or rescinded by the Town Council.

**POLICY**
The Town Council of the Town of Cary hereby establishes the following policy.

A. The owner, developer, or subdivider shall be required to install street lighting via underground contribution, unless specifically approved otherwise by the Director of Engineering, along all proposed streets and along all existing streets, which adjoin the property, in accordance with this policy.

B. Through the development plan approval process, the Director of Engineering may approve street lighting which exceeds the standard Town requirements for residential streets so as to reduce the length of sag vertical curves provided the street lights are operational prior to the issuance of any Certificates of Occupancy on such street. In any case, the minimum allowable length of sag vertical curves shall be as follows: residential streets - 20A; cul-de-sacs and loop streets - 15A.

C. All underground electrical distribution systems for street lighting within the corporate limits of the Town of Cary and its Extraterritorial Planning Jurisdiction shall be installed according to the following standards:
1. Underground service for light fixtures shall be installed by the developer in conformance with the utility company and Town of Cary standards at the developer’s expense.
2. The placement of street lighting fixtures on residential streets shall be at 400 to 600 foot intervals unless:
a. the roadway length is less than 400 feet but more than 200 feet in which case a street light will be provided at the end of the street; or
b. where the roadway length is less than 200 feet and a street light is placed at the intersection and no natural features create a problem, no street light will be placed at the end of the roadway; or
c. the vertical and horizontal street alignment or natural features necessitate shorter spacing intervals.

3. The placement of street lighting along non-residential streets shall be in accordance with the latest revision of the Illuminating Engineering Society's "American National Standard for Roadway Lighting."

4. A street light shall be provided at all street intersections.

D. Standard street light fixtures shall be enclosed high pressure sodium Cutoff Cobrahead lamps and conform to the following:

1. All fixtures on residential streets shall be 75 Watt LEDs on gray fiberglass poles twenty-five (25) feet in height.
2. All fixtures along thoroughfares shall be 105 or 215 Watt LEDs on gray fiberglass poles thirty (30) feet in height or 50,000 lumen lamps on gray fiberglass poles thirty-five (35) feet in height. The 105 or 215 Watt LED fixtures shall be placed in residential areas when spillover from the 50,000 lumen fixtures would be excessive.

E. Authorization for street light installations shall occur at such time as:

1. A developer, through the Town of Cary, requests the installation of street lights prior to the issuance of any Certificates of Occupancy. The developer shall incur a monthly electrical expense billed from the utility company equal to the monthly electrical expense incurred by the Town of Cary, for each street light installed. The developer will be billed by the utility company for the period beginning with installation of the street light and ending with notification to the Town of Cary, by the Developer, of issuance of a Certificate of Occupancy in the immediate area of each street light location.
2. A Certificate of Occupancy is issued in the immediate area of the proposed street light location.
3. A street is constructed or widened as a part of development. Streets that are constructed or widened by the Town of Cary shall be lighted immediately after construction, dependent on the availability of funds. The Town shall acquire any additional easements necessary to support street light projects requested by the Town.

F. Street lighting facilities and street lights shall be installed by the developer on any street, portion of street, or widening prior to the Town of Cary’s acceptance of that street for total maintenance unless otherwise approved by the Director of Engineering. In the event street lighting has not been installed, the owner, developer, or subdivider may submit payment to the Town prior to acceptance of total maintenance. Payment shall be based on a cost estimate provided by the utility company or the Engineering Department for street light installation.

G. Residents along a street may request the relocation of a street light provided the proposed street light location meets Town standards and the relocation is approved by the Engineering Department. A petition, signed by all persons within the area of influence, is required for the relocation of street lighting and shall include information on the specific location and associated construction impacts. The Engineering Department shall determine the area of influence on a case by case basis and provide the required petition for the residents to complete. Relocation cost and all facilities abandonment costs must be paid in full to the utility company, in advance, by the resident(s) requesting the relocation.

H. Residents along a street may request additional street lighting, beyond that already installed, provided current street lighting does not meet Town standards and the requested additional street lighting is approved by the Engineering Department. A petition, signed by all persons within the area of influence, is required for additional street lighting and shall include information on the specific location and associated construction impacts. As an option, a petition, signed by at least 70% of all residents within the entire subdivision, is required for additional street lighting. The Engineering Department shall determine the area of influence on a case by case basis and provide the required petition for the residents to complete. After the
petition is completed and approved by the Engineering Department, the Town will process the request and pay all costs associated with street light installation.

I. Upon annexation, residents along a street may request additional street lighting, beyond that already installed, provided current street lighting does not meet Town standards and the request includes an approved petition. The Engineering Department shall contact the utility company for the street lighting layout, including associated construction impacts and installation costs. An approved petition for additional street lighting shall include the street lighting layout, associated construction impacts and signatures of 70% of residents within the area of influence. The Engineering Department shall determine the area of influence on a case by case basis and provide the required petition for the residents to complete. After the petition is completed and approved by the Engineering Department, the Town will process the request and pay all costs associated with street light installation.

J. The Town will not pay for any costs associated with the lighting of private streets or drives.

K. A developer or Homeowner’s Association (HOA) may request upgraded street lighting within a new development provided:
   1. Street light fixture types and locations must be approved by the Town of Cary.
   2. The developer and/or HOA shall be responsible for all installation costs and monthly operating costs associated with upgraded street lights.
   3. The developer and/or HOA shall be responsible for any costs associated with deletion of upgraded street lights and any costs associated with installing the Town’s standard street lights prior to the expiration of the contract with the utility company.
   4. The developer shall include all responsibilities of the HOA pertaining to the upgraded street lighting in the development covenants. The developer shall inform all purchasers of property in the development of these same responsibilities.
   5. Upgraded lighting shall not be used on thoroughfares.
   6. Developers of private streets shall be required to install private street lighting in accordance with this policy, with the exception that the HOA will not have the option of deleting the private street lighting at any time in the future.

L. An HOA may request to upgrade their existing standard street light system and have the Town reimburse the HOA in an amount equal to the monthly cost of the standard street lighting system provided:
   1. The HOA requests an upgraded street lighting plan from the utility company.
   2. The Town reviews the upgraded street lighting plan to ensure it meets Town standards.
   3. The HOA may request additional street lighting at their expense.
   4. The HOA pays all costs associated with removal of existing street lighting and installation of the upgraded street light system.
   5. The HOA pays the utility company for the monthly street light bill.
   6. The HOA executes a reimbursement contract with the Town.
   7. The Town reimburses the HOA semiannually.

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

j. General Obligation Bond Sale Schedule (FN14-02)
   Committee unanimously recommended approving an adjusted Community Investment Bond sale schedule and a budget amendment to reduce General Fund debt service and increase the General Fund Transfers to Capital Project Funds by $4,199,283. In the General Capital Funds, transfers in from the General Fund of $4,199,283 would replace an equal amount of appropriated debt revenue on the most active bond projects for design and capital construction costs.

Executive Summary: Due to the projected cash flow of expenditures for the Community Investment bond projects, staff believes that the first bond sale should be delayed from Fall 2013 until Spring 2014. Staff recommends the revenue received from the two cent increase in property...
tax in FY14 be transferred from debt service to the Community Investment bond projects for pay as you go cash funding to replace authorized debt.

**Background:** The $80 million Community Investment general obligation (GO) bond referendum was approved by voters on November 6, 2012 for capital borrowing secured by tax authority and related tax increases to fund transportation, parks and fire capital projects. Consistent with the communication provided to voters in advance of the referendum, Council authorized a two cent tax increase effective July 1, 2013 (FY 2014) to pay the debt service for the first of two planned $40 million debt sales. Referendum communication also clearly explained that another two cent tax increase will need to be effective July 1, 2015 (FY 2016) to pay for additional debt service on a second $40 million borrowing. The FY14 two cent tax increase provides approximately $4.2 million in additional property tax revenue and matches the appropriation for new debt service in FY14.

**Discussion:** Preliminary debt management plans projected selling the first $40 million of bonds in fall 2013 with $4.2 million of debt service payments budgeted for June of 2014 (FY 2014). Most projects could not begin design until the referendum took place because the projects would not proceed if the referendum did not pass. As a result, most of the projects identified to be funded from the first issuance of bonds are still in early stages of design, and significant construction spending on the projects will not begin to occur for another six to twelve months. Since significant spending will not occur until later in FY 2014, staff examined sale date options. Staff narrowed a series of options to two: (1) issuing $40 million of bonds in September 2013 at current interest rates or (2) delaying the bond sale until spring 2014, with debt service beginning in FY 15. Under option 2, Council could appropriate the increased tax revenue generated in FY 2014 to bond projects as pay as you go cash funding so that the Town could borrow only $35.8 million instead of $40 million in spring 2014.

The second option considered the risk of increasing interest rates by delaying the sale and included a 0.50% higher interest rate assumption. Since the significant spending on the bond projects will not begin until late in FY 2014, staff has determined Option 2 to delay the bond sale until spring 2014, with debt service beginning in FY 15. Under option 2, Council could appropriate the increased tax revenue generated in FY 2014 to bond projects as pay as you go cash transferred from the General Fund. Debt issued would be reduced by $4.2 million, saving over $60,000 in interest over the life of the bonds even after assuming a higher interest rate. By reducing the amount of the first bond sale through the tax revenue transfer for pay as you go spending, future flexibility is provided by either a) leaving more voter authorized debt capacity for the second sale or b) reducing debt service in the future through both interest savings and reduced total borrowing.

**Fiscal Impact:** This change would not increase appropriated spending for projects, and could reduce the Town’s total cost of debt.

**Staff Recommendation:** Staff recommends a budget amendment to reduce General Fund debt service and increase the General Fund Transfers to Capital Project Funds by $4,199,283. In the General Capital Funds, Transfers in from the General Fund of $4,199,283 would replace an equal amount of appropriated debt revenue on the most active bond projects for design and capital construction costs.

**ACTION:**

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

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**k. Bid Award – NEXGEN Computerized Maintenance Management System Software (TS14-01)**
Committee unanimously recommended awarding a bid for NEXGEN Computerized Maintenance Management System Software, utilizing statute NCGS 143-129(g) to piggyback the bid award of the City of Durham for the purchase of unlimited site licenses in the amount of $200,000.

Executive Summary: Staff has spent a considerable amount of time researching Computerized Maintenance Management System (CMMS) software and has determined that the NEXGEN software application best meets all of the Town’s needs. The piggyback statute, NCGS 143-129(g), permits local governments to enter into contracts with vendors for purchase at the same or more favorable pricing as provided under contract with another unit of local government if the contract was awarded after completion of a public, formal bid process within the past 12 months. After thoroughly reviewing the different software applications available, staff has determined that in is in the best interests of the Town, and recommends, that Council piggyback the bid award of the City of Durham for the purchase of an unlimited site license for NEXGEN CMMS software for $200,000. Additional costs for the project, which Council is not required to approve as part of this staff report, will include costs for annual maintenance of the software ($17,000 $40,000 per year) and costs for customization, data migration, and implementation of the software, which will be separately negotiated with NEXGEN.

Background: North Carolina General Statute NCGS 143-129(g), often referred to as the piggyback statute, allows a local government to waive competitive bidding requirements and enter into contracts with vendors who have in the past 12 months been awarded a contract by any arm of federal, state, or local government that was bid under a public, formal bid process substantially similar to that required by NC General Statutes, if the vendor is willing to extend the same or more favorable pricing and terms to the local government. The statute requires that the governing board approve the purchase at a regularly scheduled meeting occurring no fewer than ten days after publication of a notice that a waiver of the bid procedures will be considered.

Discussion: Town Council established capital project GG1111, Application Software Replacement Project, in 2014 but staff has been examining portions of this issue (replacing facilities management and other software) since April 2011. Staff has spent a considerable amount of time researching Computerized Maintenance Management System (CMMS) software and has attended several demos of products from different vendors. NEXGEN Utility Management, Inc., a California Company, was awarded a bid for CMMS software by the City of Durham and the contract was signed on February 28, 2013. Staff evaluated the bid specifications and determined the software was bid according to the North Carolina competitive bidding statute and meets the Town’s criteria and standards for this capital project.

The CMMS software includes asset management, work orders and facility maintenance capabilities. It also includes Customer Relationship Management capability as well as a mobile application for allowing citizens to report a variety of problems to the Town using smart devices such as mobile phones and tablets. NEXGEN Utility Management, Inc. has offered to extend the Durham pricing on the CMMS software licenses to the Town of Cary. Staff has thoroughly reviewed this bid pricing, believes it is favorable and does not anticipate that a separate bidding process would result in a better price. Additionally, a separate bidding process would require extensive staff and consultant time and resources to manage.

Fiscal Impact:
Operating: The annual maintenance cost for the software package is $40,000, which, after year one, will be funded through the Technology Services operations budget.
Funding: A total of $500,000 has been appropriated in the GG1111 Application Software Replacement Project. No funds have been encumbered or expended to date. The $200,000 bid award which Council is being asked to approve, and the first-year annual maintenance fees of $40,000, can be accommodated within the funds appropriated in the project. In addition, it is anticipated that the customization, data migration, and implementation costs can be accommodated within the funds appropriated in the project.
Staff Recommendation: Staff recommends Council determine that it is in the best interests of the Town to piggyback the bid award of the City of Durham for the purchase of the NEXGEN Computerized Maintenance Management System software unlimited site licenses in the amount of $200,000.

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

C. RECOGNITIONS, REPORTS, AND PRESENTATIONS

1. Presentation of a Proclamation Recognizing St. Michael the Archangel Catholic Church's 50th Anniversary. (Council Member Smith)

RECOGNIZING THE 50th ANNIVERSARY OF ST. MICHAEL THE ARCHANGEL CATHOLIC CHURCH

WHEREAS, in the early 1960s, Father Michael Carey, the pastor of Our Lady of Lourdes Catholic Church in Raleigh, had the foresight to see Cary’s growth potential and an opportunity to establish a Catholic community in the small town of about 5,000 people. With the support of Bishop Waters, the Diocese purchased a 15 acre parcel of land at the corner of Maynard Road and Walnut Street, and began constructing Cary’s first Catholic Church on September 29, 1962.

WHEREAS, on March 16, 1963, about 100 members of the congregation dedicated the new church to God, and in 1967, St. Michael the Archangel Catholic Church was officially recognized as an independent parish. The church’s membership rapidly increased, and by the late 1980s church leaders began planning for a larger facility. The Diocese acquired the current High House Road property, and in 1996 on the Feast Day of St. Michael, church leaders and parishioners dedicated this new facility to God.

WHEREAS, for 50 years, St. Michael’s parishioners have served our community with dedication, love and faithful commitment, with the foundation of their faith being their dependence upon God for wisdom, courage and strength. This faith community is a vital part of Cary, with more than 17,000 members living their faith and sharing their time and talents. Members actively participate in 75 different ministries, which enhance the quality of life in Cary.

NOW, THEREFORE, I, Harold Weinbrecht, Jr., Mayor of the Town of Cary, North Carolina, on behalf of the Cary Town Council, do hereby recognize the 50th anniversary of St. Michael the Archangel Catholic Church. On behalf of all Cary citizens, I extend our congratulations to Reverend Doug Reed and the entire St. Michael’s faith community on this momentous occasion.

PROCLAIMED the 12th day of September, 2013.

Smith presented the proclamation to Anniversary Committee Member Dave Wulff, Father Doug Reed and Father Ryan Elder from St. Michael’s.

2. Recognition of Senior Fire Code Official Don Ayscue for fire safety consultation to the Bangladesh Garment Manufacturers & Exporters Association. (Mr. Maxwell White, President and Owner of World Wide Apparel Resources)

White recognized Ayscue and thanked him for his work in helping to improve conditions in Bangladesh.

3. Presentation of the Cyber Security Month Proclamation. (Council Member Bush)

DESIGNATING OCTOBER 2013 AS CYBER SECURITY AWARENESS MONTH IN CARY

WHEREAS, technology plays a vital role in our daily lives and in the future of our Town, State and Nation. The Internet provides a simple mechanism for our citizens, schools, libraries and businesses to perform a variety of tasks, including keeping in touch with family and friends, managing personal finances, performing research, enhancing education and conducting business. Additionally, businesses and service...
providers are increasingly reliant on information systems to support financial services, energy, telecommunications, transportation, utilities, health care, and emergency response systems.

WHEREAS, Internet users and our information infrastructure face an increasing threat of malicious cyber attack, loss of privacy from spyware and malware and significant financial and personal privacy losses due to identity theft and fraud.

WHEREAS, there are numerous national initiatives that provide education about cyber security. The Stop.Think.Connect Campaign (www.stopthinkconnect.org) uses a common sense approach to help all digital citizens stay safer and more secure online:

STOP: Before you use the Internet, take time to understand the risks and learn how to spot potential problems.

THINK: Take a moment to be certain the path ahead is clear. Watch for warning signs and consider how your actions online could impact your safety, or your family’s.

CONNECT: Enjoy the Internet with greater confidence, knowing you’ve taken the right steps to safeguard yourself and your computer.

WHEREAS, the Town’s 2008 biennial citizen satisfaction survey indicated that 96 percent of Cary residents at that time had access to the Internet. In the 2012 survey, we learned that almost 55 percent of Cary residents own smart phones, and of that number, 41 percent use them for on-line banking and shopping. In April 2007, the Cary Town Council took proactive steps to increase cyber security and citizen awareness of these threats by establishing a computer related crime activity unit in the Police Department. Today, the Town’s cyber crime unit is the only full-time unit in Wake County. It employs three full-time and one part-time staff who work diligently to protect our citizens’ cyber safety and wellbeing. They also routinely assist other local, state and federal agencies with cyber crime related cases. In the past year, these detectives have been assigned over 60 cases. The Police Department also maintains a webpage at www.townofcary.org that contains guidelines and resources to help us keep our families and children safe on-line.

WHEREAS, in 2012, the Town Council created a technology task force comprised of Cary residents with a wide array of technology related experience to determine how the Town can better use technology to serve its citizens. Cyberspace security is a critical component of their work.

WHEREAS, Town staff and officials understand that Internet security is a shared responsibility in which everyone has a critical role. Raising awareness of cyberspace security in our community will help protect the Town’s information infrastructure and our citizens.

NOW, THEREFORE, I, Harold Weinbrecht, Jr., Mayor of the Town of Cary, North Carolina, on behalf of the Cary Town Council, am pleased to partner with the United States Department of Homeland Security (www.us-cert.gov), the Multi-State Information Sharing and Analysis Center (www.msisac.org), the National Association of State Chief Information Officers, (www.nascio.org), and the National Cyber Security Alliance (www.staysafeonline.org) and declare October as National Cyber Security Awareness Month in Cary. I urge Cary residents to learn more about cyber security, and put that knowledge into practice in their homes, schools, workplaces, and businesses.

PROCLAIMED this 12th day of September, 2013.

Bush presented the proclamation to Telecommunications Manager Terry Yates and Police Lieutenant Stephen Fonke.

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4. Consideration of adopting a resolution expressing appreciation to NC League of Municipalities retiring Executive Director, Ellis Hankins. (Council Member Robinson)

RESOLUTION EXPRESSING APPRECIATION TO NORTH CAROLINA LEAGUE OF MUNICIPALITIES RETIRING EXECUTIVE DIRECTOR, ELLIS HANKINS

WHEREAS, S. Ellis Hankins, Executive Director of the North Carolina League of Municipalities, a leader in municipal government and leadership for nearly thirty years, has announced his retirement.

WHEREAS, Mr. Hankins began his career with the League in October, 1982 as Assistant General Counsel. He was promoted to General Counsel and chief legislative lobbyist in 1987 and served in that position until departing the League staff in 1994.

WHEREAS, Mr. Hankins returned to the North Carolina League of Municipalities as its Executive Director in 1997.

WHEREAS, S. Ellis Hankins is only the fifth full-time Executive Director of the North Carolina League of Municipalities in the 105-year history of the membership association representing nearly every municipality in the State of North Carolina.
WHEREAS, Mr. Hankins has worked to promote good government in North Carolina through the League’s offering non-partisan advocacy, insurance, and other services as directed by the membership. His work has benefitted the citizens of the cities and towns in North Carolina.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Cary, hereby honors S. Ellis Hankins, of the North Carolina League of Municipalities, for faithful service and lasting contributions to municipal government.

FURTHERMORE, the Cary Town Council extends its best wishes and much happiness to S. Ellis Hankins as he begins this new chapter of his life.

ADOPTED this 12th day of September, 2013.

Robinson acknowledged Hankins’ service to North Carolina municipalities and read the resolution.

ACTION:
Motion: Robinson moved to approve the resolution honoring Ellis Hankins.
Second: Bush
Vote: Unanimous

D. PUBLIC SPEAKS OUT (one hour time limit)

Mr. Roger Ehrlich thinks that the veterans park naming process was a closed process. He said citizens should have been included in that process. He believes that the Public Art Advisory Board was only presented with one design for the park, and that his request for a public hearing and a more public process wasn’t entered into the public record. He asked that council fund the needs of the veterans.

Mr. Leonard Nieman spoke about the importance of funding C-Tran improvements: “Last fall a Transportation Bond was passed in Cary that did not included any funding for C-Tran service improvements. I believe the reasoning was transit improvements would be funded by a Wake County 1/2 Cent Sales Tax for Transit that should have also been on that ballot. Only the Wake County Commissioners decided to give voters a choice in the matter, and did not place the sales tax referendum on the ballot. So C-Tran came up on with an “empty bucket” when it came to funding improved service. In fact, with paid trips jumping from 150,00 in 2010 to nearly 300,000 in 2013, rather than improving service C-Tran had to cut service on routes 1, 2, and 5 to reduce boardings in order to maintain on time performance. But I believe tonight a solution to this problem has presented itself. Specifically, I request the Council put a hold, “ear mark”, or whatever you want to call it, on the million dollars returned to the General Fund for “Future Needs” by the Engineering Department in tonight’s Consent Agenda Item 3.i for service improvements to C-Tran. I further request you direct the Planning Department to prepare a plan for implementing this improvement, some of which are listed on the handout I brought, as soon as possible. These funds were returned for “Future Needs”, and C-Tran’s service improvements have been “Future Needs” that have been left hanging for almost two years. Things like extended operating hours for existing service, rationalizing existing routes to restore service previously cut, and adding routes to provide service in western and southern Cary, where none exists now, should not be ignored any longer.”

Ms. Lynn McGuire stated that she is speaking on behalf of residents of Preston Village, Carramore and Heritage Pines regarding their concerns with the Mills-Patterson rezoning. She stated residents that border the development didn’t know about the rezoning. Their concerns are as following:

- the lack of public notice, including positioning of the rezoning signs
- high density of the townhomes
- traffic congestion
- school overcrowding
- environmental concerns with the area wetlands
McGuire thinks the land will be better served by expanding outdoor activities embraced by the community, such as the tennis court, the high school outdoor fields, and the elementary school park.

Mr. Hank Saye is against the Mills-Patterson rezoning. He spoke about the lack of notice, poor planning and inadequate data. He stated that the elementary school, soccer fields, tennis courts and high school consumed most of the 400 foot notice requirement, and Heritage Pines and Preston Village did not receive written notice of the rezoning. He stated that the rezoning signs were not placed on Louis Stephens or Upchurch Meadows. He said if council approves the rezoning, the parcel could support up to 133 units. He suggested council do the following: (1) change the land use plan before considering the rezoning or (2) deny the request because it doesn’t comply with the current land use plan or (3) deny the comprehensive plan consistency because it is not consistent with the comprehensive plan. He said it is necessary to hold off on the rezoning because of the two residential complexes currently under construction at the corner of Davis Drive and High House Road.

Ms. Michelle Draghici is against the Mills-Patterson rezoning because of insufficient facilities for the present residents. Her main concerns are traffic, nearby school overcrowding, and the resulting safety hazards. She stated that the surrounding streets are narrow, meandering two-lane farm roads with blind curves and limited access to main arteries. She said the roads support traffic from Preston Village, Heritage Pines, Carpenter Village, Caramore, the high school elementary school, after school care, soccer fields and tennis court, and are impassable for up to 30 minutes at a time during the day. She said there are no bike lanes or sidewalks on Louis Stephens for connectivity to other areas. She said they cannot support additional density in the area.

Ms. Allison Sanders is against the Mills-Patterson rezoning based on environmental concerns for residents of the nearby wetland ecosystem which is formed by an in-stream marsh behind Greenhope High School. She said the stream is a feeder that runs from the intersection of High House and Carpenter Upchurch Road into the North Hatchet Grove tributary; the tributary joins Crabtree Creek onto the Neuse River, the Pamlico Sound and the Atlantic Ocean. She said she relied on data collected and analyzed by the AP environmental and sciences classes at Greenhope High School since 2000. She said the data collected by the APES class shows the impact of the tennis park and Heritage Pines, and the ecological health of the area does not indicate that it can support additional development without risk to the area. She said this council should not see this as an example of sustainable well planned development.

Ms. Margaret Struble stated she is president of Preston Village Homeowners Association. She received a letter from a resident in a nearby neighborhood who stated that the location is not the proper place for a high density housing development. She said that area is the only remaining option for expansion of the tennis park. She said the economic impact to the tennis park would be huge, and building anything other than more tennis courts on the proposed site takes away the ability for the tennis center to grow. She asked council to deny the Mills-Patterson project or table it until more research can be done to determine the best use for the property. She said council should put the land use plan in place and then see how the neighborhood can fit into the plan.

Mr. John Myers represents the owners of the Mills-Patterson property. He said over the past year they have gone through a lot of different iterations with the rezoning plan, including determining the right use for the land. He said they met the town ordinance notice requirements, and no one was intentionally left out of the notification process. They’ve met with staff and adjoining property owners. He said their proposal is a very small component of the entire area, and it did not require a traffic study. He said they are proposing a high quality townhome community that will benefit the town with units ranging in price from $250,000-$300,000. He said half of the units will have two car garages and the other half will have at least a one car garage. He said they spoke with staff about the density and were comfortable that they were consistent with the medium density called...
for in the Town's land use plan. The said the higher intensity uses don't make their site conducive to a low density residential development. He said they anticipate 100 units for the property.

Mr. Bryan Shumaker spoke against the Mills-Patterson rezoning. He said it will change land values. He said he just moved to Preston Village from a neighboring city because of Cary’s reputation. He said Cary’s reputation is because of what it currently is, not what it could be.

Mr. Joe Ciulla said having more townhouses in Cary does not benefit him or anyone else. He said his neighborhood is surrounded by townhouses. He said townhouses create more traffic, more pressure on the school system and infrastructure. He said council’s guiding principle when voting on the rezoning should be the benefit to Cary.

Mr. Karl Thor said there are a lot of costs involved with the Mills-Patterson project. He said in the future the Town should change the notification process so that developers understand what the residents in the area want before it becomes a controversial issue.

B.2.a. Rezoning 13-REZ-07 (Mills-Patterson Property)
Location: 2428 and 2436 Carpenter Upchurch Road and a 0.48-acre tract located in the 1500 block of Louis Stephens Road
Current Zoning: Residential 40 (R-40)
Proposed Zoning: Residential Multi-family Conditional Use (RMF-CU) Conditions submitted by the applicant include limiting the density to eight (8) dwelling units per acre and limiting permitted uses.
Planning & Zoning Board Recommendation: Voted unanimously to recommend approval
Proposed Council Action: Council may take action
Speaker: Mr. Wayne Nicholas

Changes Since the Town Council Public Hearing: The applicant officially submitted new zoning conditions regarding garages on the units and a perimeter buffer adjacent to the southern property line.
Planning and Zoning Board Public Hearing (August 19, 2013): Staff presented the case and indicated that new conditions had been offered by the applicant since the Town Council public hearing to require garages with the dwelling units and a 40-foot buffer along the southern property line. These new conditions warranted a second public hearing on the application. The applicant commented on challenges to develop the site due to stream buffers and indicated that the plan was consistent with the Land Use Plan. No one else spoke during the public hearing. One board member asked for an explanation on how the future density of the site would be impacted if a portion of the property were to be developed as part of the Cary Tennis Park. The applicant and staff explained that the proposed density cap of eight (8) dwelling units per acre would apply to the residual land area. Staff clarified that the Land Use Plan called for a range of Medium- to Low-Density Residential use and that a similar split designation applied to other properties south of the subject parcel. One board member asked about future connectivity to the property if it were to be developed as an expansion of the Cary Tennis Park. Parks Recreation and Cultural Resources staff explained that there would be a design to provide pedestrian connectivity from the existing tennis center. Planning staff explained that vehicular connectivity to the property to the south would be a requirement as part of site plan review. Two board members noted that the density was on the high end of the medium range, but believed it was justified due to the stream buffer impacts on the property and that the proposed use provided a good transition. The board voted 7-0 to forward the case to Town Council with a recommendation for approval.
CAROLE M. PATTERSON, BY REZONING FROM RESIDENTIAL 40 (R-40) TO RESIDENTIAL MULTI-FAMILY CONDTIONAL USE (RMF-CU).

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

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

PARCEL & OWNER INFORMATION

<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>Anne B. Mills</td>
<td>2428 Carpenter Upchurch Road</td>
<td>0734969960</td>
<td>14.25 ±</td>
</tr>
<tr>
<td>Cary, NC 27519</td>
<td></td>
<td>0138731</td>
<td></td>
</tr>
<tr>
<td>Anne B. Mills</td>
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<tr>
<td>Cary, NC 27519</td>
<td></td>
<td>0378662</td>
<td></td>
</tr>
<tr>
<td>Carole M. Patterson</td>
<td>2436 Carpenter Upchurch Road</td>
<td>0734964924</td>
<td>2.0 ±</td>
</tr>
<tr>
<td>Cary, NC 27513</td>
<td></td>
<td>0173540</td>
<td></td>
</tr>
<tr>
<td><strong>Total Area</strong></td>
<td></td>
<td></td>
<td>16.73 ±</td>
</tr>
</tbody>
</table>

Section 2: That this Property is rezoned from Residential 40 (R-40) to Residential Multi-family Conditional Use (RMF-CU) subject to the individualized development conditions set forth herein, 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. Density shall be limited to a maximum of eight (8) dwelling units per acre
2. Permitted uses on the site will be limited to townhomes, semi-detached/attached dwellings, public athletic field, neighborhood recreation center and public or private park.
3. A minimum of 50% of all townhomes shall be constructed with a two-car garage. The balance of the townhomes shall be constructed with a one-car garage.
4. A 40-foot Type-A (opaque) buffer shall be provided along the southern property line adjacent to the parcels identified by Wake County Pin Numbers: 0744060314 and 0744164590.

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

Planning and Zoning Board Vice Chair Michelle Muir presented the board’s recommendation (as outlined herein).

Robinson said she was surprised that a development company had gotten the option for this land when it was something the Town had been interested in for expanding the tennis park to the south. She said there is very little developable land on the site; the stream buffers wrap around the portion of land to the west, and she is concerned about how the units will be put on the land. She said that area of land would be best served if it were planned cohesively. She said staff stated that at the site plan level the applicant would be required to put a stub to the south to join up with the other land when it's developed, but no one knows when that land will be developed. She said the number of proposed units will result in a lot of cars using one single access point for many years.
Bush asked if there were any homes in the notification area. Nicholas said there is a farm property to the south.

Bush asked if the neighborhoods bordering Louis Stephens—Carramore, Preston Village, Heritage Pines—were notified. Nicholas said no because they are beyond the 400 foot notification boundary.

Bush asked where the public hearing sign was placed to alert citizens. Nicholas said there was a sign placed on Louis Stephens Drive and on Carpenter Upchurch Road. He said the signs taken down after the public hearing.

Bush is concerned about the number of residents significantly impacted by the rezoning who live outside the notification area. She feels they've been left out of the entire process, and she's not comfortable voting on the rezoning.

Weinbrecht said council may want to consider modifying the process, and they can address that at a later time. Bush agreed.

Yerha would like to see additional conditions and a lesser number of townhomes reflected in the rezoning conditions. He's not comfortable saying yes or no when only two people showed up for the public hearings. He said the impact to schools is also an issue, although townhomes sometimes have less of an impact than single family homes. He said there is some misinformation in the emails he's seen. He said some information needs to be clarified and shared with those living outside the notification area.

Adcock said there were five things that struck her from those who spoke about the rezoning: (1) the current infrastructure is insufficient to support the proposed density, and the density seems out of place, (2) the environmental impacts on the wetlands, (3) expanding the tennis center, (4) school capacity, and (5) the land use plan may need to be changed. She said she struggles to see how the rezoning will make Cary better.

Frantz said council needs to fix the public notification issue. He said no matter what gets developed, the will be environmental concerns to take into consideration. He would like to see the land joined with the land to south to provide a better cohesive comprehensive product to that area.

Smith said the planning and zoning board is a citizen advocate board, and they voted unanimously for the rezoning. He said something is broken in the process when only two people showed up for the public hearing.

Smith asked the criteria for neighborhood meetings and how that information is communicated to the community. Nicholas said the ordinance requires that the applicant notify homeowners who live within 100 feet to let them know about the meeting. He said staff typically provides the applicant with the same list that staff uses for notification, which includes homeowners within 400 feet, and most applicants typically use that list to provide notice.

Robinson said as council works on the land use plan they need to think about the type of development they'd like to see for small spaces.

**ACTION:**
Motion: Robinson moved to deny 13-REZ-07.
Second: Bush
Vote: Unanimous
b. Comprehensive Plan Consistency

Subject: In accordance with N.C.G.S. 160A-383, Town Council will approve a statement of consistency and reasonableness for Rezoning 13-REZ-07 (Option A if council approves the rezoning; Option B if council denies the rezoning.)

Proposed Council Action: Council may take action.

Speaker: Mr. Wayne Nicholas

Option B (recommended if rezoning 13-REZ-07 is denied):

CONSISTENCY AND REASONABLENESS STATEMENT
13-REZ-07 – Mills-Patterson Property

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:
Section 1: Rezoning 13-REZ-07 is not 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, denial of rezoning 13-REZ-07 is reasonable and in the public interest.

ACTION
Motion: Bush moved to approve Option B.
Second: Adcock
Vote: Unanimous

E. PUBLIC HEARINGS

1. Street Closings

a. Subject: Consideration of a request to close a portion of the right-of-way of Green Level Church Road (EN14-006A)

Proposed Council Action: Council may take action

Speaker: Mr. Tim Bailey

Executive Summary: M/I Homes of Raleigh, LLC and Greystone Master Association, Inc. requested the abandonment of a portion of right of way on Green Level Church Road. Pending public comment, staff recommends that the Town Council approve the Street Closing Order and forward it to the Mayor for execution and recording.

Background: M/I Homes of Raleigh, LLC purchased from Franklin Cecil Holland a 60 acre parcel with the PIN # 0724769129 on December 11, 2012 as recorded in Deed Book 15055, Page 0753. Due to the Town of Cary’s Green Level Church Road Improvements Project, ST 1209, the subject right of way of Green Level Church Road at Austin Pond Road is no longer needed by the Town.

Discussion: The provisions for closing public rights of way are outlined in N.C.G.S. §160A-299 and Town of Cary Policy Statement 44 has been followed. A notice has been placed for four consecutive weeks advertising the public hearing, and the right of way has been posted prior to the public hearing and adjacent owners have been notified.

Utilities on the site include water, gas, electrical and fiber optics. The Town is requiring that the existing waterline easement be retained by reference on a recordable plat and by a Deed of Easement within 30 days of Town Council approval. The utility companies were notified about the proposed abandonment by the Town and all utilities will be relocated except for the waterline and fiber optics which will be deeded easements upon road abandonment execution.
Fiscal Impact: Cost of the public hearing is incorporated into our regular Town Council meeting process. M/I Homes of Raleigh, LLC and Greystone Master Association, Inc. will bear the costs for preparation and recording fee for the deed.

Staff Recommendation: Pending public comment, staff recommends that the Town Council approve the attached Street Closing Order and forward it to the Mayor for execution and recording.

Staff presented the information herein. Weinbrecth opened the public hearing. No one spoke, and he closed the hearing.

STREET CLOSING ORDER
A RESOLUTION ORDERING THE CLOSING OF THAT PORTION OF GREEN LEVEL CHURCH ROAD RIGHT OF WAY as described on the attached Exhibit A:

WHEREAS, on the 8th day of August, 2013, the Town Council of the Town of Cary directed the Town Clerk to publish the Resolution of Intent of the Town of Council to consider closing a certain portion of a street in the Cary News once each week for four successive weeks, such Resolution of Intent advising the public that a meeting would be conducted in the Town Hall on the 12th of September, 2013; and

WHEREAS, the Town Council, on the 8th day of August, 2013 ordered the Town Clerk to notify all persons owning property abutting on that portion of said street, enclosing with such notification a copy of the Resolution of Intent; and

WHEREAS, the Town Clerk has advised the Town Council that on the date directed she sent a letter to each said abutting property owners, including the DOT if the street was under the control of the DOT, advising them of the day, time, and place of the meeting, enclosing a copy of the Town Council’s Resolution of Intent, and advising said abutting property owners that the question as to closing said street right of way would be acted upon, said letters having been sent certified mail with return receipt requested; and

WHEREAS, the Town Clerk has advised the Town Council that none of the letters so sent have been returned undelivered; and

WHEREAS, after full and complete consideration of the matter and after having granted full and complete opportunity for all interested persons to appear and register any objections that they may have with respect to the closing of said street; and

WHEREAS, it now appears to the satisfaction of the Town Council that the closing of said street right of way is not contrary to the public interest, and that no individual owning property, either abutting the street or in the vicinity of said street or in the subdivision in which said street is located (if any) will as a result of said closing be thereby deprived of a reasonable means of ingress and egress to their property due to the vacation; and

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Cary, meeting in regular session, that said portion of Green Level Church Road right of way described on the attached Exhibit A, is hereby ordered closed, and subject to any reservation of right set forth below and in accordance with G.S.§ 160A-299(c), all right, title and interest in the right-of-way that may be vested in the public to said area for street purposes is hereby released and quitclaimed to the abutting property owners.

In accordance with G.S.§ 160A-299(f) the Town hereby reserves all of its right, title, and interest in any utility improvement or easement within a street closed. Such reservation extends to utility improvements or easements owned by private utilities which at the time of the street closing have a utility agreement or franchise with the Town.

The Mayor and the Town Clerk are hereby authorized to execute quitclaim deeds or other necessary documents in order to prove vesting of all right, title and interest in those persons owning lots or parcels of land adjacent to the street, such title, for the width of the abutting land owned by them, to extend to the centerline of the herein closed street right of way in accordance with the provisions G.S.§ 160A-299(c).

The Town Clerk is hereby ordered and directed to file in the Office of the Register of Deeds of Wake County a certified copy of this resolution.
Exhibit A
Right of Way Abandonment
Green Level Church Road

R/W Closure Area (0.767 acres)
Beginning at a point, said point having NC Grid Coordinates (NAD 83 – 2001) of N=746,788.3047 and E=2,029,109.4438; thence S 09°23’48” E a distance of 84.62 feet to a point; thence N 28°04’42” W a distance of 16.14 feet to a point; thence N 30°05’34” W a distance of 49.94 feet to a point; thence N 33°10’49” W a distance of 49.01 feet to a point; thence N 35°16’52” W a distance of 49.67 feet to a point; thence N 38°01’08” W a distance of 49.78 feet to a point; thence N 41°29’57” W a distance of 48.17 feet to a point; thence N 42°30’03” W a distance of 50.37 feet to a point; thence N 44°04’53” W a distance of 50.55 feet to a point; thence N 45°08’53” W a distance of 49.17 feet to a point; thence N 47°41’58” W a distance of 49.47 feet to a point; thence N 48°08’08” W a distance of 58.88 feet to a point; thence N 40°54’36” E a distance of 30.00 feet to a point; thence N 40°54’36” E a distance of 12.52 feet to a point; thence N 40°54’36” E a distance of 17.49 feet to a point; thence along a curve to the left having a radius of 25.00 feet, a chord bearing of N 10°51’32” W, a chord distance of 31.62 feet and an arc length of 34.23 feet to a point; thence S 50°25’25” E a distance of 75.60 feet to a point; thence along a curve to the left having a radius of 165.00 feet, a chord bearing of S 82°18’17” W, a chord distance of 32.05 feet and an arc length of 34.79 feet to a point; thence S 48°08’08” E a distance of 9.31 feet to a point; thence S 48°51’05” E a distance of 19.99 feet to a point; thence along a curve to the left having a radius of 30.00 feet, a chord bearing of S 89°00’23” E, a chord distance of 39.52 feet and an arc length of 43.14 feet to a point; thence along a curve to the right having a radius of 280.00 feet, a chord bearing of N 50°53’21” E, a chord distance of 10.66 feet and an arc length of 10.66 feet to a point; thence along a curve to the left having a radius of 165.00 feet, a chord bearing of S 88°52’23” E, a chord distance of 93.48 feet and an arc length of 94.78 feet to a point; thence along a curve to the right having a radius of 30.00 feet, a chord bearing of S 56°09’52” E, a chord distance of 45.40 feet and an arc length of 51.48 feet to a point; thence S 07°00’00” E a distance of 13.07 feet to a point; thence along a curve to the left having a radius of 30.00 feet, a chord bearing of N 59°13’28” W, a chord distance of 47.43 feet and an arc length of 54.69 feet to a point; thence along a curve to the left having a radius of 220.00 feet, a chord bearing of S 60°48’23” W, a chord distance of 59.29 feet and an arc length of 59.47 feet to a point; thence along a curve to the left having a radius of 30.00 feet, a chord bearing of S 04°47’29” W, a chord distance of 44.78 feet and an arc length of 50.55 feet to a point; thence S 43°47’22” E a distance of 15.50 feet to a point; thence S 42°30’03” E a distance of 45.87 feet to a point; thence S 42°30’03” E a distance of 5.86 feet to a point; thence S 41°29’57” E a distance of 50.52 feet to a point; thence S 38°01’08” E a distance of 53.03 feet to a point; thence S 35°16’52” E a distance of 25.00 feet to a point; thence S 09°23’48” E a distance of 71.92 feet to the point of beginning and containing 33,424 square feet or 0.767 acres, more or less.

b. Subject: Consideration of a request to close a portion of the right-of-way of O’Kelly Chapel Road (EN14-012A)

Proposed Council Action: Council may take action
Speaker: Mr. Tim Bailey

Executive Summary: Michael Goodfred, a member of Stephens Road Partners, LLC, submitted a written request for the abandonment of a portion of right of way between O’Kelly Chapel Road and Alston Avenue (SR 1630.) Pending public comment, staff recommends that the Town Council approve the Street Closing Order and forward it to the Mayor for execution and recording.

Background: Stephens Road Partners, LLC purchased the 17.29 acre parcel with the PIN # 0736.03-01-4245 on April 26, 2010 as recorded in Deed Book 13919, Page 2431. NCDOT realigned O’Kelly Chapel Road several years ago, and the proposed right of way closing is no longer needed by the Town or in service.
Discussion: The provisions for closing public rights of way are outlined in N.C.G.S. §160A-299 and Town of Cary Policy Statement 44 has been followed. A notice has been placed for four consecutive weeks advertising the public hearing, and the right of way has been posted prior to the public hearing and adjacent owners have been notified.

Utilities on the site include gas and a 20’ Town of Cary Force Main Easement. The Town will retain the exiting Force Main Easement by reference on a recordable plat within 30 days of Town Council approval. The utility company was notified about the proposed abandonment by the Town and will remain upon road abandonment execution.

Fiscal Impact: Cost of the public hearing is incorporated in to our regular Town Council meeting process. Stephen Road Partners, LLC will bear the costs of a recordable survey.

Staff Recommendation: Pending public comment, staff recommends that the Town Council approve the attached Street Closing Order and forward it to the Mayor for execution and recording.

Staff presented the information herein. Weinbrecht opened the public hearing. No one spoke, and he closed the hearing.

STREET CLOSING ORDER

A RESOLUTION ORDERING THE CLOSING OF THAT PORTION OF O’KELLY CHAPEL ROAD RIGHT OF WAY as described on the attached Exhibit A:

WHEREAS, on the 8th day of August, 2013, the Town Council of the Town of Cary directed the Town Clerk to publish the Resolution of Intent of the Town of Council to consider closing a certain portion of a street in the Cary News once each week for four successive weeks, such Resolution of Intent advising the public that a meeting would be conducted in the Town Hall on the 12th of September, 2013; and

WHEREAS, the Town Council, on the 8th day of August, 2013 ordered the Town Clerk to notify all persons owning property abutting on that portion of said street, enclosing with such notification a copy of the Resolution of Intent; and

WHEREAS, the Town Clerk has advised the Town Council that on the date directed she sent a letter to each said abutting property owners, including the DOT if the street was under the control of the DOT, advising them of the day, time, and place of the meeting, enclosing a copy of the Town Council’s Resolution of Intent, and advising said abutting property owners that the question as to closing said street right of way would be acted upon, said letters having been sent certified mail with return receipt requested; and

WHEREAS, the Town Clerk has advised the Town Council that none of the letters so sent have been returned undelivered; and

WHEREAS, after full and complete consideration of the matter and after having granted full and complete opportunity for all interested persons to appear and register any objections that they may have with respect to the closing of said street, and

WHEREAS, it now appears to the satisfaction of the Town Council that the closing of said street right of way is not contrary to the public interest, and that no individual owning property, either abutting the street or in the vicinity of said street or in the subdivision in which said street is located (if any) will as a result of said closing be thereby deprived of a reasonable means of ingress and egress to their property due to the vacation; and

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Cary, meeting in regular session, that said portion of O’Kelly Chapel Road right of way described on the attached Exhibit A, is hereby ordered closed, and subject to any reservation of right set forth below and in accordance with G.S.§ 160A-299(c), all right, title and interest in the right-of-way that may be vested in the public to said area for street purposes is hereby released and quitclaimed to the abutting property owners.

In accordance with G.S.§ 160A-299(f) the Town hereby reserves all of its right, title, and interest in any utility improvement or easement within a street closed. Such reservation extends...
to utility improvements or easements owned by private utilities which at the time of the street
closing have a utility agreement or franchise with the Town.

The Mayor and the Town Clerk are hereby authorized to execute quitclaim deeds or other
necessary documents in order to prove vesting of all right, title and interest in those persons
owning lots or parcels of land adjacent to the street, such title, for the width of the abutting land
owned by them, to extend to the centerline of the herein closed street right of way in accordance
with the provisions G.S. § 160A-299(c).

The Town Clerk is hereby ordered and directed to file in the Office of the Register of
Deeds of Wake County a certified copy of this resolution.

Exhibit A
Right of Way Abandonment
O’Kelly Chapel Road

Beginning at a new iron pipe on the southern right of way of O’Kelly Chapel Road (SR 1628)
(Variable Width Public R/W), said pipe being North 46°40’23” West 8,136.57 feet from NCGS
Survey Monument “TANGENT”, said monument having NC grid coordinates (NAD 83 – 1986) of
N=755,947.730, E=2,036,930.742, thence from said Beginning point with said right of way North
60°16’04” East 257.83 feet to a new iron pipe, thence leaving said right of way South 69°14’39”
East 62.58 feet to a new iron pipe on the western right of way of Alston Ave (SR 1630) (60’
Variable Public R/W), thence with said right of way along a curve to the right having a radius point
of 360.89 feet, an arc length of 243.50 feet, and a chord bearing and distance of South 38°29’20”
East 238.91 feet to a new iron pipe, thence leaving said right of way North 64°03’19” West 47.16
feet to an existing iron pipe, thence North 68°36’37” West 47.79 feet to an existing iron pipe,
thence North 72°51’17” West 47.76 feet to an existing iron pipe, thence North 76°41’27” West
48.03 feet to an existing iron pipe, thence North 80°12’28” West 53.33 feet to an existing iron
pipe, thence North 82°06’07” West 48.85 feet to an existing iron pipe, thence North 83°59’16”
West 48.15 feet to an existing iron pipe, thence North 88°04’26” West 47.49 feet to an existing
iron pipe, thence South 86°25’17” West 47.15 feet to an existing iron pipe, thence South
80°48’32” West 8.57 feet to the point and place of Beginning containing 0.653 acres more or less.

ACTION:
Motion: Adcock moved to approve the street closings presented to council.
Second: Frantz
Vote: Unanimous
NOTE: one motion approved both items

2. Economic Development
Subject: Public hearing to consider a proposed amendment to the Purchase and
Development Agreement between the Town of Cary and Memento Mori, LLC, to provide
for the proposed lease of 118 East Park Street and other easements over real property
(TM14-003)
Proposed Council Action: Council may take action
Speaker: Mr. Ed Gawf

Executive Summary: The town, in order to develop the Project known as the Mayton Inn
pursuant to the previously approved Purchase and Development Agreement with Memento Mori,
LLC, proposes to lease and grant easements over real property adjacent to the Project Site, to
extend the closing date to January 31, 2014, and submit an application to the federal Department
of Housing and Urban Development for issuance of Section 108 Loan, pursuant to a Second
Amendment of the Purchase and Development Agreement.

Discussion: On October 11, 2012, the town authorized the conveyance of an approximately 1.04
acre site owned by the town at 301 South Academy Street, 106 East Park Street and 110 East
Park Street (the Site) for the development of a boutique hotel of approximately 30 to 50 rooms or
other commercial or mixed uses (the Project), pursuant to a Purchase and Development
Agreement, as amended by a First Amendment, and the Local Development Act, N.C.G.S 158.7.

September 12, 2013 minutes
Minute Book #177, Minute Book Page #391
On November 15, 2012, the town authorized the performance by the town of predevelopment work specified in the Purchase and Development Agreement, and certain expenditures therefor.

Since approval of the Purchase and Development Agreement and First Amendment, work has progressed on the Mayton Inn through site plan review. Site plan and development requirements have necessitated a second amendment to the Purchase and Development Agreement for certain easements and other agreements to construct the hotel, including a lease of Town-owned property for a construction office and staging area during the construction of the hotel. Memento Mori, LLC has also requested to extend the closing date from September 30, 2013 to January 31, 2014.

Under NC General Statute 158-7.1, the Town must conduct a public hearing regarding the lease or conveyance of interests in public property. The requisite public hearing has been duly advertised for the September 12, 2013 meeting of the Town Council.

Memento Mori has diligently prepared construction plans and submitted them for a Town building permit and aggressively pursued construction and permanent financing for the ten million dollar, 45-room boutique hotel. The original timeline was not met due to a longer than expected site plan review process and a longer than expected timeline to secure financing. At present, the site plan is approved, pending the Park Street Waiver. Construction plans have been submitted to the Town for review. Memento Mori has secured a commitment for construction financing. It appears that the primary condition to closing and groundbreaking is HUD’s review and approval of the Section 108 loan. HUD’s review period for Section 108 loans is usually 60 to 90 days. Memento Mori anticipates closing and groundbreaking in December 2013, subject to approval of the Section 108 loan by HUD.

Terms of the Second Amendment for extension of the closing date, the Section 108 Loan, lease and easements are described below:

1. Extension of the closing date to January 31, 2014 for Memento Mori LLC to complete the purchase of the property identified in the Purchase and Development Agreement.

2. Commitment of the Town to submit the application for the Section 108 Loan to HUD promptly after approval of the application by the Town Council.

3. A lease for the unit of improvements consisting of approximately 674 square feet with an address of 118 East Park Street and a portion of the parcel of land thereunder having Real Estate ID No. 0056324 not greater than 0.11 acres, for a month-to-month term terminable by either party thirty days after notice of termination to the other party and terminating in any event not later than three years after the lease commencement date. The exclusive purpose of this lease is for the operation of a construction office and staging area for the Project on an “AS IS, WHERE IS” basis to the extent permissible under the applicable land development ordinances and to standards for conditions, maintenance and repair not higher than those standards consistent with a demolition permit. Rent for this lease will be $500 per month, net of taxes, utilities and insurance. The town approximates market rent values for comparable leases and properties to be between $350 and $500 per month.

4. A temporary utility construction easement for the construction of a subterranean sanitary sewer main extending approximately 300 feet from the eastern boundary line of the Site, across real property of the town contiguous to the public right-of-way for East Park Street to an existing sanitary sewer main adjacent to the public right-of-way for South Walker Street. Consideration for this easement will be nominal. The town approximates the market value of this easement to be nominal because the town ordinarily grants comparable easements for little or no consideration.

5. A temporary conservation easement for a term not to exceed 18 months across that approximately 0.36 acre parcel of land of the town having Wake Co. Real Estate ID No. 0031319 and an address of 315 South Academy Street, reasonably sufficient for the compliance of the Project with applicable stormwater development requirements.
including averaging pursuant to NCGS § 143-214.5(d2) of (a) development density on the Site in accordance with a site plan approved by the applicable governmental authority, substantially similar in form and substance to the Site Plan for the Project dated August 8th, 2013 and prepared by Momento Mori LLC and (b) development density on that 0.36 acre parcel at 315 South Academy Street in accordance with this easement.

Consideration for the grant of this easement will be nominal. The town approximates the value of this easement to be between $12,500 and $38,000. The town will construct, in accordance with the town’s capital investment plan for stormwater management, in the vicinity of the Site, at the town’s expense and not later than the expiration of the term for this easement, stormwater management infrastructure on real property adjacent to the Site that is reasonably sufficient for compliance of the Project with the applicable stormwater development requirements.

6. A right of entry agreement for the construction and operation of a sediment retention pond during construction of the Project on approximately 0.0184 acres or less of real property of the town contiguous to and immediately south of the Site for purposes of construction of the Project, including the drainage of stormwater from the Site during that construction. Consideration for entry by the town into this agreement will be nominal. The town approximates the market value for entry by the town into this agreement to be nominal because the town ordinarily enters into comparable agreements for little or no consideration.

7. An encroachment agreement for the construction and maintenance of a retaining wall for the benefit of the Site on approximately 0.0023 acres or less of real property of the town contiguous to and immediately east of the Site. Consideration for entry by the town into this encroachment agreement will be nominal. The town approximates the market value for entry by the town into this encroachment agreement to be nominal because the town ordinarily enters into comparable agreements for little or no consideration.

**Fiscal Impact:** Based on the rents specified above, lease revenues to the Town for 118 East Park Street will total up to $18,000 during the maximum three-year term of the lease. No other revenue or expenditures are expected from the Second Amendment of the Purchase and Development Agreement other than those already agreed to as a result of the Purchase and Development Agreement and the First Amendment.

**Staff Recommendation:** Staff recommends that the Town Council:

1) Conduct the public hearing as advertised; and,
2) Adopt the Resolution authorizing the Town Manager to enter into the Second Amendment to the Purchase and Development Agreement with Memento Mori, LLC for extension of the closing date, submission of the Section 108 loan application, the lease of 118 East Park Street and the other easements and agreements described herein.

Gawf said the purchase and development agreement is part of the overall plan to revitalize downtown. He said this project will help move the Town toward the next step to secure private investment downtown.

**RESOLUTION OF THE CARY TOWN COUNCIL**

**AUTHORIZING THE AMENDMENT OF AN AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY FOR ECONOMIC DEVELOPMENT**

**WHEREAS**, the Local Development Act of 1925, in particular North Carolina General Statute 158-7.1(d), authorizes the Town of Cary to convey real property held or acquired for commercial use; and

**WHEREAS**, the Town of Cary is the owner of:

A. 0.52 acres located at 301 South Academy Street (Wake County Real Estate ID No. 0070297) in Cary’s Downtown Historic District (Lot 1),

B. 0.20 acres located at 106 East Park Street in Cary (Wake County Real Estate ID No. 0079148) (Lot 2),
C. 0.32 acres located at 110 East Park Street in Cary (Wake County Real Estate ID No. 0011840) (Lot 3),

D. The Waldo-Rood House, a house of about 900 sq. ft., Gothic Revival style and board and batten construction, which is currently located at 114 East Park Street, and

E. The Mayton House, a house of about 1,400 sq. ft. frame construction with a hipped roof, wrap-around porch and bay window, circa 1915, which is currently located at 204 South Academy Street; and

WHEREAS, the Town of Cary and Memento Mori, LLC have entered into a Purchase and Development Agreement dated October 26, 2012 for Memento Mori to (i) purchase Lots 1, 2 and 3 (the Site), the Waldo Rood House and the Mayton House, (ii) construct and operate a boutique hotel on the Site with approximately 30 to 50 guest rooms and suites and related amenities (the Project), and (iii) incorporate the Waldo-Rood House and the Mayton House into the design and operation of the Project, as amended by that First Amendment dated April 29, 2013 (the PDA); and

WHEREAS, entry into a Second Amendment of the PDA (the Second Amendment) for, among other things, a lease and certain other agreements regarding property of the Town adjacent to the Site would be beneficial to the Town’s efforts to increase its population, ad valorem tax revenues, sales tax revenues, and business prospects in general as well as beneficial to the Town’s efforts to foster economic opportunities for its residents, including the creation of a substantial number of jobs in Cary that pay at or above the median average wage in the Wake County; and

WHEREAS, the Town Council of the Town of Cary has, pursuant to the notice and hearing requirements of Local Development Act of 1925, in particular North Carolina General Statute 158-7.1(d), held a public hearing to consider whether to approve a lease and entry into certain agreements regarding property of the Town adjacent to the Site on terms materially the same as the terms of the Second Amendment.

NOW THEREFORE, The Town Council of the Town of Cary resolves that: The Town Manager is hereby authorized and directed to enter into an agreement, on behalf of the Town of Cary and on terms materially the same as the Second Amendment, for:

A. A lease for the unit of improvements consisting of approximately 674 square feet with an address of 118 East Park Street and a portion of the parcel of land thereunder having Real Estate ID No. 0056324 not greater than 0.11 acres, for a month-to-month term terminable by either party thirty (30) days after notice of termination to the other party and terminating in any event not later than three (3) years after the lease commencement date. The exclusive purpose of this lease is for the operation of a construction office and staging area for the Project to the extent permissible under the applicable land development ordinances, on an "AS IS, WHERE IS" basis, and to standards for conditions, maintenance and repair not higher than those standards consistent with a demolition permit. Rent for this lease may be not less than $500.00 per month, net of ad valorem taxes, utilities and insurance;

B. A temporary utility construction easement for the construction of a subterranean sanitary sewer main extending approximately three hundred feet (300 ft.) from the eastern boundary line of the Site, across real property of the Town contiguous to the public right-of-way for East Park Street to an existing sanitary sewer main adjacent to the public right-of-way for South Walker Street. Consideration for this easement will be nominal;

C. A temporary conservation easement for a term not to exceed eighteen (18) months across that approximately 0.36 acre parcel of land of the Town having Wake Co. Real Estate ID No. 0031319 and an address of 315 South Academy Street, reasonably sufficient for the compliance of the Project with applicable stormwater development requirements, including averaging pursuant to NCGS § 143-214.5(d2) of (a) development density on the Site in accordance with a site plan approved by the applicable governmental authority, substantially similar in form and substance to the Site Plan for the Project dated August 8th, 2013 and prepared by Memento Mori LLC and (b) development density on that 0.36 acre parcel at 315 South Academy Street in accordance with this easement. Consideration for the grant of this easement will
be nominal. The Town will construct, in accordance with the Town’s capital investment plan for stormwater management, in the vicinity of the Site, at the Town’s expense and not later than the expiration of the term for this easement, stormwater management infrastructure on real property adjacent to the Site that is reasonably sufficient for compliance of the Project with the applicable stormwater development requirements:

D. An encroachment agreement for the construction and maintenance of a retaining wall for the benefit of the Site on approximately .0023 acres or less of real property of the Town contiguous to and immediately east of the Site. Consideration for entry by the Town into this encroachment agreement will be nominal.

E. A right of entry agreement for the construction and operation of a sediment retention pond during construction of the Project on approximately .0184 acres or less of real property of the Town contiguous to and immediately south of the Site for purposes of construction of the Project, including the drainage of stormwater from the Site during that construction. Consideration for entry by the Town into this agreement will be nominal; and

F. Extension of the Closing Date to a mutually agreeable date and time no later than Friday, January 31, 2014; and

G. The Town will submit a Section 108 Loan application in the amount of $1,400,000 to the U.S. Department of Housing and Urban Development contingent upon the approval of the application by the Town Council.

FURTHER RESOLVED, the Town Manager is hereby authorized and directed to enter into the lease, easements and other agreements described above as well as any other agreements deemed necessary in the discretion of the Town Manager for the conveyance of the Site and the development of the Project on terms not inconsistent with the terms of the PDA, including the Second Amendment.

Adopted this the 12th day of September, 2013.

Weinbrecht opened the public hearing.

Mr. Scott de Deugd asked the following questions:

- Why would the Town sign a contract to build a 45 room hotel with no parking?
- How could the Town approve an acre of high density development with the requisite storm water retention system?
- Why can’t the Crossman’s buy the land for their retention pond themselves?
- Why aren’t the Crossman’s paying for the construction of the retention pond?
- Why are other developers required to build mandatory parking lots and pay more for their stormwater runoff when the Crossman’s don’t?

de Deugd said Public funding for the Mayton Inn, providing stormwater systems for high density development, and an intentional shortage of parking are examples of forcing the town’s suburban design and free enterprise into urbanization and public-private partnerships. He said the spending request should be rejected, because taxpayers have not been provided with a complete detailed downtown plan or the total long-term spending commitment for the project. He said the Crossman’s should be told to include parking within their development, buy their own land and build their own EPA retention pond.

Mr. Judson Drennan said he chose to live downtown and is a close neighbor of the Mayton Inn project. He is happy that the Town is willing to use property investments and some public funds to jumpstart downtown. He was concerned about the project and met with proprietors and some of his neighbors to discuss the business plan. He said they have a sound business plan, and it addressed his concerns. He believes this project will jumpstart development in downtown. He also suggested moving the farmers’ market to another location downtown.

Mr. Colin Crossman believes that the Mayton Inn will be a great addition to downtown Cary. He said over the last 22 months they have reached out to Cary residents, talked with their nearby
neighbors, the Friends of the Page-Walker, the Heart of Cary, almost all of the Rotary clubs, the Chamber of Commerce and others. He said they sent postcards to 100 of the nearest neighbors and invited them to discuss the project. He said they also went to the state historic preservation office and were issued a non-adverse impact letter finding that the proposed structure will not be an adverse impact to the historic district. He said they are communicating with the nearby churches to use their parking lots, and he believes that will be sufficient parking. He said the uses are compatible and don’t require the building to have excessive expansive parking.

Ms. Deanna Crossman said they are increasing the impervious surface of their site less than 10 percent, which is one pound of nitrogen per year should they build with standard construction practices. She said they will have over a 20,000 gallon cistern under their terrace for irrigation water and capturing rainwater. She said their sidewalks and service drive will be pervious materials. She said they are catching and redirecting the collectors for Academy and Park streets that come through their site.

Mr. Kevin Slinkman said there’s normally been a dividing line between the public and the private, and when that dividing line is removed bad things can happen. He said the money for the $1.4 million loan is coming from the taxpayers. He said if this project is so important then the owners need to come up with the money themselves. He resents his tax money going to someone else’s business because someone thinks it’s good for the Town. He said his business is good for the Town also.

Jim Pelligrini said his family has lived in Cary for a little over 14 years. He expressed support for the Mayton Inn project because it’s part of the Cary he’d like to see created and the Cary he’d like to live in—a Cary with a vibrant and interesting downtown. He wants his family to stay in Cary, and downtown is an essential element. He asked council to stay the course and help build the vision that they’ve articulated.

Ms. Vicki de Deugd spoke for herself and on behalf of her neighbors, Peter and Cindy Emens. She said that the February 2013 proposal for the downtown park did not contain stipulations that the water feature should be a retention pond to deal with stormwater runoff from the Mayton Inn. She provided pictures of retention ponds. She said staff repeatedly noted that what appears on the site map as a stream has been determined to not be a stream. She said it’s in the best interest of Cary to direct the developers of the Mayton Inn to engineer the stormwater runoff into the town storm system as a permanent solution to the problem. She said that council needs to amend point C of the purchase and development agreement second amendment.

Deugd said citizens have not been told what the downtown stormwater field is going to cost. She said they would like to have answers to following questions:

- Does the town anticipate lining the retention pond with cement, and what are the costs of doing that?
- How will the town supplement the fresh water supply to keep it at an attractive level?
- Is the town planning for the water feature to be a healthy environment for fish?
- What are the anticipated methods and long-term costs to keep the retention pond as an attractive highlight?
- What are the costs of an aeration system and mosquito abatement system?
- Why a retention pond instead of a concrete fountain or wading pool?
- Why a water feature instead of a usable grass space for people?
- Where is the cost benefit analysis?

Ms. Cheryl Sanders stated she is speaking for herself and Peter and Cindy Emens. She stated the Americans with Disabilities Act has four parts designed to provide life long support and resources to disabled persons, which includes ending discrimination against persons with disabilities and promoting equal opportunity and support for independent community based living for Americans with disabilities. She said the Town center HMXD zoning that eliminates all parking...
requirements is exclusionary and has already been brought to the attention of council. She said it is also an affront to Americans with disabilities for the Town of Cary to apply for a $1.4 million HUD loan to subsidize building a hotel complex that does not address the issues of accessibility and reasonable parking accommodations for disabled and mobility impaired guests. She said they recommended that the HUD loan application be suspended until the hotel developers adequately address the parking issue.

Mr. Dan Pike and Mrs. Joy Pike said they have been active downtown Cary residents for 18 years. They have mixed feelings about some of the proposed changes in the downtown area, but they both think the Mayton Inn will be a fantastic addition to downtown Cary. He said the building size and architecture will fit in with what is already in the area and will add a level of class and sophistication to downtown. He said the Mayton Inn will provide Cary and surrounding towns with another great place to meet, eat a great meal and have families spend the night. He said they disagree with those who are opposed to the project. They strongly encourage council to support the project and have it begin as planned.

Mr. Ray Czarnecki said one problem with downtown is the economic environment. He recommended council not approve the HUD loan for the Mayton Inn. He said he cannot support any Town subsidized new business in the downtown area. He said the town needs a substantial increase in high income residents and a lot more parking. He doesn’t believe that the current income mix and number of parking spaces will help add new businesses. He suggested the council stop the current new business activity and begin adding new high end housing.

Mr. Allen Turkow said he is troubled by the Memento LLC project, and asked how the project survived a feasibility study and cost/benefit analysis. He estimates that the investment ratio is 60 percent private and 40 percent tax dollars. He said the estimated cost of the hotel is $9.8 million, the LLC will take on a bank loan for $7 million, and the town has a $1.4 million HUD loan. He said the Town is selling the owners a one-acre parcel for $151,000. He said that parcel consists of three lots, the Town paid $1.8 million and is taking a $900,000 loss on the sale of those three lots. He said in order to accommodate the parking for the hotel, the town will have to provide a parking structure at $20,000 a slot with the estimated cost $4 million. He said there’s a water pressure problem that he estimates costs $1-$2 million, and the Town is going to waive $1.2 million in developer fees. He said if the hotel goes under, the bank gets paid first. He estimates the total Town cost for this project to be $4.8 million, and it’s only bringing 40 jobs. He asked council not to get involved with the HUD loan.

Mr. Jason Buckmier said he has been a Cary resident for 12 years and currently lives in the downtown. He said it’s been hard watching restaurants in downtown start up and then close. He said with the current activities downtown he’s seen restaurants start to gain foothold. He believes the Mayton Inn will be a foundation to help restaurants start to thrive and be the catalyst that starts more private businesses entering downtown. He and his family are excited about the Mayton Inn coming to downtown and Cary’s vision, and they fully support it.

Ms. Sheila Ogle said she has been a Cary resident for about 55 years, has lived downtown for the past 20 years and has three businesses downtown. She and her family are excited about the Mayton Inn project. She said they appreciate all of the thought, study and committee meetings that have gone before the project to get it approved. She stated there has to be things to entice high income residents to downtown. She said the Mayton Inn will be another indication of a vibrant downtown and an exciting place where people can go at night. She thanked council for considering the Mayton Inn, and asked them to approve the project.

Ms. Lauren Shafer said she has lived in Cary for 35 years. She said she is the president of the Heart of Cary Association and lives in downtown Cary near the proposed hotel. She said she spoke with the Crossmans, toured their existing hotel in downtown Durham, met with them multiple times to discuss the hotel, and spoke with their surrounding neighbors in Durham. She said their Durham hotel fits in perfectly with the downtown historic environment across from the
Duke campus. She said for some families in Cary, their children come back to Cary to get married. She said there are more than a dozen churches, synagogues and wedding venues within less than a three mile radius of the proposed hotel location. She said there is no hotel that serves the downtown area, and there is a big disconnect between the church locations and the amount of wedding traffic to the hotels are located in Cary.

Mr. Karl Thor questioned whether town government should be making public investments in private projects, and he asked the following questions:

- What is the town’s return on the investment for the Mayton Inn project?
- Why the town has to pay people to put their business in Cary when we are the number one place to live and do business?
- Why the Crossman’s need the money to do this
- Why the town has to get involved and how badly will it impact the hotel’s profits and loss statement if the town didn’t invest?  
- What is the town’s total capital investment (total capital cost, the sum cost, the future cost)?
- What is the total revenue across a 10-year period?

Thor asked that staff’s presentation include estimates from better businesses and taxes. He said citizens should see the return on investments and said he wants to see a bottom line estimated return on the investment or a date when the Town would break even on this investment. He said a financial analysis of the risks and returns should be performed by an independent firm.

Ms. Jeanna Benoy said she supports Thor’s comments and the need for public information. She asked if there was a demand study done for rooms in Cary. She is concerned with the HUD requirements for the federal loan, and said that being a server or housekeeper in an inn is already a low income position. She asked why the Town has to guarantee a certain number of people hired in a low income position in order to qualify for the HUD grant. She said the “no impact” statement from the historic society is not a glowing endorsement. She said the architecture doesn’t fit with a residential bedroom community. She said they should use other facades that are more Victorian in style and more appropriate for what Cary looks like residentially.

Mr. Brent Miller, president of the Friends of the Page-Walker Hotel, said they continue to support the Mayton Inn. He said the Mayton Inn will be a prominent addition to the Town center historic district and surrounding downtown area. He said the Mayton Inn is an appropriate addition to the downtown core for the following reasons:

- The Mayton Inn will be a Georgian architectural style, and the architecture downtown is not from any single period. With the existing diversity of styles adding a Georgian building to the mix seems appropriate.
- Plans for the building include a new portico, shutters and several other design features, many of which are intended to make it look more residential and soften the building scale.
- The Mayton Inn will be approximately the same height as the Yarborough and Ogle houses across from the inn.
- The inn’s owners have recently introduced several new designs to address concerns and suggestions from the Friends of the Page-Walker and the state historic preservation commission, and the state historic preservation commission has reviewed and approved the Maytonn’s exterior design as consistent for the downtown Cary historic district.
- The plan for the inn includes the preservation of two existing downtown structures.
- The inn’s owners are experienced preservationists and have won several historic preservation and environmental awards for their current inn in Durham.

Miller believes there are many positive aspects to the planned inn that are often overlooked, and that many of the objections are undeserved or based on obsolete or misunderstood information. He said the Friends of the Page-Walker believe the Mayton Inn will be an asset to Cary, help to
bring new vitality to downtown, and is appropriate in the historic downtown district. He said they look forward to welcoming the Mayton Inn and its owners to Cary.

Ms. Joy Buckmier said she is a downtown resident and lives less than a block from the proposed hotel site. She said it would be a great benefit to the Town to be able to support an entire wedding downtown. She said there is excitement about the hotel bringing restaurants and nightlife to downtown. She thinks the Mayton Inn will be a great addition to the Town.

Mr. Kyle Smith said he is a downtown resident and has lived in Cary for 38 years. He moved downtown five years ago because he saw the vision that council presented to the community for a rejuvenated downtown. He believes the council has committed to see that Cary is vibrant throughout all areas. He said there is a danger of not going forward with this project and asked what signal it will send to the business community if it’s not approved. He said the public/private partnership is the essence of what the Town needs to move forward. He said without it there will be stagnation in downtown. He said if council says no to the Mayton Inn project, then people like him who moved downtown and brought their income to spend in downtown, will leave, and others won’t be attracted to downtown. He said that would create a much bigger problem than worrying about the return on investment of a single project.

Weinbrecht closed the public hearing.

Adcock said council’s taking one vote tonight but it’s actually just one in a series of many decisions council has made for several years. She said council has discussed economic development and investment in downtown for a long time. Adcock said council is committed to a vibrant Cary everywhere. She believes that this project will take Cary a closer step to a rejuvenated downtown; it will make all of Cary better, not just the downtown, and it’s part of council’s vision for downtown. She said council is ready to take the next step.

Frantz said he appreciated hearing the various positions and concerns regarding this project. He said council is looking at everything and are not doing downtown piecemeal. He said council has been very open about the process and engaging the public. He is committed to doing something downtown. He said council has two choices: (1) do nothing, let the area become totally blighted, crime ridden, decayed, etc and then spend millions of dollars dealing with that problem, or (2) make some strategic investments on the front-end to avoid the first scenario. He said no one on council has acted like the Town has an unlimited pot of money. He said council has committed to a few strategic projects to kick start downtown to get the private sector to start investing money and, with the exception of this project, they have all been for public uses, i.e., the Cary Arts Center.

Frantz asked if the retention pond is temporary during construction. Gawf said yes.

Frantz said the town is not turning the park into a stormwater retention pond. He said several council members have fought to ensure that the park will be a crown jewel park for all of Cary. He said the downtown park will have a beautiful water feature.

Frantz said parking is the one issue he has some concerns with, but he’s also had personal experience with shared parking, and it can work. He understands the concern about handicapped parking. He said if visitors can pull up to the hotel entrance and someone can help them out and go park their car, then he doesn’t know what’s lacking.

Frantz said he understands and is willing to take the risks to the Town. He said council made a conscience decision to try to encourage private investment by waiving impact fees for a few projects for a limited time period. He’s more concerned about doing nothing.

Robinson said when council initially created a downtown plan they didn’t invest any funds and didn’t do anything to stimulate new business coming downtown. She said that was the worst
decision they could have made for downtown, and it became harder for businesses to establish in
downtown. She said after spending lot of effort studying successful downtowns, council decided
to adhere to the following basic principles for downtown:
   1. Create shared parking because it helps to get people to move between businesses.
   2. Share stormwater collection because it’s not logical for every building to have a BMP.
   3. Create some kind of kick start for development, because the businesses that come into any
downtown are taking a chance on the downtown. The reduced fees will encourage more
business downtown, and it is just for a short period of time.
   4. Assemble land before prices increase. She said many private developments have tried to
assemble their own land without any assistance from the Town, but it has been too difficult.

Robinson said the Mayton Inn is taking a chance on downtown Cary, and the town is taking a
chance on them as well. Council strategically assessed this decision and determined that this is
an opportunity for the town to make an investment in downtown Cary.

Yerha said council has been talking about this project for a long time, and he is surprised by the
controversy. He said council has studied and vetted the concerns expressed by the citizens. He
said this is a unique opportunity for Cary without precedent. He said it’s not without risks or some
concerns, and council is willing to take the risk. He has a concern about the parking, but it’s not
something that will stand in the way of his support for the hotel.

Smith said he appreciates and respects citizens' comments and concerns. He said council is
looking at the bigger picture, level of commitment and how it fits into the overall plan for
downtown. He said cities that have higher tax rates have a philosophy of no investment, no
creativity, no risk taking and stagnant growth. He said businesses continue to come to Cary
because Cary is special, unique, authentic, and willing to make a commitment. He said with
council's commitment to downtown, Cary has had 375 permits pulled for improvements to private
property that totals $20.4 million. Some the $20.4 million is one major investment that came to
Cary because of council's commitment downtown. He said council has to look at how they are
applying tax dollars to the investment downtown. He said there would be more harm and damage
if council were to stop this project.

Bush said the Mayton Inn project provides the activity needed in downtown, and it will bring
greater economic benefit and impact to downtown. She said council made a commitment a long
time ago to a revitalized and vibrant downtown, and people are starting to get a flavor of what that
can be.

Weinbrecht said the Mayton Inn project is the right thing to do, and doing nothing would be a big
mistake.

ACTION:
Motion: Adcock moved to approve the amendment and adopt the resolution to the
purchase and development agreement between the Town of Cary and and Memento Maury
LLC to provide for the proposed lease of 118 E. Park Street and other easements of real
property.
Second: Frantz
Vote: Unanimous

3. Consolidated Housing and CDBG Plan and 2014 Annual Action Plan
Subject: Public hearing to consider a Resolution to amend the Consolidated Housing
and Community Development Plan/ FY 2014 Annual Action Plan to authorize a Section
108 application and loan for the Mayton Inn Project (PL14-005)
Proposed Council Action: Council may take action
Speaker: Mr. Philip Smith
Executive Summary: The Purchase and Development Agreement approved by Town Council on October 11, 2012, and as amended, between the Town and Memento Mori, LLC, commits the Town to apply for a Section 108 Loan from the US Department of Housing and Urban Development (HUD) to support the development of the Mayton Inn. The Consolidated Housing and Community Development Plan and the FY 2014 Annual Action Plan must be amended to authorize the application for the Section 108 Loan. The application for up to $1,400,000 in Section 108 funds will be used to supplement the financing for the Mayton Inn in exchange for the creation of jobs targeted for low- and moderate-income persons. Staff recommends adoption of the attached Resolution as the mechanism for amending the Consolidated Plan and authorizing the application for the Section 108 loan.

Background: The Mayton Inn is a proposed hotel consisting of approximately 42-48 rooms with restaurant and other amenities to be located at 301 South Academy Street. On October 11, 2012 the Town Council approved a Purchase and Development Agreement (PDA) between the Town and Memento Mori, LLC to sell 1.04 acres of Town-owned property to Memento Mori, LLC for the development of the hotel. Among the several covenants made in the PDA is a commitment of the Town to apply for a Section 108 loan in the amount of $1,400,000 in exchange for Memento Mori's pledge to create 40 jobs targeted towards low- and moderate-income persons.

The Section 108 Program is a program administered by the U. S. Department of Housing and Urban Development whereby a Community Development Block Grant (CDBG) Entitlement Community may borrow up to five times its current CDBG Grant. Communities use the Section 108 program to fund projects of a larger scale than would ordinarily be possible with their annual CDBG funds alone. For the Town of Cary, which has been a CDBG Entitlement Community since 2004, the maximum loan is $2,557,440 based on our FY 2014 CDBG grant amount of $511,488. Section 108 loan funds may be used for any activity that is eligible for CDBG funds and one such activity is economic development such as contemplated by the development of the Mayton Inn. The Section 108 loan must be repaid to HUD over a period no longer than twenty years. The Town will, in turn, receive loan repayments from Memento Mori to be used to repay the loan to HUD. If for some reason, Memento Mori is unable to repay their loan, then the Town must pledge its annual CDBG funds to repay HUD.

To apply for Section 108 loans, the Town must declare its intent to do so in its HUD Consolidated Housing and Community Development Plan and its Annual Action Plan. The Town may amend its Consolidated Plan and Annual Action Plan at any time following a public hearing. The public hearing was advertised on August 28, 2013 for the public hearing to occur on September 12, 2013.

Discussion: The purpose of this staff report is to fulfill the Town's commitment in the Purchase and Development Agreement between the Town and Memento Mori to apply for a $1,400,000 Section 108 loan. Council action is required to 1) Amend the HUD Consolidated Housing and Community Development Plan and FY 2014 Annual Action Plan to reflect the Town's intent to apply for the Section 108 Loan; and 2) Authorize staff to submit the Section 108 loan application to HUD. Staff recommends adoption of the attached Resolution as the mechanism for amending the Consolidated Plan and authorizing the application for the Section 108 loan.

This transaction will consist of two loans – the Section 108 loan from HUD to the Town and an economic development loan from the Town to Memento Mori. Section 108 loans generally have a term of up to 20 years. Interest rates are set by HUD and are based on the internationally-recognized LIBOR rate (London Interbank Offered Rate). Currently the HUD rate is expected to be around 0.60% per year but may change by the time the loan is approved, as interest rates are trending upward. HUD review of the Section 108 loan application is expected to take approximately 90 days after submission. Approval of the loan is not guaranteed. The PDA provides that the Town will not be held responsible should HUD deny the loan.
In making the loan to Memento Mori, LLC, the Town has the latitude to impose terms, interest rates and fees based on the risks and costs to the Town. Any income generated through loan repayments is considered income to the CDBG program and must be used for CDBG-eligible activities. The proposed terms of the $1,400,000 loan to Memento Mori, LLC cannot be finalized until after approval of the Section 108 by HUD, but are expected to follow these guidelines. Council action will be required on final loan terms and the loan agreement after approval of the loan by HUD:

**LOAN TERMS**
- **Loan Amount:** $1,400,000
- **Loan Term:** 20 yrs, Yr 1 Deferred, Amortized over 19 years.
- **Interest Rate:** HUD’s Rate to Town plus 1% (i.e. if HUD’s rate to Town = 0.60%, then Town’s rate to Memento Mori = 1.6%)
- **Collateral:** 3rd Position Deed of Trust on Land and Building
- **Loan Fee:** 1% or $14,000 (Town’s of preparing application and legal documents)
- **Administrative/Monitoring Fee:** $1000.00 annually (Annual costs for loan servicing and monitoring of job creation)

**Fiscal Impact:** The fiscal impact to the Town is expected to be positive and generate program income for the CDBG program. Although the exact loan terms will not be known until approval of the Section 108 loan by HUD, loan repayments from Memento Mori are expected to exceed the Town’s required repayment to HUD. Additionally the Town is expected to recover its costs of applying for and administering the loan through the Loan Fee and Monitoring Fee. If for any reason Memento Mori is unable to meet its loan repayment obligations, the Town would be required to budget the Section 108 loan repayment annually from its CDBG grant before committing CDBG funds to any other project.

**Staff Recommendation:** Staff recommends the Town Council conduct the advertised public hearing and adopt the attached Resolution amending the CDBG Consolidated Plan and FY 2014 Annual Action Plan and authorizing the submission of the Section 108 application to HUD.

**RESOLUTION OF THE CARY TOWN COUNCIL AMENDING THE CONSOLIDATED HOUSING AND COMMUNITY DEVELOPMENT PLAN/FY 2014 ANNUAL ACTION PLAN AND AUTHORIZING A SECTION 108 APPLICATION AND LOAN FOR THE MAYTON INN PROJECT**

**WHEREAS,** the Town Center Area Plan, adopted in August 2001, envisions downtown Cary to become a “unique, vibrant, dynamic, pedestrian-friendly location; a regional destination and a place to live, work and recreate”; and

**WHEREAS,** towards that end, the Town of Cary has acted upon the opportunity to purchase a 13-acre site in downtown Cary for a downtown park and other uses including a library, hotel and possible retail/office and residential uses; and

**WHEREAS,** on October 11, 2012, the Town Council approved a Purchase and Development Agreement to sell a 1.04-acre portion of the 13-acre site, located at 301 South Academy Street, and 106 and 100 East Park Street to Memento Mori, LLC for the purposes of constructing and operating a boutique hotel with approximately 42 to 48 guest rooms, restaurant and related amenities to be known as the Mayton Inn; and

**WHEREAS,** the Town wishes to request up to a $1.4 million loan, to assist Memento Mori, LLC in the financing of the Mayton Inn, from the U. S. Department of Housing and Urban Development under the Section 108 Loan Guarantee Program; and

**WHEREAS,** the Mayton Inn will be beneficial to the Town’s efforts to revitalize its Town Center area and foster economic opportunities for its residents, and Memento Mori, LLC has committed to the creation of a substantial number of jobs in Cary targeted for low- and moderate-income persons; and
WHEREAS, after public notice, the Town Council has held a public hearing to consider whether to approve an amendment to the Consolidated Housing and Community Development Plan/FY2014 Annual Action Plan to allow the submission of an application for a $1.4 million Section 108 loan to the U.S. Department of Housing and Urban Development.

NOW THEREFORE, The Town Council of the Town of Cary resolves that:

A. The Town Council hereby approves an amendment to the Town of Cary Consolidated Housing and Community Development Plan/FY 2014 Annual Action Plan to add Section 108 loan authority in an amount not to exceed $1,400,000 for the Mayton Inn project.
B. The Town Manager is hereby authorized to submit an application to, and enter into a Section 108 Loan Agreement with, the Department of Housing and Urban Development and to execute such other agreements or instruments as may be necessary to implement the Section 108 Loan Program for the Mayton Inn Project.
C. The application, agreements, and other instruments shall contain such additional terms and conditions as the Town Manager deems appropriate.

Weinbrecht opened the public hearing.

Mr. Scott deDeugd said he’s not opposed to the Mayton Inn. He’s opposed to being forced to pay for it. He said council can keep the inn a local matter or finance it with a HUD loan and make it a national matter. He said the public notice justified that the public funds for the project will create or retain jobs for low income to moderate persons. He said this is stimulus funding. He thinks the Crossman’s can find their own loan. He said council should raise the standard of living and income in Cary rather than spend $6 million for a handful of low paying jobs to wait on elite clientele of the Mayton Inn. He said the public should see the Crossman’s business plan and financial statements before the Town extends them a HUD loan. He said using public funds to construct private business is not the role of government.

Mr. Kevin Slinkman asked council not to commit money to the Mayton Inn. He said the Crossman’s made their inn work in Durham, and they can make it work in Cary.

Mr. Judson Drennan said he lives next to a couple of triplexes and two duplexes. He said it’s always funny for him to hear affluent people talk about what those who aren’t affluent would want to do. The people who live in those houses could use the jobs the Mayton Inn would bring to Cary. He said they could work closer to home, probably at a higher wage than what they are getting, and probably better working conditions. He said that is exactly what HUD money is for, and the Mayton Inn project is appropriate use of that money. He said it’s a great investment that would benefit his neighbors if they were able to get those jobs.

Weinbrecht closed the public hearing.

ACTION
Motion: Frantz moved to approve the consolidated housing and CDBG 2014 annual action plan and associated resolution.
Second: Bush
Vote: Unanimous

Smith said he supported the motion because the project is so far down the road. He said anytime the Town gets involved with HUD, council has to due their diligence and stay on top of it

Adcock said she takes comfort that council budgeted money to monitor this process. She said the Town is not giving them the money; this is a loan.

F. QUASI-JUDICIAL PUBLIC HEARINGS
1. **SUBDIVISION AND SITE PLAN 13-SP-010 (Glencroft Townhomes)**

   **Location:** South side of Cary Glen Boulevard approximately 800 feet south of Carpenter Fire Station Road - PIN #0735035058

   **Proposal:** Partial payment-in-lieu for traffic signal improvements associated with development of 150 townhomes

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

   **Speaker:** Mr. Kevin Hales

**REQUEST**

WSP Sells, on behalf of the developer and property owner, ForeverHome, has requested approval of a subdivision and site plan to develop 150 townhomes on approximately 26 acres located on Cary Glen Boulevard between Green Level Church Road and Carpenter Fire Station Road. The proposal includes several Minor Modifications to Town standards, including the acceptance of a partial payment-in-lieu (PIL) for a traffic signal, the elimination of vehicular and pedestrian connectivity to adjacent properties, the use of hardscape edges for stormwater management, the encroachment of development into perimeter buffers, and the removal/replacement of several champion trees.

**SUBJECT PARCELS**

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**BACKGROUND INFORMATION**

| Applicant’s Agent    | Ed Tang
|----------------------|----------------------------------------------------------|
|                      | WSP Sells
|                      | 15401 Weston Parkway, Suite 100
|                      | Cary, NC 27513
|                      | (919) 678-0035
|                      | ed.tang@wspsells.com
| General Location     | South side of Cary Glen Boulevard, approximately 800 feet south of Carpenter Fire Station Road
| Land Use Plan Designation | High-Density and Medium-Density Residential (HDR and MDR)
| Zoning Districts     | Mixed Use (MXD) – 12-REZ-16 (Glencroft Townhomes PDP)
| Within Town Limits   | Yes
| Staff Contact        | Kevin A. Hales, Senior Planner
|                      | Town of Cary Planning Department
|                      | P.O. Box 8005
|                      | Cary, NC 27512-8005
|                      | (919) 462-3944
|                      | kevin.hales@townofcary.org

**LIST OF EXHIBITS**

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

- Attachment A: 13-SP-010 Application
- Attachment B: 13-SP-010 Plan Set
- Attachment C: 13-SP-010 Champion Tree Report
PROJECT DESCRIPTION/SUMMARY OF REQUEST

WSP Sells, on behalf of the developer and property owner, ForeverHome, has requested approval of a subdivision and site plan to develop 150 townhomes on 26 acres located on Cary Glen Boulevard between Green Level Church Road and Carpenter Fire Station Road. Primary access to the development would be via Cary Glen Boulevard, with secondary access via a vehicular connection being provided to the Grove at Cary Park multi-family development located to the southwest. The proposed development would also have access to Carpenter Fire Station Road via a future connection through the multi-family site currently under design to the north. Stormwater management would be provided through seven stormwater devices located around the property. Pedestrian connections through the future Town Park to the Mills Park Middle and Elementary Schools would be provided.

As proposed, this project includes several Minor Modifications to Town development standards. The applicant has proposed to provide a partial PIL for the signalization of the Carpenter Fire Station Road/Cary Glen Boulevard intersection. This PIL would be consistent with the partial PIL recently approved for the Cary Park Medical Office project located two properties north of this site. The PIL also anticipates the participation of the multi-family site located immediately to the north. The proposed townhome project would not provide street connections to the properties located to the south (Town of Cary park site) or to the east (Duke Energy Progress utility substation). Pedestrian access would be provided to the Town park site; however, no pedestrian access would be provided to the substation property.

In addition to the traffic and connectivity modification, the proposed project includes a number of modifications to the Town’s aesthetic and landscape regulations. The topography of the site presents challenges to the development of the property and, as a result, the applicant has proposed to use modular masonry walls in the design of two of the proposed stormwater best management practices (BMPs). In addition to the walls, two of the proposed BMPs would be partially located within the required perimeter buffer. These BMPs would be bio-retention areas, requiring that their surface area be planted with trees and shrubs. The Town’s Community Appearance Manual (CAM) requires a higher density of plant material when bio-retention areas are permitted to encroach into a required buffer. In addition to the BMP encroachment, the applicant has proposed a sewer line within a 20-foot utility easement that would be located coincidentally with the required 20-foot perimeter buffer. This encroachment would be limited to a short section of the southern perimeter buffer, which is adjacent to the future Town of Cary park. This encroachment did appear in the approved Preliminary Development Plan for the site; however, it was not specifically called out as a modification at that time. Finally, a survey of the existing tree cover on the site identified a number of trees in excess of 30 inches in diameter. The applicant had a registered forester evaluate the identified trees and prepare a report describing their health and their suitability for retention. The report indicated that there are six trees that should be construed as champion trees. The applicant has proposed to remove five of these champion trees and to retain the one remaining tree. The champion trees removed from the site would be replaced as required by the LDO.

SITE CHARACTERISTICS

Streams: The development of the property is constrained by two parallel stream buffers located in the northwestern and the southeastern portions 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: The elevation of the site descends approximately 50 feet from a knoll at the northern end of the site toward the streams located to the northwest and southeast.
**Surrounding Land Uses:**
North – Vacant (future apartment site in Cary Park)
South – Vacant (Mills Park site)
East – Duke Energy Progress utility substation
West – The Grove at Cary Park multi-family complex

**SUMMARY OF PROCESS AND ACTIONS TO DATE**

**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 27, 2013. Notification consistent with North Carolina General Statutes was published in the Cary News both on August 28 and on September 4, 2013.

**Property Posting**
Notice of the public hearing was posted on the property on August 28, 2013.

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

**Traffic**
This project was submitted prior to March 1, 2013, and a Traffic Impact Analysis (TIA) was performed for the project by MAB. The TIA identified a number of mitigations for the project’s impacts to the surrounding intersections that are outlined below:

- Cary Glen Boulevard/Access Drive #1
  - Align Access Drive #1 with existing Cary Reserve Drive.
  - Provide one inbound and one outbound lane.
- Carpenter Fire Station Road/Cary Glen Boulevard
  - Install two-phase signal at intersection following a warrant analysis for signalization.
  - Restripe northbound Cary Glen Boulevard approach to provide an exclusive left-turn lane and a shared through/right-turn lane.

The proposed subdivision and site plan include the design specified for the project’s entrance onto Cary Glen Boulevard. However, the applicant has requested the Town Council approve a partial PIL for the signalization of the Cary Glen Boulevard/Carpenter Fire Station Road intersection. Section 3.23 of the LDO allows Town Council to waive or to modify traffic mitigations identified in TIAs conducted for plans submitted prior to March 1, 2013, for which a Certificate of Adequate Public Facilities for Roads (CAPFR) has not been issued. The council may consider such a request if the proposed plan will not create unsafe conditions for pedestrians or motorists, will not create unsafe ingress and/or egress conditions for emergency services, and will not result in traffic congestion impacts reasonably expected to be generated by the project that will not be mitigated.

The proposed traffic signal would be designed with a standard metal pole and mast arm design with pedestrian accommodation and with a total estimated cost of approximately $250,000. The signalization of this intersection appears in at least two other TIAs performed for other developments in the immediate vicinity of this project. Town Council approved a PIL of $30,000, or 12% of the total signalization cost, as part of the approval of the Cary Park Medical Office (12-SP-036, approved by council March 14, 2013), located at the intersection of Cary Glen Boulevard and Carpenter Fire Station Road. The Glencroft Townhome project has proposed to make a PIL of $110,000 toward the signalization of the intersection, which is one-half of the remaining $220,000 project cost. The applicant provided a justification statement that indicates this number is consistent with a private agreement between ForeverHome and Crowne Partners that obligates each project to a PIL in the amount of $110,000. Crowne Partners prepared a TIA (13-TAR-363) in preparation for submitting their multi-family project for review by the Town, which identified signalization of the Cary Glen Boulevard/Carpenter Fire Station Road intersection as mitigation for their project’s traffic impacts as well. The development plan for the Crowne Partner multi-family project will be subject to the recent LDO amendments that eliminated the requirement...
for a traffic study as part of site plan review but now require Town Council review for all projects proposing 100 or more residential units. Therefore, it is unknown at this time when or if the remaining PIL would be made.

**Comprehensive Transportation Plan (CTP) Improvements**
The subject property has access onto Cary Glen Boulevard through an existing 50-foot-wide local street (unnamed) right-of-way turnout. The proposed private street system would tie into the right-of-way stubbed into the property, and no other road improvements would be required by the Comprehensive Transportation Plan.

**Buffers and Streetscapes**
The property is located within the Mixed Use Overlay District and was rezoned to Mixed Use (MXD) in November 2012. As part of that process, a Preliminary Development Plan (PDP) was approved by Town Council, which established the required perimeter buffers and streetscapes. The PDP was approved with a 20-foot Type B buffer along the northern, the western, and the southern property lines. A 15-foot buffer, representing the project's half of a 30-foot Type B buffer, is required along the eastern property line. The PDP does not indicate a requirement for a streetscape, which is due to the extremely limited frontage of the project along Cary Glen Boulevard. The proposed subdivision and site plan would be consistent with the PDP approved by Town Council.

**Champion Trees**
The tree survey required by Section 7.2.5(A) of the LDO identified 12 trees in excess of 30 inches in diameter (at breast height or DBH). The applicant had Steven Ball, a registered forester, examine the trees in the field and evaluate them as to whether or not they should be considered as champion trees due to size, health, or to other professional criteria. The results of his evaluation of the trees were that of the 12 originally identified large-diameter trees, six trees should be classified as champion trees for the Town’s purposes. The remaining six trees were disqualified for a number of reasons, most notably measurement error in the original survey or due to disease and/or structural damage.

The LDO requires that no Champion Tree be removed from the site without the approval of the Planning Director or, in this case, the Town Council. The applicant has not provided specific justification for the tree removals as part of their waiver requests; however, many of the trees are located within or in close proximity to required infrastructure. Sheet C1.0B of the plan set has overlaid the locations of the trees identified in the forester’s report with the proposed site layout. The trees identified by numbers 1, 2, 4, 7, 10, and 11 are the trees which the forester has indicated should be considered as champions by the Town. Of these, trees 1, 2, 4, 10, and 11 are proposed for removal and replacement. Replacement of the trees removed from the site would be consistent with the requirements of Section 7.2.5 of the LDO.

Trees 1 and 2 are located in or immediately adjacent to a proposed street connection to the Grove at Cary Park multi-family site. The location of this connection is fixed by the location and the alignment of the existing vehicular stub from the adjacent property. Therefore, little could be done to save these two trees. Likewise, tree 11 is located at the back-of-curb for the street connection to Cary Glen Boulevard. The location and alignment of this connection is also dictated by the existing right-of-way turnout from Cary Glen Boulevard, and there is little that could be done to save that tree.

Trees 4 and 10 are not directly impacted by infrastructure alignment and are located on the rear of proposed lots. Tree 4 is a 32-inch oak located on the rear of proposed lot 25. A proposed retaining wall supporting lot 26 to the south terminates just south of the tree. The required tree protection area for tree 4 would be 40 feet in diameter, which would make development of the proposed lot difficult if not impossible. Tree 10 is a 30-inch oak located on the rear of proposed lot 90. Lots 90 and 91 are being graded to reduce the existing slopes on the rear of the lots, and a retaining wall is located on the northern and eastern sides of lot 91. The developer has proposed...
approximately three feet of cut where the tree is located. In addition, the tree protection required for a 30-inch tree would be 37.5 feet in diameter and would make development of both lot 90 and lot 91 difficult.

Tree 7 is proposed to remain on site and is located south of the proposed street connection to the Grove at Cary Park development. An adjacent pedestrian connection to the future Mills Park site would cause some disturbance within the typical tree protection area associated with the tree; however, it is anticipated that, with proper care during and after construction, the tree will survive.

Connectivity with Adjacent Properties
The LDO requires that development provide connections to adjacent parcels to facilitate internal and external traffic movement in the community. The applicant has requested that Town Council consider waiving of the requirement to provide vehicular connections to the parcels located to both the south and the east of the proposed development. The applicable section of the LDO, Section 7.10.3(B)(1), reads as follows:

The proposed public or private street system shall be designed to provide vehicular interconnections to facilitate internal and external traffic movements in the area. In addition to the specific connectivity requirements described above, roadway interconnections shall be provided during the initial phase of any development plan between the development site and its adjacent properties with one roadway interconnection every one thousand two hundred fifty (1,250) to one thousand five hundred (1,500) linear feet for each direction (north, south, east, west) in which the subject property abuts. If the common property boundary in any direction is less than one thousand two hundred fifty (1,250) linear feet, the subject property will be required to provide an interconnection if it is determined by the Planning Director that the interconnection in that direction can best be accomplished through the subject property. When the Planning Director deems a vehicular connection not possible due to topographical and/or environmental constraints, he/she may increase the length requirement and/or require pedestrian connections. The Planning Director may delay the interconnection if such interconnection requires state approval. The intent of this standard is to improve access/egress for Town neighborhoods, provide faster response time for emergency vehicles, and improve the connections between neighborhoods.

The property located to the south of the proposed Glencroft Townhomes project is owned by the Town of Cary and is identified as a future park (Mills Park) in the Parks, Recreation, and Cultural Resources (PRCR) Facilities Master Plan. Mills Park is one of the projects covered under the recent bond referendum, and a conceptual master plan for the park did not contemplate access from the Glencroft Townhomes project. A street stub from Glencroft Townhomes would require the Town to evaluate an extension of that road through the future park that could potentially impact the park’s operation and layout. The extension of the road would also require crossing approximately 450 feet of floodplain on the northern half of the park property.

The applicant proposes to provide an access easement at the southern terminus of Cary Mill Drive, a private street within the Glencroft Townhomes project, in-lieu of constructing the street to the project boundary. Typically, access easements are used to satisfy connectivity requirements when topographical or other conditions prevent the improvements from being constructed. An access easement would not remove the requirement for the Town to evaluate an extension of that street in future development of the park. However, provision of an easement would prevent a dead-end street stub if council were to decide not to extend the street in the future. The applicant has proposed to provide pedestrian connectivity to the future park at two locations along the southern property line whether the street connection is made or not. These pedestrian connections would connect the development to the Panther Creek Greenway, a second bond referendum project that would run along the stream corridor on the park property.

The applicant has also requested that Town Council waive the requirement for vehicular and pedestrian connectivity to the east. The adjacent property was developed as a utility substation that is owned and maintained by Duke Energy. The creation of an interconnection to that property...
would provide no enhancement to the traffic circulation in the community since the property is located adjacent to the I-540 right-of-way. Additionally, such connections would potentially create security concerns for the utility company and would make potentially hazardous areas more accessible to members of the general public.

**Stormwater Management**

Stormwater management would be handled through the use of eight BMPs scattered across the site. Three of the BMPs would be constructed wetlands and the remainder would be bio-retention areas. The applicant has requested a few Minor Modifications to the regulations regarding the aesthetic design and the location of their BMPs due to the topography of the site and the design requirements for their proposed street network. These modifications include the use of hardscape edges in two BMPs (BMP #2 and #4) and the encroachment of three BMPs (BMP #1, #2, and #4) into the perimeter buffers identified in the approved PDP.

BMP #1 is located in the northwestern corner of the site between the Crowne Partners site and the proposed entrance drive into the development. The BMP is a proposed bio-retention area, the surface area of which requires tree and shrub plantings. A portion of the proposed impoundment for the bio-retention area would be located within the 20-foot buffer established by council’s approval of the Glencroft Townhomes PDP. This area of encroachment would be less able to be planted to the required Type B buffer planting standard. Section 7.2.3(H) of the LDO prohibits stormwater devices within perimeter buffers unless no reasonable alternative location exists. Where encroachment is permitted, supplemental planting shall be provided as necessary to meet the required buffer standard. The applicant has proposed to plant the area of bio-retention area immediately adjacent to the perimeter buffer at twice the planting density that would otherwise be required, which would satisfy the required buffer standard.

BMP #2 is a bio-retention area located in the northwestern portion of the site, just southwest of BMP #1. The applicant has proposed to use an earth-toned, modular concrete masonry unit (CMU) wall along the southwestern edge of this BMP behind several proposed townhome lots. The proposed wall would be approximately 100 feet long and approximately three-and-a-half feet tall at its highest point. As previously mentioned, the surface area of the bio-retention area is required to be planted with shrubs that will, in addition to their stormwater benefits, serve as evergreen screening of the wall at maturity. A very small portion of the impoundment for this BMP would also encroach into the 20-foot Type B buffer adjacent to the Grove at Cary Park multifamily site. In order to meet the requirements of the LDO, the applicant has indicated that the area immediately adjacent to the encroachment would be planted at the higher density mentioned above.

BMP #4 is also a bio-retention area and is located in the southeastern corner of the site, just east of the street connection into the Grove at Cary Park multifamily site. Like BMP #2, the applicant has proposed an earth-toned, modular CMU retaining wall along one side of the BMP. The proposed wall would be approximately 245 feet in length and would run along the southern side of one of the internal streets. The wall is proposed at a maximum height of eleven feet at its highest point. The proposed wall would not be tiered, as would typically be required by the ordinance, partly due to the horizontal and the vertical controls that dictate the alignment of the street at the northern edge of the BMP. The impoundment proposed for this BMP would have a significant impact on the adjacent perimeter buffer along the shared property line with the future park. As with BMPs #1 and #2, the applicant has proposed planting additional plant material adjacent to the impacted buffer to satisfy the buffer requirements of the PDP.

**Utilities**

The project is well located in regard to access to both water and sewer services. Water would be provided via an existing 12-inch water line in Cary Glen Boulevard. Water line stubs would be provided to both the northern property line and the southern terminus of the proposed cul-de-sac. A new reclaimed water line would be provided along the western side of Cary Glen Boulevard to
tie into the existing reclaimed water line along Green Level Church Road. Reclaimed water within the development would be limited to the proposed Neighborhood Green #1.

Sewer would be provided to the community through two existing sewer lines. The first would be a connection to the system currently serving the Grove at Cary Park multi-family site located west of the proposed development. A second sewer connection would be made to an existing line in the extreme southeastern corner of the site. This connection has prompted the applicant to request a Minor Modification from council to allow the associated public utility easement to be located coincidentally with the perimeter buffer identified in the Glencroft Townhomes PDP. The Town does not allow the installation of trees within a utility easement and restricts shrub plantings to the outer five feet of such easements.

The Glencroft Townhomes PDP approved by Town Council in November 2012 proposed a 20-foot Type B buffer along all property lines. The PDP also included the proposed easement encroachment; however, it was not identified as a specific deviation from the development standards through that process and is, therefore, subject to the requirements of the LDO. Section 7.2.3(H) of the LDO restricts development within buffers, including utilities that do not cross the buffer at an angle of at least 75 degrees from parallel. Where utility lines have been unable to cross at a 75-degree or higher angle, staff has required an equivalent area of buffer adjacent to the utility encroachment.

The proposed utility plan includes approximately 215 feet of sanitary sewer line within a 20-foot public utility easement, which coincides exactly with the required 20-foot Type B buffer. Provision of a 20-foot buffer north of the proposed easement would result in the elimination of lot 90. Staff suggested that the applicant could approach the PRCR Department regarding the provision of a landscape easement or a relocation of the easement onto the adjacent Town property to remove the buffer encroachment. The applicant indicated that neither of those options was received particularly well and decided to proceed with a Minor Modification request to keep the line consistent with the approved PDP. The applicant has indicated in their justification statement that the adjacent park is an open space use and no impact is anticipated. Additionally, the applicant has offered to relocate the plant material that would have been in the buffer to the rear of the nearby lots to enhance the visual screening of those lots from the utility substation located to the east.

### 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 the 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 requirements of the LDO. The applicant has requested approval of several Minor Modifications to the Town’s development standards. Council must find that each of the requested modifications: (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. When considering the requested payment-in-lieu of construction of a required traffic mitigation, council must find that the request would not result in (1) unsafe conditions for pedestrians or motorists, (2)
unsafe access for emergency services, and (3) traffic impacts expected to be generated by the project that are not mitigated.

Once council has made a decision on the Minor Modifications, it may then turn to the remaining site plan approval criteria:

**WORKSHEET 2**

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<td>2.</td>
<td>Does the plan adequately protect other property, or residential uses located on the same property, from the potential adverse effects of the proposed development?</td>
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<td>3.</td>
<td>Does the plan provide harmony and unity with the development of nearby properties?</td>
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<td>4.</td>
<td>Does the plan provide safe conditions for pedestrians or motorists and prevent a dangerous arrangement of pedestrian and vehicular ways?</td>
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<td>5.</td>
<td>Does the plan provide safe ingress and egress for emergency services to the site?</td>
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<td>6.</td>
<td>Does the plan provide mitigation for traffic congestion impacts reasonably expected to be generated by the project?</td>
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**WORKSHEET 1**

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<td>1.</td>
<td>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). The request for acceptance of a payment-in-lieu of physical improvements is governed by Section 3.23 of the LDO. Section 3.19 of the LDO governs Minor Modifications to other requirements of the LDO.</td>
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<td>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:</td>
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<td>(1) That the modification advances the goals and purposes of this Ordinance and</td>
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<td>(2) That the modification either</td>
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<td>A. Results in less visual impact or more effective environmental or open space preservation, or</td>
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<td>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:</td>
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<td>a. Whether there can be any beneficial use of the property without the variance;</td>
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<td>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;</td>
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<td>c. Whether the variance would adversely affect the delivery of public services such as water and sewer;</td>
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<td>d. Whether the applicant purchased the property with knowledge of the requirement; and</td>
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<td>e. Whether the applicant’s predicament can be mitigated through some method other than a variance.</td>
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<td>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 to the requirements of Section 3.19, individual requests may have additional criteria for consideration.</td>
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1. Request that the Town Council accept a payment of $110,000 in lieu of signalization of the Cary Glen Boulevard/Carpenter Fire Station Road intersection per Section 3.23 of the LDO

(1) Would the proposed alternative create unsafe conditions for pedestrians or motorists or a dangerous arrangement of pedestrian and vehicular ways?

Signalization of the intersection would provide safer conditions for pedestrians and motorists in the community. A waiver to the signalization identified in the TIA would potentially delay the signalization of the intersection indefinitely. The PIL request would fund a portion (50%) of the remaining cost ($220,000) of the signalization with the project to be administered by the Town in the future. The requested PIL would allow for the cost of the signalization, which appears as mitigation in several TIAs for development in the immediate vicinity, to be divided proportionally among several projects according to each project’s share of the projected impacts. The council approved a similar request for a PIL for the same signal associated with the Cary Park Medical Office site plan (12-SP-036) in March 2013. The proposed PIL would not alter the current traffic patterns in the surrounding community.

TEST SATISFIED? __ YES __ NO

(2) Would the proposed alternative create unsafe ingress and egress for emergency services to the site?

The signalization and the requested PIL would not be expected to significantly impact access to project. Fire service would be provided from Fire Station #8 located on Mills Park Drive. Unlike fire service, police service is less centralized at a fixed location; therefore, the delay in signalization of the intersection would not be expected to have a significant impact on the provision of police service.

TEST SATISFIED? __ YES __ NO

(3) Would the alternative result in traffic congestion impacts reasonably expected to be generated by the project that will not be mitigated?

The proposed PIL would result in the Town managing the installation of the required signal with the project being funded by multiple developers in the immediate vicinity. Therefore, the alternative proposed by the developer is not expected to result in the project generating traffic impacts that would not be mitigated.

TEST SATISFIED? __ YES __ NO

2. Request that the Town Council approve the removal and the replacement of six champion trees per Section 7.2.5 of the LDO

2a. Remove and replace a 30-inch oak (tree 1)
2b. Remove and replace a 30-inch oak (tree 2)
2c. Remove and replace a 30-inch oak (tree 4)
2d. Remove and replace a 30-inch oak (tree 10)
2e. Remove and replace a 36-inch poplar (tree 11)

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

Section 7.2.5 of the LDO states that existing significant vegetation should be retained to the extent practical and reasonable, while taking unique site conditions and features into consideration. Three of the trees proposed for removal (1, 2, and 11) would be located within the corridor of disturbance for the internal street network for the proposed development. The streets that would necessitate the removal of these three trees are required by the LDO and, due to the locations of the existing infrastructure, relocation of the required connections would be impractical.

The two remaining trees (4 and 10) would be located in the rear yard of proposed townhomes and would not be expected to be impacted by required infrastructure installation. Preservation of the trees would require a large tree protection area.
that would limit the amount of grading that would be allowed on the lots in the
vicinity of each tree.

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?
As mentioned previously, trees 1, 2, and 11 would be located within the corridor
of disturbance for streets required to serve the proposed development. Due to
the street network required by the LDO, no part of the affected infrastructure
corridor would be eligible for preservation. The alignments of the applicable
streets would be controlled by the alignment of the facilities into which the
proposed streets would connect.

The removal of trees 4 and 10 would result in less open space preservation since
the preservation of the trees would require protection of a radius equal to 1.25
feet per inch of diameter around the tree. The applicant has indicated that their
removal would be necessary due to the topography of the site. The preservation
of the trees would likely preclude the installation of adjacent retaining walls,
which could complicate or completely prevent development of the lots in the
vicinity of the trees.

TEST SATISFIED?   __ YES  __ NO

3. Request that the Town Council approve modifications to the connectivity
requirements of Section 7.10.3 of the LDO

3a. Provide an access easement in-lieu of a physical vehicular connection to the
south
3b. Eliminate both vehicular and pedestrian connections to the east

(2) Does the modification advance the goals and purposes of this Ordinance?
The LDO requires connectivity to adjacent properties to create highly connected
transportation network and to connect neighborhoods to each other and to local
destinations, such as schools, shopping centers, and parks. The applicant has
proposed to provide an access easement in-lieu of constructing the physical
street connection to the southern property line. The requested modification would
make a future connection less likely; however, the access easement would
provide opportunity for a street connection in the future should the Town deem
such a connection desirable. In the meantime, the provision of an easement in-
lieu of the physical connection would prevent the creation of a dead-end street
until the ultimate dispensation of the street stub is decided.

The property located east of the proposed development is a utility substation
owned and operated by Duke Energy. Such uses are not locations that the
surrounding community would need or desire access to. The property owner
would prefer to restrict access points to their substation to increase security for
their facility. No additional connectivity benefits would be provided by making a
connection to the property since the substation property is located adjacent to the
I-540 corridor and borders Carpenter Fire Station Road (to which Glencroft
Townhomes will ultimately have access) and the Mills Park School properties
(which were not designed to accept any connection from the north).

TEST SATISFIED?   __ YES  __ NO

(2) Does the modification result in less visual impact or more effective environmental or
open space preservation or relieve practical difficulties in developing a site?
The proposed access easement to the southern property line is located
coincidentally with a utility easement associated with a sanitary sewer line. In
addition, the grading required to install the proposed cul-de-sac would encroach
into the perimeter buffer regardless of the any access easement provided.
Therefore, the provision of an easement would result in marginally more effective
environmental protection.
The elimination of both pedestrian and vehicular connectivity to the eastern property line would prevent the disturbance of the 20-foot perimeter buffer required along the eastern property line. There is a significant change in elevation from the closest proposed street in the proposed development and the eastern property line; therefore, the installation of a vehicular and/or pedestrian connection would require significant grading within the perimeter buffer.

TEST SATISFIED? ___ YES ___ NO

4. Request that the Town Council approve the use of hardscape edges in the design of stormwater BMPs per Section 7.2.8(A) of the LDO

| 4a. Approve the use of an earth-toned, CMU wall in stormwater BMP #2 |
| 4b. Approve the use of an earth-toned, CMU wall in stormwater BMP #4 |

(1) Does the modification advance the goals and purposes of this Ordinance?
Section 7.2.8(A) of the LDO restricts the use of hardscape edges in stormwater BMPs to reduce their visual impact in the community. Stormwater BMPs should be graded and landscaped to blend in with the surrounding landscape. The proposed stormwater BMPs in which the developer has proposed to use hardscape edges are bio-retention areas, the surface area of which would be planted with trees and shrubs. The wall in stormwater BMP #2 would be three-and-a-half feet in height with the shrubs in the bio-retention area providing screening to reduce the visibility of the wall from the adjacent street. The wall proposed in stormwater BMP #4 would be significantly taller; however, the wall would face the adjacent park site, limiting public visibility from adjacent streets. The shrubs and trees in the bio-retention area would serve to soften the visual impacts of the wall, though not to the extent of those in stormwater BMP #2.

TEST SATISFIED? ___ YES ___ NO

(2) Does the modification result in less visual impact or more effective environmental or open space preservation or relieve practical difficulties in developing a site?
The proposed wall in stormwater BMP #2 would provide additional rear yard space for the adjacent townhome lots. The use of a wall in the stormwater BMP design would reduce the footprint of the stormwater BMP though it would not, in this instance, result in any additional environmental protection since the townhome lots would be required grading either way. The wall proposed in stormwater BMP #4 would be necessary to allow the installation of the adjacent street, which connects to the adjacent multi-family site, while maintaining sufficient space to install the stormwater BMP.

TEST SATISFIED? ___ YES ___ NO

5. Request that the Town Council approve the encroachment of stormwater devices into required perimeter buffers per Section 7.2.3(H) of the LDO.

| 5a. Allow the impoundment for BMP #1 to be in the northern 20-foot Type B buffer |
| 5b. Allow the impoundment for BMP #2 to be in the western 20-foot Type B buffer |
| 5c. Allow the impoundment for BMP #4 to be in the southern 20-foot Type B buffer |

(1) Does the modification advance the goals and purposes of this Ordinance?
Section 7.2.1 of the LDO establishes the purposes of the buffer requirements of the LDO, including delineating separation between uses and ensuring that adjacent properties are protected from any adverse impacts from proposed development. All three requests for encroachment into a perimeter buffer for a stormwater BMP, the stormwater BMPs would be located adjacent to either open space or to stormwater BMPs located on adjacent properties. Stormwater BMP #1 would be located adjacent to a stream buffer on the Crowne Partners property to the north. In addition, the designer of the Crowne Partners’ project indicated that there will likely be a stormwater BMP located in that portion of their site as well.
Stormwater BMPs #2 and #4 are adjacent to stormwater BMPs located in the Grove at Cary Park multi-family development. Stormwater BMP #4 is located adjacent to the future Mills Park site and the preserved open space on that property would provide additional separation between any uses on that site and the proposed townhome development. In addition to their location, the required bio-retention area plantings would protect the adjacent developments from any potential adverse impact from the proposed townhome development as if they were buffer themselves.

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 allowance of any encroachment into a perimeter buffer, by its very nature, would result in less effective open space preservation. However, the LDO allows the encroachment of stormwater BMPs if no reasonable alternative exists. The applicant has indicated that the encroachments would be necessary due to the topography of the site. Removing the encroachments from the perimeter buffers would likely result in an increase in the BMP footprint that would impact the development of the adjacent lots. The applicant has proposed to provide additional planting density in the portions of the stormwater BMPs adjacent to the encroachments. That would result in the stormwater BMP functioning as the buffer in those areas.

TEST SATISFIED?  YES  NO

(3) Is there a reasonable alternative location for the stormwater BMP?

The proposed location of the stormwater BMPs is driven, to a great extent, by the topography of the site. The stormwater BMPs are located in lower portions of the property, generally adjacent to stream buffers and/or wetlands. Stormwater BMPs #1 and #2 are located on the southeastern side of a stream buffer in the northwestern corner of the site. Their footprint would be constrained by the applicant’s desire to develop on both sides of their internal street network. Expansion of the footprint for stormwater BMP #1 would potentially result in the loss of units 147 through 150. Expansion of the footprint for stormwater BMP #2 would be less likely to result in the loss of units, but would still potentially result in the loss of a unit.

Stormwater BMP #4 is located along the southern property line between the connection to the Grove at Cary Park development and the Mills Park property. The curvature of the proposed street would define the stormwater BMP’s northern and eastern boundaries and that curvature would be set, to some degree, by the geometry of the vehicular stub provided to the subject property. The southern edge of the BMP would be defined by the property line since the impoundment would be located in the required perimeter buffer. The western edge of the stormwater BMP would be defined by the adjacent stream buffer, leaving only a small portion in the northwestern corner of the BMP for expansion in footprint. Expansion of the footprint in that direction would result in the elimination of lots in that area.

TEST SATISFIED?  YES  NO

6. Request that the Town Council approve the coincidental location of a 20-foot public utility easement within the 20-foot perimeter buffer along the southern property line per Section 7.2.3 of the LDO.

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

The proposed encroachment would be located in a portion of the perimeter buffer adjacent to the future Mills Park site. The applicant has indicated that the encroachment into the perimeter buffer would not result in visual impacts to the adjacent property since the portion of the park property adjacent to the encroachment is predominantly slated for open space. In addition, the applicant
would relocate the required plant material to the rear of the adjacent lots to 
enhance the visual screening from the utility substation located to the east.

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 encroachment into the southern perimeter buffer would result in the clearing 
of vegetation in the buffer that otherwise might be preserved. Relocation of the 
utility line would require the elimination of the townhome lot to the north of the 
buffer or to the Town property to the south.

TEST SATISFIED? __YES__NO

(3) Is there a reasonable alternative location for the sanitary sewer line?
There would be several alternatives in addressing the location of the proposed 
sanitary sewer line that is located in the required perimeter buffer. Shifting the 
line north of the current location would result in the elimination of proposed lot 90. 
Likewise, the applicant could elect to keep the line in the currently proposed 
location and shift the required buffer to the north. That option would also result in 
the loss of lot 90. The final option would be to shift the line or the required buffer 
south. That option would encumber the future park property in some manner, 
either with the sanitary sewer line or with landscaping that would require 
maintenance access for the HOA.

TEST SATISFIED? __YES__NO

SUGGESTED MOTIONS FOR MINOR MODIFICATION REQUEST

MOTION TO APPROVE ALL MINOR MODIFICATION REQUEST: 
For the reasons discussed, I move that we APPROVE the Minor Modification requests 
made by the applicant as the requests meet all the approval criteria of Section 3.19.1 and 
Section 3.23 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 APPROVE INDIVIDUAL MINOR MODIFICATION REQUESTS: 
For the reasons discussed, I move that we APPROVE Minor Modification requests 
number(s) __________ made by the applicant as the requests meet all the approval 
criteria of Section 3.19.1 and/or Section 3.23 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 ALL MINOR MODIFICATION REQUESTS: 
For the reasons discussed, I move that we DENY the Minor Modification requests made 
by the applicant as the requests do not meet all the approval criteria of Section 3.19.1 
and/or Section 3.23 of the LDO.

MOTION TO DENY INDIVIDUAL MINOR MODIFICATION REQUESTS: 
For the reasons discussed, I move that we DENY Minor Modification requests number(s) 
__________ made by the applicant as the requests do not meet all the approval criteria 
of Section 3.19.1 and/or Section 3.23 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. The property located to the west of the proposed development is a 
multi-family residential project. Likewise, the property to the north of the development is 
zoned for development of a multi-family residential product. The properties to the east
and south of the project would ultimately be un-manned facilities (utility substation and public park) and would not be expected to be subject to adverse effects from this development.

TEST SATISFIED? __ YES __ NO

3. Does the plan provide harmony and unity with the development of nearby properties?
   The proposed development would be a residential townhome development. As mentioned previously, the residential developments in the immediate vicinity are multi-family development consisting of multi-story blocks of units. The proposed townhome development would be less dense in terms of building mass than the surrounding residential communities. The utility substation to the east has significant vegetative buffering to mitigate any adverse effects from that use.

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 comply with all design requirements for roadways and sidewalks found in the LDO and the Town’s Standards and Specification Manual. Adequate sight distance would be provided at all intersections consistent with AASHTO standards. The TIA for the property identified a need for signalization at the intersection of Cary Glen Boulevard and Carpenter Fire Station Road. The applicant has requested a payment-in-lieu be accepted by the council to distribute the cost of the signalization among several developers in the area. Vehicular connections would be provided to the north and east, with pedestrian connections provided to the future greenway and park site to the south. The LDO allows Town Council to consider waiving or other alternatives to identified traffic mitigations if they would not result in unmitigated traffic impacts to surrounding transportation infrastructure.

TEST SATISFIED? __ YES __ NO

5. Does the plan provide safe ingress and egress for emergency services to the site?
   The proposed plan would provide street access from Cary Glen Boulevard. The site could also be accessed from the Grove at Cary Park multi-family site through a street interconnection to their parking lot. The project would also have access to Carpenter Fire Station Road through the Crowne Partners and Cary Park Medical Office sites to the north once their developments are completed.

TEST SATISFIED? __ YES __ NO

6. Does the plan provide mitigation for traffic congestion impacts reasonably expected to be generated by the project?
   The Town performed a TIA for the project that identified a single, off-site mitigation for the traffic expected to be generated by this project. The TIA indicated that signalization of the Cary Glen Boulevard/Carpenter Fire Station Road intersection was required. This mitigation also appeared in the TIAs performed by the Cary Park Medical Office and the Crowne Partners sites. This applicant has proposed a partial payment-in-lieu for that signalization.

TEST SATISFIED? __ YES __ NO

SUGGESTED MOTIONS FOR SITE PLAN

MOTION TO APPROVE THE SUBDIVISION AND 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(I).

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. The payment-in-lieu of signalization of the Cary Glen Boulevard/Carpenter Fire Station Road intersection in the amount of $110,000.00 shall be paid to the Town prior to plan approval (signature of the master set).
3. [insert any additional conditions necessary to bring the project into compliance with the LDO or other standards]

OR

September 12, 2013 minutes
Minute Book #177, Minute Book Page #417
MOTION TO DENY THE SUBDIVISION AND SITE 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(I).

The deputy clerk administered oaths to speakers. These oaths are maintained in the town clerk’s office per the Records Retention and Disposition Schedule.

Begin verbatim transcript

Weinbrecht: We will reconvene our council meeting and we are at item F.1, Subdivision and Site Plan 13-SP-010 the Glencroft Townhomes. We are happy to welcome Mr. Silverstein once again as our attorney to the table. This is a quasi-judicial hearing. An overview of the hearing procedures and detailed rules are attached to the printed agenda. All speakers who want to speak during this public hearing must be administered an oath by the Town Clerk. We will pause for just a moment to allow those individuals who want to speak at this public hearing to approach the Town Clerk who is on my right and receive their oath. And while that's going on I’m going to ask council members if they've had any site visits, ex-parte communications, financial relationships, specialized knowledge or close relationship to any, to an affected person to disclose. I will start on my left with Mr. Yerha.

Yerha: no sir I have not

Bush: no

Frantz: no

Weinbrecht: none for me

Smith: none for me

Robinson: no

Adcock: no mayor

Weinbrecht: It appears that everybody is sworn in that wants to speak. Based on the disclosures we’ve heard from council members, I would invite anyone to the podium who has been sworn in, to speak if you have an objection to any of the council members participating in this hearing. I see no one. We’ll proceed and I’ll open the quasi-judicial public hearing. Mr. Hales of our staff will introduce this hearing. Mr. Hales.

Hales: Thank you, and good evening council. As you indicated the next item on tonights agenda is a request by Forever Home for a subdivision and site plan approval for approximately 150 townhomes -- well for 150 townhomes -- on an approximately 26 acres. The purpose of coming before you this evening is a request for a partial payment-in-lieu for signalization of Carpenter Fire Station Road and Cary Glen Boulevard, and many of you may remember in March of this year you saw a very similar request for a parcel actually located at that intersection and did a partial payment-in-lieu as well. Associated with that request there are other minor modifications, including removal and replacement of champion trees, some kind of clarity modifications and BMP design the buffer impacts.

Hales: The site is located on the south side of Cary Glen Boulevard between Green Level Church Road and Carpenter Fire Station Road. It actually has no frontage on Cary Glen Boulevard. There is a small right-of-way turn-out that connects this site to Cary Glen Boulevard. Cary Glen Boulevard is identified as a collector in Cary’s Comprehensive Transportation Plan, and Carpenter Fire Station Road slightly to the north and Green Level Church Road to the west are both identified as thoroughfares. Properties located immediately north of the Mills Park site -- that
is a future Town of Cary park being funded by some bond money -- it is adjacent to the Grove at Cary Park, a multi-family site to the west. There is a vacant tract of multi-family land to the north, which is in Cary Park, and the property to the west is developed by Duke Energy as a utility substation. There’s also a cell tower on that site. There are currently no transit services in the area. There is a future C-Tran route that will run a fairly big loop in west Cary that runs up and down Green Level Church Road. There are currently no funds or plans for that expansion in the current planning horizon. Cary’s Parks, Recreation and Cultural Resources Master Plan does not identify any improvements which would impact this property directly. We already mentioned briefly -- there is future park in development now to the south -- or in planning stages now -- to the south. There is a future greenway trail that runs along the northern side of the creek located on their property, which will be in pretty close proximity to the subject property, and they will be providing pedestrian connections for future pedestrian connectivity into that greenway system.

Hales: There are two stream buffers which impact the property. There are no floodways, flood hazard areas, or wetland impacts. You’ll see there is a very small branch, the stream that connects to the north that was in the field determined did not exist. As you can see it does not continue any farther to the north, so when they did the field determination associated with the site plan, that small portion of buffer went away. Current land use plan, it’s in the northwest area plan, it’s identified for high density transitioning to medium density residential as you get farther away from the Cary Park Town Center development to the northwest. It is also located within the Cary Park Mixed Use Overlay District, and to that end it was rezoned in November 2012 to MXD. This piece was not part of the Cary Park PUD originally, it’s a little notch surrounded by Cary Park on two sides, and then R40 to the east and to the south. But there’s an adjacent R40 parcel that I already mentioned planned for non-residential uses. So there is no likelihood that any residential uses would be adjacent to this property in the future -- single family residential.

Hales: Just as a refresher, this was the preliminary development plan, which was approved by council in November 2012, which looks very much like the subdivision layout which is under consideration tonight. Primary access, as I mentioned earlier, is by a right-of-way turn-out from Cary Glen Boulevard. Secondary access would be provided at the time being back out to Cary Glen Boulevard through the Groves at Cary Park, which is a parking lot connection here in the southwestern corner. There will be future access for this site out to Carpenter Fire Station Road to the north, which is dependent on the property in between here and Cary Park Medical Offices being developed in the future. That plan is somewhere in the preliminary and has not been submitted, so we haven’t seen it; we have seen preliminary layouts, and that they did take that road into account. So it will eventually be extended all the way up to Carpenter Fire Station.

Hales: Stormwater is handled through seven BMPs scattered across the site. They are a mixture of bio-retention areas and constructive wetlands. There are two gathering areas in the site. One is located at the first major intersection as you come into the subdivision. Another one is at the far end at the south. They do qualify for the enhanced amenities, and what they have proposed is a lot of hardscape and outdoor amphitheatre seating area for gathering -- a little impromptu stage in that area. And then there is a purgola, an outdoor -- not hardscape -- but improved grass area for multi-purpose court, I guess, in the southern portion. As I mentioned before, there are several minor modifications associated with this, kind of scattered all over the site. And we’ll go over each of these in detail. The first being the big one, which was the partial payment-in-lieu for a traffic signal at the main intersection out here, Carpenter Fire Station and Cary Glen Boulevard. They are requesting that the Town accept $110,000 toward the construction of that signal, which represents 44 percent of the total cost of that signalization, which is about $250,000. That signal did appear -- this plan came in under the previous iteration of our APF ordinance. There was a traffic study done, and the only off site mitigation identified in that traffic study was the signalization of the intersection. That signal also appeared in several other traffic studies which were done in a similar time frame for the Cary Park Medical Office, which is showing here in green. Council’s already seen that plan for the--do not have name for it yet, but call it the Crowne Partners site, which is a multi-family site immediately north of the subject property. In March council did approve that payment-in-lieu for the Cary Park Medical office building. That payment-
in-lieu was for $30,000 for 12 percent of the total cost, which left a remainder of $220,000. The applicant’s proposal is that they pay half of the remaining cost. So $110,000 is half the remainder of $220,000. They have indicated in the justification statement, which is attached to the staff report, that they reached an agreement with Crowne Partners to the north, and that they feel that’s an equitable split of the remaining cost, and I will let them speak in more detail of that since I don’t have that agreement. Just to make council aware, we made the same comment with the Cary Park Medical office site. There are no plans in for the Crowne Partner site, so there is no -- it is unknown at this time when or if that payment -- remaining $110,000 -- will ever come in. It just depends on when that develops.

Hales: the next group of minor modifications is related to the removal and replacement of Champion trees. The first three are at the very southwestern corner of the site where the site ties into the Grove at Cary Park. They did provide at the Grove at Cary Park development -- did provide a stub to the property line, which this development would be required to tie into, which dictates a lot of the alignment horizontal or vertical of that road. That being the case, there are two 30-inch oaks, trees one and two, which are the lower ones on this slide, are located within the private right-of-way for that street. One’s within the shoulder, the grading for the shoulder and the other one is right on top of the curb line. Independent of whether or not they are in good health or anything else, those trees would have to be removed just based on the engineering requirements of making that connection. Tree four is a little different, and my circle got buried -- it got sent to the very back, so it is behind the picture -- but tree four is located on the rear of lot 25 right at the end of that arrow. There are no infrastructure concerns there, just from a town saying they had to be there, the alignment is all developer-driven at that point through the lots. That 32-inch oak under our ordinance would require a 40 foot radius tree protection circle, and that circle that as drawn on that plan would go to the back porch of the lot. So essentially, retention of that tree by following the ordinance would make that lot development either exceptionally difficult or impossible. Tree 10 is located -- it’s a very similar situation -- it’s located at the rear of lot 90, which is in the extreme southeastern corner of the site. Lot topography here -- the applicant is proposing three foot of cut. The existing grade -- there’s probably, I don’t have the numbers right in front of me -- but there’s probably 13 foot of fall across the back of that lot or more. They’re trying to grade it out to reduce some of the topography on that corner of the site. You could see the retaining wall there in yellow they’re using to break some grades. Like the other situation, it is a slightly smaller critical rezone, because it’s a smaller tree. It is about 37 and 1/2 foot radius, but that will still put it well into the -- right against the back patio or into the units themselves if they were to preserve that tree per the code. The final Champion tree we are talking about is tree number 11 in the tree reports. Like the first two we talked about, this one is located within the private right-of-way of the street, and given the fact the only access to public right-of-way this property has is that small turn-out off Cary Glen Boulevard -- again the alignments of that road coming in are fairly stringingly set based on tying into the existing turn-out and making sure the stream buffer here -- making sure to cross that stream buffer substantially perpendicular through the course of the stream to minimize impacts.

Hales: Moving on to the connectivity minor modifications, the first one is a request that council accepts an access easement in lieu of construction of a physical stub to the southern property line. I mentioned earlier, the property to the south is planned as a future town park in the conceptional master plan, which is just a, a real concept at this point, but it’s going through design now. I did not contemplate any connections to this parcel. The Town in its development of that site would need to assess whether or not connectivity to this property is a desirable outcome or not. Whether or not the developer builds the street stub to the property line or provides an easement, either way the Town would need to make that assessment. Because the easement would give us the ability to go on there and complete the stub if we thought it was a good idea. One of the benefits of the easement over the physical obstruction, however, is if it would prevent a dead-end street stub being there if in the future the Town decide it was not a good idea to extend the road through the park. If they were to build the improvement all the way to the property line you would have a dead-end street stub, which would be there in perpetuity. By providing an
easement you get the finished cul-de-sac. If the Town never decides to extend the road, then it stays a finished cul-de-sac and you -- slightly better aesthetics.

Hales: The applicant's justification statement for the connectivity waiver also brought up some environmental concerns about the stream buffers -- slide back for just a second. There are approximately 450 feet of floodways, flood hazard area and stream buffer just to the south. We've talked about the greenway that's going to go along the north side of that stream anyway. There are some flood hazard areas outside that that any kind of road would have to cross. They have also requested the modification to eliminate all connectivity to the east. I forgot to mention, but they are providing two pedestrian connections to the future park to the south, just no vehicular connections. To the east they would not be providing any connections at all. The most logical point to make that connection would be the northeast corner of the site. You've already got a road that's in fairly close proximity. There are some topographical concerns there. There's about 15 foot of fall between the proposed road where it makes that curve and the property line to the east. In addition to the topographical concerns, the property located to the east -- like I mentioned before -- is a substation, and that proposed connection -- or logical connection point -- would be basically dumping traffic right into the side of the substation. And that's obviously a concern for Duke Energy. For residence you don't really want to provide -- you want to discourage access to substations more than encourage it. In addition to the use -- with the development of the 540 corridor running north-south, that's a big cleared area, it is kind of an outdated photo now. There's really, even if you were to provide a connection to the east, it really has nowhere to go other than back up to Carpenter Fire Station Road. The property to the south -- parts are developing on the western part of that. Mills Park Middle and Elementary Schools are on the western part adjacent to the thoroughfare, and there were no previsions for connections going south from any of these parcels when those plans were developed. So, there's very limited benefit just in general to connectivity to the east.

Hales: Next few groups -- I combined groups four and five of minor modifications, because they all deal with BMP design. The BMP 2 is located just inside the site at the entrance coming in off Cary Glen Boulevard and crosses the stream buffer we mentioned earlier. And just to the south side of that stream buffer and the road is BMP number 2. It's a proposed bioretention area, which means it will be a planted surface area with trees and shrubs per the Community Appearance Manual. In order to get the BMP in between the buffer and the rear of the proposed lots, as to provide a little better rear yard, they have proposed to use an earth tone modular CMU -- concrete masonry unit -- retaining wall. That retaining wall in this instance would be at its maximum point, which is where the break is there, about three and a half feet tall. So, staff is fairly certain that the required shrubs in the bio-retention area combined with vegetation being preserved in the stream buffer is really going to do a fairly good job of significantly hiding the mass of that wall and would be almost not visible at all. There would be some visibility, but very limited visibility from the adjacent roadway. The lots are higher there, so you wouldn't be seeing the wall from the lot side. That would be the top; there would be a fence along the top of it. In addition, there is a small amount of encroachment for the impoundment. Don't call it a dam, because it doesn't hold water, but the impoundment for the bio-retention surface area, there's a small portion of encroachment into the buffer. There is lots of topography on this site, so most of the buffers are being cleared just to make the site work. In compensation for that small encroachment, the LDO used to allow bio-retention areas in buffers as a by-right allowance. We changed that several years ago. We did not take away the -- there's still the ability to put them in buffers if there is no reasonable alternative, as well as the Community Appearance Manual requires an increased planting density for portions of BMPs that are in perimeter buffers. Basically that's twice the planting density that would otherwise be required. So, twice the number of shrubs and twice the number of trees. This service area is not directly in the buffer; however, the impoundment does carry some planting restrictions. You cannot put any large trees or shrubs really on there. So, they've offered to increase the area -- the planting density of the area of the BMP immediately adjacent to the encroachment.
Robinson: Mr. Hales can you go back. In your comments you said something is necessary. I thought you said clearing the buffers is necessary for this site. Is that what you just said?

Hales: Correct. They are clearing all the existing vegetation in the perimeter buffers.

Robinson: They are?

Hales: They are, not the stream buffers, but the perimeter buffers around the site. This site -- Cary Park Medical Office and the Crowne Partners site -- are basically clearing the entire from property line to property line. And Ed can speak more to that when they get into it.

Robinson: People are wildly in favor of that. They just love it when they see all the trees come down like that.

Hales: I understand.

Hales: BMP 4, very similar situation, the same minor modification requests. This wall is substantially larger than the other wall. This wall is about 11 feet tall at its highest point. Again, this is the connection that goes into the Grove at Cary Park, and it ties in not far off the side of the screen. So, a lot of the alignment of that road is dictated in some part by that connection point in its existing geometry. So, in order to get the BMP on the south side of this road, they are proposing to use a an 11 foot retaining wall. Their justification statement talks about the wall will be facing what is essentially two parcels to the south. This is part of the Grove at Cary Park and its existing stormwater BMP. the parcel to the west -- eastern side of the screen -- is the Town Park. Since the Town Park is going to be developed as open space, they felt there would be very limited visual impact from having that wall. In addition, it is another bio-retention area, so there will be shrubs and trees that will mitigate some of the visual impact of that wall if you are walking along this trail. However, you’re going to see an 11 foot wall; there’s really no way to hide that with the plantings that are in a bio-retention area. Again a 20 foot buffer as described in the PDP is shown here in the green. There’s a slightly larger -- significantly larger -- encroachment of the impoundment. And again, theyre proposing to increase the planting densities of trees and shrubs in the bio-retention area itself or compensate for the loss of plantable area in the buffer.

Hales: BMP number 1 does not have a retaining wall, so we’re only looking at encroachment into the 20 foot perimeter buffer. The property to the north is going to be the Crowne Partners site. They've had some discussions, preliminarily with the designer of that site, and the stream buffer cuts across diagonally here, so that's an ideal space for their stormwater device as well. So, it's likely this bio-retention area is going to be backing up to another bio-retention area. But again, the planting density has been increased-- doubled per the CAM -- to compensate for that buffer encroachment.

Hales: And the final encroachment -- or the final minor modification being requested with this plan -- is a 20 foot utility easement, which is running coincidentally with a 20 foot perimeter buffer shown on the approved PDP. As shown on the approved PDP, it was not called out as a specific requested modification. So, when staff got a hold of this we said it wasn't called out. There's a note on the PDP that says unless specifically called out you have to follow the LDO. So, we're here to discuss this again tonight. Utility easements do carry planting restrictions on them. There are shrubs in the outer five feet, no trees at all within the confines of the utility easement. Again, the applicant's justification in this instance was the adjacent use is open space so there would be very little visual impact from not having that buffer there. In addition, they've also proposed to move the plantings that would be in that 20 foot buffer strip to the back of the lots adjacent to the substation to kind of provide additional buffering there instead of buffering against the park.

Hales: That concludes staff's presentation. Following the public comment portion of this hearing, staff will be available for questions. And also at the conclusion of council’s deliberation prior to closing the public hearing, staff would like to come up and talk about how the worksheets are
structured. There’s been a couple of changes with the worksheet structures and the proposed motions. So, thank you, and I’ll turn it over to the applicant.

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

Thank you, Mr. Mayor, members of the council. Thank you, Kevin. Jason Barron with Morning Star Group on on behalf of the applicant. We’re excited to be here today rather than tomorrow morning, and as I was watching you all earlier I was growing concerned we might have to re-notice the hearing -- so here we are.

Barron: As Kevin alluded to, this is a site plan for approval of a 26 acre parcel for townhome development. If it looks familiar, as Kevin mentioned, it’s a site that went through the preliminary development plan approval process last fall and was approved back in November. The vision that was approved at that time was for 150 townhomes, and those 150 townhomes are reflected on the site plan that is before you tonight. Here with me tonight to testify in support of this application are Mr. Ed Tang of WSP Sells who is the engineer on the project, along with Mr. Mark Ward who is with Forever Home who is the developer of this site and can speak specifically with respect to the fee-in-lieu that ultimately triggered our need to come to you all for approval of this site plan. I believe once our testimony is concluded that you all will see that the evidence that we’ve provided shows that we’ve satisfied the requirements of the ordinance for approval of the site plan along with the modifications that have been requested. And at this time I’m going to call my first witness, Mr. Mark Ward. Thank you.

Mark Ward: Thank you, Jason. Good evening Mr. Mayor, members of the council. My name is Mark Ward and I am a principal with Forever Home. We are the applicant here tonight. We appreciate the opportunity to be here tonight seeking site plan approval for this site -- for this townhome development in the Town of Cary. Some of you may know that Forever Home has been a proud supporter of Cary during the recent real estate recession. During the downturn we stepped in and built out several communities that had stalled including the Meadows and Old Carpenter townhome community, Weston Place townhome community, Renaissance at Regency cottages, and the Tuscana upper end single family community. In what has been a bad time for builders and for municipalities alike, we were able to add over 2.35 million dollars in building permit revenue to the Town and add significant dollars in tax revenue. I mention this only to say that we appreciate the opportunity to do business in the Town of Cary, and we feel like we have been a good -- and made a good, positive to the Town.

Ward: As you may recall last fall we sought and received the rezoning approval for this plan within the Cary Park mixed use development. At that time we had identified that while numerous uses within that mixed use district had been developed, there existed a need to develop a high quality for-sale townhome product that would serve the future residents of the area. This sentiment was echoed by council at that time. Following approval of the plan we worked closely with our engineers and the Town staff and submitted an application for site plan approval for the townhome development that you have before you tonight. As our engineer Ed Tang will highlight in more detail, the plan before you is for 150 townhomes and has been submitted consistent with our previously approved plan. I’ll let Ed get into specific details of our submittal, but there is one item that I would like to discuss. As staff has presented, we have requested town council approval of a fee-in-lieu for the traffic signal planned to be installed at Cary Glen Boulevard and Carpenter Fire Station Road. The staff has indicated that the total cost of construction of this signal is approximately$250,000. Last year the staff indicated that a capital project could be done for this signal if the funding came from the development projects that are planned for the area. In March you all approved a similar request for fee-in-lieu for the Cary Park Medical Office. They agreed to contribute $30,000 toward the construction of this signal. The remaining $220,000 of the cost will be split evenly between our development and the Crowne Properties project, which is a planned multi-family development that is immediately adjacent to our project. I have several copies of an agreement that is signed between us and Crowne that I will ask the clerk to share with you all.
Our offer to pay $110,000 for this signal is made in an effort to mitigate the transportation impacts that are reasonably anticipated to be generated by our proposed development. We’re excited about the opportunity to develop this site, and we’re hoping for your approval. At this time I would like to ask Ed Tang of WSP Sells to present the specifics of our proposal. Thank you.

Good evening mayor and council members. My name is Ed Tang. I’m with the engineering firm WSP here in Cary located at 15401 Weston Parkway. We are the civil engineers on the project. A little bit of background on my credentials. I hold a bachelor of science in civil engineering and am a licensed professional engineer in North Carolina and Florida. I have been practicing engineering for 19 years with the last 10 years here in North Carolina and primarily focus on land development. As previously mentioned as you may recall, we came before you last November, and the site was unanimously approved for a rezoning with a MXD category with a preliminary development plan within the Cary Park mixed use center. The MXD area that was identified in the Towns Comprehensive Land Use Plan calls for a variety and mix of residential and commercial uses in this area. One of the missing components that we highlighted in this MXD was a high quality for-sale townhome product that was different from the ones that are located to the north under the Camden townhome project that's north of Carpenter Fire Station Road and the multitude of the rental units that are located within the same proximity as our project. Forever Home has come forward with a product that has done very well in this market, and it is expected that it will do quite well at this location with its proximity to the shopping, the schools and easy access to RTP. The site as Kevin mentioned is approximately 26 acres and is located behind the Grove at Cary Park apartment site, west of the Duke Energy Progress substation and north of the Town’s Mills Park property and south of Carpenter Fire Station Road. The site has some unique and rather challenging topography as Kevin mentioned. The site is essentially split into two parts by ways of two streams that run diagonally into the property, and the riparian buffers traverse the site, making it somewhat difficult to plan and also grade the site for any type of development. Topographic relief is anywhere in the 10 to 20 percent range across the site, and vertically in numbers that translates to roughly between 30 to 40 feet of vertical fall from the ridge of the site down to the streams. This makes designing the site challenging as I mentioned to destruct roadways, utilities and other infrastructure to meet the Town’s design criteria. We are trying to make this site accessible and developable under the existing zoning. We have attempted to take advantage of this topography where possible by adding basements to these units and to thereby lessen the amount of grading and disturbance necessary. But despite that it still presents a challenge. The plan proposes 150 townhome units as was approved with the PDP last November. The roadway network within the project connects the two locations that were preset for this parcel, one through a dedicated right-of-way stub as Kevin mentioned at the northwest corner of the site out to Cary Glen Boulevard, which provides little to no frontage. And the other connects an existing parking lot stub with the Grove at Cary Park in the southwest corner of the site. To the north, the site will connect to the future multi-family project being proposed by Crowne Properties and ultimately out to Carpenter Fire Station Road through the Cary Park Medical office that's now under construction.

Tang: I will now address the minor modifications in the same order as it's written in the staff report with the exception of item 1 as Mark just covered. Item number 2: We are requesting that the town council approve the removal of placement of six Champion trees per section 7.2.5 of the LDO. A tree assessment was done for the site during our site plan review process, and it identified that there were six Champion trees that were healthy and in decent conditions. Three of these trees are located -- as staff mentioned -- in the direct alignment and path of roadways and other required infrastructure and that have been preset by the adjacent development that we're tying into. As Kevin mentioned, these are trees 1, 2 and 11 in the presentation, and these are primarily our only entrance corridors into the project for the public. We could not avoid these trees in order to meet the Town’s horizontal and vertical roadway design criteria. There is one tree that we are proposing to save, and that is located within the perimeter buffer along the southern property line with the town park; and that tree is tree number 7 in the staff report. Two additional champion trees are located behind townhome units as was pointed out. Due to the aforementioned topographic changes and challenges of this site, the grading activities to save
these two trees would be impractical. Tree number 4 is located in the footprint of the rear yard of lot 25 where grading for a swale, a drainage pipe would impact the tree if saved. Tree number10 similarly is located in the back of lots 90 and 91, and is also located on a 13 percent slope right now, making it also impractical to grade the rear yard for these townhomes without minimizing or taking away any semblance of a back yard. As required by the LDO under section 7.2.5(d), the applicant is offering to replace the five trees removed with 60 replacement trees at a rate of 12:1. We believe that with the replacement trees we are preserving the spirit and intent of the ordinance in the long term by increasing the absorption ability and reducing heat affect the trees bring.

Tang: Subsection (d) of section 7.2.5 also contains provisions applicable to Champion tree removal. We have consulted with our landscape architect and staff on suitable replacement trees. We intend on following the criteria of this subsection as it relates to the replacement of Champion trees that are removed due to construction. Item 3a, 3b request that the town council approve a minor modification to the connectivity requirements of Section 7.10.3 of the LDO. We are requesting the council accept an access easement from the cul-d-sac that was shown in the presentation at the end of what we’re naming Cary Mill Drive that connects at that one cul-d-sac at the end of the southern end of the project. The southern end of the project terminates at the property line with the Town’s Mills Park property. In lieu of a physical road connection, we are proposing the easement so in the event the Town would like to construct it in the future if it’s deemed necessary, there is a way and a provision that allows that to be done. We are willing to construct pedestrian access to the park site as seen on your site plan through two access points along that southern boundary. The reasons our justification for eliminating the physical road connection is so – first, the Town’s conceptual master plan for the most part does not contemplate any vehicular access to the park from this parcel. That area along the northern side of the park is shown on the master plan as open space and natural area with a trail running along the north side of Panther Creek as Kevin mentioned. Second, a dead-end road stub in lieu of a cul-de-sac would not provide adequate turning radius or turnaround area for fire department or EMS vehicles to turn around at the end of a stub street. Third, if a road stub is built to the property line it may be unlikely the Town will construct the road to cross Panther Creek with its wide flood plain of approximately 450 feet at this location, approximately 300 feet south into the Town park property from our common property line. Fourth, a road stub to the property would be difficult to monitor and control access to the park from a private street. This really presents a security issue that would be inconsistent with the Town’s general requirements that park facilities are locked and gated after hours. We are requesting the council also consider a waiver to connect to the east, which is the Duke Energy Progress substation, as putting a roadway there stubbing to the property serves no general enhance purpose. The electrical substation is not a place for the general public to have access to, and needs to be secured for safety reasons. Thus eliminating this connectivity makes sense. Both of these stubs were not shown or contemplated on the approved PDP as both were not contemplated for this very reason, the nature of the existing uses adjacent to the site for security and safety.

Tang: Item 4a and 4b requests that town council approve the use of hardscape edges and the design of stormwater BMPs per section 7.2.8(a) of the LDO. Per the LDO under this subsection, use of hardscape edges in BMPs is allowed in mixed use centers. As mentioned earlier the site has topography constraints of 10 to 20 percent and vertical relief of approximately 30 to 40 feet across the side, which makes developing this site challenging. One of these challenges was to be able to incorporate BMPs into the landscape. As water flows downhill, the placement of BMPs as you all know usually ends up next to streams, wetlands and other low lying areas and typically next to stream buffers. We are requesting the use of some walls in these areas to make up for some of those grade changes that we have to encounter. In order to do so, two of the BMPs will be required to have earth tone masonry keystone type articulating masonry block walls. Both of these BMPs -- number 2 and 4 -- are planted by retention areas and will have limited visibility from adjacent properties or any buildings. BMP 2 is located next to the western stream buffer, and the proposed wall is three and a half feet high at the highest point. Visually this wall will have limited exposure as the applicant is proposing to plant the inside of the bio-retention cell with...
required landscaping and drape vines or other evergreen material also from the top of the wall. BMP 4 is located just south of the road that ties into the existing stub at the Grove at Cary Park. This BMP is located adjacent to the eastern stream buffer. The slope of the existing grade in this location is between 17 to 20 percent; therefore we need a wall to transition our grades from the roadway that Kevin described that we tied into down to the grades closer to the elevation of the riparian buffer. This wall is higher than the one in BMP 2, but we’ve also allowed for vegetation below it and to provide some screening and evergreen vines in the top to provide screening to break up the mass of the wall. This wall cannot be tiered here due to the required surface area of the bio-retention cell. The applicant has agreed to increase planned density as Kevin mentioned per the Community Appearance Manual, and both of these BMPs, and I will mention this in my second -- my next point -- as well. Visual impacts to the adjacent property, the Mills park on this BMP is minimal, as the park property is intended to remain as open space in this location.

Tang: Item 5a, b and c requests that town council approve the encroachment of stormwater devices into the required perimeter buffer per section 7.2.3 of the LDO. The requested encroachments are for grading the BMP dams or slopes that tie the existing grade. The functional part of the BMP is not within the perimeter buffer that we’re proposing to encroach into to tie these grades together. The requested encroachments are located either next to existing or future BMPs or open space on adjacent property, thereby minimizing visual impacts to adjacent neighbors or residents as they will not be looking directly at these BMPs. The open space that these BMPs are adjacent to will provide additional separation between any uses on the adjacent properties and the proposed development. The requested encroachments are due to the size of apartments and topographic constraints of this site to be able to grade these BMPs out properly. To mitigate for these encroachments, the BMPs are bio-retention cells, which will be planted as Kevin mentioned at a much higher density per the Community Appearance Manual. That will also by doing so provide some additional screening and function as the buffer in these areas where the plantings would have been, and those plantings are now being basically moved or translated inside the BMP.

Tang: Item number 6 requests that town council approve the coincidental location of the 20 foot public utility easement within the 20 foot perimeter buffer along the southern property line per section 7.2.3 of the LDO. The proposed encroachment is approximately 215 feet along the southern perimeter next to Mills Park, next to lot 90 at the end of that cul-de-sac that we were talking about earlier. The proposed utility encroachment was shown on it as part of the approved PDP plan to provide sewer outfall to an existing manhole located in the southeast corner of the site where there is already an existing easement that we’re tying into. To offset this encroachment, the proposed buffer plantings would be relocated from its southern boundary line to the rear of these lots between units 90 and 95 where it could be used more effectively to screen the views of the substation from the backs of these units. The proposed area adjacent to the sewer easement is -- as I mentioned -- the Town’s park property, which will remain predominately open space in its natural form; therefore, no visual impact to the adjacent property is anticipated.

Tang: In summary, based on the foregoing it is my professional opinion that the proposed Glencroft townhome project protects other property adjacent to the site or on-site from potential adverse impacts of this development. The plan is generally consistent with the approved PDP for the Cary Park mixed use district and the requirements of the LDO except for the minor modifications indicated. Surrounding properties would not be adversely impacted from this development. The proposed plan provides harmony and unity with the development of nearby properties. The proposed townhomes is consistent with the desire of the Cary Park mixed use district to provide additional housing options, which do not currently exist in the MXD. The proposed plan provides safe conditions for pedestrians and motorists and prevents a dangerous arrangement of pedestrian vehicular ways. The proposed development will comply with all design requirements for roadways and sidewalks found in the LDO. The proposed plan provides safe ingress and egress for emergency services to this site from Cary Glen Boulevard and to the Grove at Cary Park multi-family site. Further access will be provided in the future to the property
to the north in the Cary Park Medical Office. The proposed plan provides for mitigation through traffic congestion impacts reasonably expected to be generated by the project. The applicant has elected to follow the Cary Park Medical Office in contributing toward funding the single offset mitigation for the traffic signal that appeared in several surrounding TIAs, namely the Cary Park Medical Office and the Crowne Property site and our project site in order to mitigate through their share of the impacts. And that concludes my testimony, and now I will turn it over to Mr. Barron.

Barron: Thanks Ed. First of all I appreciate you all’s patience. I know these quasi-judicial proceedings aren’t the most fun in the world, but because we have to supply evidence, we have to follow the requirements of the ordinance. So we greatly appreciate you all’s attention and understanding that we have a burden to carry. At this time I would like to enter into evidence a copy of the staff’s report as well as the other materials we’ve submitted in support of the case, including the exhibit, the cost sharing agreement, which I will refer to as exhibit G and ask that the council take judicial notice of the contents of the Land Development Ordinance and other Town adopted plans. I believe that the evidence that’s been presented to you tonight shows that we have satisfied the requirements of the ordinance reissuance of the site plan with the associated minor modifications, and I think my client feels much like some other folks have with respect to the Town Center discussions. They’re a ways down in the process of development of this site, and this site plan is kind of the next step in moving forward with the vision for this property. So, we’re here to answer any questions that you all might have. Thank you.

Weinbrecht: Next on my list of sequence of things to do is to invite other speakers in support of the application to the podium at this time. I don’t think there is anyone else sworn in. I am going to proceed, and I will invite cross-examination of the witnesses who testified in support of this request.

Lisa Glover: Good evening council. I have two quick questions for Mr. Ward, if you wouldn’t mind coming back up please. I’ve heard your testimony. Earlier you mentioned that you arrived at the figure of $110,000 for the payment-in-lieu. Was that based on your independent judgment and not from suggestions from staff or other town officials?

Ward: It was based on our independent judgment and based on our negotiations with the neighboring property owner.

Glover: Okay. And you believe that the amount of the payment-in-lieu contribution is rationally related and roughly proportional to the impacts created by your development?

Ward: Yes ma’am.

Glover: Thank you.

Weinbrecht: We will now open the hearing for those who are opposed to this request and invite them to the podium. And again, I don’t think anyone else was sworn in. And I will call on staff to provide any additional testimony that they have. And ask if anyone sworn in has any objection to incompetent evidence or testimony. None. And does either party believe new evidence has been presented tonight that warrants a continuance of the hearing? None over there, and none over there. We will now begin the deliberative phase of the hearing, and I’ll open it up to council members for comments or questions, and as Mr. Hales said, he is going to guide us through the steps of the motion.

Hales: Once you guys finish your discussion and somebody is ready to make a motion before we close the hearing. Just call me back up.

Weinbrecht: Who wants to go first?
Robinson: I'll start. Okay, I guess I have a question for Mr. Tang. Mr. Tang, I understand that you have accomplished in getting all 150 allowable units on this site. To do that you are eating into the buffer with a utility line, with retention areas, which are not our preference. Could you have accomplished a development on this site with fewer lots without having to get into the buffers?

Tang: Certainly with fewer lots we could probably have this site designed differently and probably would have maybe avoided some of these impacts that we're here before you tonight.

Robinson: Okay, I understand some of the Champion trees are in the roadway, and I don't know how you would possibly save them. But the other trees, if you did not have this many lots would you be able to save some of these Champion trees, in particular number 10?

Adcock: There are actually two that are rear lots.

Robinson: Yeah, there's another one she's mentioning. I don't know what number they are.

Tang: Yes. Number 4 as well.

Adcock: There are two that are at the rear of lots.

Tang: Yes, behind lot 25, yes.

Robinson: So yes, you would be able to?

Tang: Yes, if we had less units there, yes.

Robinson: Okay. I will just make an observation. Townhomes are getting a really bad name here in Cary. People are starting to get very ticked off about townhomes, and part of the reason why is because the site gets completely graded. All the perimeter trees are taken down, and it's irritating people sorely. You have allowable 150. We often go through these rezonings -- I say often -- 99 percent of the time it seems we say you may have a rezoning for x many lots, but people will say well there's site constraints and therefore we probably won't get all 150. We'll probably end up with something more like 135 or 140 -- or whatever their number is, I don't know -- it doesn't matter. This looks like one of those sites where you guys should have respected the buffer and tried to get those -- use fewer lots and try to protect the site some. Make it look appealing so that we don't have so many citizens outraged about townhome communities. I'm hearing it everywhere I go, and of course I talk to a lot of citizens right now, but everywhere I go people are angry right now about trees coming down excessively and too many units, the density. I say to people all the time, we know density done well is great -- it works -- it can work. But density not done well just makes people angry. And I just don't think that this -- eating into the perimeter buffer in this manner is the right thing for us to do. In good conscience I can't put my name to it. The other thing is the stormwater BMPs -- the BMPs that wrap around the lots up there in the top left corner -- I work with people all the time, and we go to a house and they say I like it, but I don't that BMP right there. It's going to bring mosquitos. What do you have when you have the BMP wrapping around two sides of your lot? It is just unappealing. I mean, if you put fewer lots in there you would be able to put together a really nice parcel. I know this has some topographical challenges, but it's by and large a very nice piece of land, isn't it? I mean it's very pretty. So I just have some reservations about this.

Adcock: I'd like to piggyback on Ms. Robinson if could. Wow, you said what I was thinking, and when I read the staff report before this meeting -- you know we try so hard. We talk about harmony with the land, and I feel -- and Mr. Tang, I really appreciated your honesty to answer that question.

Robinson: He had to.
Adcock: I know he’s under oath. It’s after 11; he’s very honest. We talk about being in harmony with the land, and this is trying to make the land conform to your plan. And I think it should be the other way around. I was really -- I got the most -- I totally get what you’re saying about the BMPs and everything -- but I was most disturbed about taking down perfectly great trees. Totally get the two in the roadway. One is on the curb, one is encroaching on the -- but two perfectly great Champion trees at the back of lots. I just think that maybe this needs to be rethought from that point of view. It could be -- I know that you’ve done a lot of hard work, but I would just say I think it is asking for modifications that aren’t absolute -- some that aren’t absolutely necessary for a good development.

Hales: If I could have just a second. I want to clarify one of my comments during the presentation, because Ed pointed this out. I should avoid the use of absolutes. Not all of the perimeter buffer’s being cleared, but a large percent of it is being cleared.

Adcock: What percent.

Hales: I don’t have that number in front of me.

Robinson: It’s okay. When the plan first came up I thought -- I wonder why there isn’t more green on this map, because we often see a lot of green on our maps. And then I realized the reason why is because there’s so much topo work being done here, that you guys left in light blue the few areas that are not being disturbed. Is that correct? The light blue is the area?

Hales: The light blue areas is actually stream buffers. You do not see a lot of green on there.

Robinson: Is the land not being disturbed or is some of that being disturbed, too?

Hales: There are portions of the perimeter buffers -- for instance this wall--I don’t have the map in front of me, but correct me here Ed, this portion right here, that wall was put in there -- a portion of that along this perimeter buffer I believe there’s some being saved.

Tang: All of the buffer along the substation is being saved.

Hales: Correct. So this buffer and a portion of this.

Adcock: I have something; I am sorry. I think your request to change the connectivity to a substation -- that made sense, it does to walk to substation. And then you’ve got connectivity,because I know Lori’s going to talk back connectivity, so I am trying to beat her to it. I think you’ve done a good job with that and some other things, so I’m not trashing your plan or anything, just making comments.

Weinbrecht: Mrs. Bush

Bush: There were two other concerns that I would like to bring up well -- putting a sewer line in an easement and saying that it’s okay because it bumps up to a park, and nobody’s really going to be there kind of ruins from my perspective the whole idea of a park. We want the whole idea of the buffer is to protect not only the residents on that side from staying out, but also from the park being enjoyable. I don’t want to be in the park and see the side of a building. And so having that be in the buffer I think mitigates the whole reason why we have buffers. So, that was one of the issues. And then the other issue I, of course, had was connectivity. I guess it is more of a question for staff in the Mills Park plan. I might not have an issue with the connectivity that goes with the park; I think you have a perfectly sound reason. Why would you want a private road? Although we have had that discussion recently with other parks that are next to subdivisions. Is there a plan, Mr. McRainey, about connectivity to the Mills Park? Because I know that’s in our bond referendum, and it’s soon.
Doug McRainey: There wasn’t in terms on an access road from this point into the park. Remember Panther Creek greenway is one of the bond projects. It is a greenway. It would connect into Mills Park. But the plan never contemplated -- the staff report I think does a good job of pointing that out -- of an access from the north. And I think in part because -- I think Kevin mentioned that there is a 400 foot -- 450 foot crossing. It’s a 400 foot floodway, and it’s in wetlands, and so it just was not considered. That’s all.

Bush: So then is it staff’s, maybe this is Mr. Hales, is it staff’s recommendation that the two pieces of connectivity on the site plan are enough for the 150 plus homes -- the right-of-way --one on the top and the lower left hand one?

Hales: Staff does not make recommendations in quasi-judicial hearings.

Bush: I’m sorry.

Hales: However, the LDO requires subdivisions with over 100 units to require access to at least two points of access to two public streets. In the future -- or in the past -- the stubs -- if they will be extended in the future, have counted towards that. In this case you would count the stub to the north to Carpenter Fire Station Road and the access onto Cary Glen Boulevard.

Bush: Can you bring up that map again just to make sure. The stub to the north, that property is already on the development plan. Correct? We don’t have a site plan yet for the

Hales: The developer is working on developing a site plan for their property, but that has not been submitted to the Town yet. We’ve had pre-application meetings, but nothing more.

Bush: So that would be a stub, and then there is the right-of-way at the top corner.

Hales: That is an actual connection to public right-of-way.

Bush: And the bottom one goes to a parking lot?

Hales: It goes through the parking lot of the Grove at Cary Park and back out to Cary Glen. The only access into the Grove at Cary Park is through Cary Glen Boulevard. So that is actually providing two points of access onto the same public street.

Bush: And there was a mention of – someone mentioned and called this a private street. Thank you for letting me keep going, by the way. These are private streets, but built to Town standards? Is that correct?

Hales: These are private streets. I cannot speak of the standards they’re built to.

Robinson: They better be built to Town standards.

Bush: That’s where I’m going.

Tang: Yes, these are private streets built to Town standards.

Bush: Thank you. I just know that we take on a lot of streets, and I just wanted to reiterate that, so thank you. I have some issues with that connectivity, but not as much now with the ones if staff doesn’t see that it’s very feasible to cross over Panther Creek. I can see how that’s not as big of an issue.

Weinbrecht: Mr. Yerha.
Yerha: I'm actually okay with the connectivity modification, and I'm certainly okay with the payment-in-lieu of the traffic signals consistent with what we've done before. I don’t like the 11 foot retaining wall, and I don’t like the encroachments into buffers. But I really don’t like the removal of those two Champion trees, numbers 4 and 10. I understand the other ones. I don’t like it, but I understand it. So, I mean -- that’s my major major problem -- is the trees. And I somehow think even with the buffer encroachments and the trees, I can’t imagine too many lots being lost and yet being able to avoid most of those modifications. I don’t think you have to go down to 100 lots out of the 150 to avoid those problems. It seems to me that there’s -- they can, perhaps just be a few that were -- that we need to go down. But I think the problem is that we're trying to squeeze in all 150 is the issue.

Frantz: How many BMPs actually encroach into the buffers? Is it two?

Hales: They are proposing impoundments of three BMPs. BMPs 1 and 2, which are the ones that flank the entrance road, and then BMP 4 down at the south.

Frantz: So a total of three encroaching into the buffer.

Hales: Correct

Frantz: Okay; thank you. Those are the only ones I guess that give me a little heartburn. The traffic signal makes sense. I think that's very fair. I think you being responsible for your impact, I think is incredibly fair. Some of the others -- the connectivity -- it's not an issue for me given there's no development plan, site plan, submitted for the north. And really they are providing two access points, it's just to the same road. The trees -- I did like to keep the Champion trees, but they're going to plant a lot more nice trees that will be good. But the BMPs into the buffer, that's a little bit of a concern for me. That's my comments.

Weinbrecht: Other comments? Are w ready for Mr. Hales?

Barron: Not quite yet, Mr. Mayor. I've consulted with Mr. Silverstein, and in light of the cross-examination of Mr. Tang with respect to the items that he answered on, I've got a couple of questions for Mr. Hales with respect to compliance of the site with the city code. Kevin, there was a question with respect to -- or an issue that was raised with respect to clearing of the site. Do you believe that the proposed clearing is in any way in conflict with the requirements of the ordinance?

Hales: I believe the ordinance says that the existing vegetation shall be retained to the extent practical.

Barron: So, do you believe there is anything in this proposal that conflicts with the requirements of the ordinance with respect to tree removal and clearing of the site, specifically.

Hales: In regards to clearing in a buffer, I think that's a question for a certified engineer, not for me.

Barron: Okay. Is there a certified engineer here representing the Town that I can cross?

Hales: Probably not.

Barron: So there’s no evidence in the record suggesting that we’re violating the ordinance?

Bush, there's one

Hales: Jerry would like to speak, I guess.
Jerry Jensen: Would you restate that question, please?

Barron: Are you aware of anything in the ordinance that would prevent this site from being cleared as proposed per the site plan application?

Jensen: I’m not aware of anything other than clearing in the buffer. I think you can clear some portions of the buffer, but I’m not an expert in the stormwater BMP section, but I don’t know that anything that would.

Barron: Okay, thank you. Kevin, you’re familiar with the provisions of the ordinance with respect to Champion tree removal?

Hales: Yes.

Barron: And you’re familiar that they’re located at section 7.2.5 of the ordinance?

Hales: Yes.

Barron: And that subsection (c) indicates that trees can’t be removed unless you satisfy the requirements of subsection (d)?

Hales: I don’t have that in front of me. But those references sound correct.

Barron: And that’s fine; I understand. And do you recall that in subsection (d) there’s essentially three subsections contained in there, kind of identifying how you would go about replanting -- consultation with the staff by a registered landscape professional to identify how replanting would occur, and that there would be a commitment by the developer either through a three-year or a one-year maintenance program depending upon the type of development being put it. Does that generally sound

Hales: Correct. There is a maintenance requirement for the replacement trees if the removal is approved.

Barron: I understand. And was the staff consulted during this site plan review process with respect to Champion tree removal?

Hales: We were aware they were removing trees. We never made a final decision on whether or not they could be, because the town council makes that decision now that it’s quasi-judicial.

Barron: Right

Hales: If that’s your question.

Barron: Well ultimately I just want to confirm that the site plan applicant has consulted with the staff and has presented a plan for replanting that was presented to the staff and that the staff

Hales: The replacement plan is consistent with the requirements of the ordinance based on the trees you’re proposing to remove. Yes.

Barron: Okay. Thank you. That’s all.

Weinbrecht: Okay. Mr. Silverstein, is everything in order to this point? Is there further cross-examination needed or anything else before I go to Mr. Hales to help us lead us through the motions.
Silverstein: Essentially, and the proceeding I think can be a little less formal than they would be in an actual court proceeding, but to the extent that any question by council opens up new areas that either party would want to address, that would be appropriate. And so I think that has been exhausted.

Weinbrecht: Okay.

Adcock: May I ask a follow up question? At the risk of sounding like I am not as familiar with the LDO as I ought to be, does it really say that we can remove Champion trees for convenience as long as something else is replanted? I mean, is that what it says? Because that’s what we’re doing. And if that’s what it says, I can live with what it says, but I’m not happy that it says that.

Hales: We happen to have an LDO in front of us, so I will read you 7.2.5(d). Subsection 7.2.5 subsection (c) in entitled protection of Champion trees required. And it says no Champion tree may be removed during development unless the planning director and/or town council approves replacement of such tree pursuant to paragraph (d) below. And then it talks about when it’s removed or dies within one year following construction they have to replace it.

Adcock: Right

Hales: The ordinance at the moment contains no clear criteria for determining when a Champion tree should be retained or removed.

Adcock: It says we can decide.

Robinson: It says the council has discretion.

Adcock: Right or the planning director, in this case us.

Hales: Correct.

Adcock: But it doesn’t say that they have to come down just because they could come down.

Hales: It does not require you to approve their removal.

Adcock: That’s the clarification I wanted. Thank you.

Weinbrecht: Other questions? Okay, I think we’re ready Mr. Hales.

Hales: They’re discussing

Barron: Thank you, sir. I apologize for the delay. If the council’s inclined, my client would be happy to have this matter tabled. We’ve heard you all’s comments with respect to concerns associated with the site plan. We’d like the opportunity to address those concerns and come back to you with a plan that hopefully is more palatable, just given kind of the general consensus of comments that we’re heard. So, we understand it’s you all’s discretion to choose to table or not, but that would be our request.

Robinson: That’s fine with me.

Adcock: I think that’s very reasonable, Mr. Barron, and I appreciate your client making that suggestion, because I think you really heard what we were talking about.

Robinson: I make a motion to table.

Frantz: Second.
Weinbrecht: It’s a motion and a second. Just for clarification, we didn’t put any date on this, so it’s indefinitely.

Adcock: It’s whenever they are ready.

Bush: So I understand, when a quasi-judicial is tabled that means none of us can speak with the applicant.

Hales: You would essentially be continuing the hearing. Is that correct?

Weinbrecht: That’s right

Robinson: We can’t talk with anybody

Adcock: We can talk to staff

Weinbrecht: Mr. Silverstein, could you brief us on this really quick?

Silverstein: You have not closed the public portion of the hearing. So, the hearing is still open. That means that you are not to have any discussions at all regarding any of these issues with anyone; otherwise, you would be disqualified. You also – when you table it, if you don’t table it to a date certain at this time, then you would have to notice a new hearing for a subsequent date as you would table it, as it would come up again.

Adcock: But that only seems fair because the applicant, could well -- I don’t know -- maybe they’re so smart maybe they can say we only need 30 days, but I

Silverstein: That’s fine

Adcock: I think they need to have some wiggle room, and I don’t mind us having to notice again.

Weinbrecht: But in 30 days, if they’re not ready, we can continue.

Silverstein: I’m just saying that if you say a date tonight, you don’t need to notice a new hearing. If you don’t establish a date tonight, you do need to give notice of the continued date for the hearing.

Adcock: So, let’s say we set a date certain, and the applicant’s not ready by then. We put it on an agenda, and we make motion to continue it again.

Silverstein: Sure

Adcock: Now that I can buy.

Weinbrecht: So, who made my motion?

Robinson: I made the motion. How much time do you want?

Barron: Just given the topography associated with this site, and there’s going be some rejiggering of the grading plans, our preference would be, we understand there’s one meeting in November, and we would request that we’d be placed on the agenda for that.

Adcock: That’s reasonable.

Robinson: You’re killing us. That November meeting is so long. You sure?
Barron: It may be long, but this

Robinson: Okay I make a motion that we table to November.

Frantz: Second

Weinbrecht: Okay so we have a modified motion to continue this public hearing until our November meeting. Everybody clear with that? Any discussion?

Hales: Do we have a date

Frantz: Well, they said they've heard us, so I just want to make sure if we have any other concerns that we get them out now, so we don’t have to do this again.

Robinson: Alright, I don’t like. I’ll just mention really fast, I don’t like the BMPs contrived so close up to the lots at that.

Weinbrecht: We’re not allowed to discuss this, so if you’ve got anything to say you’d better say it now.

Glover: Mayor, we’d just like to get into the record the date of that November meeting. It looks to be November 21\textsuperscript{st}, so if you could say that the meeting would be continued until November 21st.

Robinson: I amend my motion to say we will table this until November 21st.

Frantz: I'll amend my second

Weinbrecht: And the second's also amend it. Okay. We’re still good, and we’re still ready for a motion. All in favor to continue this public hearing -- quasi-judicial public hearing -- until November 21st of this year, please say aye.

Council: Aye

Weinbrecht: Any opposed? Motion carries unanimously, and we will take this up at that time. Thank you, Mr. Silverstein.

Silverstein: Thank you.

**End verbatim transcript.**

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**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)

N/A

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

Operations Committee, September 3, 2013 (any item pulled from the committee consent agenda for discussion [agenda item B.3.] will be discussed during this portion of the agenda) **(Council Member Robinson)**
1. **Fire Station 2 – Architectural Concept (FD14-01)**
   
   Committee members recommended presenting these options to all council members for consideration, with design Concept 2 being preferred by Mrs. Robinson and Mrs. Bush.

**Executive Summary:** Staff is completing the design for Fire Station 2 for Development Review Committee (DRC) approval. After several meetings with the Town’s architect, staff is presenting two conceptual renderings; one design illustrates a traditional Cary appearance and one design is considered more contemporary. Staff recommends Council approve one conceptual design.

**Background:** The Town is relocating Fire Station 2 from Southeast Maynard Road to East Chatham Street. The project is a Cary Community Bonds project and was funded in FY12. The Town hired Williard and Ferm Architects (WF) from Raleigh to perform professional design and construction management services. Over the last several months Town staff has met with WF to program the internal layout of the fire station and to develop concept renderings for its appearance. This staff report presents two appearance options for Council to consider.

**Discussion:** Given the proximity to downtown and the desire to further establish architectural standards for subsequent development along the East Chatham Street corridor and contiguous areas, staff is presenting two conceptual renderings that illustrate the results of several design meetings with WF Architects.

*Concept 1 aligns with elements of existing buildings in or near the Chatham Street corridor, in effect continuing with a more traditional Cary theme. The first level veneer detail follows aspects of the Fidelity Bank while the roof-line captures elements of the Westbrook Building, located at East Chatham Street and Southeast Maynard Road. The apparatus bay doors are red bi-fold doors with a square appearance. The clerestory detail over the stairwell and apparatus bay doors have clean lines similar to Town Hall.*

*Concept 2 is presented as a more contemporary urban facility. The southwest perspective creates a more contrasting appearance with gray block and a lattice awning at the SW corner while buffering the main entrance with its arched red awning. The clerestory over the stairwell and apparatus bay has more detail and prominent gussets compared to Concept 1. The apparatus bay doors are red bi-fold and arched like the apparatus doors at Fire Station 8.*

Exact materials and colors may change as final design and DRC approval occurs. Staff recommends Council approve one concept rendering.

**Fiscal Impact:** There is no fiscal impact with this action. Council has previously allocated design and construction funding for Fire Station 2. The project is funded by $6.4M in Cary Community Investment Bonds. Staff will present a bid award for construction in Spring/Summer 2014.

**Staff Recommendation:** Staff recommends Council approve one of the Fire Station 2 concept design renderings.

Robinson outlined the committee’s recommendation. She said her only reservation about the designs is the gray brick.

Frantz and Robinson want the doors and awning to be red.

**ACTION:**

*Motion: Bush moved that council approve concept number 2 for the fire station.*

*Second: Robinson*

*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. Mayton Inn Roadway Improvements and Right-of-way for Road Into Downtown
   Park (EN14-017)
   Consideration of a request to waive right-of-way and roadway improvements along East
   Park Street. Consideration of dedication of right-of-way adjacent to the Mayton Inn
   project from Park Street to proposed downtown park
   Proposed Council Action: Council may take action
   Speaker: Mr. Tim Bailey

   Executive Summary: The applicant for Mayton Inn has submitted a recent development plan
   and is proposing to construct a 45 room hotel, innkeepers’ residence and guest house, located at
   the southeast corner of South Academy Street and East Park Street. The developer has
   requested a waiver from required additional right-of-way and roadway improvements along the
   south side of East Park Street.

   The Town is requesting approval for a dedication of approximately 50’x150’ right-of-way on Town-
   owned property adjacent to the Mayton Inn project, from East Park Street to provide access to
   proposed downtown park.

   Staff recommends Council approval of the waiver request by the applicant.

   Staff also recommends Council approval of the right-of-way dedication from East Park Street
   adjacent to the future boundary line of the Mayton Inn, and to authorize the Mayor to execute a
   deed of right-of-way to the Town of Cary to provide a record of the dedication.

   Background: The applicant is proposing a 45 room hotel, innkeepers’ residence and guest
   house, located at the southeast corner of South Academy Street and East Park Street. The
   project is called Mayton Inn and is currently going through the development plan (13-SP-020)
   review process.

   In accordance with the Town’s LDO, Section 8.1.4(A), the applicant is required to dedicate
   adequate right-of-way and widen East Park Street to one-half of the ultimate 2-lane, collector
   street (35’ back of curb to back of curb roadway width with 11 foot travel lanes and 4 foot bike
   lanes and 5’ sidewalks) within a 60’ right-of-way along the applicant’s property in order to meet
   the Town’s Comprehensive Transportation Plan (CTP). Within the Town Center Area Plan the
   CTP refers to the Downtown Cary Streetscape Plan which also calls for the same roadway
   section and sidewalks but does not specify right-of-way widths. The current roadway section is a
   2 lane (varying 25.5-28 boot back of curb to back of curb roadway section without sidewalks)
   undivided roadway, within a 30 foot right-of-way. The CTP improvements include widening the
   southern half of the roadway to accommodate the ultimate11 foot travel lane and 4 foot bike lane.
   The project frontage is approximately 425 linear feet.

   The applicant is requesting that the Town Council waive the CTP right-of-way and roadway
   improvement requirements. The applicant is proposing to construct an 8 foot wide sidewalk along
   the East Park Street property frontage outside of existing right-of-way and on the site that will be
   within a public sidewalk easement to ensure continued pedestrian access along the corridor.

   The Town is constructing a downtown park to which access from Park Street will be required.
   This is an effective time to obtain Council’s approval of street access from Park Street to the
downtown park at the location on Town property immediately adjacent to Mayton Inn project
property, and the memorialization of such in a street right-of-way easement deed.

   Discussion: The applicant has submitted a letter dated May 1, 2013 requesting a waiver from
   CTP right-of-way and roadway widening to meet the required ultimate 2-lane collector street
roadway section along the property frontage of East Park Street conditional upon construction by
the applicant of an 8 foot wide sidewalk along the East Park Street property frontage outside of
existing right-of-way, but within a public sidewalk easement to ensure continued pedestrian
access along the corridor. The applicant notes that the CTP states that "street cross sections on
the Downtown Cary will be determined based on special considerations and recommendations
from the Town Center Area and Downtown Streetscape Plans".

In addition, the Town is requesting approval for a dedication of approximately 50'x150’ right-of-
way on Town-owned property abutting Mayton Inn project property. Said right-of-way is from the
East Park Street southern right-of-way line to the future abutting boundary line of the Mayton Inn
parcel. A survey will need to be conducted to determine the boundary.

**Fiscal Impact:** If Town Council supports the waiver request, then the Town may be responsible
for future funding of the widening improvements.

**Staff Recommendation:** Staff recommends Council approval of the waiver request by the
applicant; approval of the right-of-way dedication from East Park Street to the future boundary
line of the Mayton Inn, and to authorize the Mayor to execute a deed of easement for the right-of-
way to the Town of Cary.

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<th>ACTION:</th>
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<tr>
<td>Motion: Frantz moved to waive the requirements of the associated right-of-way dedication and improvements for the collector street along Park Street and authorize the Mayor to execute the deed for the right-of-way dedication.</td>
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<td>Second: Robinson</td>
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<td>Vote: Unanimous</td>
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J. CLOSED SESSION

Not called.

K. ADJOURNMENT

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<th>ACTION:</th>
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<td>Motion: At 11:30 p.m. Bush moved to adjourn the meeting.</td>
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<td>Second: Adcock</td>
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<td>Vote: Unanimous</td>
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