Cary Town Council Minutes
Thursday, December 12, 2013, 6:00 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)
2. Pledge of Allegiance

Weinbrecht called the meeting to order at 6 p.m. and led the Pledge of Allegiance.

3. Adoption of agenda (Town Council)

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

B. OATHS OF OFFICE

1. Administration of oath of office to Jennifer Robinson, District A Council Member

Senator Tamara Barringer administered the oath of office to Robinson.

2. Administration of oath of office to Jack Smith, District C Council Member

Wake County Board of Commissioners Chair Phil Matthews administered the oath of office to Smith.

3. Administration of oath of office to Ed Yerha, At-Large Council Member

Town Clerk Sue Rowland administered the oath of office to Yerha.

All oaths are maintained in the town clerk’s office.

C. ORGANIZATIONAL MEETING

1. Election of Mayor Pro Tem

ACTION:
Motion: Bush moved to elect Adcock as mayor pro tem.
Second: Robinson
Vote: Unanimous

2. Appointment of council liaisons to boards/commissions and other Town of Cary official entities and outside organizations:
Weinbrecht announced the following appointments:

2.1 Economic Development Committee: Robinson and Smith
2.2 Environmental Advisory Board: Yerha
2.3 Information Services Advisory Board: Bush
2.4 Parks, Recreation and Cultural Resources Advisory Board: Frantz
2.5 Planning and Zoning Board: Adcock
2.6 Public Art Advisory Board: Smith
2.7 Zoning Board of Adjustment: Smith
2.8 Chatham/Cary Joint Issues Committee: Robinson and Bush
2.9 Morrisville/Cary Joint Issues Committee: Adcock, Robinson and Weinbrecht
2.10 Transportation Advisory Committee: Weinbrecht (regular member) and Adcock (alternate member)
2.11 Metropolitan Coalition: Weinbrecht (regular member) and Adcock (alternate member)
2.12 Triangle J Council of Governments Board of Delegates: Robinson (regular member) and Bush (alternate member)
2.13 Triangle J Council of Governments Development and Infrastructure Partnership: Robinson (regular member) and Smith (alternate member)
2.14 Triangle J Council of Governments Center of the Region Enterprise (CORE): Smith (regular member) and Adcock (alternate member)
2.15 Triangle J Council of Governments Water Resources Advisory Committee: Weinbrecht (regular member) and Smith (alternate member)
2.16 Triangle J Council of Governments Smart Growth Committee: Frantz (regular member) and Bush (alternate member)
2.17 Triangle Area Mayors: Weinbrecht (regular member) and Adcock (alternate member)
2.18 Greater Raleigh Convention and Visitors Bureau Board of Directors: Smith
2.19 Triangle Mobility Action Partnership (Tri-Map): Robinson (regular member) and Adcock (alternate member)
2.20 Friends of Page Walker Board of Directors: Frantz
2.21 Sister Cities Association: Smith

D. QUASI-JUDICIAL PUBLIC HEARINGS

1. Public Hearing and Action: 13-SU-003 and 13-MA-188, Cary Swim Club Proposal: The applicant has requested approval of a special use permit to erect a temporary enclosure over an existing pool, allowing year round use of the pool and intensifying a non-conforming use.

Speaker: Mr. Kevin Hales

Weinbrecht: We’re now at quasi-judicial hearings. Our first quasi-judicial public hearing is for Cary swim club. We’re happy to welcome attorney John Silverstein to the table when he gets here; he’s stuck in traffic unless he showed up while I wasn’t looking. When he does get here we’re going to welcome him to the table, but at this time I’m going to go ahead and proceed. An overview of the hearing procedures and detailed rules are attached to the printed agenda. All speakers who want to speak during the public hearing must be administered an oath by the town clerk. We’ll pause just a moment to allow those individuals who want to speak at the public hearing to approach the town clerk and receive their oaths. She is to my right, or probably to your left. And while this is going on, I’m going ask council members if they’ve had any site visits, ex-part communications, financial relationships, specialized knowledge, or close relationship to any affected person to disclose. I’ll start on my left, Mr. Yerha.

Yerha: no sir.
Bush: No

Frantz: As far as site visits, it’s actually - this building is probably the closest building to my house. We walk the dogs a lot – so I’ve been on the property. I have had a brief conversation with a neighbor about this where I tried to explain the process and the hearing and such, but didn’t really give them more details than that.

Weinbrecht: And do you feel that will impact your judgment?

Frantz: No.

Weinbrecht: I’ve had no ex-parte communications.

Smith: I’ve had no ex-parte communications.

Robinson: No.

Adcock: Several months ago someone who was connected with the swim club – I don’t even remember the gentleman’s name -- called me to ask what the Town’s process was to go to a special use, and I directed that gentleman to Town staff. And that’s the only communication I’ve had about this, and I do not believe it will affect my ability to make a decision.

Weinbrecht: Ok, very good. I wonder if I should wait for the folks to be sworn in before I proceed.

Robinson: Sue says yes.

Weinbrecht: While we’re waiting on that - Mr. Silverstein, we welcome you. Sorry about the traffic. Take a breath; we have time.

Weinbrecht: Have all the oaths been administered?

Rowland: Yes sir.

Weinbrecht: Alrighty. Based on the disclosures that the council members gave, I would invite anyone to the podium who has been sworn in to speak if you have an objection to a council member’s participation in this hearing. Is there anyone? If not we’ll proceed, and I’ll open the quasi-judicial public hearing. Mr. Hales of our staff will introduce the hearing. Mr. Hales.

(The staff report is attached to and incorporated herein as Exhibit 1. (NOTE: The planning department is the custodian of the records referenced in the staff report and maintains them according to the Records Retention and Disposition Schedule. Documents linked to the online staff report are not included with the official minutes.) Oaths administered to speakers are included in the case file maintained by the planning department.

Hales: Good evening, council. First item on tonight’s agenda is a request by Cary Swim Club for a special use and minor alteration to erect a temporary structure over an existing pool located at 536 Walnut Street. This swim club has been around since the 1950s. Changes to the zoning ordinance over the years have rendered a legal nonconformity, since commercial outdoor recreation is no longer allowed in residential zoning districts. Staff is looking at this as being able to extend the time of year that the use is allowed to operate or able to operate; therefore, it is an intensification and would require a special use, which is why we’re here this evening.

Hales: The site’s located on the western side of Tanglewood Drive south of Walnut Street. It’s southeast of the existing Allen Brook subdivision there where Carolyn Court, north of the Town’s Lion’s park. Christ the King Lutheran Church is on the opposite side of Tanglewood to the east,
and Burger King is on the opposite side of Walnut Street to the north. The site consists right now of a pool, several support buildings surrounded by a patio and two tennis courts and a small parking lot. There’s also a large open area between that facility – it’s on the same property between the facility itself and Walnut Street. That used to be the home of the gazebo, which you probably remember the Cary Town Band used to perform there over the years. That has since been removed. It is located at a major intersection. Both Walnut Street and Tanglewood are considered – well Walnut Street is a thoroughfare and Tanglewood is considered a collector by the comprehensive transportation plan. It’s currently not served by any transit. There is a projected C-Tran route to run along Walnut Street to connect to the hub at the train depot with the existing route that runs farther out on Walnut Street, and that’s proposed and being developed to maybe start servicing -- that’s five years or so. There are no immediate impacts to the site from Cary’s Parks and Recreation and Cultural Resources Master Plan. There is a sidewalk connector, which is a standard sidewalk connecting greenways and parks on the north side of Walnut Street. There’s already sidewalk on both sides along Walnut and Tanglewood at this property, and we’re adjacent to the park. It’s also very close to the Duhnam Park to the northwest. The site’s land use plan is designated for parks and open space. This is a common land use designation for neighborhood recreation centers. In prior iterations this was probably an appropriate land use and wasn’t considered as commercial under old ordinances. Surrounding land uses of low density residential to the east and west. The one to the west is consistent with the plan; however, the LDO (inaudible) is actually a church, so it’s really more of an institutional use than a low density residential. Commercial and office uses across the street to the north. Property is currently zoned Residential-12. It’s also within the Swift Creek watershed protection overlay district and on the edge of the mixed use overlay district around Cary Towne Center, which is a regional activity center in our land use plan. Like I’ve mentioned earlier, under today’s regulations, commercial outdoor recreation is not a permitted use, and, therefore, we’re here for a special use this evening to allow the intensification of the existing use.

Hales: Moving on to the site itself, this is a low closer view. You can see the pool and the outbuildings. They are proposing a temporary structure or tent to go over the existing pool patio area. It would be basically followed by the dash line here on the slide. Because it’s all on existing – it’s covering the existing pool and the existing patio area – there’s no increase in impervious surface, so, therefore, there are no additional runoff concerns associated with Swift Creek watershed protection, since it’s already impervious. The structure itself would be a metal frame structure spanning the width of the pool and the deck. Most of you are familiar with the temporary event tents, basically white vinyl with some clear plastic windows, which allow natural light inside to supplement additional lighting they may need. That concludes staff’s presentation. I will be available following the applicant’s presentation to answer any questions and then go over the approval criteria, because there are several particular ones that need to be considered in addition to the normal ones for the expansion of the non-conforming use. Thank you.

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

McBennett: Mr. Mayor and members of the council, I am Larry McBennett, I am counsel for the Cary Swim Club representing them tonight. My address is 220 Fayetteville Street, Suite 300, Raleigh 27601. Club members Jon Troxler, who’s the president of the club, John Potok and Jason Oates, the gentlemen here are here to answer questions. We’ll also have two experts who will address impacts for traffic and property values, and I’ll introduce them at the appropriate time. And another gentleman is a representative of the tent manufacturing company who will also be available to answer questions if need be. First, I would like to introduce Jason Oates who is spearheading the effort on behalf of the Cary Swim Club to tell ya’ll in short what they’d like to do.

Oates: Good evening. My name is Jason Oates. I’m with the swim club. What we’d really like to do is add a temporary tent over top of the pool to allow the Cary Swim Club members and New
Wave swim team to use the pool during the winter months, so that we can have swimming year round. That's basically what we'd like to do. Thank you.

McBennett: We have a series of criteria, which there are 20 of them. And I will be very pointed and go down them one right after the other. There's a little overlap in them, because some of them are special use permit, some of them are for the land -- the development plan they call it -- but I'll try to be very much on point and keep things moving. You'll have copies I'm sure of all the criteria, which are attached to the staff's report. First of all, the first of the criteria for the special use portion of it is that the site is in the Cary Towne Center regional mixed use center. It's within a mixed use overlay district regional. The purpose of the district is to enable the development of the land and activity centers on the land use plan map, in accordance with the guidance, the land use plan and the comprehensive plan. Activity centers, such as the Cary Towne Center, are intended to have a compatible mixture of commercial, office, residential, recreational, civic and cultural uses according to section 4.4.2a of the Land Development Ordinance. The Cary Swim Club's proposal for swimming, of course fits squarely in the recreational component of that. That's the only time I'll give you a citation for anything.

McBennett: The second criterion has to do with public safety. Naturally being a pool, lifeguards are there all the time to take care of the people who swim. There's also a big fence around the pool and buildings that protect (inaudible) during off hours. Entrance for most folks is through the clubhouse, unless they want to climb the fence. And then there is emergency entrance through three different driveways into the facility; so the emergency vehicles have adequate access now in case of an emergency.

McBennett: The third criterion has to do with general welfare. The Cary Swim Club has been in this area since approximately 1952 -- since I was a kid, and apparently I gather many people in Cary swam there when they were young. It proposes to continue to provide the very same service that it's been providing for 60 years. It currently serves many people in the adjoining neighborhoods. All they want to do is to move into the winter months, and not just confine themselves to the warmer months. In addition to serving its own members, it wants to serve members of the New Wave swim team. They are the prominent club in the Triangle area. They are in dire need of lane space for practices now. The club wants to make their eight lanes available for a portion of the New Wave club to practice. And New Wave wants to continue to offer practices in this part of Cary, because its other practices are in North Raleigh, and they actually meet in the Optimist pool and then at another facility in North Raleigh. They have to break their team up because it's a fairly good sized team.

McBennett: The fourth criterion has to do with injuring value of adjoining or abutting property. First I would mention that the club has operated for about 60 years. Here I'd like to have Robert Birch, who is a senior residential appraiser at Birch Appraisal Group, speak to the impact of the proposed use on the value of adjoining properties. His report is exhibit F in the materials that you have from the staff. Mr. Birch, please come up. Mr. Birch, I would ask you to introduce yourself, explain your credentials to the council and summarize your report and then give them your conclusion.

Birch: My name is Robert Michael Birch. I reside at 3200 Fieldview Court in Raleigh. For the past 34 years I've been the principal partner in Birch Appraisal Group of North Carolina. We have four offices, one in Durham, one in North Raleigh, one in Cary, and one in Downtown Raleigh. Aside from doing residential and commercial real estate appraisals, we also perform other ancillary functions, such as rent surveys, impact studies, highest and best use analysis, rental projections, things of that nature. I'm a senior member of the Appraisal Institute, have been since I think 85; as I said for three, four years I've been doing appraisal work, and it's all been in this area -- in the Triangle. I know you have a copy of my report, and basically what we did is we found -- went out into the market and found three other public pools in the area that had tents over the pool areas in the winter months. And we found where an adjacent home sold not too long ago, and we compared it to another home within the same subdivision, and we adjusted for all the
dissimilarities – square footage, number of bathrooms, garages, what have you. And after all these adjustments if they was any difference, then that could be attributed to either a positive affect, a negative affect or none at all. And so after reviewing those three, our conclusion was there was no impact to it. Do you have any questions?

Weinbrecht: Thank you.

McBennett: For all the hard work he did that was a very short presentation. His report is 72 pages long. With the next criterion, it has to do with the scale, density and character of area. I’d like to give ya’ll a handout that I just got two days ago, so it was not in your packet. If I might, there is one for everybody.

(Handout is in the case file in the planning department according to the Records Retention and Disposition Schedule.)

McBennett: And it’s simply a scale drawing, a pretty, nice little scale -- right on a photograph of the facility taken from Tanglewood Drive. And the tent as you know would only be up from late autumn through the spring. But what this photograph shows I think as well, as good as anything, and I apologize for the darkness of the actual photograph. It’s because I couldn’t reproduce it in color at my office, but it gives the idea. The tent goes up nine feet on the sides and then it goes up like a tent should in the middle. This first nine feet, which are the body of it all, are hidden by the clubhouse and the fence. You just can’t even see those. Once it starts going up, of course it gets up above that rise. Look at it from Tanglewood, which is your best point of view of it, there’s a big tree there in the way. So even the point gets blocked, unless as your drive by, of course, you’ll see it here and there. But as the photograph shows, basically the most you’ll see are the two corners of the tent above coming from Tanglewood. That’s the most visible portion of it.

McBennett: Number six then. The next one has to do with increasing demand for transportation facilities, water supply, other public services. The basic point we’d like to make there is that the services are quite adequate for summer usage. The winter uses would be less, and so it's more than adequate for the purposes in the winter time.

McBennett: The seventh criterion is to do with the – let me see if I got it right there – further impact on traffic matters. That’s why I get to introduce another gentleman to you with a shorter report. The club, I would emphasize it will not be used for year round swim meets. If any of ya’ll, like me, have been a swim parent, you know that swim meets generate a whole lot of people, and mostly who’s happy are the vendors and fast food places nearby. New Wave does not intend to hold any meets there at all. It’s simply too small. There’s eight lanes, and with eight lanes you have a neighborhood meet, but you can’t have a big regional meet that draws hundreds of kids. The Cary Swim Club, the Cary Imps, is actually larger than the New Wave Swim Club – if you take the whole New Wave and bring them all together at the same time. Last summer the club counted 147 kids swimming for the Cary Imps. At the present time we estimate -- we don’t have the exact number -- but New Wave is 107. So they’re about three quarters the size. And of those 107 at any one time, because we only have eight lanes available, it's only going to be 30 to 50 maximum children there for New Wave when they're there during the winter. As to the affect on vehicular traffic, I would like to ask Jeffrey Hochanadel, who’s a traffic engineering department manager for SEPI Engineering Construction, it’s based in Raleigh, to address the traffic impacts. His testimony would also go to address criterion number nine in the special use criteria and five and six of the development planning criteria. Mr. Hochanadel, would you come forward. If you would, just introduce yourself, give your credentials and explain your report and your results.

Hochanadel: Good evening. My name is Jeff Hochanadel. I work with SEPI Engineering Group. As was stated earlier, I am SEPI Engineering’s traffic engineering department manager. I’ve worked with SEPI now for a little over nine and a half years. I have 14 years of experience in traffic engineering. I’m a registered professional engineer, license number 28430. I graduated undergrad with a masters from NC State with a traffic engineering specialty. We did a traffic
analysis of the existing site driveways as well as the Tanglewood and Walnut Street intersections while Swim Club was in session during October, and we noted that there were no capacity issues at either intersection. In fact, the site driveways all operated at a level service A, which is the best you can get. With no increase in traffic, no increase in the number of swimmers, we do not anticipate an increase or a problem with traffic congestion in the future. And, therefore, there was no need for mitigation at any of the intersections that were analyzed or the site driveways. The current driveway, like I said, the current driveways are adequate capacity and allow for easy ease of traffic flow. Our traffic counters noted no concerns or problems with entering or exiting traffic during the time of observation. And, like I said, there’s three site driveways, so in the case of an emergency should one site driveway be blocked, the other two site driveways will serve to allow for emergency vehicular access. I think that about covers it.

Weinbrecht: Thank you.

McBennett: Okay to continue. We’ll go down the roster. Number – the ninth one has to do with ingress and egress – no, I’m sorry, the eighth one is non-conforming use. Does it contribute to the area? We think very strongly that recreational opportunities do contribute to the area, and that we’re just providing more of them.

McBennett: The number nine criterion Mr. Hochanadel just addressed. The tenth one has to do with onsite loading, parking, refuse collection, that type of thing. Because the use will be less in the winter time, it won’t put any extra demands. The current public services are quite adequate, thank you. We’re very happy with them. And we have no proposal for changing any of the walkways on the site, and there’s simply no plans to change anything else other than put the tent up.

McBennett: Number 11 -- we have to address whether or not the property is adequately served by water, wastewater, schools, emergency services. The answer to that is an unequivocal yes. And, of course, putting up the tent would have no affect on the need for schools at all.

McBennett: The twelfth criterion has to do with the landscaping, screening and fencing around the pool. You’ve seen pictures of it. You know we’ve got the landscaping. Pretty healthy number of trees on the back side, because there are several houses – there are actually five lots that abut, but only four of them could actually potentially see the pool, because the other one’s just got a little smidge of a connection to our property. The noise would partly be mitigated. It’s a fact that swimmers in the winter will be indoors, and the lighting will not change. There will be no odors associated with it. No economic impact on the adjoining properties.

McBennett: Thirteenth criterion has to do with storage location on the use on the site, hours of operation. We don’t plan to change the hours of operation. There’s no need for extra storage; the kids come, and the kids go. The one use actually in a odd way will be condensed a little bit from summer, because the tent itself will be designed to provide a small seating area for parents. So the parents instead of sitting out in the cold get to go inside the tent and those who decide to stay during practice.

McBennett: And the fourteenth one is surface drainage. Of course because we’re not expanding any impervious surfaces, there’s no extra taxing of the surface drainage. Those are the special use criteria, and then development criteria, I’m going through (inaudible) because they do overlap a wee bit. It’s a recreational component of the activity center and the mixed use regional center. The erection of the tent does not (inaudible) any changes to the site. Any existing landscaping, screening, parking and lighting suffice for current summer usage, so they’ll serve quite well for the winter, too.

McBennett: The second criterion, protected by screening and landscaping -- I’ve already addressed that. We think they’re very well protected.
McBennett: The third one is does it fit. The tent will be designed to sit on the deck of the pool. Most of it will be hidden. There’s visible houses on the west, they get to see a little bit when the leaves drop off the trees, but they’re going to see the fencing anyway, you know, so there’s not much of a change there for them at all. And then there’s pictures that you saw that were flashed up on the screen – your exhibit E. Those are not the actual tent obviously, because it hasn’t been ordered yet, but those are pictures from the vendor, and we do have a representative of the vendor’s company here who’s sworn in who can answer questions if you want to know. This isn’t a blowup tent; this is a framed tent. This is a serious operation very carefully designed.

McBennett: The fourth one -- changes on the site to streets and sidewalks – none whatsoever. Mr. Hochanadel addressed safety for access for emergency vehicles. They have three entrances, so they’ll get in there if they need to. And then last thing, Mr. Hochanadel also addressed in the last criterion mitigation because traffic will increase. There’s no need to mitigate any traffic. There’s nothing else there to mitigate.

McBennett: In summary, the Cary Swim Club requests the council to approve the special use permit and the minor alteration request for the erection of the tent so that the pool can (inaudible) to club members during the winter as well as to New Wave swimmers just for practices. We thank you. Be glad to answer questions if you have any.

Weinbrecht: Alright. Thank you. This time I’ll follow the procedures. I’ll invite other speakers who’ve been sworn in and wish to speak in support of the application to approach the podium one at a time. Speakers in support. I see none; we’ll move on. I invite cross examination of the witnesses who testified in support of the request. No cross examination. We’ll now open the hearing for those who are opposed to the request, and I would ask them to approach one at a time. Anyone opposed to this request? I see no one. I’m sorry, please. I apologize. I didn’t see you. It’s going to take a moment for those who would like to speak be sworn in.

Lovett: My name is Julie Lovett, and I have been an active broker in Cary – real estate broker -- for 30 years. I live at 524 Carolyn Court, which directly abuts the pool, and I have lived there for 30 years. Both of my children have not only been members of the swim team for this pool, but also I have been a supporter of this pool for many years, because the pool was built by nearby family subdivisions, and it is not an aquatic center. As stated in the request for the variance zoning, CSC continually refers to the fact that they are a private, family recreational facility, yet they are associated with the New Wave Swim, the Triangle Swim Club, Raleigh Christian Academy and Cross Fit RDU. Not all of these are neighborhood family entities. Again, of utmost concern is the noise factor to me. Although CSC printed information supplied to me that there would be no whistles or any loud noises. That has not been the case to this point. Between the very loud buzzer that goes off every five minutes and extremely loud gentleman on a megaphone, my family’s peace and quiet have been taken away. The backyard is – you just can’t stay out there. As for sight lines, I can currently see the entire facility from my home in the yard and screened-in porch. A 20 foot high facility will absolutely be obtrusive to the view. Coupled with the sight lines, the issue is the lighting. These teams have been practicing until late in the evenings with high intensity lights burning and shining in my home. Probably the most harrowing of these effects is the value that it will have on my home. And I have brought an expert in the field to explain this effect. Thank you.

Weinbrecht: Thank you.

Ligon: Good evening. I’m Alice Ligon. I’m an active North Carolina state certified residential real estate appraiser. I’ve been in new residential real estate market for over 30 years. I recently retired as the administrative director for a large regional bank and now run my own appraisal consulting business. I’ve appraised Ms. Lovett’s house in the past and am very familiar with the house and her family’s lifestyle. There is no doubt that the erection of this tent will have a negative impact on the value of her home. It will be reflected in a two to three percent reduction in value simply based on the tent itself. Ms. Lovett has continually had updates done to her home.
for both comfort and enhanced value. Having this large white tent in her back yard will be the first thing a potential buyer will see -- not necessarily the many upgrades. It is also my professional opinion that both the tent and noise potential may very well become disclosure items – (inaudible) the town as to what the allowable decibel levels are or should be and how those will be monitored. I believe that the homes located in the cul-de-sac behind the pool will incur a loss of value of up to five percent based on the noise and the unattractive tent that is going to be there. It’s very significant, especially in our current market. We’ve been told lately by many real estate appraisers and others in the industry that the market is wonderful. It’s not. Things are selling, but they have not increased in value to the point that you could overcome a five percent loss. Thank you for your time.

Weinbrecht: Thank you. Anyone else to speak in opposition? Moving on I will call on the Town’s staff if they have any testimony they wish to add.

Hales: I’m not aware of any.

Weinbrecht: Okay. Now we’ll ask if there’s anyone sworn in that has objections to incompetent evidence or testimony.

McBennett: I would object to the expert’s testimony, because it’s not based on any analysis of comparative property values. It’s just a hunch. And on that basis I don’t think it is valid, because there’s been no analysis of purchases and sales and the impact. It contradicts what our expert has said with regard to the impact of tents in three other places in the Triangle. There’s Optimistic and a couple of others -- I forgot -- right off the top of my head. Plus, I would add that the tent – I should’ve requested, Mr. Mayor, can I address the other points or just the thing you mentioned to expert testimonies?

Weinbrecht: I believe you can address the other points; let me check with the attorney. If everything’s in order if he addresses their points.

Silverstein: Yes sir

McBennett: Just very, very briefly. First of all factually, the Cary Swim Club is not affiliated with Cross Fit or Triangle Swim Club in any way, shape, form or fashion. It proposes to enter into a contract with New Wave. That’s it. The lighting impact -the lights were on now until eight o’clock. They’d be cut off at eight o’clock as well. As a practical matter -- the noise impacts you’re speaking of -- there’s noise now without the team; with the team it gets muffled, because they will be inside the tent. And then, of course, I would reiterate that the true buffer -- you can see from the pictures -- it’s pretty significant. Yes, you can see through them, and, of course, in the winter the trees drop their leaves, but the buffer is there, and it provides a pretty substantial buffer area for the homeowners. The club apparently is-- I haven’t been there for 50 years, but they have been very cognizant in trying to make a good impact on their neighbors and provide a good service to the neighbors. Thank you.

Weinbrecht: Thank you. Now I ask if there’s anyone who is sworn in that has any new evidence that warrants continuance of this hearing. Okay. Please bear with me as I go through all the steps. So we’ll now begin the deliberative phase of the hearing, and I’ll ask council members for comments or questions.

Robinson: I have a question for the appraiser on behalf of the swim club. The houses that you considered, were they being sold at a time when the tent was up or did you not regard that, and some of them were when the tent was down.

Birch: Bear with me one moment if you would. The first one in Cary – the Y -- that was May 15th.

Robinson: Okay, so the bubble would be down at that time.
Birch: Right. Let’s see, the second one -- North Cliff Drive -- was June and July. And the third one was July of this year.

Robinson: Okay. Do you know if the property disclosure statements for those home being sold included disclosure about the tent or bubble going up on the facility -- the adjacent facility, so that people purchasing those homes would know that they were buying a house that would soon be overlooking a tent or a bubble?

Birch: I don’t know if that was disclosed in any of these sales or not. I guess the seasonal use of the bubble had gone on for some time prior to this year in each of these three cases.

Robinson: Right, but if somebody coming from out of state wouldn’t know that. They would have to be told by somebody about the tent. I would think that would be relevant in the purchase of that home.

Birch: Somewhere in the process I guess brokers would have discussed it, talked about it, brought it up. I wasn’t privy to anything at that point.

Robinson: I guess my only concern in this regard is that we’re looking at three homes, and we’re basing our decision on property value based on a fact that someone’s buying a home adjacent to a tent or a bubble. But if they’re buying their home in the summer when the tent or bubble’s not up and it’s not in a property disclosure form, they may not have known. So, it then renders those comparisons a little bit less valuable, because we don’t know if the buyer really took that into consideration -- if that would have affected the price of the house. That’s my only concern.

Birch: Sure. I understand.

Weinbrecht: Thank you.

Robinson: I’d feel better if you all knew the addresses and could look up real fast the property disclosure forms attached to the MLS.

Birch: I know the forms that I’ve seen -- the pre-printed forms. That’s not a question on there. I know there are extra areas where you can add things to it.

Robinson: You can enter in information like I’m really close to a railroad track, and every night this train goes by at 3 a.m., you know, that kind of thing.

Birch: Yeah, I understand.

Robinson: And those are often times scanned and attached to the sale -- the MLS listing -- so we would be able to go back and look to see if there was a disclosure form.

Birch: In all the cases the brokers were called. I would make the calls, they would call back, talk to a staff member or staff member would call them and talk. And we told them kind of the idea of what we were doing.

Robinson: So you did talk to the brokers representing the buyers of each of these?

Birch: There were both buyers and sellers, and almost no one would call us back. And we told them that this was the reason we were doing a survey, yo try to determine the impact of a pool. And having thrown that out there is the reason we were calling to begin with. None of them told us, well that’s a horrible thing.
Robinson: Okay, but they did suggest that the buyers understood that there was a tent or a bubble.

Birch: I guess. I didn’t talk to the buyers or the sellers I talked to the brokers.

Robinson: But the brokers articulated to you that their clients understood that there was a bubble or tent involved.

Birch: No, they didn’t say that.

Robinson: They did not say that.

Birch: But again I left the question or the point out there. If they had had a bad reaction to it, I think they would have told me then and there.

Robinson: Yeah, because you asked them specifically about the impact of the bubble or tent on the purchaser’s decision to buy.

Birch: Right, but again, I told them that was the whole reason for our call. We were doing a survey to try to determine the impact of a bubble to adjoining residential property values.

Robinson: And the brokers that you talked to said that they did not think there was any impact.

Birch: They didn’t say one way or the other. They just verified the sale; really they had no comment about it.

Robinson: Okay, that’s interesting.

Adcock: Could I ask you a follow-up while the witness is here? I know you said this at the beginning, but help me out by just saying. So, when they verified the sale, what they told you was that the house sold for the asking price or the house sold for above the asking price or the house sold for 3-5% less than the asking price? What did they verify for you?

Birch: They verified the actual sales price to me.

Adcock: The sales price compared to the asking price? I mean, the other witness — in what was called her supposition — was a 2-3% drop in home sale for the home of the woman who spoke to us in opposition, and for those directly behind or others around the pool 5%. So my question to you is did what you hear bear any of that out? That these houses sold for less than what was asked?

Birch: No, the brokers did not indicate that to me.

Adcock: And were they asked that? I think that’s what Ms. Robinson’s trying to get to. What were they actually asked?

Birch: Well, again I told them that was the whole reason for my call. That I was trying to determine what kind of impact a bubble had on adjoining property values — residential property values.

Adcock: And they’re response was nothing.

Birch: Nothing, no, none.

Adcock: For those three properties, okay.
Frantz: I guess to me – I don’t know what they were asking versus what they were sold for. I mean. I could ask a million dollars for my house, but probably not going to get it. But, at the end of the day, your report shows that the sales of the homes that were next to the tents or the bubbles was really no different than the homes in the same neighborhood that were not next to the tents or the bubbles.

Birch: Exactly.

Frantz: So to me that says competent.

Robinson: That’s a good point.

Birch: Yeah.

Robinson: But my question was – the heart of my question was did the buyer understand that they were buying a property adjacent to a bubble or a tent, or in October did they go, what in the world is that? That was my question.

Bush: I wanted to ask either the – I guess the applicant, with regards to the temporary structure -- a couple of questions. This temporary structure, how long is the plan for it to be up? What are the months of use?

McBennett: The exact number of months I couldn’t say, but it’s basically from the middle of the autumn until the middle of the spring. This is based just on how cold it is and any changing weather. Jason could answer probably.

Oates: It’ll be up less than 180 days. So, less than six months.

Bush: Less than six months.

Oates: Yeah, we’d put it up in May – let’s see -- not May -- sorry. We’ll take it down in May. Put it up in September -- whatever is less than six months in that time period. Right now they’re swimming outside; there’s not any issues. I mean, it’s cold today and the last couple of weeks, but it’s been nice.

Bush: So it basically stays from the time you put it up -- its stays up until you put it down. It’s up there constantly; you don’t take it up and down every week right?

Oates: Right, correct. It’s a structure. It’s an architectural structure -- aluminum beams and a thick fabric that covers it. It’ll be up for less than six months. It’ll go up, and then it’ll all come down. We can remove the side if it’s nice outside, but mainly it will stay down because we’ve got the windows and stuff.

Bush: And the life of this temporary structure -- will it be used every year for the

Oates: The life that the manufacturer tells us is 15 years on the fabric.

Bush: Okay. And maybe this is a question for staff. Do we have guidelines with regards to temporary structures – the aesthetics, the look, the height, how nice it looks and for how long?

Hales: We don’t have anything explicit in the ordinance. We don’t even really have time frames. And more than six months is really more of a building code, or it becomes a type of permanent thing. Typically we’ve required it be neutral colors, that’s pretty much all we have. If you’re familiar with the YMCA, they have a giant grayish whitish bubble.

Bush: Thank you. Do you have a question?
Yerha: I guess from Mr. Oates also or the attorney – how long is the club open now? Is it open 12 months and people swimming throughout the winter or how long is it open?

Oates: Traditionally we’re open from May – what’s the date, John? Anyway we’re open from May until – we’re open from before traditional calendar school goes in -- or comes out, I’m sorry. And then we’re open after Memorial Day.

Yerha: So approximately how many months is that? Do you have a number?

Oates: I don’t have a calendar in front of me.

Potok: I’m John Potok. We’re open May 15 and we usually close the first week in September.

Yerha: So it’s four months. And with the tent you’ll be able to be open theoretically 12 months.

Oates: Year round. That’s correct, sir.

Yerha: I guess the concern perhaps from the neighbors is that even though – and I agree with what you were saying that the lighting isn’t going to be any worse with this, and the noise may even be muffled for part of the time. But still, if it’s only open for four months, there’s going to be lighting now, I guess, for 12 months, no?

Potok: Well, we have flood lights that are all around the pool that are used all summer long. And so, they’re up until nine o’clock when we close, so there’s bright lights going around in the summer time. In the winter time when we have the tent up those big flood lights will not be used at all, and the only lighting will be within the tent. And they’ll be no activity outside the tent except people going in and coming out. All the swimmers will be inside.

Yerha: That’s a good answer. Thank you.

Potok: You’re welcome.

Weinbrecht: Other questions?

Frantz: I just have comments.

Weinbrecht: Okay. We’re still in the comment portion. We’ll move from the comment portion to the motions portion. So, proceed with your comments.

Frantz: I do appreciate the questions of my colleagues. I think they’ve been very good questions. It speaks to some of the concerns that were raised tonight, and then concerns that we would just generally have with any type of expansion of an existing use. Things like noise, appearance, lighting and such always factor in our decisions, but at the end of the day to me the positives of allowing this expansion outweigh the negatives. First and foremost, it’s a huge demand for a swim recreational facilities -- not only in Cary, but throughout the region –a huge shortage. This provides a place for these kids to train, exercise, learn sportsmanship, competition, do good things. My family -- my neighborhood -- lives with this all through the summer. On Tuesday nights I know not to go home down Tanglewood, because with swim meet night you’re not really getting down Tanglewood, so we come in Ralph and come in the back way. And, yes, during swim meets if you’re on the deck you can hear it, and you can hear the buzzers; you can hear the parents screaming. But that’s just one night a week. When they’re just practicing and training, there’s not really much noise going on. The use is already there. I understand it’s only four or five months a year. There’s one issue that I don’t know that anybody’s really spoken to yet, but it’s been a concern of mine and the neighborhood for quite some time. It’s actually the future viability of the swim club. It’s been the neighborhood pool for a number of years. The neighborhood is aging out.
We no longer have as many young children in the neighborhood as we used to. It’s our understanding that the swim club over time has kind of seen their membership numbers dwindle over the years. There’s just not as many kids to go swimming. This would provide additional memberships for the pool, additional revenues that will help keep that pool open so it could continue to be a neighborhood pool for years to come. We saw what happened with the Silverton pool for example – you know it goes out of business, it goes under, sits vacant for years until somebody else hopefully comes and picks it up. I don’t think anybody in our neighborhood wants that to happen to the Cary Swim Club, so to me that’s something – I was actually surprised somebody didn’t speak to that. It’s been a concern of the neighborhood for quite some time.

Traffic is somewhat a concern, but Tanglewood is a very wide street, parked cars could park on both sides of it – they do it all the time – you can get through. Swim meet nights, my whole street we’ve got cars all the way down. God help you if the baseball field, the swim club and the church are doing something all at the same time. But it’s good stuff; it’s fun stuff; it’s kids and families doing good things -- wonderful things. Where they could otherwise be out, maybe getting into some kind of trouble or sitting on their butts in front of an X-Box -- I don’t know. It is a temporary structure; it’s not a year round thing. The majority of it will be – I’m not going to say hidden, because I think from any vantage point you’ll be able to see a piece of it, but the swim club is surrounded by an eight foot tall fence. The main building that’s out front will hide the most of it at least from the Tanglewood side. I do understand the residents’ concerns that live behind it, especially in the winter months. Yeah, you might see it, but they’re not going to be dealing with the swim meets, there’s not going be the buzzers, the guns. It’s just some of the kids swimming laps and stuff and the occasional goofing off. I’d rather -- when the baseball fields are growing and the parks are growing – we hear that noise all the time, and we enjoy it. It’s good stuff. Let’s see what else. Emergency access – a non issue. Quite frankly, the ambulance wouldn’t even pull into the parking lot; it would just stop on the street right in front and go in the front door. It’d be way easier. Widening not so much of an issue. Land use plan designates it as a park site - recreation site. I can appreciate all the concerns, but at the end of the day, I think the positives for allowing this outweigh the concerns. I would actually support the request.

Robinson: Do you want to make a motion?

Weinbrecht: We haven’t got there yet. I have to close the public comment period before we do that. And before we do that, I do have a question. The 180 days, six month comment – is that a condition, or was that just a statement that’s not backed up?

Hales: Right now that is just a statement that is not backed up. But, on my list as we go forward and talk about the pool criteria, there are some suggested conditions. One of those would be a time frame potentially. One of those would be restricting the use of the overhead lights during the period the tent is up. And you might also want to investigate one about restricting the use for no swim meets while the tent is also up, because right now you’re talking about having swim meets, but they earlier testified they wouldn’t be having swim meets. That’s something you may want to consider as possible conditions to the special use.

Weinbrecht: Do we have conditions – I’m still stuck on the 180 days. Do we have any of those types of conditions anywhere, and how do you enforce them?

Adcock: When you say anywhere, do you mean in other locations?

Weinbrecht: Yeah or any any type of

Frantz: Does the YMCA have conditions such as this?

Weinbrecht: Right.
Hales: They do. Their minor alteration is conditioned on a certain period. Usually it is a date. It has to be up no earlier than September 15th and down no later than May 15th or whatever time period.

Weinbrecht: Now you’re getting to where I want to go.

Hales: That is the easier way to enforce that type of condition rather than saying no more than 180 days, because that becomes a tracking nightmare.

Robinson: Yeah.

Weinbrecht: Exactly because one year at the tail end of winter could go longer, and the beginning of winter could be earlier, and it could be seven months in a calendar year. Who knows.

Hales: Correct. And that’s how the YMCA has done. It’s a set start date and a set end date, or a no earlier than and later than date.

Weinbrecht: Other questions or comments?

Robinson: I have a question. Something you just said. They said that they would probably not be doing swim meets. Is that a condition of this? I mean, what if they want to do like a little mock meet?

Frantz: A neighborhood meet.

Robinson: Are they prohibited from doing that?

Hales: They are prohibited from whatever condition you put on it. Right now there are no conditions on it. That’s why I’m saying there are suggested conditions; you may want to word something.

Robinson: No, I don’t want to.

Weinbrecht: Any other questions or comments? Mr. Hales is going to walk through the motions and the conditions that we may or may not want to add. And before we go to that, before we close public comment, I’m going to ask Mr. Silverstein if anything is out of order or anything missing before we close public comment?

Silverstein: I’m a little bit reluctant to say this, but I think I should add this, because you are still relatively new at these quasi-judicial proceedings. One point that I wanted to make was that -- this is from your own policy guidelines statement 167. And it has to do with expert testimony. You had some expert testimony in this case. And there’s a sentence that says unless they are qualified expert, witnesses are not competent to testify about the impact of a proposed land use on the value of nearby property, the danger to public safety resulting from increases in traffic, or other matters that requires special training or expertise, like the level of noise that will be generated. So in a case like this you’ve got to be very careful that you’re not basing your decision on speculation, but are basing it on actual evidence. You can’t take evidence of what happens during the summer and apply it to this situation. You’ve got to look at what happens not only in a tented situation for a pool, but one that would be exactly like this. So, that’s a little bit of a cautionary guide.

Weinbrecht: Alright, very good. Other questions or comments?

Frantz: I would like to actually ask the applicant back up if we could as far as dates up dates down. I think we need some clarification on that.
Weinbrecht: Okay. Would the applicant please come forward.

Frantz: Very specific, would you happen to have dates that you could agree to that tent will not be put up until and then must come by down?

Potok: That would be fine. The only other thing you could do is say 180 consecutive calendar days.

Frantz: And that gets very hard to enforce. So we’re looking for a date up and date down.

Potok: We could say a date up no earlier than October 1st, and a date down no later than May 1st.

Robinson: May 15th

Potok: Okay

Frantz: Okay. And then regards to no swim meets

Potok: There’s not enough room inside the tent to have enough spectator space for a swim meet.

Bush: That’s seven months.

Potok: Okay. April 1st

Weinbrecht: And if you go October 15th

Robinson: They’d be giving themselves a range. If you say 180 days and not going up before this date or after this date. Or are you trying to eliminate the 180 days?

Bush: We’re trying to eliminate that.

Potok: Those dates that we just said in setting up, within that date of 180 days of being erected does that work?

(Inaudible; multiple people speaking simultaneously)

Robinson: We’re trying to avoid the 180 days so that staff is not counting.

Weinbrecht: The way I understand this, Mr. Silverstein, is they’d have to offer the condition.

Silverstein: Not necessarily. You can impose conditions as long as they’re reasonably related to the request.

Weinbrecht: So we can propose a condition, and staff has recommended that we not do the 180 consecutive days because it’s an enforcement issue. So council can actually state a date up/a date down.

Robinson: As a mother of a swimmer, I will tell you that if you pull that tent down any earlier than May 1st -- it’s really cold to swim in April. Even May 1st it’s pushing it. And if waiting to put your tent up until October 1st, that means your kids are swimming the last two weeks of September, which honestly is a little bit chilly. So, I understand 180 days was the first proposal, but October 1 to May 1st is very reasonable. It’s going to be very burdensome to the swim club if you’re asking families to not swim for an entire month -- if you say April 1st. The kids really can’t get in the water. And I will tell you as a person who has her daughter at the YMCA swimming, when the bubble comes down you spend a lot of days trying to find out – are they swimming, are they going to NC State, are they not swimming at all – that kind of thing. It’s just a real nightmare for families.
So I would say in this case October 1 to May 1st is a very reasonable time frame to allow if we really want to help the swim club.

Silverstein: Ms. Robinson, I think what you might want to do is check with staff to see if that takes it outside the temporary structure definition.

Robinson: Okay. Does it?

Hales: We were discussing, so can you repeat the questions?

Frantz: Is beyond 180 days – does that make it a permanent structure?

Bush: And what is the definition?

Hales: It does make it a – it starts having to meet building code and fire code when it goes up over 180 days. That’s what we were just discussing. As well as it starts stretching the definition of a temporary structure from a planning standpoint, in which case you’re starting to be more of a permanent structure and do need start applying more architectural guidelines. So, the 180 days is really kind of the break point between is it now permanent. It’s up more than it’s down.

Robinson: Okay.

Smith: The question I have is do we really have to solve the date tonight or can we just make a condition that it’s 180 days, and you work with staff to resolve that?

Robinson: Well I think the recommendation was get some dates. So, given that restriction, I would say October 15th to April 15th.

Oates: We would be agreeable to that.

Potok: That would be fine.

Robinson: Okay.

Weinbrecht: Other questions or comments?

Frantz: The swim meet question.

Weinbrecht: They said it’s not likely they would do anything else.

Frantz: It’s not likely.

Robinson: It’s not likely, but here’s the deal also, it’s sometimes you have like little mock meets where you’re going to bring 20 of your kid swimmers in, and they’re going to see what it’s like to be in a swim meet. Why would we go and even make a condition about this. You don’t have the capacity to have one that’s going to be burdensome to anybody. But if you put a condition that says no swim meets, then you have some swim coaches saying, gee I’d love to have these 30 little girls practice a swim meet, but I can’t because we have a rule against it. So why would we even address this?

Weinbrecht: And that would be hard to enforce, too, I would think.

Robinson: Yeah, It’s just burdensome and it’s just ridiculous.

Weinbrecht: Others?
Adcock: May I ask the exterior light question? One of you had stated that the -- I'll call them pole lights -- the exterior pole lights would not be used while that tent was up. So you would be okay with the condition that just specified no use of exterior pole lights while the tent is erected?

Oates: As long as it's not a safety concern. I mean there might be sometimes where they have to be on safety wise. I don't know why.

Adcock: Kevin, can you speak to that? Whether the exterior pole lights need to be lit while the tent is erected as a safety issue.

Hales: That was the first thing I thought of when they said they wouldn't be using the poles lights, is how do you light the area around the outside the tent to get people in and out.

Adcock: Right – parking.

Hales: So obviously there are some parking lights and that's separate. We're talking around the deck.

Adcock: Okay, deck lights.

Hales: There may be the use of some deck lights or some other supplementary lighting they can do.

Potok: We have permanent lighting all around the edge of the inside of the pool.

Oates: The gazebos are lit.

Potok: The gazebos are lit, the side of the inner side of the building -- the main building is lit. We have lights that are recessed. The pole lights are really only there to light the pool.

Adcock: Right, so with the tent in place you don't need to light the pool with those.

Potok: They also aim at the pool and down, so the baseball lights are much taller and brighter, and they're right next to us. So there is lighting for people to see the way to go. They would come in and go out through the main building. So they would walk out of the tent just a very short way, but it's a lit area into the lit building and then out. And there's lighting out there too. There's lighting outside of the building, too.

Adcock: Right. I was just responding to one of the three conditions. I think it was Mr. -- I can't remember who brought it up, but that the lighting that's necessary when the tent is not up didn't need to be on when the tent is up. I'm talking about the lighting that's directed toward the big wall.

Potok: The big lighting, it really doesn't need to be on.

Oates: We have lights. There will be lights inside the tent that will light the pool and that area. I'm not able to speak to the safety outside of what we have to have on. I can't speak to that. So, if we're required to have them on then.

Hales: Our ordinance does not address lighting for the surfaces for pedestrians. We only address parking lot lighting in our ordinance, so there's no minimum standards. So if they have enough lighting to see people to get around safely, then that'll be fine with us.

Adcock: So it would be best to not address the lighting issue, because we won't know until we try. Is that what you're saying or?

Hales: I think the concern is about the pole lights.
Adcock: Right.

Hales: I don’t think that there seems – I didn’t hear any concern mentioned about the lighting around the buildings and other deck lighting.

Adcock: And that’s the safety part.

Hales: And that should be sufficient to get people in and out if that’s what they’re using. Now, they would have to make that determination; we don’t have any standards.

Frantz: And you have the capability of controlling the pole lights independently of the other exterior lights and stuff, right?

Oats: Yes.

Frantz: You’re okay with a condition that would say, No pole lights when the tent is up?

Adcock: No exterior deck pole lights.

Oates: Yes.

Potok: If we need extra light, we’ll figure a way not to use the pole lights and put up a different lighting to light the way.

Frantz: I’m hearing exterior lighting, and that’s not possible. It’s pole lights that’s the concern. They have to have some lights outside the tent in order to see outside the tent.

Bush: No additional exterior lights than you already have.

Potock: We already have lighting around the

Frantz: You also have pole lights, too.

Potok: The pole lights are 32 feet tall, and there’s four of them and they’re just to light the pool. They’re used for swim meets and they’re used - you know like that kind of thing.

Oates: We would be acceptable to say turn those off.

Frantz: Turn off the pole light. You can use the regular ground level deck outside lights.

Oates: And if we need to add something that’s lower than those pole lights to light the way, then it wouldn’t be as -- wouldn’t have as high of a beam to be able to get other houses behind us.

Bush: I understand.

Frantz: Okay. Mr. Silverstein, any concerns with that?

Silverstein: No.

Frantz: Alright.

Weinbrecht: Other questions, concerns?

Rowland: Mayor, let me point out - I hate to interrupt the flow of the conversation, but you’ve reached your hour time limit, and it’s completely up to you guys how to proceed at this point.
Weinbrecht: We’re about ready for a motion so, we’re going to continue. We’re going move to – we’re going to end the public comment portion of the hearing and ask Mr. Hales to help us with the motions necessary at this time. Mr. Hales.

Hales: The (inaudible) standards special use approval criteria used to -- and the counsel for the applicant did a good job summarizing and addressing those individually -- but we’ll run them through really quickly. They generally comply with the comprehensive plan, they do not endanger public health, that it’d be reasonably necessary, does not harm adjacent property values, that it would be in harmony with the surrounding area, be served by public services and not cause undo traffic problems. And because this is an expansion of a nonconformity section 10.1.8 of the LDO has additional criteria, and some of these are a little redundant. I’ll summarize briefly by saying that basically the existing site as it is non-conforming provides adequate protection for adjacent properties from parking, traffic, adequate utilities, adequate service areas, adequate stormwater control. So, pretty much the standard thing -- protecting adjacent properties. And then you have the site plan approval criteria, which apply to the minor alteration, which is the second decision you’ll be asked to decide on. And that is it complies of all applicable requirements of the LDO, adequately protects other properties, is harmonious with the surrounding development, provides safe circulation for vehicles, pedestrians and emergency services, and it provides mitigation for traffic impacts expected to be generated by the proposed use.

Frantz: Did you want conditions with the site plan or the application?

Hales: You would want to make the conditions with the special use, because they’re addressing the concerns with the proposed expansion to the non-conformity.

Weinbrecht: So, we have a motion for a special use, a motion for the site plan, what else did I miss?

Hales: That’s the only two. You’ll notice there are proposed conditions already with the special use, which are the standard two, and then you’ll add the additional ones that you choose to propose. And then there’s one condition with the minor alteration that they address outstanding review comments before if it’s approved.

Frantz: Okay.

Frantz: For the reasons discussed, I move that we approve the request for special use permit, as the proposed expansion to the existing use meets all the approval criteria set forth in sections 3.8.3 and 10.1.8. This approval shall include the following conditions:

1) The resolution and permit approving the special use application shall be recorded with the Wake County Register of Deeds upon the expiration date of the appeal period, per section 3.8.4(e) of the LDO. The original recorded resolution and permit shall be returned to the planning department when received from the Register of Deeds.

2) The approval of the special use is conditioned on the subsequent approval of a development plan in accordance with LDO section 3.8.1(b)(2) and as required under LDO section 3.9.

3) The tent -- the structure -- may not be erected any earlier than October 15th and must come down no later than April 15th.

4) During the time frame when the structure is up, the exterior pole lights at the facility shall not be used.

Weinbrecht: Okay. There’s a motion.

Adcock: Second.
Weinbrecht: And a second. Discussion?

Adcock: Good job, Mr. Frantz.

Weinbrecht: Mr. Silverstein, any issues with the motion?

Silverstein: No sir.

Weinbrecht: Okay. All in favor of the motion please say aye.

(Multiple people say aye simultaneously.)

Weinbrecht: Any opposed? Motion carries unanimously. Mr. Frantz.

Frantz: For the reasons discussed, I move that we approve the proposed subdivision and site plan with conditions as stated below, as it meets all the approval criteria set on section 3.2.9(i). 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.

Weinbrecht: There’s a motion.

Adcock: Second.

Weinbrecht: And second. Discussion? All in favor please say aye.

(Multiple people say aye simultaneously.)

Weinbrecht: Any opposed? Motion carries unanimously. And that concludes this item. Thank you very much, Mr. Hales.

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2.  **Public Hearing and Action: 13-SP-010, Glencroft Townhomes**  
*NOTE: This hearing is continued from the 9/12/13 council meeting*

**Proposal:** The applicant has requested approval of a subdivision and site plan to develop 144 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.

**Speaker:** Mr. Kevin Hales

Weinbrecht: We now move to our next quasi-judicial hearing which is the public hearing for Glencroft Townhomes. 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 our town clerk, to my right. We’ll pause just a moment to allow those individuals who would like to speak at the public hearing to approach the town clerk and receive their oaths. And at this time, we’ll ask council members for any site visits, ex-parte communications, financial relationships, special knowledge, or close relationships to any affected person to disclose. I'll start on my right.

Adcock: None
Weinbrecht: None for any of us. Alrighty. And we’ll pause just a moment while these fine men and women receive their oaths.

Weinbrecht: We’ve now had everyone that’s going to speak sworn in, so I’ll ask those that have been sworn in if they have any issues with council members participating in this hearing. Council members expressed no ex-parte communications. So at this time I’d ask if anybody has an objection. Seeing none we’ll proceed. And I’ll open the quasi-judicial public hearing, and Mr. Hales of our staff once again will introduce this hearing.

(The staff report is attached to and incorporated herein as Exhibit 2. (NOTE: The planning department is the custodian of the records referenced in the staff report and maintains them according to the Records Retention and Disposition Schedule. Documents linked to the online staff report are not included with the official minutes.) Oaths administered to speakers are filed in the planning department case file according to the Records Retention and Disposition Schedule.)

Hales: Thank you. The next item on tonight’s agenda is a continuation of a hearing that started in September for the Glencroft Townhome project just outside the Cary Park PDD in western Cary. Forever Home and WSP Sales originally proposed 150 townhomes on approximately 26 acres, south side of Cary Glen Boulevard, just south of Carpenter Fire Station before you get to Green Level Church Road. At that hearing there were several concerns brought up by council in regards to some of the minor modifications that were being requested. The applicant requested to continue that hearing to have time to go back and look at his plan and revise it to address those, and they’ve done so. They’ve lost six units, made several revisions to their BMPs and have actually eliminated some of their minor modifications and made changes to minimize some of the other impacts to their minor modifications. Just a quick overview. I’m not going to go through all the standard slides. The property is located in the southeastern side of Cary Glen Boulevard between Carpenter Fire Station and Green Level Church Road, just north of the proposed Mills Park -- Town of Cary Park in the future. Adjacent to a vacant multi-family site to the north, which is just now beginning plan approval process, and existing multi-family is located to the west, and a Duke Energy substation to the east. This was the approved PDD, approved back in November of 2012. The layout is essentially the same with some minor tweaks in order to address the council concerns from the last meeting. This was the original site plan layout with the minor modifications identified. Starting in the upper corner, 2E is the removal of a champion tree, 5As -- the fives are encroachments in the perimeter buffers with BMP impoundments that would have prohibited planting back. The fours are retaining wall, hardscape edges and BMPs. The two threes, 3a and 3b, are connectivity waiver requirements, and minor modification number six was an encroachment of the utility easement running parallel inside of a required perimeter buffer. So the applicant has made some changes; 5A went away, which was the encroachment -- actually all of the fives, which were encroachments of BMPs into impoundments went away. Connectivity stayed essentially the same. Some of the retaining walls reduced in size, some were lengthened to accommodate that grading revision. And the two champion trees, which were one of the larger points of discussion have been retained. And I’ll go over each of these individually in more detail. Also, the payment-in-lieu originally was proposed for $110,000. They started up on several
developments in the area. Original development where the payment-in-lieu was approved was for the Cary Park Medical Office in the amount of $30,000. The remaining $220,000 was originally agreed to be split between two parties -- the Crown Cary, which is the dashed red outline, which is a multi-family project, and this Glencroft Townhomes. Since then another developer has entered into that agreement. That would be the Meachum Property. That is just beginning its rezoning process. So that $220,000 is now being split three ways. So the new payment-in-lieu amount would be $73,334 for Glencroft. They picked up the extra dollar. The Meachum track, like I said, is just beginning its rezoning process. So they will be -- there is a proposed condition that addresses this amount and when it’s due. And the adjacent multi-family property to the north will be coming before you because of the number of units, so that will be addressed in a quasi-judicial hearing in the future as well. You can expect both of those to be coming forward soon. There is one proposal -- the removal of the three champion trees -- trees one, two and four identified in the arborist’s report. Trees one and two are the two are on the southern end of this slide that are adjacent to the required roadway. That roadway connects to a parking lot stub that exists on the adjacent property. It’s that geometry set and has very little wiggle room as far as engineering to move that road. And, therefore, those trees are necessitated to be removed just because of that infrastructure. There was a 32 inch oak on the rear of lot 25. That was being removed to allow the development of those couple of lots. That was a point of concern for council at the September meeting, and, therefore, they’ve revised this section of the area to eliminate those lots and to retain that 32 inch oak. What they’re doing in that area now, once they lost those lots, was providing a neighborhood amenity with a small dog park. There are some storm drainage lines that need to be run through there. They will be impacting the critical root zone of that tree to some extent, but less than the 25% that is allowed by our ordinance. So it is expected that tree would recover in that instance. The two other trees -- the two 32 inch oaks -- are still being impacted by the road, and are still being removed. A second tree that was of most concern to council was tree 10 in the arborist’s report. It was a 30 inch oak located at the southeastern corner of the site. That was also being removed to allow development of those two lots. And the applicant again has lost those couple of lots to save that tree. They they did flip a parking lot. The parking lot was originally on the other side of the cul-de-sac, and they were able to pick up a couple of the lots so they didn’t have to lose as many as they originally thought by relocating and reconfiguring that section of the site. Again, this champion tree root zone will be impacted somewhat. There’s a sewer manhole that is located in the corner of the property. They’ve got to cross the perimeter buffer and near that tree to get to it, there’s really no other way to do it, and so they’ve modified the original encroachment. And we’ll go over that in a little more detail here shortly. Tree 11 is located again in a required infrastructure corridor. The property only has a very small amount of frontage, about the width of a right-of-way, to get to Cary Glen Boulevard. So that tree is located right next to it, and again there’s really no way to save it, so that tree is still being proposed for removal. Connectivity to the south -- the applicant has proposed to provide a 50 foot access utility easement, except the utility went away with the revisions. But the access easement to the south, that’s the Mills Park property. Right now the Town doesn’t have a plan to make any connections through there. There’s a lot of environmental concerns. On the southern property a large stream buffer and some flood plain that we have expand to do any connection. So with the revised plan, they are continuing to propose the 50-foot access easement – has been reconfigured slightly to accommodate the redesign of the cul-de-sac, and it’s essentially the same as before. The second connectivity minor modification was to the east. If you remember the eastern property was bounded by the Duke Energy substation. There’s also about 15 foot of fall between the two properties, so in order to get that easement -- get that connection -- one, it would serve very little to no purpose, and two, there was some topographical challenges in making that connection physically. The applicant has proposed to provide neither the access easement nor physical construction, nor pedestrian access, just because it would go nowhere but the substation. So really no changes in that area either. Changes to BMP two. I’m going to lump what was four and five together. Like I said before, four is where the retaining walls, hardscape edges and the BMP. And the fives were the encroachments of the impoundment into the perimeter buffers. that’s the red area down to the – in the southwestern corner of that BMP. They’ve revised them to remove all the grading from the buffer associated where the impoundments. It’s made some minor revision as to the wall in this instance, but very minor, almost not noticeable. BMP four is located

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to the extreme southern end of the site. What they did – the alignment of the road – this is where
the connection is to the apartment complex to the west. Alignment of the road is fairly rigidly set
by that existing connection. This parking was eliminated. This wall was originally 11 feet tall. It’s
now been reduced, and the wall that was on the back edge has now been turned along this edge.
So it’s been lengthened somewhat plus redesign surface area to eliminate the encroachment in
that southern perimeter buffer, so it now looks like this – the longer wall to the south, shorter wall
and the parking along the road has been eliminated and moved elsewhere. BMP one is in the
northern part of the site. There were no retaining walls proposed in this BMP. These are all three
bioretention areas by the way. So they will be planted. But there was no retaining wall here.
There was an encroachment, and that encroachment has since been removed by reconfiguring
the surface area and then redoing some drainage. The last minor modification they are
requesting was running the sewer line to connect to the sewer easement in the extreme
southeastern corner of the site. Originally it had to run down the center of the cul-de-sac and then
ran parallel inside a 20-foot buffer, so you had a 20 feet easement inside a 20 foot buffer, which
essentially eliminated the buffer. What they’ve done in order to minimize the conflicts between the
existing champion tree, which we desire to retain and provide as much buffer as possible – they
are crossing the buffer. But it’s still a minor modification because it’s less than the 75 degrees
allowed by-right by the ordinance. Essentially if they increase the angle of the crossing, they
would be impacting more of the champion tree root zone. If they made the crossing shallower,
they’d be eliminating more of the buffer, so this is the ideal angle they can come up with to
minimize impacts to both. That concludes staff’s presentation -- the summary of the changes. The
applicant is here and will be. Staff will be available for questions following the presentations.
Thank you.

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

Barron: Thank you, Mr. Mayor, members of the council. Jason Barron here on behalf of the
applicant; here again on behalf of the applicant. As Kevin alluded to, this case is part of a plan
that came to you all back in 2012. It was an approved preliminary development plan for 150
townhome units. Generally in the configuration that’s before you tonight, when we were here in
September we presented evidence on a 150 unit plan to you for approval. We believe that
evidence satisfied the requirements of the ordinance at that time. However, there was obviously
council questions, consternation and concern related to the layout and the modifications that were
requested as part of that original plan. And in an effort to be a good partner with the Town, as you
heard from Mr. Ward last time, Forever Homes views themselves as a partner with the Town
especially during the down time. In an effort to be a good partner they decided let’s take a
deferral; goes go see what we can do; see if we could address these concerns and maybe lay
this out a little bit differently and come back with a plan that makes more sense for the Town. I
believe that the plan that has been presented to you tonight achieves those goals. We heard last
time essentially what I would characterize as three primary areas of concern. First there were
perimeter buffer encroachments as a result of the BMPs. The second area of concern related to
champion trees, and there was a lot of conversation related to removal of champion trees. And
finally, the sewer line encroachment on the perimeter buffer on the southeastern edge of the site.
And I think this was a quote from Councilor Robinson, who said if you did not have as many lots
maybe you would be able to save some of those trees. The good news is that the proposal that is
before you tonight has reduced the unit count by six lots. It’s not a reduction that my client is
excited about, but it’s a reduction that allows them to – they believe -- address the concerns that
you all raised at the original hearing. What you will hear from Ed Tang, who’s the engineer on this
proposal or at this development – what you will hear from him in a minute, is that the two
champion trees that were discussed have now been saved. Those are the two in the
southwestern corner of the site. The original proposal showed those on lot lines or in the lots
themselves, and those two lots have been removed. Second, the redesign has allowed the
location of BMPs outside of the perimeter buffers entirely. And finally, the reduction of unit count
has allowed us to relocate the lots around the champion tree in the southeastern corner of the
site and come in at an angle. As Kevin described, that’s kind of a catch 22, given the existence of
the sewer manhole and the need to tie in there. If we go less than 75 degrees further, then we’re cutting into the perimeter buffer; if we do it more, then we’re cutting into the critical root zone of that tree. So, we think what we’ve arrived at is essentially the ground that allows us to move forward, plug in to sewer and save the tree, and reduce the impact to that perimeter buffer. With that I will call Mr. Ed Tang to the stand, and he can testify as to the plan itself.

Tang: Good evening mayor and council members. My name is Ed Tang, and I’m the engineer in the project. I will try to be brief this time and not quite as long winded as last time I was in front of you. As Jason alluded to you, a number of the modifications have been made to this site plan in order to address the issues that were raised at our September hearing on this matter. Most significantly, six townhome units were eliminated from this plan, reducing the development density from 150 units to 144 units. By doing so we were able to redesign the site in a manner that avoids a number of the items that were identified by the town council as concerns at our September hearing. First, the redesign has allowed us to save the two champion trees located in the southeast and southwestern corner of the site, namely trees number four and number 10 as previously presented. There were a number of council members who identified removal of these two trees as a concern, and Forever Homes’ willingness to reduce the units has provided our team with the flexibility to save these trees with the redesign rather than having lots where these trees were located. Specifically tree number four I’ll address first. In the southwestern corner, the site plan now proposes a neighborhood green space including a dog park. The trees in the area will provide shade and essentially serve to anchor that as a feature of that green area. Additionally, the lots that were impacting tree number 10 on the southeastern corner have been removed in order to save that champion tree as well. Second, the redesign has allowed us to avoid proposed encroachments into the perimeter buffers due to our BMPs. Once again there were a number of council members who identified this as an issue, so our revised plan addresses that issue as Kevin has shown earlier in the graphics. As noted in the staff report, in order to take and revise these BMPs out of the perimeter buffer, the grading, some of the retaining walls had to be reconfigured in a couple of these locations. However, it is important for us to note that the amount of retaining wall has been reduced in terms of its square footage by possibly eight or close to nine percent as compared to what you saw back in September. Finally, the reduction in the unit count has allowed us to remove the lots around the champion trees in that southeast corner as mentioned, thus allowing us relocate that sewer line that used to occupy that same 20-foot perimeter buffer next to the Mills Park property. And by angling that sewer we were able to take or minimize that modification to a smaller adjacent, and Kevin pointed out we were really stuck in a catch 22 with the location of the existing manhole and trying to save the tree and preserve what was in that buffer. So, therefore, in conclusion as stated previously, I believe the plan complies with the requirements for an approval of the site plan. The modifications that we made do not change this conclusion -- in fact, makes for a better case I believe for an approval. And I’ll be able to answer any questions at your convenience. Thank you.

Weinbrecht: Thank you.

Barron: Mr. Mayor, we don’t have any additional witnesses other than to note that Mark Ward who testified last time is here again to answer any questions that you might have.

Weinbrecht: Okay, very good. At this time I’ll invite other speakers who have been sworn in and who wish to speak in support of this application to approach the podium, one at a time please. Anyone to speak in support? Okay. I would invite cross examination of the witnesses who testified in support of the request. No. We’ll now open the hearing for those who are opposed to the request, and I would invite the first one forward at this time. Anyone opposed? Keep moving. I’ll call on the Town staff for any testimony they wish to add. Mr. Hales.

Hales: I’m not aware of any.

Weinbrecht: We’ll now ask if anyone sworn has any objections to any evidence presented as testimony. No. Any parties believe that any evidence or any information presented tonight
warrants continuance of this hearing? No. We’ll now begin deliberative phase of this hearing. Council members - questions, comments?

Adcock: Kevin, I just have a clarifying question either to you or Mr. Tang. That BMP number four, that the retaining wall was originally 11 feet. It was reduced to what?

Hales: Six feet.

Adcock: Six?

Hales: Six, yes.

Adcock: Yes, thank you.

Weinbrecht: Other questions or comments?

Robinson: Just to say I think this is a big improvement. I’m glad you reduced the number of lots, because it enabled the BMPs to be pulled away from the homes somewhat. It kept that utility line from decimating that buffer on the southeastern section there, and saved some trees. So I think this was the right thing to do, and also it afforded you that opportunity to put that dog park in there. Which you know looking at this, 144 homes really begs to have some meeting spaces, so I’m glad that you have that dog park in that tiny gazebo area. It doesn’t look like you have a clubhouse on here, but you can correct me if I’m just missing it.

Hales: There is no recreation site.

Robinson: Yeah, so I think that was a big enhancement. So I’m glad it happened.

Weinbrecht: Other questions or comments?

Yerha: I hate to see any champion trees go, but I believe the revisions that you made to the plan have addressed completely the spirit of our concerns the last time around. Appreciate that.

Weinbrecht: Okay. Mr. Silverstein, anything out of order?

Silverstein: No sir.

Weinbrecht: Okay. Very good. We’ll close the public comment portion of the hearing and ask Mr. Hales to help us with motions.

Hales: You’ll notice that I passed out a new worksheet, one for minor modifications - the numbering was off on the original I apologize for that. Everything else is the same, all for justifications. Just to remind council, the basic approval criteria for minor modification is that the modification advances the goals of the ordinance, and that it results in either less visual impact and more effective environmental preservation, or relieves the practical difficulty in developing a site. We have provided combined motions. You can approve all five and their sub-parts as one motion or deny all, or you can pick and choose as you will by identifying with the numbers in the worksheet. I will point out there are two special approval criteria that need to be considered in addition to the standards. The first one for minor modification, one which is the payment-in-lieu, is that – ask yourself would there be – is there proposed alternative results that would result in unsafe conditions for pedestrians or motorists and unsafe access for emergency services or in traffic impacts not already contemplated in the mitigations. And then for minor modification five, which is the impacts – the utility easement on the perimeter buffer, the additional criteria is is there a reasonable alternative location for that utility line. Once you’ve decided and acted on the minor modifications, whichever pattern you wish to do so, the standard approval criteria for development plans apply. Does it comply with all applicable requirements of the ordinance? Does
it adequately protect properties, are harmonious with the surrounding developments, does it provide safe circulation for vehicles and pedestrians, provide safe access for emergency services and does it provide mitigation for which traffic impacts? You’ll also notice there are two suggested conditions of approval for the site plan. The first is the standard – address remaining, outstanding staff comments when the master set. And the second has to do with the timing of the payment-in-lieu. It has not changed from the original proposed condition other than the amount due, which is $73,334, and that shall be paid to the Town prior to signature of their master set, which is the same condition that was put on the Cary Park Medical Office, which started this. Thank you.

Weinbrecht: Okay. Council members, are we ready for a motion?

Adcock: I have a question first.

Weinbrecht: Okay.

Adcock: Did you have a question first Jen, then go ahead.

Robinson: No, go ahead.

Adcock: Would you go back to slide 59, please Kevin. So do we have any evidence about modification one? Do we have anybody – do we have a witness to give us any evidence about whether there would be unsafe conditions created or traffic impacts not mitigated? Because I don’t recall hearing any.

Glover: That relates to their request for the payment-in-lieu, so the question is by giving the payment-in-lieu, does the payment-in-lieu create an unsafe condition for pedestrians, that sort of things.

Adcock: Thank you. And then the second question, if I could ask this. Modification number five – this might be a question for the engineer. Is there a reasonable alternative location for the utility line requested in modification number five? That's a simple yes or no question probably.

Tang: No, there are no other alternatives available.

Adcock: Okay. Thank you very much.

Weinbrecht: Any other questions?

Robinson: Just to clarify. I can make a motion to approve all five. Right?

Hales: Correct

Robinson: Good. Okay. For the reasons discussed previously, 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.

Weinbrecht: Okay. There’s a motion.

Frantz: Second.

Weinbrecht: And a second. Discussion? All in favor please say aye.

(Several say aye simultaneously.)

Weinbrecht: Any opposed? Motion carries unanimously. And I’ll close the public hearing. Thank you, Mr. Hales.
Hales: You need to take action on the site plan.

Weinbrecht: Oops; I'll open the public hearing back up. Sorry.

Adcock: I'll be happy to make the motion on the site plan. For all the reasons discussed, I move that we approve the proposed subdivision and site plan with conditions as stated below, as it meets all the approval criteria set in section 3.9.2(i). 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.
- And the payment-in-lieu of signalization of the Cary Towne Boulevard/Carpenter Fire Station Road intersection in the amount of $73,334 shall be paid to the Town prior to plan approval.

Weinbrecht: There's a motion.

Robinson: Second

Weinbrecht: And a second. Discussion? All in favor please say aye.

(Several say aye simultaneously.)

Weinbrecht: Any opposed? Motion carries unanimously. And now I'll close public hearing. Thank you, Mr. Hales.

3. Public Hearing: 13-SB-007, Green Hope Crossing Subdivision

Proposal: The applicant has requested approval of a subdivision and site plan to develop 169 townhomes and eight detached dwellings on approximately 59 acres located on Green Hope School Road east of I-540. The proposal includes Minor Modifications to Town standards, including the averaging of the Green Hope School Road streetscape and removal of one champion tree. An associated owner-initiated annexation petition, 13-A-16, is also under consideration by Town Council, and council must act on the annexation prior to the subdivision and site plan.

Speaker: Mr. Kevin Hales

3.1 Action: Annexation 13-A-16
Property Owner(s): Multiple (see report)
Location: South of the intersection of Green Hope School Road and Twyla Road
Zoning: Residential 12 Conditional Use (R-12 CU); Transitional Residential-Conditional Use (TR-CU); and Residential 40 (R-40)
Contiguous to Primary Corporate Limits: Yes
Existing Use: Vacant; Residential (detached dwelling)
Proposed Use: Residential
Associated Case: 13-SB-007 (Batchelor Tract)

3.2 Action: 13-SB-007, Green Hope Crossing Subdivision

Weinbrecht: We’ll move to our next quasi-judicial public hearing. It’s for the Green Hope Crossing subdivision. A review 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 our town clerk, and we'll pause at this time to allow you or allow those individuals who want to speak at the public hearing to approach the town clerk to my right. And I’ll now ask council...
members if they have any site visits, ex-parte communications, financial relationships, special knowledge, or close relationships to an affected person to disclose. Starting on my left - Mr. Yerha.

Yerha: No I have not.

Bush: Actually all of town council received an email from a citizen with regards to this. That’s the only communication.

Weinbrecht: Did you open it read, read it?

Bush: I opened it. Didn’t realize it was a quasi until I read it.

Weinbrecht: Okay, so you have read it. Will it impact your judgment?

Bush: No.

Frantz: I have none.

Weinbrecht: I saw the email. I didn’t read it. I saw the subject line.

Smith: No

Robinson: I didn’t read it either.

Adcock: Too busy to read the email. No sir.

Yerha: Didn’t even notice it.

Weinbrecht: Very good. We’ll pause for a moment while our speakers are being sworn in.

Weinbrecht: Now that our speakers have been sworn in I’ll briefly summarize that council members said they had no ex-parte communications with the exception of council member Bush, who read an email and said it would not affect her judgment one way or another. So at this time I would ask if anyone that has been sworn in objects to any council member participating in this public hearing. If so, I would ask you to approach the podium. Seeing none, we’ll continue, and we’ll open the quasi-judicial public hearing, and I’ll ask Mr. Hales of our staff to introduce the item.

(The staff report is attached to and incorporated herein as Exhibit 3. (NOTE: The planning department is the custodian of the records referenced in the staff report and maintains them according to the Records Retention and Disposition Schedule. Documents linked to the online staff report are not included with the official minutes.) Oaths administered to speakers are filed in the planning department case file according to the Records Retention and Disposition Schedule.

Hales: Thank you. Next item on tonight’s agenda is a request by Withers and Ravenel on behalf of the property owners of 7217 Green Hope School Road for development of a subdivision consisting of 169 townhomes and eight detached dwellings on approximately 59 acres located on Green Hope School Road, immediately east of I-540. There’s also an associated annexation with this request, 13-A-16. As I mentioned, the property is located on the south side of Green Hope School Road at the point where Twyla Road terminates into Green Hope School Road from the north. It’s immediately to the east of NC 540, to the west of the existing Highcroft PDD adjacent to Highcroft Drive Elementary School. Highcroft also continues to curve around to the south of the proposed development as well. College Park Baptist Church is located across Green Hope School Road to the north, and then beyond that is residential uses. The Parks, Recreation & Cultural Resources Master Plan does identify a greenway that runs through the center portion of the site along a stream buffer. Through the course of the development of the site plan in
Hales: Existing conditions – the majority of the site is wooded. There are some old agricultural uses in the northwestern portion of the site along Green Hope School Road, and there are some farm house and several out buildings. As I mentioned before, there’s an existing pond on the northern end of the site. We went out and took some photos when we did the property posting. As you can see, it’s rolling open grassland right now, so there’ll be a lot of revegetation in regards to streetscapes and some revegetation in portions of thoroughfare corridor buffer; various sparse vegetation around the farm itself. The proposed layout – and I will caviat this by saying north is now to the right hand side of the slide, because it’s such a long narrow development. Green Hope School Road runs along the northern property boundary. There will be an access into the site opposite the existing Twyla Road intersection to minimize conflicts there. From there – continuation of Boscawen Drive coming out of – Boscawen Lane excuse me – coming out of Highcroft and Piermont Drive coming out of Highcroft immediately opposite Highcroft Elementary School. There’s a stormwater BMP located in the center of the site as well as one located at the extreme southern end of the site adjacent to the cul-de-sac. They are maintaining the required 100-foot thoroughfare and corridor buffer, and there are no encroachments from utility lines or anything else in that area. There’s also a large area right here – a little bit of confusion – says phase two. That does not mean for future development. That’s simply delineating that phase two is on that side of the creek.

Robinson: Oh okay.

Hales: There would be no way to access that once they develop those two lots. There’s no road access, and pedestrian access would be expensive for a future HOA. Going over some of the traffic mitigations identified in the TIA that was done for the project, the TIA really identified improvements at the intersection of the proposed drive and Twyla Road with Green Hope School Road. Those are left turn lane exclusive headed westbound on Green Hope School Road with...
100-foot of storage, and then striping the exit lanes with a shared left turn through lane, a right turn lane with 100-foot of storage. In addition, during the review process staff identified concerns with the existing left turn facility on NC 55 at Green Hope School Road. There are improvements identified for that left turn facility with the Fryar’s Gate development, which is just to the northeast of this proposed development. They’re extending that turn lane from about 200 foot to about 335 feet per their TIA. Rather than having to widen it and then come back and widen it or lengthen it again, staff has worked with the applicant, and the applicant has agreed -- there’s an additional exhibit that was added to the staff report -- there’s a letter saying they would go ahead and work with the developer of Fryar’s Gate to go ahead and extend that to a full 550 foot rather than having to do it twice. So that’s an addition to what was identified in the TIA just based on some staff concerns. Also, in recognition of some of the concerns with the curvature in Green Hope School Road, the applicant has worked with staff and NC DOT to do additional widening on their side of the road to flatten out the curve. The yellow is the existing right-of-way as it exists today, which is a fairly sharp curve, especially given the existing speed limit out there. In order to meet design standards, that curve would need to be flattened, and they’re doing additional widening along what will be phase three -- their rec site -- to go ahead and flatten out the curve to improve conditions along that corridor. There are two minor modifications associated with this requested subdivision plan. This shows overall the site with the averaging of the streetscape shown along Green Hope School Road and the removal of champion trees. This predates the current wording. This submittal pre-dates the current wording of the ordinance, so there are several trees identified here in pink which the arborist had recommended for removal. Some of those are actually being retained currently, but they’re going to go ahead and treat them as removed just anticipating. Some of them are in fairly bad shape -- anticipating some mortality. The ones that are identified three, eleven, six and nine, are just being retained and 10 down here -- are being retained on-site using some walls and some rearrangement. There is one removal of an actual champion tree that is considered to be healthy, and that’s number two, and we’ll talk about that in detail. Looking at the averaging of the streetscape, a 50 foot streetscape is required for residential uses along thoroughfares, which Green Hope School Road is classified as. There is an existing Town of Cary utility line easement that encroaches into that 50 foot streetscape, which pinches down against that access drive, so they were unable to provide the 50 foot. They have proposed to remove the portion striped in blue from the streetscape, and then provide additional streetscape – a small area there; a larger area here; a larger area farther to the east along the phase three boundary – providing additional streetscape width to make up for that loss. In addition, beyond the actual averaging, they have been working with DOT. DOT has some access right-of-way right near the construction for the bridge over 540. And they’re working with DOT to secure approval, and DOT has given them a preliminary approval for planting about a 5,000 square feet additional in the DOT right-of-way. So, that’ll be above what it’s actually technically the averaging. Just real quick before I move on to the details of the tree, in this location there’s tree number two, which is in the middle of a center of a block of townhomes. Given the minimum densities on site, they would not be able to meet the three units per acre for the gross density on the property if they were to lose additional units. That tree is a 41 inch white oak. The arborist did notice in the vicinity of out buildings there is some root compaction given the fact it’s gravel and people have been driving machinery and parking cars and whatever else and that vicinity; however, it’s adapted to its environment as trees all want to do. Unfortunately, with the minimum density required by the zoning, which is a function of the medium density residential designation land use plan -- that’s why that minimum density of three exists to make it consistent with the land use plan. They would not be able to provide the required number of units to meet the density if they kept the tree. We did talk at length about reducing the lot size for the units in order to save the tree, but what that does is eliminate the ability to provide garage units. And then as a function of that, you start picking up on-street parking, you have to do private streets. You pick up on-street parking and small parking lots, and it becomes in the applicant’s mind a less desirable product. And more inconsistent with the adjacent properties, which Highcroft is larger homes with garages and not a lot of on street parking. That concludes staff’s presentation. If you have any questions, we’ll be available following the applicant’s presentation and answer. Thank you.
Weinbrecht: Thank you. We'll call on the applicant's attorney to present arguments and evidence in support of the application by addressing the applicable approval criteria.

Burns: Mr. Mayor and members of council, my name is Keith Burns. I'm the attorney for the applicant. Thanks for hearing us tonight. I'll call three witnesses tonight. Ed Tang, whom you've heard from once before; Tom Morgan, who is an appraiser to talk about values; and then Lyle Overcash. Though not in that order; actually, in that order. Mr. Overcash will talk about traffic impacts. There's six elements that are before you tonight. You've heard those six elements twice already tonight, and I won't repeat them for you again, but they're the six elements having to do with site plans. The staff report which you've received concludes that this project meets those six elements, and we'll present additional testimony to amplify that those six elements are, in fact, met and that this is the kind of plan that you want to see in Cary. As mentioned, this site needs to be annexed also. It is reamed by Cary, and so is appropriate for annexation. But the applicant would prefer that it not be annexed if council is not inclined to grant the site plan. So with that I would call Mr. Ed Tang to come up and speak with us for just a moment. Get comfortable there, Ed. Ed, will you introduce yourself please to council.

Tang: Yes. My name is Ed Tang again. I have a bachelors of science in civil engineering from the Florida Institute of Technology. I am a licensed professional engineer in the state of North Carolina and in Florida. My work history – I've spent the last 10 years working for WSP in town, and the last one and a half months over at Withers and Ravenel. And thus so, I have spent 10 years here working within the Town and throughout the Triangle.

Burns: Thank you, Mr. Tang. Would you tell us a little bit about the area plan and the zoning for this particular property?

Tang: Yes. The area plan – the site exists in the southwest area plan for the Town. It has a medium density residential zoning as Mr. Hales mentioned before. The medium density residential -- typically the density ranges are three to eight units per acre. And it is typically used in areas where we find transitioning uses from higher intensity uses, such as NC 540 being adjacent to this site to areas of lower density, such as single family neighborhoods and those types of uses.

Burns: Tell us about the zoning if you would please.

Tang: Yes. The site has two zoning designations as mentioned by staff. It has a TRCU zoning and an R-12CU zoning, and this was approved back in 2007 under a separate zoning case.

Burns: What use is permitted in the TRCU?

Tang: In the TRCU there are allowed in this case townhomes only, and it's also important to note that the allowed number of units at the time the case was approved was 200 townhomes.

Burns: And is there any use other than townhomes permitted?

Tang: No.

Burns: And is there both a minimum and maximum density in the townhome portion?

Tang: For the site, it's three units per acre collectively is the way the case for the zoning was approved.

Burns: Mr. Hales can I have - back this down. Going to slide 70, please. I would like to invite your attention, Mr. Tang, to slide 70. Would you point out for us the uses that surround the site please.
Tang: The uses that surround the site -- to the west is NC 540, which follows the western property line. To the north there’s the College Park Baptist Church in this light blue shaded area, and this light purple area has got an MXD land use that was approved by the Town early last year.

Burn: And what is the MXD?

Tang: It’s a mixed use district that would consist of some higher intensity uses that is permitted in there. And then to the east we’ve got the existing Highcroft neighborhood and same to the south.

Burns: I would like to ask you about buffering between the proposed townhomes and Highcroft. Can you speak to the buffering between those two uses?

Tang: Yes. The Town -- as Kevin mentioned -- the existing stream that runs north and south makes up the basically the dividing line between the townhome uses on the west side and the single family uses to the east of that. The approximate distance between the backs of the townhomes along the western edge of that stream to the property line with Highcroft, it varies anywhere between 400 to 550 feet as you go north and south along that property line.

Burns: And are those stream buffers regulated?

Tang: Yes. Those are regulated by both the state and by the Town.

Burns: Do those regulations restrict what can be done in those buffers?

Tang: Yes.

Burns: Can you describe that for me please.

Tang: The restrictions really are -- there’s no grading permitted. There’s no disturbance of the trees and the vegetation within that buffer.

Burns: So it’d be fair to say that the trees that are there are going to stay there?

Tang: Yes.

Burns: I’d like to -- actually if I can pass around to council. Did you keep one of those Ed?

Tang: No, but I can.

Burns: So while that’s being passed around, can you describe generically what that is?

(The two page handout is attached to and incorporated herein as Exhibit 4.)

Tang: What council is receiving is a sheet from the plans that illustrates the typical building elevations for the townhome product.

Burns: And is that part of the plan that’s been submitted for approval?

Tang: Yes it is.

Burns: And can you describe the townhome product that’s proposed there?

Tang: The townhome product that's being proposed by the developer is a two-story, two-car garage product consisting -- exterior materials with brick and hardy plank and stone combinations that would meet the Town's architectural requirements. The size of the units will range anywhere between 1,700 to 2,600 square feet with a targeted price range of $230,000 and up.
Burns: And garages?

Tang: Yes, two-car garages in all units.

Burns: Thank you. Have you been involved with the site plan development for this project?

Tang: Yes, for the time that I have been employed with Withers and Ravenel.

Burns: Have you been through many revisions with that?

Tang: Yes. There have been seven versions of this plan throughout the review process, and several of them are due to review comments, and typically trying to address them and making changes to the site plan during that process, and some were preliminary versions.

Burns: Have those revisions caused a decrease in lots?

Tang: Yes, the initial version of this plan started out with 174 townhome units. We are currently at 169 units. There were more single family units. I believe there were 10 single family units proposed, and we are currently down to eight.

Burns: And where does the tow unit count sit – these are the minimum required by the zoning?

Tang: Right now the unit count – what is being proposed tonight – the units that we have, if we fall below that we will fall out of meeting the zoning condition of the three units per acre. So we’re right at that minimum amount.

Burns: Council’s going to be called on to answer six or address six issues in connection with this. I’d like to walk through those with you now. Does the plan as presented comply with the ordinance?

Tang: The plan does comply with the ordinance with the exception of the two items that Mr. Hales mentioned that we’re seeking minor modifications on.

Burns: And I’ll come back around to those two items in just a moment. Does the plan protect other property from the potential adverse affects of the proposed development?

Tang: Yes, it does.

Burns: Can you explain that for me please?

Tang: The plan meets or meets the uses of the adjacent neighborhoods. As I mentioned before, there’s anywhere between 400 to 550 feet of buffering or space between the townhomes and the existing single family within Highcroft. And just based on the zoning and land use that was approved for this site, it sets it up very nicely for a transition of uses from the highway being on the west side, transitioning into a townhome neighborhood, before transitioning then into a single family detached neighborhood with a 200 foot natural stream buffer that runs the length of the property.

Burns: A discussion of transitioning transitions well into the next topic, which is does the plan provide harmony and unity with development that’s adjacent?

Tang: Yes it does, because it follows the land use plan that exists, and it also complies with the current zoning requirements on this property.
Burns: And is it safe for pedestrians and motorists?

Tang: Yes, the site has been designed to that it’s consistent with industry standards in terms of sidewalks through pedestrian access, inter-connection to neighborhoods and surrounding street networks. It provides sufficient sight distance and sight triangles so people can see where they’re going at intersections. There’s additional street traffic calming measures that are being employed within the neighborhood to slow people down as they drive through the neighborhood by way of speed tables. There are some limited on-street parking, which tend to slow folks down if you have parallel parking spaces on the street. So that’s how we believe this complies with that.

Burns: And does this plan provide ingress and egress for emergency vehicles?

Tang: Yes it does. There’s numerous access points that are showing on the site plan to come in and out of this neighborhood, meeting the Town’s connectivity ordinance. From Green Hope School Road, the extension of Boscawen Lane and Piermont Drive as required by the Town. And there’s only one cul-de-sac in this project, which is at the very southern tip of it where it comes up against NC 540 and existing stream buffer.

Burns: You started to speak a minute ago about the minor modifications. I’d like to turn your attention please to minor modifications, and Kevin if I could have slide two that’d be great. Want to talk with you first about the removal of the champion tree. Would you identify the champion tree?

Tang: Yes, the champion tree that is the subject of the request is tree number two, which was shown as that light blue circle on the slide.

Burns: And does the plan save the other champion trees, including some that are perhaps not worthy of being saved?

Tang: Yes, it saves six of the champion trees that were identified that aren’t colored or shaded in this exhibit, and additionally there are two – trees number seven and number eight on the slide -- that while the professional opinion of the arborist is that they could come out, we’ve identified that we will attempt to save them with the site work.

Burns: And in terms of the champion trees we’ve asked to remove. Are there alternatives to removing?

Tang: After investigating the site, after the seven versions and different layouts, there really aren’t any alternatives to saving that tree without losing units, which in this case would make us fall below the zoning requirement of three units to the acre under that MDR condition.

Burns: And what about the idea of shrinking the unit size to get more units in the same space. What does that do to the plan?

Tang: If we shrink the units -- and that was an item that was looked at as well – could they put a smaller product to basically put some back if we were to save that tree, and by doing so that product would shrink to possibly like an 18 foot wide townhome. Typically those have no garages, and they have parking lots instead of streets and driveways. So it’s the belief of the developer that that is not a desirable product in this market, nor does it provide any aesthetics, which they want to provide since Cary has such high standards for what they want their residential products to look like. So we believe that sticking with the product that we have right now meets that, but going to something smaller would not provide that type of desired look or market conditions.

Burns: Does on-street parking have any adverse impact on city services?
Tang: Yes. If there’s parking lots, it makes it difficult for trash collection, and pedestrian access becomes a little tricky as people will park and back up, and it’s just not as visible for people.

Burns: So it’s a minor modification around the removal of that single – actually if you will scroll forward, let’s look at the tree just real briefly. Yes, that’s the one. Anything there that you’d like to comment on, Ed?

Tang: The only thing that I would comment on is that the tree -- as everybody can see -- there are existing out-buildings, and there’s a house to the left of this picture that isn’t shown, and whether that car and the front end of -- I believe that’s a truck in that picture as parked -- that entire base of that tree is basically a gravel area with no other trees in that vicinity that meet the champion tree criteria that would protect it, so it kind of stands out there by itself.

Burns: Thank you. So is removal of that tree consistent with the spirit of the ordinance?

Tang: It is in this case. It is.

Burns: Kevin if we could have 83. You also mentioned earlier the minor modification having to do with the streetscape and some streetscape averaging. Using slide 83 there would you run through that real quickly, please?

Tang: Yes. The averaging that we are requesting for the streetscape runs along the Green Hope School Road as Kevin pointed out. On this exhibit, the blue hashed areas here behind the units represent the areas that could not provide that full 50-foot streetscape, and that is due mostly in part to this existing Town of Cary utility easement that runs basically along that property line and the right-of-way line of the old alignment of Green Hope School Road before they built the bridge over NC 540. And the gray areas represent the areas that we are proposing to offset that loss by picking that up and basically making it a wash.

Burns: So bottom line is you can’t plant in the easement area, but you’ve provided other places in red.

Tang: You can’t. That’s true. To offset that.

Burns: Would you speak also to the green area that’s shown on that slide.

Tang: Yes, so as staff mentioned, we meet the averaging of the street yard by the red area shown in this slide to offset that blue area that’s lost. We also had contacted NCDOT to talk about possibly landscaping that area along the old right-of-way that isn’t being used anymore up Green Hope School Road now that 540 has been completed. And have worked with them, discussed and showed them a preliminary landscape plan to offset and provide an addition 20-foot strip of landscaping so that that would provide for meeting the spirit and the intent of the 50-foot street yard.

Burns: Thank you. In summary does the plan as proposed meet the six elements that the council is required to find with the exception of those two minor modifications?

Tang: Yes it does.

Burns: And are those two minor modifications consistent with the spirit of the ordinance?

Tang: Yes they are.

Burns: Great. Thank you very much. Tom would you come join us? Mr. Morgan would you introduce yourself please?
Morgan: My name is Winston Tom Morgan, and I am a North Carolina general certified appraiser and been appraising for 35 years. Started out selling – matter of fact first house I ever had listed in 1972 was in Scottish Hills in Cary, so it goes back, seen a lot of growth here. Basically what I’ve been doing for the last 40 something years is in the real estate business – five years in the brokerage business. I’ve done some teaching in the pre-licensing courses and focused on appraising. I do not do any selling; I do maintain my broker’s license. And I’ve attended some 375 hours of recognized appraisal courses. Some of it was required for me to be certified. I do primarily – when I started for the first 10 years was residential appraising. Since then, I still do residential appraising. Typically, it’s properties either for a mortgage loan or either some situation that they may need something that goes to court. I also have done subdivisions in Cary - proposed subdivisions that was going to be developed. The intended use of the report was to underwrite a loan, and appraised housing in Cary, and townhouses, single family as well as – basically I cover most of Wake County. So I was asked to take a look at this particular development.

Burns: And in connection with taking a look at this particular development, were you specifically asked to assess whether the proposed development would have any adverse impact on surrounding uses?

Morgan: Yes.

Burns: Tell me about the work you’ve done to make that determination.

Morgan: Two things looked at – one is the market itself in (inaudible) – and I looked at 12 potential comparable basis, if you would, that had single family housing and townhouses that backed up to each other, and to see if there was impact, if any, on those properties – the single family. And basically, in selecting the ones that had sufficient data to be able to extract out of the market sales and re-sales. There is no difference in the price and in the ones looked at. As an example, I took a look at Amberly Village Square that had both townhouses and single families, and they backed up to each other. And I tried to stay with pricing that is similar to Highcroft, and Highcroft runs 410 to 685. And their minimum prices somewhere slightly over $300,000. And then I looked at Amberly Village again, townhouse backing up to single family. And one thing, the market doesn’t always give me what I’d like to have – the perfect data. So you have to go through and look at the marketplace, and then select a data that will give you an indication. You may not like it, but it’ll give you an indication. So looking at Amberly Village, their medium price was 385, and the subject being Highcroft at this point is 410. If you look at the high in Highcroft – and this is to analyze the lots along Highcroft that will abut the east line of the proposed townhouse development. But anyway, Highcroft’s medium is 410; Amberly Village is 385; and then I looked at one where we didn’t have townhouses backing up to it, which was Amberly in the Peninsula, and the medium price was 399 and the high end was 641. So when you look at Highcroft and you look at the product that’s in here – so when you go in the market you want to try to select other – the comparables would be as close in similarity to the house and single family detached along Highcroft that back up to this proposed project. So, in looking at those that was – that intent there and then beyond this looking at the configuration of the product that they were talking about building in comparison. As an example – across the Green Hope School Road you have a development that’s called Fryar’s Gate, and that’s under construction at this point, and it’s got a mixture of townhouses and single families, and I don’t – could somebody point – it’s right in here. Yes, right there, just stick it right there that’s fairly close. So the physical characteristics there, those are three story townhouses that front fairly close to the Green Hope School Road. And then you got single family on in behind it. And, so if you look at those -- and the developer there – and there will be a significant difference, I think, between those attached housing – townhouse units that are three story one car garage against their single family. Quite a spread. But anyways, so I looked at that configuration, and then I looked at the configuration of the lots in Highcroft. And there is this stream right through here. Along here are the lots that will adjoin or abut the subject proposed development. And these are single family. And along in there, that’s where you’re looking at the 400, the 600 thousand dollar price range. And very nice housing; no question about

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it. So when you look at that, those houses -- single family detached -- and you look at the buffer -- you look at this buffer here, and I think the engineer said it was 400, 500 feet - 200 to 300 hundred is a large distance between the back of a townhouse development, the units and the back of a single family. So when you look at that, that three to four hundred feet from the rear lot line of the single family to the townhouse – that's a long distance and in comparison to the other competing properties. So my opinion is based on the market study, which are actions of buyers and sellers where you had townhouses that back up to single family detached, and in analyzing the sales and the re-sales and in that relationship there, it does not indicate any loss in value or any impact in value along along the main road into where you come in to Highcroft – that main street that goes in. And again, the distance is tremendous, and then the market on those that I’ve looked at, some 12 of them, and a lot of them have the data – they didn’t have townhouses backing up to single families, so that data you can use it, but it doesn’t give you any indication. So as you go along that street, the units backing up to that, and then you got three, 400, 500 buffer area between it as well as that draw that goes down through it. There is significant difference there, so the impact to value along there are – my opinion is based on the market study there is no impact on those units -- those existing units.

Burns: Mr. Morgan if I could, to summarize what I think I understand you to be saying is that the market study you've done suggests that there would be no impact. And then in addition to that, the market study was based on places where there was not much buffer and the existence of this huge buffer would further your conclusion that there would be no impact. Is that fair?

Morgan: Yes, yes.

Burns: So there are two issues that council is going to have to consider in relation to your testimony. The first is whether the plan protects from the potential adverse impacts of this subdivision or this proposed subdivision. Do you have an opinion as to whether it does protect against any potential

Morgan: Whether it impacts Highcroft or.

Burns: Yes.

Morgan: It does not.

Burns: And is it in harmony with nearby properties?

Morgan: Based on what they're proposing to build, yes.

Burns: Thank you. That's all. Mr. Overcash, you want to come on down? So our final witness tonight will be Lyle Overcash, who will speak very briefly to the transportation issues around this development. Mr. Overcash, if you could introduce yourself please.

Overcash: Good evening. My name is Lyle Overcash with VHB. We're at 4000 WestChase Boulevard, Suite 530 in Raleigh. I hold a bachelor of science in civil engineering from NC State, 1993. I'm a licensed professional engineer in North Carolina and Virginia. I'm a principal with VHB, where I lead the traffic engineering group. Been with VHB for 13 years. We used to be MAB, but we were acquired this year. I've been a traffic engineer for 20 years. Since 2004, I've been one of the on-call consultants for the Town of Cary, and during that period I've directed about 75 studies within the Town.

Burns: Have you conducted a study a study with respect to this site?

Overcash: Yes, back in 2007 we conducted the Batchelor property TAR 241. And so that's why Withers and Ravenel, Meritage, approached my firm to do this study as an update to the previous study.
Burns: So in connection with your study, what areas around the site did you study?

Overcash: We studied the intersections same as the previous TIAs, starting from the west on Green Level Church Road and Green Hope School Road moving east; Twyla Road across the intersection of our primary access; Highcroft Drive at Green Hope School Road; the two secondary access points along Highcroft Drive, Boscawen Lane and Piermont Drive; and then also NC 55 signalized intersection.

Burns: Can you describe for me that study process? What are you looking at and trying to accomplish when you study those roads?

Overcash: Yes, you start with collection of traffic data. We went out and collected turning movement counts, new counts for this study at three of the primary intersections at Green Level Church, Highcroft Drive and NC 55. And then we took counts from other studies that were in the area, and used them to balance intersection volumes throughout the network.

Burns: What were the results of those studies?

Overcash: We then proceeded on with the no build traffic projections, where we took the six other studies that were conducted in the area; we added that traffic to ours. We used the 2% back by growth rate, and then we also then generated the traffic for our development based on 169 townhomes and 10 single families, so we have two more single family in our study. The resulting peak hour trips in the morning were 96 in the morning, 105 in the afternoon peak hour, which follow the typical 7-9/4-6 peak hours. Daily total is about 1,141 trips. We assigned about 70% to the primary access point on Green Hope School Road, about 30% to the two points on Highcroft Drive. Their volumes are generated by adding the no build traffic and the site traffic, and then we assess the need to improve the study area intersections based on the combination of background traffic and site traffic. That resulted in the improvements that were described earlier at the site driveway where we were recommending a westbound left turn lane at the site, and also a two lane exit coming out of the side where we have a right turn lane and a through left lane. One hundred foot of storage here, and a hundred foot of storage on this westbound left turn lane. Then at NC 55 at Green Hope School Road, as Kevin mentioned earlier, right now you’ve got a couple hundred feet of storage. For ours, we want to extend it 365 feet. We’re adding about 14 cars during the pm peak hour; about 2 or 3 seconds of a delay. But even with that, we discussed it with Town staff, and we thought it would be good to go ahead and extend that basically to the maximum, which would be about 550 feet. So, that would basically just start to taper here at the end of the median. That’s probably the maximum you can get without just basically taking out the median. So we wanted to save some of the median, and then start to taper and then extend the storage to 550 feet to accommodate the projected queuing in the future.

Burns: Mr. Overcash, council’s going to be called on to answer a few questions about the site plan related to your testimony. I’d like to pose those to you now. Does the plan provide safe conditions for pedestrians and motorists?

Overcash: Yes. As discussed, I think Ed brought it up earlier, the intersections in the site plan have 90 degree angles, they have sidewalks, the sight distances are appropriate, they are planning a couple of traffic calming measures. I think three humps on Alamosa Place, and then three traffic humps or tables on Rock Castle Drive. There’s some parallel parking that has some pull-offs for that, so that would help in the traffic calming perspective. Sidewalks are connecting over to Boscawen and Piermont to allow folks to walk over to the school. And the signage and striping plan seem appropriate, and the internal streets will be posted at 25 mile per hour.

Burns: And does the plan provide for safe ingress and egress for Town vehicles, emergency vehicles?
Overcash: Yes. So we've got basically three access points to the development -- the two end connectivity’s to the Highcroft Drive and the primary drive out to Green Hope School. And then you have a cul-de-sac at the end that will allow Town vehicles and trucks to be able to turn around without having to make three points turns. They'd be able to just to loop around there.

Burns: And does the plan provide mitigation for traffic congestion impacts that might be created by the proposed subdivision?

Overcash: Yes, in summary, the development doesn’t generate a ton of traffic, about 1,100 trips per day. The widening at the site driveway, the turn lanes going into and out of the site and then the combinations at NC 55 and Green Hope School will mitigate the traffic off site. On site, the traffic calming devices will help. Pedestrian are accommodated throughout the development, and it’s well connected to the adjacent street system.

Burns: Thank you Mr. Overcash. Members of council, that concludes the witnesses that we’ll be calling tonight. We have a very pleasant circumstance of being able to stand before you and say that staff’s report and all the witnesses that you’ve heard from each conclude that each of the six factors that you need to consider have been met with respect to this — and with respect to the two variances that we’ve — excuse me — the minor modifications that we’ve requested — you’ve heard that the applicant has worked very hard to avoid asking for any modifications, and with respect to the modifications it has requested, has done all that it can to avoid and to minimize those impacts. Your package includes information that the one champion tree that we have asked to come out is going to be replaced at the rate of 12 to 1. So for the one tree that will come out, there will be another 12 planted, plus all the extensive landscaping you saw in the exhibit that was passed around. So in the whole, this is we believe the exact kind of process that you want to see happen before a plan comes to you, and exactly the kind of plan that you’d like to see develop here in Cary. Thank you.

Weinbrecht: Thank you. At this time I'll invite other speakers who have been sworn in and who wish to speak in support of the application to approach the podium one at a time. First speaker in support. Seeing no one. I'll invite — I'll now open the public hearing for those who are opposed to the request and invite the first speaker to the podium at this time.

Crescenzi: Good evening. My name is Michael Crescenzi. I reside at 303 Boscawen Lane. My property abuts adjacent to the Batchelor property that we've been discussing tonight. The focus seems to be on the townhomes, which I think is reasonable. But my question -- first question -- is with respect to the single family dwellings. And I was hoping the applicant could provide some additional information with respect to those.

Weinbrecht: Okay. Thank you. Other speakers in opposition?

Moriarty: Good evening. My name is Andrew Moriarty. I live at 704 Piermont Drive. Piermont is the second connection in addition to Boscawen. I live at the last house on the right as you proceed toward the Batchelor tract. My biggest question -- I’m also a licensed professional engineer in North Carolina. I've been doing land development work for 22 years up and down the east coast. I don’t know if I'm an expert in that or not, or if that’s appropriate. My biggest concern has to do with the configuration of the development with respect to the cross connection on Piermont with a school at the end of our street. Certainly, the intent of the cross connection is to allow traffic to access from the proposed development of the townhomes to the school. And with respect to -- so the connection on Piermont obviously continues on toward the east toward Highcroft Drive to the main entrance to Highcroft Elementary. My biggest concern is that with the connection that’s proposed from the townhomes, it’s a relatively long, straight section that dumps into a 27 foot wide back-to-back street, relatively narrow, and we know all of us who live in Highcroft certainly love our school, but we know that during the morning drop-off period and the afternoon drop-off period, but the morning probably more particularly, where we have a significant amount of congestion into the section of Piermont and Highcroft Drive with the intersection for the
school. And my concern is that many folks in the townhome community are going to use that Piermont Drive connection to drop their kids off at school. I have talked to Kevin a little bit about understanding Wake County's relatively small ratio that they assign in term of population calculations for townhomes relative to how many students would go to that school. I think in this area of the town it might be a little on the low side, just because of the nature of the community in that area and the quality of the Highcroft and reputation. I think many families would want to live in that community and benefit from Highcroft Drive. So I believe that the traffic numbers that were presented in the traffic study were a little light on Highcroft Drive -- on Piermont specifically. And I'm concerned about adding another leg of traffic to the intersection. All of us who live on Piermont and pretty much in that nearby area -- all our kids that went to school there walked to school, and I would expect some walkers from this neighborhood as well. But given the proximity -- a relatively long stretch of road that they have to navigate to get to the school -- I think there will be quite a few motorists coming from the proposed neighborhood dropping their kids off at the school and going to work. And I think with a narrow, congested, relatively small road, if any of us on the street have a contractor working on the house, it's very difficult to navigate through there. And I think it's just something that needs to be considered. I know the Town really fosters the inter-connectivity between the neighborhoods. But I think in this case we have to take a look at the circumstances here with the school and our community and how that inter-connectivity impacts our existing neighborhood. Thank you.

Weinbrecht: Thank you. Next speaker please.

Krebz: Hello my name is Chris Krebz. I live at 5108 Highcroft Drive. My property backs up to the property in question. The first thing I wanted to point out in relation to the witness presented by the developer who talked about appraisal values and impact on Highcroft. One thing that I think you all probably know, but needs to be pointed out is that the comparison study -- and I don't know what methodology was used for this; I didn't hear one, but the comparison that was used was Amberly. And that there you have a community where there are single family homes as well as townhomes, and that the single family homes were not adversely impacted by the presence of those townhomes. I'd like to point out that I don't think -- from what I understand those homes, those single family homes and those townhomes were built by the same builder, a non custom home builder. That makes the comparison here to the townhomes that are being proposed and the single family homes that are in the Highcroft community I think a lot less valid. So, I think that needs to be considered. The main thing I want to just mention though is I believe it was Mr. Tang was asked if there's sufficient landscape and buffering, and he said yes there is. One thing that isn't really clear to me is it says under buffers that a 30-foot type B perimeter buffer would be required adjacent to Highcroft, and that they would share that with us. But on all of the site plans that I see, there's the 30-foot buffer that's part of our community, but I don't see any 30-foot buffer as part of the site in questions. So I guess I have a question about that. And I know we keep talking about the buffer is 3, 4, 500 feet before the townhomes start, but I just learned tonight that phase three, which is currently a pond, is going to be an entertainment facility, which I assume is a pool. So the fact that there's not any buffer on their part of the property to me is a little bit of a concern since that's going to be more or less the land right behind my home. So I would ask that they also just as Highcroft set aside a 30-foot buffer, they'd be ask to put some sort of buffer on their pieces of land, and a buffer can be linear feet -- in our case 30 feet, and it's heavily wooded. I would ask that any buffer that they're going to have added to their pieces of land also have some physical attributes – planting of trees; wax myrtles are cheap; maybe a berm of some sort. Because for parts of these communities the townhomes aren't the only concern. There's also the single family homes, which are going to be different from ours, and there's going to be now, I understand an entertainment facility of some kind. Thank you.

Weinbrecht: Thank you. Next speaker please.

Wang: My name is Bin Wang. I also live on Piermont Drive. My house is next to – it's about the second house abutting the buffer of the stream. I have similar concerns with previous witnesses. First is the additional traffic on Piermont Drive and Boscawen, because we're going to connect
these two streets to these 169 townhouses. I am not an expert, but I’m a homeowner, and any person who is going to buy a house or has a house, you buy the house for a reason, and apparently a lot of people like Highcroft. It’s a great school, and people would love to send their kids to the school. So I would imagine in the morning time, in the drop-off time, there’ll be lot of cars going through our street. And it’s a narrow street. If you have visited Piermont and Boscawen, you know it’s not like a big wide street allowed such much traffic. Second concern is on the analysis by the appraiser about no impact on the existing home value. The analysis was done on Amberly and also a new construction near Highcroft. I would assume that Amberly with the townhouses and single family were planned together, probably viewed in roughly the same time, but not too far apart. Also the new subdivision that’s near Highcroft, actually they are planned together and being built together. But Highcroft – I bought my house in 2007, and my house was probably one of the last few lots at Highcroft, so this is a well established neighborhood. And now you have 169 townhouses with higher density connecting through these two little streets coming into Highcroft. Any people with common sense would imagine the house value at least on Boscawen and Peirmont would be impacted. My third concern is the time that was given to the homeowners. I got my letter the day before Thanksgiving. I really regretted opening it, because it was such a shock. It’s right before Thanksgiving when a lot of families are planning their vacations, their family gatherings. Now we get a letter telling us your street will be opened up to traffic of 169 townhouses, and we were given a little over two weeks over a holiday season to pull our neighbors together, and get our acts together, and how do we even find the experts to evaluate a situation and speak on our behalf. I’m no expert in anything except being a mom and a homeowner. So I’m really concerned with the little time. I’m sure the developer has started looking at their master plan since 2007. They hired experts to do their own analysis, but we weren’t given enough time to provide our cases. I’m sorry – am I exceeding time limit? Okay. I also have a question. Who are actually the developers? That’s a question I ask for one of my neighbors. Are they provided on this piece of paper? And also the last question is the time between phase one and phase two. Thank you.

Weinbrecht: Thank you. Next speaker please.

Pullen: Good evening. My name is Jim Pullen. I live in Highcroft. I’ve lived there since 2005. There have been obviously quite a few changes in that time span. Some of which arguably enhance the value of our properties, some of which remains to be seen. My property is directly behind what’s labeled phase two on the drawing above, a couple of homes up from Piermont Drive. I have some of the same concerns my neighbors has expressed. I’m not going to reiterate those, but I think they’re all valid concerns for our neighborhood. I have another concern. It regards phase three – the planned community space. Councilman Robinson mentioned earlier in the prior discussion that a property of this size needs community space. In the prior discussion it was a dog park. Here, I believe it’s a pool. I’m not really clear on it. Right now, it’s phase three. We’re not clear on what the timeframe is between the development and the building of phase three. My concern here is it in the meantime before that community space is actually built, this neighborhood is essentially going to function as an extension of Highcroft. It is connected at two residential streets, Piermont and Boscawen. There are single family residences on both of those streets. The Highcroft pool, which is very close to Boscawen is going to essentially be viewed by residents of this neighborhood as their pool. I would very much like to understand what steps the planner, the developer is taking to ensure that doesn’t happen. I would like to see phase three developed concurrent with phase one rather than on some sort of time delay, which remains unclear at this point. Thank you.

Weinbrecht: Thank you. Next speaker please.

Rowland: Mayor while the next speaker is coming, I’ll remind council that we’ve reached our hour time limit, and you can decide as a group how to proceed at this point.

Weinbrecht: Council you have the option. I don’t think we have any legal options to do one things or another. It’s our option to continue, to postpone to another time.
Robinson: We’re not going to cut off a resident now.

Weinbrecht: I wouldn’t say that either, but I’m just letting you know your options.

Smith: Let them go first.

Weinbrecht: Everybody okay with continuing. Okay.

Smith: On and on and on.

Tochacek: My name is Martin Tochacek. I live on the very southern end of development that’s in Highcroft that’s going to abut the end there. I walk my daughter to school up Highcroft Drive and have the same concerns that Andrew and Bing had about Piermont Drive. Right now there’s a traffic guard there handling the traffic going down Highcroft. Now I also looked at the traffic study and looking at the increase in traffic, and you know, I know that sometimes I’m lazy. I drive my daughter to school because it’s cold. So I think that same thing is going to happen on Piermont, so that’s one thing. The second thing, I want to echo Bing’s concern that we did get this notice right before Thanksgiving. Again, we don’t have any experts testifying in our behalf, and if we could have some time to pull things together, maybe some things could be different. The third thing is that I know petitions are not admissible at council hearings, but we have a lot of support on our neighborhood group against this. A lot of concerns – I have a concern about how the appraisal was done. Was it comparing the existing homes and adding something to it, and the price stayed the same? So those are my concerns as they stand right now. Again, I’m with my neighbors and just want to conclude. Thanks for giving me the time.

Weinbrecht: Thank you. Next speaker please.

Haub: Hi; my name is Jean-Paul Haub. I’m a resident of Highcroft. I would like to ask that we be given some time to kind of put something together – some cohesive discussion on this topic. As everyone else has said, we really didn’t have a lot of time. But, I can just tell you kind of from a meat and potatoes sort of look at this thing – I drive by Green Hope School Road all the time. That road’s maxed out. Since I’ve moved into that place, the council’s allowed 300 additional units to be planned or started phased building on that road. Now when I leave in the mornings to try to get to Highcroft, it’s not unusual to have well over 100 yards of cars backed up. I currently drive right vs. left. The two lanes are blocked for everybody trying to go left going to RTP. There’s not an entrance to 540, so traffic there’s always an issue. It is a two-lane road. It does not have sidewalks – the majority of it. So, if you take a car and drive down that road at 5:30 at night – anytime towards dusk – accidents are common. There’s limited visibility. There’s a lot of traffic on that road. If you ask any of the police that work that area – Green Hope School Road and 55 – way more accidents right there. It’s a safety issue. There are constantly people biking, running. I know me – when I leave for work in the morning, I have to go right. So I quit using Green Hope School Road. I cut through Sears Farm Park, which I know they probably don’t appreciate, but it’s definitely been an increase in traffic in that way. Gosh, it does not take rocket science to figure out that if you’ve got $500,000 houses and you increase traffic in front of your street, you put in a bunch of townhomes behind it, it’s not going to have an effect on property values? I mean, it begs to ask where that data might have come from. If we have enough time I think we can definitely show that it would have an impact on property values. I think we could show that increased traffic has an effect on property values. But realistically, development is going to happen sometime. Cary’s growing, it’s going to continue to grow. Lots of people want to move here. I moved here from California. But, until Green Hope School Road is a four-lane road with sidewalks – we’ve already got 300 more units coming on there in the next two years – there’s no way you can put another 175. Heck, you can’t put 50 more units on that road. And realistically, they’re talking about building hundreds and hundreds of more units. So, I would like the council to at least consider working with whatever agencies you need to to delay future growth on that road until two things happen. One, the road is able to handle the capacity so we don’t have kids, we don’t have
bicycles, we don’t have pedestrians getting hurt needlessly. And then secondly, if this
development’s not going to impact Highcroft, why do they need access to Highcroft. One guy,
Jim, lives right in front of the school. At 8 o’clock in the morning, it’s backed up with hundreds of
parents trying to drop their kids off. You can’t put another car on that road. I mean, it’s just a
nightmare as it is now. If you’ve got time and it’s worth it to you, drive around that place at eight
o’clock in the morning sometime. Drive around that place at five thirty in the morning and tell me it
won’t impact property values, it won’t impact the families, it won’t impact the people living in that
neighborhood. Give us some time. Let us put something together. You’ve got a lot of residents
that feel very strongly about this. Short notice we came out for this. Give us a chance to put
something together reasonable so we can at least let you understand how the impacts are going
to affect us directly. Seven years would be great, but 90 days. I’d push for seven years though.
Thank you for your time.

Weinbrecht: Thank you. Anyone else to speak in opposition? So I’ll call on Town staff to see – oh,
I invite cross-examination of the witnesses who spoke in opposition of the request. No? Okay. I
ask Town staff if they have anything to add.

Hales: Just a couple of points of clarification. The applicant’s presentation indicated or implied
that staff was supporting the justification criteria. We’re simply making observations that were
related to those criteria. We’re not making a recommendation one way or the other. And the
second being the word buffer has been thrown around a lot, maybe somewhat out of context.
Because in a planning context, buffer has a particular meaning. There is not a 300 to 400 foot
buffer between the townhomes and the single family homes, except for the fact there’s a special
separation between the two. There’s no planting standard or anything else. There’s a stream
buffer, which is 100 foot wide running along there, and there will be – where it says phase 2, it’s
currently proposed not to be developed. So, there will be additional woods there. But there is not
any performance criteria associated with that as a buffer.

Weinbrecht: Okay. Any cross-examination of the Town staff who just spoke? Okay. Now I ask
anyone sworn if they have any objections to incompetent evidence or testimony.

Burns: Thank you, Mr. Mayor. I would note the attachment for the agenda for tonight has in very
large, bold letters at the bottom an admonition regarding testimony from non-experts on expert
matters. It specifically calls out traffic, and you’ve heard a great deal of traffic testimony over the
last few moments that would, by the terms of the Town’s own agenda, be incompetent. I would
object to the consideration of that information. And likewise, I believe anything that dealt with
property values, which would also be an expert matter, I would object to consideration to that.

Weinbrecht: Okay. Does either party believe that new evidence has been presented tonight that
warrants a continuance of this public hearing? Okay. Time for deliberation. I open it up to council
members for deliberative phase. Comments?

Bush: A quick question for staff. Could you lay out the notification plan that was sent to residents
in the surrounding area?

Hales: Standard notification procedures for a public hearing. It’s no different for a quasi-judicial.
It’s between 10 and 20 days ahead of time in according with – oh, Lisa’s going to answer.

Glover: Kevin’s answering as to what we did. I just want to point out that under the current
statutes and actually our current LDO, we are only required to notify adjacent property owners.
So the notification that staff did was above and beyond any LDO or statutory requirements.

Weinbrecht: Could you speak to the time?

Hales: 10 to 20 days before the hearing.
Frantz: Would that be the same type of consideration that was shown for say Cary Swim Club?

Hales: They all received the exact same – we sent them all out on the same day.

Bush: And also with the posted sign, not just notification?

Hales: Correct. It was posted on the 26th.

Robinson: I want some clarification about what we’re actually discussing tonight. Because we have so many phases of development reviews. Sometimes it can get muddled. I think it’s confusing for us, just like it’s confusing for the citizens. So, help me understand exactly what we’re going over here. The rezoning was approved in 2007.

Hales: Correct.

Robinson: And that empowered the land owner or a developer in conjunction with that landowner to develop this parcel for no less than three units an acre. There was a minimum set on this parcel that was dictated by the land use plan? Is that correct?

Hales: Correct. There were very specific zoning conditions that were fairly restrictive. It limited only townhomes on the western portion, only single family on the eastern portion, and they cannot be less than a gross density of three units per acre, which would make it a minimum available – and medium density in the land use plan.

Robinson: I don’t remember the specific case. I don’t remember why a minimum was put on it. I hope we never do that again. I really hate that, because it limits our ability to be flexible, when it sounds like, hey, we might take out that – a couple of units so we can save that tree, but, gosh, we can’t because you guys told us we had to have at least three. So, since 2007, it has been known by some parties, particularly the landowners and the staff and people who have historical knowledge of this that there will be a townhome community at some point, and it will be no less than three units per acre. Correct?

Hales: I can’t speak to – they should have been aware of it. I can’t speak to individual’s knowledge.

Robinson: Okay, but it’s established at this point?

Hales: Correct. In ’07 that was established and that was the zoning. It hasn’t changed.

Robinson: Okay, so tonight we have no power to go back and reconsider any aspect of that rezoning. We’re not here to waive that three lots per acre minimum. We’re not here to say no, it shouldn’t be townhomes, it could be something better, anything like that.

Hales: Correct. The only way to get around those conditions would be to rezone the property.

Robinson: To go through a rezoning. Okay. And, a rezoning is either done – an application is either done by the property owner, or a rezoning can actually be initiated by somebody else who does not own the property. Right?

Hales: It could be. It’s highly unusual.

Robinson: It’s unusual, but it could happen. Okay. So tonight, what we’re here to do is to consider modifications that are being requested to our ordinances that govern how a site can be developed. Is that
Hales: You’re really here to – under consideration is the development of this property compliant with the site plan criteria. As part of that you need to consider whether or not the two variances – or the two minor modifications are appropriate as well.

Robinson: Okay. I didn’t explain it well. So, if the applicant did not want to put that connection in -- either one of these connections in – that would be out of compliance with our connectivity ordinance. So, they’d be having to ask for a waiver to our connectivity ordinance, right?

Hales: Correct. That would be an additional minor modification for that to not comply to the connectivity ordinance. And probably the connectivity index as well. So a couple are tied in there together.

Robinson: Okay. So the next question is were these two streets signed like we asked a long time ago – for all stubs to be signed that say future connection to – I forget, how do we have that worded? What is it? Future connection, or something like that. What is it?

Hales: Given the age of the property, I haven’t looked personally. Mr. Bailey will speak.

Bailey: At some point council asked us to label all streets with a reflective barrier and a sign that says future roadway extension.

Robinson: Okay.

Bailey: And I do not know about the specific locations. I do know that we have added many throughout town. I do believe there’s one at the end of Highcroft Drive, but I don’t recall these particular street stubs.

Robinson: Okay. It is disconcerting if a resident moves in and for whatever reason doesn’t know that their stub’s going to be connected. So that can be disconcerting, but if it’s signed, then the understanding is that you knew that they’d be a connection. So, that kind of is just a point. So, I respect the citizens having concern, and I respect the fact that they feel like there wasn’t a lot of advanced notice, because it’s very – it’s very alarming when you get one of these letters, and you don’t understand the implications. But, I think we need to really fully understand what we’re allowed to do here at the council table tonight. And that’s really – what we’re asked to do is to look at these modification requests and see if the site is being proposed to be developed appropriately given our ordinances.

Weinbrecht: And let me follow up on that. Could this site have been developed without it coming to council in any way?

Hales: No, because it’s over 100 units. So even if they met all the requirements, the new traffic related ordinances would catch it.

Robinson: So why is that? I’m sorry.

Weinbrecht: Other than the modifications, it’s coming to us because it’s over 100 units.

Hales: Correct.

(Inaudible: Multiple people speaking at once.)

Weinbrecht: If there were 99 units we wouldn’t see it.

Hales: Correct.

Weinbrecht: Okay.
Adcock: But if they did 99 units they’d fall below the minimum three units per acre. Another reason not to do that anymore.

Weinbrecht: I’m just trying to get at why we’re seeing it.

Adcock: Why it’s here.

Robinson: Okay. We’re seeing this because we have an ordinance that pertains to the number of units. It’s not because

Weinbrecht: The townhomes were already decided. A lot of things were already decided, and we’re here to decide on a few things.

Robinson: Yeah. Okay.

Weinbrecht: Actually, while we’re clarifying, do we have authority to stop development because of road capacity? That was one comment.

Hales: Sounds like a legal question.

Glover: Tonight you’ve got to look at the criteria that are in front of you.

Weinbrecht: Beyond tonight. Does the Town have authority to stop development along a road because of capacity? That was a statement made.

Adcock: You mean contextually. He’s asking for context.

Glover: Well in the context of rezonings, if you think the road can’t handle any more traffic, that’s a good opportunity and time to say we’re not going to rezone and upzone a piece of property to have more traffic being generated.

Weinbrecht: But if it’s zoned and

Glover: And it otherwise meets our criteria, then no.

Weinbrecht: Okay. Thank you. I wrote down a bunch of notes that speaker’s made, and I want to make sure they’re addressed.

Robinson: Okay, so that reminds me about phase 3. So, phase 3 looks really vague. There’s no drawing for it. Don’t we have some kind of requirement that recreation space has to be put in before you have a certain number of units in?

Hales: It does, and this applicant’s intent is to follow up very closely to this, and I’ve already spoken to them about that this week earlier -- following up closely with another plan for a rec site on that location. They’re planning on keeping the pond, and they can speak to this more than I can. But, it will be following very closely behind, because it does need to be in before they start getting c.o.’s.

Robinson: The recreation site needs to be developed or submitted before

Hales: It needs to be developed. In order to meet the site design standards, they would need a recreation site – an enhanced amenity. It doesn’t necessarily have to be a pool or a clubhouse.

Robinson: But whatever they’re going to have, they have to have it built before they issue their first c.o.?
Hales: Correct.

Robinson: Okay, that’s very promising. Does that give you a comfort level?

(Inaudible: Someone speaking from audience.)

Robinson: Okay. That’s good. Okay. Do we know who the developers are?

Weinbrecht: Oh, yeah, that was another one.

Frantz: Is that a relevant question?

Robinson: It’s not really a relevant question.

Weinbrecht: Just curiosity.

Hales: It’s Meritage currently.

Adcock: That’s what’s on the plan.

Robinson: Oh, yeah, Meritage. I see it. Thank you. Sorry.

Weinbrecht: Other questions?

Robinson: I understand the concern regarding traffic going to the elementary school. We have the same concern in my neighborhood when Green Hope Elementary School was built. And, a sign was put up at the end of Benwell Court that restricted people from going straight into the school property. So the signage went up, and I think you have to go right or left. I think – that’s my recollection. But, is that a possibility to put here, some kind of signage that would deter people from using that street to access the school, and instead would loop around?

Bailey: On any public street council can adopt an ordinance prohibiting turning movements, and it can be permanent or have hour restrictions associated with those turning movements. That could be something you could consider separately at a later date.

Robinson: Oh, okay. Okay. At what later date would we consider that? We just put a pink slip in or what?

Bailey: That’s correct. We would have to do a staff report and bring it back with the associated ordinance. Because every location for stop sign, speed limits – they’re all a part of an ordinance and has to be added to our ordinance. So, it could happen in a matter of probably 60 days. We probably would suggest waiting until the roadway connection was made before putting that ordinance in place, but it could happen at your pleasure.

Robinson: Okay. So it would give the citizens an opportunity to consider whether they’d want anything like that. Okay.

Adcock: Can I ask a follow up about that, Tim? But if we put in signage that limited turning to left or right, that wouldn’t necessarily have any impact on the amount of traffic on that road. It’s just what movement they could take when they got to the end of that road.

Bailey: That’s correct. And typically it’s left turns, because that’s the most difficult and have the most number of conflicts trying to get out with vehicles. So, it would force even the residents – everybody who lives on that street or exits that street would all have to take a right or be subject to
Robinson: But you could limit it just to the morning hours. You could say right turn only.

Bailey: 8 to 9 – whenever.

Robinson: Okay. That’s something to consider.

Bush: Can I ask a follow up traffic question? There was some discussion about traffic calming measures that were going to be implemented, but I didn’t see anything in the traffic study about traffic calming measures.

Bailey: We review the plan when it comes through for long straight stretches of roads where there’s an opportunity normally for people without an obstacle or something – they would tend to speed – especially down hills. And, the applicant, as part of our standard specification requirements, has included some of those in the plan. That’s not a traffic study requirement. That’s just a standard we have within the development itself.

Bush: So those measures are on the long strand that enters from Green Hope School Road, not on the connectors to the school?

Bailey: I mean there’s straight stretches along those, too. I don’t know the exact locations. The applicant could certainly address that. But they are a requirement of our standard specifications.

Hales: They are not currently proposed on the connections – either Boscawen Lane or Piermont. They’re the gray – see the small gray areas crossing the roads in these three locations. Mr. Overcash did talk about parallel parking on-street as a traffic calming device, and there is parallel parking in this location, and a small amount here – Piermont. So

Bush: Okay. Thank you.

Robinson: Okay. What about the 30 foot buffer between these neighborhoods?

Hales: As you’re well aware

Adcock: He called it a 30 foot separation, not a buffer. Right?

Hales: I was referring to the applicant’s presentation. They kept saying a 2 to 400 foot buffer. It’s not a 2 to 400 foot buffer. There’s a stream buffer that’s 100 foot wide, and then there’s open space or whatever else. It’s not an actual buffer. As you’ve heard in the past, the LDO establishes a required buffer width between adjacent land uses. In this case it’s a class 3 to a class 2, which is single family to townhomes. Even though the townhomes don’t directly abut, it’s the most intense class on the property, so that’s what we use. The buffer between those two pieces – or two land use classes – is a 30 buffer. That buffer responsibility is shared between two properties. When this originally came in we requested they provide a portion of the buffer on this property even though – and I was actually prepared for this question – even though Highcroft, in the PDD document, already included a 30 foot buffer for the majority of the length with the exception of this one lot on Boscawen Lane, we requested them to provide 10 to 15 foot – whatever – on the new site. And they responded with the correct answer from the reading of the ordinance, which is the buffer’s already been provided, and therefore, we’re not responsible, which is what the buffer says. If you’re developing adjacent to a developed site and the vegetation on the adjacent site meets the buffer requirements and the width requirements, the buffer’s been met, and this development’s not technically required to provide any. They are providing 22 foot of buffer adjacent to this one lot where in Highcroft – for whatever reason when it was developed – only provided eight feet of perimeter buffer. And then further down on Piermont, the same situation. Highcroft already provided all 30 feet.
Robinson: By ordinance they are not required to add an additional

Hales: By ordinance we cannot require them to provide additional buffer.

Robinson: Okay.

Bush: Do you have a question?

Yerha: Go ahead.

Bush: Can you bring up the picture where it intersects with Twyla Road – that intersection of off Green Hope School Road?

Hales: Zooming in on the entrance?

Bush: When I look at it this way, it looks like it's skewed. Twyla Road kind of turns, and then this road turns the other way. Is there a reason for that? Why are the roads not aligned when you look at the big picture? There's a funny curve there. I'm just curious. Because Twyla Road is mixed use. I can see a lot of potential pedestrian traffic crossing Green Hope. People going from the townhomes. And it just, it just doesn't look right when you pull it back.

Hales: I'll take a stab, and Tim can jump in if he needs to. Twyla Road is an existing alignment. So that curve exists as it is. When we're developing sites and making these connections, we're trying to get it as perpendicular as possible at the point of connection. So this one's set up the way it should be. I can imagine that when the Twyla Road – because right now Twyla Road is very large lot single family subdivision – when Twyla Road redevelops as a mixed commercial type development, I can easily see us looking at the alignment there -- is there a way to improve that when that side of the road develops.

Bush: Okay. Thank you.

Yerha: I was just looking at one of the charts in the staff report – summary of the level of service results across the different scenarios. And just to make sure I understand it correctly. Highcroft Drive and Boscawen and then Highcroft Drive and Piermont today, and if there's a no-build by 2015, are in the A and B range. And if we build – in other words we put this in – this says it's still in the A and B range. In other words we're not deteriorating there according to this chart.

Hales: I'll ask the applicant to speak to his summary table.

Overcash: Yes, you're correct. No change in level of service is anticipated with the additional traffic. We did assign – please bring the site plan back up – we did assign 10% traffic going towards the school. We hope folks would walk, but if you can see how the site is laid out, there's a heavier concentration of units towards to top. So we think most folks would end up coming down that road and getting into the back of the queu that turns left into the school. We do at some point – we didn't anticipate that much traffic that would actually come straight across Piermont. We thought the majority – they'd go to the school and drive to the school would end up coming down Boscawen and turn right and get into the back of the queu to go into the school.

Yerha: Thank you. One speaker indicated before – and I have to say I've always agreed to this, too – that the school children estimate with townhomes always seems to me to be low. I really think it's higher than what it is, so I agree with that speaker. But, it would really have to be very high – I mean, even if this wasn't A and B would go to B and C. And technically that's still acceptable. It would really need to be out of whack if we're to believe the statistics we have here to get into the E and F range to be a concern to us. I just want to point that out. It just seems odd there was no deterioration at all. But even if there was, I can't imagine it being a great amount.
Overcash: Right. The development itself is not developing that much traffic in the grand scheme of developments. Townhomes generate less traffic per unit when compared to an apartment or even a single family home.

Yerha: We know that.

Weinbrecht: And these traffic studies were at intersections, and it’s trips at intersections, not volume on the road?

Overcash: That’s correct.

Weinbrecht: Does it take into account the direction the traffic is going?

Overcash: Yes. We study the intersections and the direction. We assign it into the direction based on the turning movement counts existing.

Weinbrecht: So you can say it’s A and B going north and C and D going south. You do that type of analysis?

Overcash: We did level of service for each movement – left or right – or through at an intersection. And, Green Hope School Road has reserved capacity. It’s not near capacity even with this development and all the other developments that were included in the traffic study.

Weinbrecht: Okay. Other questions? We’ve heard expert testimony. We’ve heard testimony that was not expert. We’ve heard a lot of opinions. And so, Mr. Silverstein, I want to get your caution once again.

Silverstein: Can I read the same

Weinbrecht: Yes

Silverstein: Unless they are a qualified expert, witnesses are not competent to testify about the impact of a proposed land use on the value of nearby property, the danger to public safety resulting from increases in traffic, or other matters that require special training or expertise, like the level of noise that will be generated.

Weinbrecht: Okay. Very good. Council understands that? Any other questions or comments before we move out of the deliberative phase and into – before we move out of public comment and move into the motions. Okay. We’ll move into the motion portion of this hearing. As Mr. Hales reminded us in the beginning, we have to consider a motion for annexation before we consider a motion for anything else. But we need to express concerns before we do the annexation vote, because the applicant would like to withdraw the request to annex if we feel that we’re not going to approve the site plan. So, considering that, I would ask for concerns to be expressed at this time. If not, I would ask for a motion.

Adcock: I’ll speak to the two minor modifications. I wish there was some way around removing that 67 foot or however huge that sucker is.

Hales: 42 inch oak?

Adcock: Yeah, okay; 42 inch. That’s good – champion tree. I don’t see a way around it given where it is, and I hate that. But the 12 to 1 replacement certainly makes that easier to bear. I think the averaging of the Green Hope School Road streetscape is a reasonable modification. I think we should annex it and approve this. I may be the minority opinion here, but I’ll throw that out there and see how we do.
Weinbrecht: Is that a motion, or are you just

Adcock: I'm trying to get a sense of council before I make a – I guess I'd be happy to make the annexation motion and then, depending on what that – if we vote that down, then we know.

Weinbrecht: I don't have concerns on what we're considering, and that's what we should be talking about tonight. There's a lot I would have loved to have considered in 2007, but I wasn't sitting here in 2007.

Adcock: And we can't turn the clock back.

Weinbrecht: That's right. So, by what we're considering, I don't have an issue.

Frantz: I'll make a motion to approve annexation 13-A-16.

Adcock: Second

Weinbrecht: There's a motion and second. Discussion? All in favor please say aye.

(Multiple council members say aye simultaneously.)

Weinbrecht: Any opposed?

Smith: No

Weinbrecht: Motion carries six to one. Follow up motion?

Adcock: The next motion is the motion to – for the reasons discussed I move that we approve the minor modification request made by the applicant as the request meets all the approval criteria of section 3.19.1 and section 7.2.2 of the LDO.

Weinbrecht: There's a motion. Second?

Frantz: Second

Weinbrecht: And a second. Discussion?

Robinson: I'll just throw in my comments. I agree with you completely, Harold. You know, we're getting so many townhome communities now, and I think that we need as council to stop and look back at what our standards are for these townhome communities and raise our standards, because we're getting so many, and I don't want us to become one of these communities that's just overrun by rows of townhomes. I look at that long strip of townhomes. That's

Frantz: Right next to 540

Robinson: I know it's right next to 540, but nonetheless, that's – I know what that's going to look like in the end. And I think the renderings are attractive as far as the units go, but that's a very long strip of townhomes all in a row, and if I had my druthers – if it was back at the rezoning – I don't really remember this rezoning case; I could have voted for it or against it; I don't remember going back. But, I certainly would never put in a standard that you cannot go below a three unit per acre minimum. That's just not in keeping with the what the values of our community are.

Adcock: I agree with you, Jennifer. I mean, if you could go back in time there would be a lot of things we'd probably change. But, I don't know that anyone who was sitting at this table in 2007 had any indication of what the next seven years held. And I agree with you that at some point we need to look at this whole – I don't know if we need to change an ordinance or we just need to be
thoughtful when we look at these to say there is no minimum. There totally should always be a
maximum, but there should be no minimum. But that’s what we got at this point.

Bush: My struggle here again is for the homeowners. If they moved in at 2007 or sometime after
that and they have 10 or 20 days to come before a quasi-judicial, which is a totally different
process – having expert testimony, to be able to get those resources after Thanksgiving. You
can’t contact anyone, really. I think the question that is before me is if we gave them more time,
would my answer be any different. Because I think right now we’re limited to what we can
approve here. It’s going to be townhomes with some single family. What would change our
minds? They could come in without any modifications, and we would be mostly in the same
position.

Weinbrecht: It’s going to be the same number.

Robinson: (inaudible)... We share the same concerns that they have. They’re just not applicable
to what we’re being asked today.

Bush: So I just want to make sure the residents know that we’re at this position. If it will change
where we are, I think council always leans towards citizen input and giving them the right amount
of time to give feedback. But I’m not sure that that extra time would really – at least I can only
speak for myself – would give me any more valuable information.

Robinson: I think that’s a point we need to consider going forward, because in this case there’s
only two modifications that they could really work on. But, on some of these other quasi-judicial
cases, there’s a lot of things that people might want to bring in – expert testimony. We’re giving
them 10 to 20 day’s notice. That is not really sufficient.

Bush: I agree.

Adcock: Kevin, is that statutory – that 10 to 20 days?

(Inaudible; multiple people speaking simultaneously.)

Glover: Again, the statute doesn’t require any mailed notice. It does require a posted notice. And
Mr. Silverstein can tell me if I’m saying this wrong. It requires the posted notice, and it has to be
no less than 10 days before the hearing but no more than 25 days before the hearing. And that’s
from the legislature. So you can’t go any earlier than 25 days out on the posting. And we copy
that with our mailing, so when we mail things, we mail them within the 20 to 25 day timeframe.

Adcock: It’s unfortunate that they lost two business days because of Thanksgiving. To your point,
Lori, one of the notes I made to myself was what expert testimony would be presented with a
continuance? Well, none of the concerns were about the champion tree. There was some
concern about the streetscape, I think, or maybe it was the buffering. And so, that’s what led me
not to move for a continuance, because that doesn’t appear to really solve the problem.

Bush: Right. I just wanted to speak to that.

Robinson: It’s reasonable.

Weinbrecht: Okay. We have a motion and a second.

Smith: I just have one question for clarification. It’s more like planning for the future, like you’re
talking about. And it sounds almost silly to ask. But, the observation I have from previous quasi-
judicials is we get into these debates about what’s considered expert testimony. And we’ve had
cases – and I’m going to put this one aside. I’m not saying anything perjorative about this one.
But I’m just saying there’s got to be a way we can get some handle on expert – that definition.
Because we’ve had cases come before us, and the people stepping up were far qualified – far more qualified than the applicants. And you get an applicant that brings a person in that’s not even from the area, very superficial reviews; we have to accept that. That’s expert testimony. And yet you have citizens come in and they have expert testimony; in my mind on those cases we looked at – of equal credentials, and yet they’re dismissed. I don’t understand it. Is that something we can work on in the future? Or, am I just missing something? And that was a point of contention on some of our previous applications.

Silverstein: It’s actually in the statute. The statute – you’re really talking about two different things. One’s the competency of the testimony; the other is the weight of the testimony. So the competency is limited to expert testimony by statute. For someone to – in those limited exceptions that I read – value of the property, impact of traffic on safety, expert things like noise – it’s limited to expert testimony. You can’t have lay testimony. However, if you have an expert, and you don’t necessarily think that expert has done a very good job at making that expert’s presentation, you do not have to give the weight to that testimony. So you can choose not to accept it. But if that expert testimony is the only testimony before you, and the rest of the testimony is speculative testimony from lay people, then it’s not competent for you to consider that.

Smith: And maybe this is where I’m flying over my head. But when you say it’s lay testimony, they have the exact same credentials. They have the exact same testimony as the person coming in that’s giving that quote unquote expert testimony.

Robinson: Like an appraiser.

Adcock: But is part of the difference that we’ve received evidentiary material from that expert that says this is the way I looked at the traffic, this is the way I looked at the value of homes in this area vs. someone who says I also have this credential, and in my opinion. Is any of that in play?

Silverstein: It’s difficult, because I believe you can have a neighbor come in and say – as the gentleman testified – I drive through the park every day. He can say how many cars drive through the park at eight o’clock when he’s driving through the park. What he can’t testify to is the impact that has on safety.

Adcock: Because he’s not an expert.

Silverstein: Because he’s not an expert.

Adcock: Observational but not

Smith: Putting this case aside for a minute

Silversten: I understand, but as an example

Adcock: Well to be honest it sounds like that’s a great question, but it’s outside

Robinson: Not germaine. Let’s deal with this another day. Good question.

Weinbrecht: Are we ready to vote on this motion? Alright. All in favor of the motion.

Yerha: And the motion is on the minor modifications right now?

Adcock: Yes, to approve the request for the minor modifications.

Weinbrecht: Everybody clear? All in favor of the motion please say aye.
(Multiple people say aye simultaneously.)
Weinbrecht: Those opposed?
Smith: No
Weinbrecht: Motion carries six to one. Thank you, Mr. Hales.
Hales: Now the site plan.
Weinbrecht: I'm so quick to pull the trigger.
Adcock: We like that about you usually. I'll be happy to do it for you. For the reasons discussed I move that we approve the proposed subdivision and site plan with conditions as stated below. It meets all the approval criteria set in section 3.9.2(i). 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.

Frantz: Second
Weinbrecht: Motion and second. Discussion? All in favor please say aye.
(Multiple people say aye simultaneously.)
Weinbrecht: Any opposed?
Smith: No
Weinbrecht: Motion carries six to one. Thank you, Mr. Hales.

Weinbrecht called for a short recess.

4. Public Hearing and Action: 13-SP-033, Parkside Town Commons
Proposal: The applicant has requested construction approval of 153,061 square feet of commercial uses and a master plan for the overall development
Speaker: Mr. Kevin Hales

Weinbrecht: At this time, I'm going to ask council members if they had any site visits, ex-parte communication, financial relationship, specialized knowledge or close relationship to an affected person to disclose. Starting on my right, mayor pro tem.

Adcock: No, Mayor
Robinson: No
Smith: Not that I recall
Weinbrecht: I've got none
Frantz: No, never, none
Bush: I met with representatives from Kite Realty many months ago. But not in particular in to this public hearing or quasi-judicial hearing.

Weinbrecht called for a short recess.
Weinbrecht: Would it impact your judgment in any way?

Bush: It would not.

Yerha: None

Weinbrecht: Okay, very good. Based on disclosures heard from council members, I would invite anyone to the podium that has been sworn in to speak if they have an objection to a council member’s participation. Seeing none, we’ll open the quasi-judicial public hearing. Mr. Hales of staff will introduce the hearing.

(The staff report is attached to and incorporated herein as Exhibit 5. (NOTE: The planning department is the custodian of the records referenced in the staff report and maintains them according to the Records Retention and Disposition Schedule. Documents linked to the online staff report are not included with the official minutes. Documents linked to the online staff report are not included with the official minutes.) The oaths administered to speakers are filed in the planning department case file according to the Records Retention and Disposition Schedule.

Hales: Thank you. We saved the most complicated for last I believe. Parkside Town Commons -- I think most of you are familiar with the development in general. It’s located up on NC Highway 55 almost to the Durham County line at the intersection with O’Kelly Chapel Road. This is in particular for phase 2c, which constitutes approximately 150,000 square feet of commercial uses. In addition to that specific site plan, due to size and scale and the fact this is little of an odd situation where it’s been in development since 2007, they’ve secured a number of approvals already, which has been outlined in detail in the staff report. However, with changes to the regulations in regard to traffic, the individual phase 2c was the first one that came in since those changes and tripped the 100,000 square foot threshold for non-residential uses. So instead of having to bring back each individual phase as a they continued to develop this out, we worked with legal staff and the applicant to come up with a -- they already had an overall master plan -- but to kind of phrase that overall master plan so that council would be looking at the traffic generated by the project as a whole, the phasing for the mitigations as a whole, locations of potential drive-throughs across the entire development, and then as long as all subsequent site plans come in that are consistent with that overall master plan, we’ll continue approving those administratively rather than having each one come back to council. So that’s kind of the way this is set up, and I’ll try to keep it as simple as possible.

Hales: Like I said, the project is located at the intersection of NC 55 and O’Kelly Chapel Road. The extension of O’Kelly Chapel Road is obviously proposed to go across and tie into Little Drive in Research Triangle Park. Both adjacent roads, O’Kelly Chapel Road and NC 55, are identified as thoroughfares in the comprehensive transportation plan. There is no transit opportunity out here for C-Tran; however, there is TTA route that runs up and down on NC 55. The Parks and Greenways plan -- it’s not shown here, but there is actually a Town park proposed on the opposite side -- the west side of NC 55. The anticipated entrance to that park site would line up with the signalized intersection leading into the northern end of the Parkside Town Commons site. There’s also a proposed streetside trail, which runs along the northern side of O’Kelly Chapel Road, which I believe is already under construction with the continuation of that road. This has been looked at several times over a course of several years. As I mentioned before, there are several stream impacts that were looked at and identified and dealt with in earlier iterations of the plan. As a matter of fact, council looked at a variance several years ago for some impacts associated with these stream buffers with the original sketch plan, which, of course, has changed over the years somewhat. The land use plan calls for mixed use. This is located within the Alston regional activity center. Mixed use is the land use plan for the entire site. Currently the base zoning is split between industrial and office, research and development. That industrial piece was the closest equivalent Cary zoning when it was annexed into the Town. The developer’s developing under the Alston Regional Activity Center concept plan, so the base zoning is not the applicable zoning in this instance. Going to google maps to get the most up-to-date -- and if
you’ve driven out there lately, this is even not very up-to-date, because they’ve done a lot of work out there. The site’s been cleared. The phase 1a plan was a mass grade plan and involved installation of infrastructure on phase 2 which is the part north of the O’Kelly Chapel Road intersection. Phase 1, which is south of the O’Kelly Chapel Road extension, includes the O’Kelly Chapel Road extension. There is a (inaudible) under development. The Target is up. Retail buildings are up along 55, and they’re steaming along trying to get a C.O. early next year. This is kind of a project overview of where we’re at and how this is chopped up. Phase 1, which is the dark green color, includes everything south of O’Kelly Chapel Road extension and the extension itself, with the exception of the two outparcels -- lots three and four along O’Kelly Chapel Road. Those were graded to essentially pad ready or base grading, but there are no plans for those developments yet. Phase 1a is shown in light blue and includes the infrastructure, the loop road that runs from the northern entrance around O’Kelly Chapel Road and the main entrance roundabout serving phase 2b, which is the apartment complex shown here in brown. Council made some modifications to the Alston plan to allow horizontal mixed use rather than requiring vertical mixed use. So that residential component was moved to the northern end of the site, and the main street required by the Alston Plan does continue all the way across through the roundabout and into the apartment complex. So it’s got strong connectivity, but it is a horizontal separation. Phase 2c, which is what’s under consideration this evening – it’s shown in the bright cyan and includes actually five buildings -- three main anchors, two small retail buildings, and a lot of the parking and main street infrastructure itself, not necessarily the hardscape. The hardscape for the retail buildings along the main street is generally covered in Phase 2d, which is also in review with staff. However, we’re holding approval of that until council acts on the mitigation tables and overall site plan, master plan in 2c. So 2c and 2d are running pretty close together as far as time-wise. The yellow parcels shown have not had site plans submitted yet, and that’s lots 9 and 10; there is one building here along the main street and some associated parking. The building connecting the Frank Stiger and outparcels -- I mean the other anchor tenants -- one outparcel’s along O’Kelly Chapel Road and other small outparcels and a hotel. So, a lot going on; a lot of different phases; but we’ll get through it. The proposed drive-through locations -- because that’s one of the other criteria that would require quasi-judicial approval through town council for traffic considerations. They’re only proposing four at this time. Those would be the two flanking the main entrance along O’Kelly Chapel Road to the north and lots 3 and 4, which I mentioned, on phase 1 to the south. The only one that currently has a plan on it is lot 12, and that’s just a retail building at the moment. I don’t necessarily have tenant information yet. So the plan before you this evening as I mentioned before includes the three major anchors. Building b1, which is the largest of the three, is approximately 60,000 square feet. Frank Theater - movie theater, believe it’s got a bowling alley and a little eatery. Building b2 is a 50,000 square foot Field and Stream. Building b3 adjacent to it is a 35,000 square foot golf galaxy. Then the two smaller retail out-buildings that are included -- they went ahead and included those in this phase, because they are pretty well tied in with the hardscape infrastructure in front of the Frank Theater. It also includes a large amount of parking to serve the future retail buildings along the north side of the main street. Stormwater management facilities along NC 55 along both entrances -- those have to go in to provide stormwater services, and they are being revised again in 2d to enhance the appearance to meet the new site design standards as far as the treatment of the walls. They are going to have a higher quality country keystone; it’s not your standard keystone block. It’s a nicer stone surface. They reduced the height of the walls to six feet, so they don’t have to be tiered. The final design of the amenity right here -- the main street comes down and terminates right at the edge of the BMP. The hardscape -- it is the intent to make that a visual draw into the community. They are planning on doing water features and really nice aesthetic tie-in with the plaza in front of lots 9 and 10, but those haven’t been submitted yet, so that’s still kind of outstanding. This is just to give you the idea of the architecture for the anchor tenants. The top image is the Frank’s Theater – a lot of flat lines, parapets, brick, integral colored concrete. It does meet the architect standards. The one below it is Field and Stream – a little more rustic feel, I guess.

Frantz: Awesome
Hales: The wood you see is actually not wood. It’s a wood grained concrete interesting siding product. It doesn’t count towards masonry, because it is a very thin siding product, but it’s interesting. The one below that is the golf galaxy standard retail, brick and a little bit of stone.

Robinson: Is it actually going to be blue?

Hales: It is going to be blue. It looks a little more intense there. If you look at the actual color samples in the plan

Robinson: One red building, one green building, one blue building?

Hales: Those colors tie-in somewhat to the accent colors used in phase 1 as well. And there is a pretty broad palette if you look at the site plan. There is a material palette in there. Those accent colors kind of tie throughout.

Robinson: Really?

Hales: Uhu

Adcock: You look skeptical; very skeptical.

Hales: The small buildings in front of the theater are in a standard gray pilasters – a little bit of a modern roof line. Going try to walk through fairly succinctly the traffic mitigations. There are a lot of them, so this would be an additive process, with each one staying on there as I pull it up. Obviously, the O’Kelly Chapel Road extension is required, and their applicant has proposed to complete that prior to the (inaudible) of phase 1. It’s already under construction and mostly built. (Inaudible) did not include a railroad crossing; that’s covered later in the discussion. There are improvements at the O’Kelly Chapel Road and 55 intersection. Those improvements would be made prior to the issuance of the c.o. in phase 1. That’s a signalized intersection, so there are some signal improvements as well as obviously constructing the westbound approach. The second signalized intersection on NC 55 is access number 1, which will line up with the future park site, and that’s an approximate location. It will be signalized, and that is scheduled to be complete prior to issuance of c.o. in phase 2b, which is the apartment complex. The right-in/right-out access number 2 -- that is also scheduled to be completed prior to a c.o. and the issuance of phase 2b. There is a second restricted movement access. It is a right-in only -- access number 9, which leads into the commercial portion. That is scheduled to be complete with 1st year within phase 2d, which that’s the one waiting for administrative approval, pending approval of this plan. There is also a right-in access south of O’Kelly Chapel Road, which is planned to be completed prior to issuance of c.o. in phase 1. That leads into the Harris Teeter side of the development. Moving on to O’Kelly Chapel Road -- there are two right-in/right-out accesses -- four and five -- halfway between the intersection with 55 and the proposed signalized intersection -- access number six. That’s the main entrance into both the north and south side. That’ll be a new signalized intersection -- pretty big. Then again there’s two smaller accesses restricted movements halfway between there and the railroad crossing. There are improvements proposed to NC 55 and Kit Creek, which is a little bit to the north of this site. Basically, there is additional storage -- lost my place -- widened eastbound approach and westbound approach is to provide additional storage. Restriping a southbound approach to show a shared through right movement is also offered prior issuance of c.o. in 2d, which is the retail component that we are looking at. From O’Kelly Chapel Road and Green Level Church Road the construction out there has outpaced even Google’s ability to keep up. That road has been realigned as a part of MI Homes’ project – you catch a very small piece shown over here as part of the Amberly residential component. MI Homes did a realignment there, and that is in place, so the applicant is not proposing to make any improvements identified in the traffic study for this intersection.

Robinson: Kevin, when will the signal go in there?
Hales: Do what?

Robinson: When will the signal go in there? There's accident after accident there. When will the signal go in?

Hales: I'm not aware of the signal timing. I don't - that wasn't in the

Jensen: A request for a signal has already been made to DOT and by MI Homes, and they're working on an agreement with NCDOT to start review of that signal. As soon as that's done and reviewed, they'll go ahead and bid it out and put a signal in. It should be forthcoming. I think that the agreement is probably going to be executed in next 30 days, and the design then will go out to bid by

Robinson: That's a long time to get a signal. So what are we looking at for a final date?

Jensen: Because the intersection isn't to its full configuration, it should be on a wood pole, so it should go fairly quickly. So the lead time on that's probably more of a 90 days -- 60 to 90 days rather than six months if we went with mast arms and metal poles.

Robinson: Okay, 60 to 90 days for wood poles. Then this big project is going in, and there is not going to be any improvements later to this intersection. You say it's not at full configuration, so it doesn't get the metal mast arms. So I guess my question is, we are putting a gigantic project right here. Won't it expand this to the full configuration, because this is going to be massively impacted. And then wouldn't it get metal mast arms at that time in conjunction with this project?

Jensen: They are doing some improvement on O'Kelly Chapel Road. They're four-laning it as it approaches Highway 55. There is also another development, the Evans Townhome project on the corner, that will be widening in the quadrant as well. We'll have actually widening to its full configuration in all quadrants except for the southwest corner of the intersection. There hasn't been any activity in that quadrant as of yet. No one's really saw interest in that yet, so there will be one corner that will not have its full configuration.

Robinson: So will any of these players be contributing to the future fund for the metal mast arms, or will the Town have to bear the burden of that cost?

Jensen: They haven't offered any condition that would contribute towards a payment towards a metal mast arm. That's something again in the future whenever that that last player comes in -- when that corner -- we would certainly like to get that configuration to its full mast arm generally at that point in time. And that would be considered then, but they have not offered anything of that nature for this off-site improvement now.

Bailey: Let me add. We have been in negotiation with the developer about a package of roadway improvements here. Staff actually recommended that we not proceed with some things at this location. We believe MI Homes and others with some future plans will make these improvements and probably do most of the conversion to the metal poles. I think you’ll see some information in the presentation later that will help clarify how we’re pulling that together.

Robinson: Okay. Thank you, Tim.

Hales: Moving farther east on O'Kelly Chapel Road at Alston Avenue, there were some minor improvements included there. Those improvements also appear in a couple of other traffic studies for improvements or for developments. Actually, one at the corner of Alston and O'Kelly Chapel Road, and I believe a day care at the corner of O'Kelly and Green Level Church. As I say, the applicant is not doing those, since they are covered by other developments. As also a requirement to install stop control along the southbound approach of Lewis Stephens actually in the RTP. That's scheduled to be done before c.o. in phase one. And then, as Tim mentioned
earlier, there’s been some negotiation with the applicant in regards to making improvements at NC 55, Morrisville Carpenter related to some of the railroad closures in the area up and down that corridor. Those are scheduled to be completed prior issuance of a c.o. in phase one, as well as improvements at NC 55 and Carpenter Fire Station Road. The big one is a little complex. Here’s the timing of the railroad crossing at O’Kelly Chapel Road. Obviously, there are numerous parties involved, the Town, the developer, NCDOT, CSX, so timing of that and how we allow them to move forward with development currently underway and still ensure that gets done in a timely manner has been a focus of a lot of discussion between the applicant and staff and DOT and CSX. So the current proposal before you, which staff has looked at and is agreeable with, is that that timing of that improvement is tied to the development of lots 3, 4, and then 9 through 14. Basically, that’s the outparcels along O’Kelly Chapel Road plus the few buildings remaining on the NC 55 frontage along the main street in phase two. The agreement was we would accept plans for three of those parcels -- there are eight parcels -- three of them will accept plans for and review them concurrently. And they cannot get approvals for those until they obtain all necessary approvals and encroachments for the O’Kelly crossing from CSX; they execute all necessary contracts; they satisfy all conditions preceding the CSX constructing the crossing; and they place funds in escrow to pay all costs associated with installation of the signalization of the O’Kelly crossing. Once all those conditions have been satisfied, c.o.’s may be issued for those three lots that we reviewed site plans for. They will come in now, and we’ll sit on them until all those conditions have been met. Once they are met, we will be able to move forward and issue c.o.’s. Once those conditions have been met, we’ll take the site plans for review for the remaining five lots. However c.o.’s may not be issued for those remaining five lots until the crossing is open to traffic and all conditions have been satisfied in regards to that. That’s how it is currently proposed. And I’m sure the applicant will provide a lot more detail than I did in regards to how that came and about and how they plan on executing it. That concludes staff’s presentation. This is basically an opportunity for council to look at the traffic generation for this overall development and see if the mitigations are appropriate. Thank you.

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

Brown: Thank mayor, members of council. My name is Jeff Brown. I have the pleasure of assisting Kite Realty and KRG on this matter. It’s late. It’s a complicated matter, but at the same time we hope to move through it quickly and be mindful of the lateness of the hour. With me tonight are Mark Jenkins, senior vice president of development for Kite Realty; and David George, who is the project senior project manager for Kite and for this project. Also Bill Derks of John R. McAdams, who is the project planning and engineer; and Christa Greene of Stantech, which is been involved in a lot of the review, also working with MAB on the transportation work that Mr. Hales just reviewed. As you can tell, it is a very involved project. You all know that. You’ve been aware of this; you’ve been a part of this. We really do have to commend and thank the staff for their efforts on that of putting it together. I think representative of that is the report that you received on something that has a lot of history and a lot of information. And so we really commend that report that Mr. Hales made, and we also thank Jerry Jensen and Lisa Glover for their efforts on this. I know it’s late. I don’t want to delay with just thanks, but I really think it’s warranted in this instance, because it is very, very involved. With that in mind, we do commend to the mayor and council the materials which have been provided and the report. We are going to be doing some referencing to the materials you already received as opposed to doing a lot of handouts, but I think the guts of this really does deal with sort of the transportation. And what we wanted to be able to do is review that. Obviously, we have six primary findings that are part of the ordinance provisions. And so we’ll try to phrase our questions and our testimony to meet those as well. As Kevin indicated and as in his well done staff report, there is a great deal of history here. A lot of approvals have already been made, including approval regarding sketch plans and things of that nature. And really this does provide us an opportunity not only to approve the phase 2c site plan and subdivision, but also to allow this master plan approach that’s part of the materials and the off-site improvements that are part of the very detailed materials -- to allow it to serve as a master plan to set out square footages of the types of drive-through window facilities that has
been reviewed, and allow that to be able to be approved administratively rather than piece by piece coming back to the council. In a way though at the same time, that has to adhere to the standards and limitations and parameters that has been reviewed in your staff report. So with that we will try to move things through things quickly. I’m going to call first on Bill Derks with McAdams to review some of what I might describe as the land planning portion of the six findings. And then Christa Greene a little bit to talk about some of the transportation aspects. And again we’ll try to move through it quickly, and certainly available to answer questions. I know the staff will help in that regard as well. So, Bill, if you would just briefly give your background and how you’re familiar with the project. I know you and McAdams have been involved in this for quite some time.

Derks: Sure, My name is Bill Derks. I’m actually a Cary resident. I’ve worked at McAdams for 16 years. BA from Kenyan College. Masters from Michigan State. I’ve been working in private land development in this area in this area for over 25 years. As I said, with McAdams for 16. I worked on this project as the project manager for the phase 1 submittal and approval process, and now for phases 2a, 2c, 2d as this project has been moving forward.

Brown: And just so again, you are very familiar with the obviously -- the Cary zoning plans, the Alston plan and things of that nature as well as part of ya’ll’s work?

Derks: Certainly become very familiar with the Alston plan as we’ve gone through this and developed the main street concept and all the provisions -- pedestrian, interconnectivity -- that are required in that plan. And work in several -- you hear us both in Cary and around the area -- familiar with the LDO and the requirements of that.

Brown: And you reviewed the very detailed report that Mr. Hales gave and the other materials, so you’re familiar with that. With that in mind, I move to item 1 of the criteria that references, as you know, Bill, the compliance plans with applicable requirements of ordinance. If you could just briefly give your view on that as an expert as to the compliance with that finding.

Derks: Certainly, in reading your report. I compliment Kevin on his summary. It’s a complicated project with approvals that happened early and the revisions that have gone on. His summary was right on spot. The development has gone through as we’ve been working with staff -- both planning, engineering, stormwater -- meets all the requirements of the LDO. Stormwater management for the entire project has been laid out and is coming in with each phase to address the impervious area and runoff on each phase. And so it is very much in compliance with all the applicable regulations.

Brown: One of the other items, as you know, is the item of the approval criteria that seeks to determine whether the plans adequately protect other property from adverse impacts. We have a lot of material -- even this particular item on the screen. We are just handing out another example map showing the site’s location in conjunction with other developments in the area and the property. And with that, Bill, if you would kind of of give us a sense of the nature of the site and how it might interact with the nearby properties.

(Handout is attached to and incorporated herein as Exhibit 6.)

Derks: You can look at the map – the familiarity with the site. The site is bounded on three sides by right-of-way, 540 to the south, Highway 55 to the west, CSX railroad right-of-way to the east, with RTP beyond that. Actually on the north is the Kit Creek, which has flood plain and stream buffer associated with it, so essentially is undevelopable property up at that end. The site has all the required perimeter buffers, streetscapes along those existing right-of-ways as well as the new O’Kelly Chapel Road that’s being constructed as part of the project. Stormwater management controls for detention and treatment of stormwater runoff to the required standards for Jordan Lake. Of course, meeting the Town’s lighting requirements, landscape requirements and everything else.
Brown: So no adverse effects that you see from the development or other properties?

Derks: Not at all.

Brown: Similarly the criteria in item number 3 references if the subdivision and site plans provide harmony and unity with the development of nearby properties. Again, Bill, if you could kind of outline why you believe these plans are in fact in harmony.

Derks: Again, essentially the site is surrounded by roads, RTP, office/industrial property to the east. The other properties are essentially undeveloped, but all lie within Alston Regional Activity Center. This project is being developed within those standards, and certainly will be in harmony and unity with the rest of the development as it comes in.

Brown: Another item that is important is the nature of the design elements of the site and how those relate to creating safe conditions with streets and otherwise for pedestrians and motorists. If you could weigh in on that item number 4 in the criteria.

Derks: The street sections, particularly in this phase 2c, 2d the north side of O'Kelly Chapel Road, meet all the main street standards laid out in the Alston Activity Center Plan. We met with staff of transportation, engineering, and the fire marshal to ensure the connectivity and access, but the main street concept certainly accommodates the pedestrian interconnectivity. There are multiple crosswalks -- raised crosswalks, raised roundabout -- to slow traffic down and provide for a safe interaction with pedestrian and vehicular traffic inside.

Brown: And again, all these comply with the Alston concept plan as well?

Derks: Absolutely

Brown: Similarly, you touched on this briefly, but the criteria that ensures we have safe ingress and egress for emergency vehicles. If you could just from a planning perspective describe that and how this plan satisfies those types of requirements.

Derks: Well again from what Kevin went through as he listed, there were nine access points into this. Certainly access into and out of the site for emergency vehicles is plentiful. Internally, the layout – again, street sections reviewed with fire marshal. Access to necessary distances within buildings for emergency and fire protection have been provided and have been reviewed and meet the requirements.

Brown: Alright. Thank you. Thank you, Bill. And if there are no questions from council we would like to ask Christa Greene of Stantech to come forward to address some of the transportation aspects. Thank you. Again we are trying to move forward with the clock on the wall over there. Realize it's getting late. Christa, just again we are going to touch on the really more transportation components of the approval. And if you could just again give your background, professional background and your involvement on the transportation aspects related to the Parkside Town Commons.

Greene: Sure. As he mentioned, my name is Christa Greene. I work for Stantech Consulting at 801 Jones Franklin Road in Raleigh. I am the senior transportation engineer in that office. I have over 22 years of experience in traffic engineering with an undergraduate and graduate degrees from NC State with concentration in transportation. I am a registered professional engineer in North Carolina. This project, as they mentioned, started in 2007. I have been working with Stantech since 2007. So I have been here since the very beginning but serving as a developer’s representative to just sort of oversee the Town’s consultant to work hand in hand with them. Have had great working relationships with Julie Green, Jerry, MAB. It’s just been a real good experience overall.
Brown: So with that regard you’re very familiar with MAB’s very thick report that that Kevin was also able to go through tonight and highlight.

Greene: Yes, as I said I’ve been here since the beginning, have reviewed the multiple reports, and I am very familiar with all the traffic aspects of the project.

Brown: One of the items I’ll pass out that was in the report to the council is this schedule here, which is the schedule of improvements for the different components. Mr. Hales went through that earlier with the various intersections highlighted. You’re familiar with what I’m handing out to the council which was exhibit D to their report?

(The handout is in the case file in the planning department according to the Records Retention and Disposition Schedule.)

Greene: Yes, I am.

Brown: If you could just talk about that report, that set of transportation improvements, as well as how the overall report was done in terms of its professional approach and the appropriateness of the assumptions, and things of that nature.

Greene: Sure. In reviewing the report I agree with the methodology. It was prepared following standards. It was an excellent report, and I’m in agreement with the recommended improvements tied along with the phasing plan that we’ll discuss in just a second. And also we’ve made sure that all the intersections recommended were designed to safety standards, too. So what he passed out was the phasing plan, as mentioned before was outlined in a most excellent manner. There are a lot of improvements. This is a big development. So it would be very difficult to do all the improvements at once, so we have looked at the different phases, which were outlined; looked at them in terms of how much development, what size, how many trucks are they going to generate – to sort of break them out and look what make sense. What improvements need to be built with each phase to mitigate the traffic from that, too. We’ve come up with a very comprehensive list that you have before you to outline our improvements that were recommended by MAB, and when they will be constructed as part of the phasing plan.

Brown: And this includes some items that Mr. Hales talked out in terms of the rail crossing in terms of how that mitigation was also done. And that also conforms with the overall approach that was taken in terms of the phasing.

Greene: Yes it does. So the construction of the rail crossing is tied in with what development can be built as he described.

Brown: Gotcha. So in short order when we talk about criteria number 6 of the ordinance that states that the proposed subdivision and site plans and in the instance the master plan that’s part of this development -- that those and off-site commitments -- that they provide for suitable mitigation of the traffic congestion to be generated by the development. If you could just kind of again give your summary.

Greene: Yes, no I agree that the recommend improvements as stated in the TIA will adequately mitigate the additional traffic generated by the development.

Brown: One or two other items that really relate a little bit to transportation that Bill Derks also touched on. Item number 4 of approval criteria talks about safe conditions for pedestrians and motorists as well. So again, if you from more of a transportation perspective, could deal with that in terms of (inaudible) standards and other things of that nature.

Greene: Yes, all the designs meet (inaudible) standards, and as he recommended that there is good connectively for the pedestrians. And with the multiple access points, talking about access
for emergency vehicles, too. Everything has been done to meet standards. There are cross
access, multiple ingress and egress to different parcels, too.

Brown: So again that also touches on number 5, dealing with emergency services vehicles.

Greene: Yes, emergency services vehicles are adequately provided for with this plan.

Brown: Great. Mayor, members of council, we tried in short order to have experts address what is
fairly voluminous material that's been provided. And again, we really appreciate the staff report,
which we thought was an excellent report, provided a lot of materials -- over some 127 pages of
various plans that are associated with this. But we are happy to answer questions. But we do
believe that we have been able to establish that the six findings that are important for your work
this evening have been met, and in particular, that the master plan and transportation aspects
have been addressed. Thank you. We don't want to belabor things, but at the same time we
definitely want to have an opportunity, and we really do commend the staff and the report as part
of the record tonight and as part of also helping to provide substantiation for the findings. Thank
you very much.

Weinbrecht: Thank you. At this time, I invite speakers who have been sworn in who wish to speak
in support of the application to approach the podium. Seeing none, I invite any cross examination
of any witnesses that have testified. Moving on, we'll now open the hearing to those who are
opposed to the request and invite the first speaker forward. Seeing no one, I'll call on Town staff
for any testimony they wish to add.

Hales: I'm not aware of any.

Weinbrecht: Okay, now I'll ask if there's anyone sworn in that has objections to any incompetent
evidence or testimony. None. Does either party or does this party believe we need to continue
tonight's hearing?

Brown: We do not.

Weinbrecht: Okay. I'm just going through my process here. We will now begin the deliberative
phase of the hearing and open it up to council members for questions or comments.

Bush: I have a couple of questions. Could you share with us the plan for the remainder of Louis
Stephens Road, where it goes south from this property?

Hales: It's in RTP's jurisdiction. I don't know that we have anything.

Bush: No, the Louis Stephens part that's in Cary.

Bailey: Any parts of Louis Stephens have been built within the Cary corporate limits. There is a
gap that's within Morrisville and Wake County. In the past we had some projects in our capital
plan that partially funded that. But as we moved forward and the economy got slower we sort of
abandoned those plans, and we have no funding for that project at this time. I'm aware that
Morrisville is working with North Carolina Department of Transportation to pave some of those
portions. But I don't have details about that or timing of that. But they are working to try to make
connection up to Breckinridge and right by the Partner Building and get that section paved. The
gap would not be closed with that project.

Bush: And, is it true that one of those signals in this exhibit D speaks to a signal at Louis
Stephens and O'Kelly Chapel -- correct?

Bailey: That's within RTP.
Bush: Oh, that one’s within RTP.

Hales: And I think right now it just talks about a stop control on the southbound approach for the time being.

Bush: Okay. Thank you.

Hales: Until everything goes through.

Bush: Yeah, I was wondering why there was a signal there when you couldn’t go south. Right? Because it dead ends right at 540 basically. I think no more road there would stop them. Also, could you speak a little bit to the timing of CSX? I’m not quite sure I understood where we are with that, because that seems like a vital component.

Bailey: That’s somewhat a separate issue. The timing is important, but remember it’s linked as some of the prior agreements that council has seen. It’s linked to our crossing in the Carpenter area and some of those closures and a package. We are still working with CSX. We are hopeful to make some changes to get our environmental process going on our crossing earlier and maybe conclude that sometime in summer ’14. Then we will begin our design. Again, that’s a bond project for us. We are trying to move that along. And we would probably seek permits from CSX collectively for that. That’s what’s caused sort of the delay and the inability to obtain the at-grade crossing. Parkside would love to proceed with that, but cannot get the permit to proceed.

Bush: So until that’s done -- make sure I understand it -- all entrance and egress out of Parkside Town Commons will all be off of 55. That’s the only way to get in. Is that correct?

Bailey: That’s correct. That’s why we looked very closely at the phasing and limited some of the remaining outparcels that could not get c.o.’ed until the crossing gets in place. That’s how we’ve looked at that package of improvements and how they’re timed.

Bush: Thank you.

Weinbrecht: Other questions? No comments? We will close the public comment portion and ask Mr. Hales to walk us through the motions.

Hales: For all the complicated history on this project, this is very simple decision. There’s no minor modifications requested by this development, so it’s a single vote up or down on the site plan. Standard development plan criteria apply. You’ve been doing them all night, so I don’t need to go through them again. One decision.

Weinbrecht: Alrighty

Robinson: Explain to me why we’re seeing this particular one. Is it because of the apartment complex portion of it?

Hales: Why we’re seeing this particular plan?

Robinson: Um-hum

Hales: The apartments are approved. They can build the apartments tomorrow.

Robinson: Okay. So why are we seeing this site plan?

Hales: It is the first plan that has come in since the change to the ordinance that’s over 100,000 square feet.
Robinson: Over a 100,000 square feet for this one. Okay; and we are suppose to be looking at all elements for just the fact that it’s harmonious? Are we supposed to be looking at the aesthetics and the fact that all these buildings each look very different? It looks like it might have this kind of eclectic look to the final product.

Hales: You are supposed to be evaluating whether or not it complies with all applicable requirements of the LDO.

Adcock: The entire project though, or the

Hales: You don’t have enough information to determine whether it’s fully compliant, and on a sketch plan level. But you are looking at Phase 2c for full plan approval. That’s architectural, stormwater, utilities, parking.

Adcock: Can you go back to the slide that shows the phases? Just so I can see it. I don’t actually have a question. I just want to look at it.

Robinson: I just want to make sure we understand this.

Hales: It’s complicated. You’re looking at a full plan approval on everything that is in cyan – bright blue.

Weinbrecht: Other questions?

Frantz: I kind of like the eclectic look myself. I mean we got tons of commercial areas in town where every building looks the same except for the sign.

Robinson: Yeah, I was just surprised you have your rustic building, you have your modern building, you have your art deco looking theater.

Hales: Remember, you are only looking at the anchors. There is a bunch of infill retail. This building -- yellow building -- connecting all those buildings hasn’t been designed yet. You’ve got all of 2d. A lot of architecture outside of the Field and Stream looks very similar to phase 1.

Robinson: Can you show me a picture of phase 1?

Hales: I cannot.

Robinson: You do not have that? Okay.

Frantz: But everything proposed does comply with our ordinances. Correct?

Hales: Everything proposed is consistent with the architectural standards of the community appearance manual.

Frantz: So even if we didn’t like it, not much we can do about it.

(Inaudible: Multiple people speaking simultaneously.)

Robinson: (Inaudible)... little colors that you tied all together.

Hales: There is a color palette for the overall development. It’s not just three colors for the overall development. It is a very extensive color palette. They’re all similar tones. The accents tend to be more jewel tone, the greens the blues, the red. It’s got Target red on it. It’s not Target red but very similar to Target red. It’s a desaturated red. The base field masonry – you’ve got three or four
different bricks and a couple of precast stone elements. You've got rustic stone elements. It's a very large project. There is a very large color palette.

Bush: Real quick question, because I think I know what it is. But that little box above that seems to be part of the Parkside Town Commons property -- Kite realty property -- is that the cool mountain bike area that was bought -- that land was purchased and given to the RTP Foundation, or is that something else?

Adcock: That empty parcel?

Hales: That's a piece of the property. They are not proposing to develop it. I don't know if it is the mountain bike piece or not.

(Inaudible comment from audience)

Bush: That's the mountain bike easement? So will there be will be a way to get there from the

Weinbrecht: We need to hold off a second. Mr. Silverstein, do you want to help us out here? We need to focus on

Silverstein: Really, in a quasi-judicial proceeding you're not supposed to have dialog with someone in the audience.

Bush: I wasn't. I was asking -- I was asking Mr. Hales.

Silverstein: Okay

Hales: It will be at the base -- not sure what the height is there. It is a fairly significant retaining wall. The site sits above the train tracks. So there would be no easy way to get across there. They would need to go down to the railroad crossing.

(Inaudible: Multiple people speaking simultaneously.)

Robinson: One thing that made this rezoning when it first came through unique is that it reserved a little space in case that rail corridor ever became a commuter rail line, which is obviously talking like way, way, way in the future. But is that gone completely now from the site plan? Like it got lost somewhere along the way?

Hales: I'm not aware of any additional width to the corridor that's in the Alston plan. It's your standard 100 foot.

Robinson: It was on this rezoning application originally. It said that it would have this little area that would be reserved for rail -- like a rail stop if that ever became a rail corridor.

Hales: Which rezoning? This plan has a base zoning of ORD and I that's been out there for ages. And then the Alston plan sits on top of that. And, there's nothing in the Alston plan that talks about additional rail corridor that I'm aware of.

Robinson: Okay. I don't know if one of the staff member's who's been here a long time

Bailey: I seem to remember some discussion when some of these plans came through a process. However, I think we would have ample room, because if we actually had a platform, it would be within the rail right-of-way. So we would have room to do that. And the density of the spot – it would allow a lot of people to walk to it. You wouldn't need a lot of parking. There's parking in the project itself that could serve that need if it was something that came together ultimately.
Robinson: Okay; thank you.

Weinbrecht? Are we ready for a motion?

Frantz: It’s this one right here, right?

Weinbrecht: Think so. Mr. Hales will correct us if we’re wrong.

Frantz: If I get it wrong, stop me. I make a motion to approve the subdivision and site plan for the reasons discussed. I move that we approve the proposed subdivision and site plan with the conditions as stated below, as it meets the approval criteria in section 3.9.2(i). 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.

Yerha: Second

Weinbrecht: Motion and second. Discussion?

Frantz: The word subdivision kept making me think I was reading the wrong one.

Weinbrecht: Okay. All in favor please say aye.

(Multiple say aye simultaneously.)

Weinbrecht: Any opposed? Motion carries unanimously.

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E. CLOSED SESSION

ACTION:
Motion: At 10:35 p.m., Robinson read the following motion to conduct a closed session.
Second: Adcock
Vote: Frantz voted no; everyone else voted aye. Motion carried by a vote of 6-1.

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

1. CONSULT WITH ATTORNEYS EMPLOYED BY AND/OR RETAINED BY THE TOWN IN ORDER TO PRESERVE THE ATTORNEY-CLIENT PRIVILEGE BETWEEN THE ATTORNEYS AND THE TOWN.
2. TO PREVENT THE DISCLOSURE OF INFORMATION THAT IS MADE PRIVILEGED OR CONFIDENTIAL BY G.S. 143-318.10(E).

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F. ADJOURN

ACTION:
Motion: At 10:55 p.m., Smith moved to return to open session and adjourn.
Second: Frantz
Vote: Unanimous