

Cary Town Council
Thursday, June 14, 2012
6:30 PM
Council Chambers
316 N. Academy Street, Cary, N.C.

Present: Mayor Harold Weinbrecht, Mayor Pro Tem Gale Adcock, Council Members Don Frantz, Jennifer Robinson, Julie Robison and Jack Smith

Absent: Council Member Lori Bush

A. COMMENCEMENT

1. Call to Order (**Mayor Weinbrecht**)

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

2. Ceremonial Opening (**Mrs. Adcock**)

Adcock provided the ceremonial opening.

3. Adoption of agenda (**Town Council**)

ACTION: Frantz moved to adopt the agenda. Adcock provided the second; council granted unanimous approval.

B. CONSENT AGENDA

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

- a. Consideration of approval of the minutes of the regular town council meeting held on May 24, 2012, the minutes of the special meetings held on May 22 and June 5, 2012, and the minutes of the work sessions held May 15 and May 24, 2012. (**Town Council**)

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

b. **LDO Amendments – Round 23 Item G (Electronic Gaming Operations and Machines (PL12-033))**

Subject: Request to set a public hearing for the June 28, 2012 council meeting on this issue.

Speaker: Ms. Mary Beerman

STAFF REPORT

Town Council Meeting, June 14, 2012

LDO Amendments – Round 23 Item G (Electronic Gaming Operations and Machines (PL12-033))

Add an item to the Land Development Ordinance Amendment Round 23, scheduled for public hearing on June 28, 2012, to address electronic gaming operations and electronic gaming machines

Speaker: Mr. Rob Wilson

From: Jeffery G. Ulma, AICP, Planning Director
Prepared by: Mary W. Beerman, AICP, Senior Planner
Approved by: Benjamin T. Shivar, Town Manager
Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

Land Development Ordinance Amendment Round 23, scheduled for public hearing on June 28, 2012, includes the following Items:

- Item A: Life Care and Nursing Home Density
- Item B: Home Occupations
- Item C: Signs
- Item D: Stormwater Rules
- Item E: Conditional Rezoning
- Item F: Clothing Donation Drop-off Stations
- Item H: Minor Revisions and Clarification

Staff recommends adding Item G (Electronic Gaming Operations and Machines) to LDO Amendment Round 23.

TENTATIVE SCHEDULE:

Planning and Development Committee	January 19, 2012 (Item G) May 17, 2012 (Items A-F, and H)
Advertisements in <u>The Cary News</u>	June 13, 2012 <i>June 20, 2012*</i>
Public Hearing	<i>June 28, 2012*</i>
Planning and Zoning Board Work Session	<i>July 30, 2012*</i>
Planning and Zoning Board Meeting	<i>August 20, 2012*</i>
Final Action by Town Council	<i>September 13 or 27, 2012*</i>
Effective	Upon Adoption

* Italicized dates are tentative.

Background

Electronic gaming operations are also referred to as internet sweepstakes businesses, business centers, or internet cafes. They have become a growing industry in North Carolina and the southeast. State legislation passed in 2010 that attempted to prohibit certain types of electronic gaming operations was recently overturned by the North Carolina Court of Appeals; the case has been appealed to the North Carolina Supreme Court. There have been several inquiries and requests from companies wishing to locate an electronic gaming operation in Cary in the past year. The Town's Land Development Ordinance does not specifically address this type of use.

The proposed amendment will allow electronic gaming operations in the General Commercial (GC) and Industrial (I) zoning districts, and in the portion of the Office/Research and Development (ORD) district within the Airport Overlay, subject to use-specific standards. Proposed standards include: a 500-foot separation from any residence or residentially zoned property, religious assembly, licensed day care facility, public or private school, or another electronic gaming

operation; parking standards based on the amount of floor area and/or the number of machines; and no serving of alcohol.

The proposed amendment will also allow electronic gaming operations in the Commercial (COM) sub-district of the Town Center, provided there is no serving of alcohol. Parking standards are also proposed based on the amount of floor area and/or the number of machines.

Up to four electronic gaming machines will be allowed as an accessory use to any legal conforming principal use (other than an Electronic Gaming Operation) in the General Commercial (GC) zoning district, and in the Commercial (COM) sub-district of the Town Center. The use-specific standards applicable to an Electronic Gaming Operation as a principal use will not apply where electronic gaming machines are allowed as an accessory use.

Approval of a Zoning Compliance Permit is proposed for electronic gaming operations, as well as electronic gaming machines allowed as an accessory use. Section 3.26 (Zoning Compliance Permit), that applies only to family care homes and group homes, has been reorganized and revised so it can be applied to electronic gaming operations and other uses.

Proposed Text:

TABLE 5.1-1: TABLE OF PERMITTED USES - GENERAL USE DISTRICTS (EXCEPT TC & CT)																			
P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit																			
Use Class is listed for determining the type of required perimeter buffers, and is repeated in Section 7.2																			
Use Category	Use Type and [Use Class]	RESIDENTIAL							NON-RESIDENTIAL					MIXED USE OVERLAY DISTRICT			Use-Specific Stds		
		R80	R40	R20	R12	R8	TR	RMF	RR	OI	GC	ORD	I	NC	CC	RC			
COMMERCIAL USES																			
<u>Recreation/ Entertainment, Indoor</u>	<u>Electronic Gaming Operation [6]</u>												<u>PZ</u>	<u>PZ</u>	<u>PZ</u>				<u>5.2.3(P)</u>
ACCESSORY USES																			
<u>Accessory Uses</u>	<u>Electronic Gaming Machine [6]</u>												<u>AZ</u>						<u>5.3.4(P)</u>

TABLE 5.1-2: TABLE OF TOWN CENTER (TC) DISTRICT USES

P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit

Use Category	Use Type	HMXD	MXD	HDR Mid-Rise	MXDR	HDR Garden	MDR	LDR	LDR-12	CB&R	COM	CLI	OFC/INS	INS	OFC/IND	Use Specific Stds
COMMERCIAL USES																
<u>Recreation/ Entertainment, Indoor</u>	<u>Electronic Gaming Operation</u>										PZ					5.2.3(P)
ACCESSORY USES																
<u>Accessory Uses</u>	<u>Electronic Gaming Machine</u>										AZ					5.3.4(O)

5.2.3 USE SPECIFIC STANDARDS - Commercial Uses

(P) [Reserved] Electronic Gaming Operation

- (1) In the GC, ORD and I zoning districts, such use shall be separated by a minimum of 500 feet from any residence and/or residentially-zoned property, religious assembly, licensed day care facility, public or private school, or another electronic gaming operation. The 500-foot distance shall be measured on a straight line from property line to property line, with no consideration as to intervening structures, roads, or land forms.
- (2) Such use shall be allowed only in the portion of the ORD district within the Airport Overlay District.
- (3) No alcohol may be served in the establishment.

5.3.4 ACCESSORY USES AND STRUCTURES Accessory Uses and Structures Allowed

(P) Electronic Gaming Machines

Four or fewer electronic gaming machines shall be permitted as an accessory use to any legal conforming principal use other than an Electronic Gaming Operation.

7.8.2 OFF-STREET PARKING AND LOADING – Off-Street Parking Space Requirements

(D) Required Off-street Parking Spaces

<i>Portion of TABLE 7.8-1: OFF-STREET PARKING SCHEDULE "A"</i>			
<i>("du" = dwelling unit; "sf" = square feet)</i>			
	Land Use	Number of Motor Vehicle Spaces	Number of Bike Spaces
COMMERCIAL USES (NOTE: Motor vehicle spaces listed for commercial uses are maximums. Refer to Section 7.8.2[C][4] for exceptions to this requirement.)			
Recreation/ Entertainment, Indoor	Amusement establishment	One per each 200 square feet or one per every three persons of maximum fire-rated capacity*	Three racks, or one rack per 100 auto spaces*
Recreation/ Entertainment, Indoor	Commercial indoor/outdoor recreational facilities, general	One per every three persons of maximum fire-rated capacity	Three racks, or one rack per 100 auto spaces*
<u>Recreation/ Entertainment, Indoor</u>	<u>Electronic Gaming Operation</u>	<u>One per each 200 square feet or one per every three persons of maximum fire-rated capacity or one per electronic gaming machine*</u>	<u>Three racks or one rack per 100 auto spaces*</u>

* Whichever number is greater

12.3.4 USE CLASSIFICATIONS - Commercial Uses

(N) Electronic Gaming Operation

Any business or enterprise where persons utilize electronic machines, including but not limited to computers and gaming terminals, to conduct games of chance or sweepstakes, and where cash, merchandise or anything else of value is redeemed or otherwise distributed or placed on an account or other record, whether the value of such distribution is determined by electronic games played or by predetermined odds. Electronic gaming operations may include, but are not limited to, internet

cafes, internet sweepstakes, electronic gaming machines/operations, cybercafés, business centers, or by whatever terminology such establishment might be known. Electronic gaming operation does not include any lottery approved by the State of North Carolina.

12.4 OTHER KEY TERMS DEFINED

ELECTRONIC GAMING MACHINE

An electronic machine, including but not limited to computers and gaming terminals, used to conduct games of chance or sweepstakes in which cash, merchandise or anything else of value is redeemed or otherwise distributed or placed on an account or other record, whether the value of such distribution is determined by electronic games played or by predetermined odds.

SWEEPSTAKES

Any game, advertising scheme or plan, or other promotion, which, with or without payment of any consideration, a person may enter to win or become eligible to receive any prize, including cash, merchandise, or anything else of value, the determination of which is based on chance.

3.26 ZONING COMPLIANCE PERMIT

3.26.1 Applicability

A Zoning Compliance Permit shall be required prior to operation of certain permitted principal or accessory uses as set forth in Tables 5.1-1, 5.1-2 or 5.1-4. These uses may be subject to use-specific standards which require approval procedures, research, monitoring or other aspects of project review to ensure compliance with such standards, including standards that require separation between the proposed use and another use. It shall be unlawful to operate these uses until the Planning Director has issued the zoning compliance permit.

3.26.2 Approval Procedures

(A) Submittal

Applications for a zoning compliance permit shall be submitted to the Planning Director. The Planning Director shall prescribe the form(s) on which such applications are made, and shall prescribe any material that may reasonably be required to determine compliance with this Ordinance. No application shall be accepted by the Planning Director unless it complies with such submittal requirements. Applications that are not complete shall be returned to the applicant with notation of deficiencies.

(B) Planning Director Decision

The Planning Director shall take final action on the application. Final action on an application shall be based on compliance with the use-specific standards of Section 5.2 applicable to the proposed use, as well as other applicable provisions of this Ordinance.

(C) Actions Subsequent to Decision

In the case of approval, the Planning Director shall issue the zoning compliance permit. In the case of denial of an application, the Planning Director shall notify the applicant of the reasons for such denial and the applicant may appeal the decision of the Planning Director pursuant to Section 3.21 of this Ordinance.

3.26.3 Additional Provisions Applicable to Specific Uses

(A) Group Homes and Family Care Home

In addition to or as an alternative to the option to appeal the decision of the Planning Director per Section 3.26.2(C), the applicant may request approval of a special exception by the Zoning Board of Adjustment pursuant to Section 3.25 of this Ordinance.

3.26.1 Applicability

It shall be unlawful to operate a group home or family care home until the Planning Director has issued for such action a zoning compliance permit, certifying that such activity complies with Section 5.2.1(D)(1) or 5.2.1(D)(2) of this Ordinance, whichever is applicable.

3.26.2 Procedures

(A) Submittal

Applications for a zoning compliance permit shall be submitted to the Planning Director. The Planning Director shall prescribe the form(s) on which such applications are made, and shall prescribe any material that may reasonably be required to determine compliance with this Ordinance. No application shall be accepted by the Planning Director unless it complies with such submittal requirements. Applications that are not complete shall be returned to the applicant with notation of deficiencies.

(B) Planning Director Decision

The Planning Director shall take final action on the application. Final action on an application shall be based solely on compliance with Sections 5.2.1(D)(1) or 5.2.1(D)(2) of this Ordinance, whichever is applicable. Final action shall be taken within five working days of acceptance of the application, or within such further time as consented to in writing by the applicant.

(C) Actions Subsequent to Decision

In the case of approval, the Planning Director shall issue the zoning compliance permit. In the case of denial of an application, the Planning Director shall notify the applicant of the reasons for such denial and the applicant may appeal the decision of the Planning Director pursuant to Section 3.21 of this Ordinance or request approval of a special exception by the Zoning Board of Adjustment pursuant to Section 3.23 of this Ordinance.

Fiscal Impact

Although LDO amendments can have a cumulative impact on staff resources, in this particular case, staff believes that the overall impact of the proposed amendment will have a nominal impact and can be readily absorbed by existing staff.

Staff Recommendation

Staff recommends Town Council set a public hearing date of June 28, 2012, for the proposed amendment to address electronic gaming operations and electronic gaming machines, so that it may be included as an item in Land Development Ordinance Amendment Round 23.

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

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

- a. **LDO Amendments - Round 21 (Recreation Area Funds)**

Subject: Consideration of proposed amendments to the Land Development Ordinance regarding dedication of land for parks and recreational area or payment of funds in lieu thereof and to require a recreation fund payment, or payment and land dedication combination, for multi-family development.

Planning & Zoning Board Recommendation: Unanimously recommended approval

Proposed Council Action: Council may take action

Speaker: Mr. Doug McRaine

The purpose of this item is to consider proposed amendments to the Land Development Ordinance to implement a recreation fund requirement, or combination of funds and land, for new multi-family development. Staff also proposes amendments to update the existing ordinance (regarding land dedication and payment of funds for subdivided residential subdivisions) to provide consistency with statutory language. The proposed amendments have been developed and evaluated for consistency with the Comprehensive Plan, and the opportunity for public review and comment has been provided in accordance with Section 3.4 of the Land Development Ordinance.

OVERVIEW

Schedule for Round 21 LDO Amendments

Planning and Development Committee	March 2, 2012
Advertisements in <u>The Cary News</u>	April 4 and 11, 2012
Public Hearing	April 19, 2012
Planning and Zoning Board Work Session	April 30, 2012
Planning and Zoning Board Meeting	May 21, 2012
Final Action by Town Council	June 14, 2012
Effective	<i>July 1, 2012</i>

* Italicized dates are tentative.

Proposed Land Development Ordinance Amendments

The proposed amendment to the LDO will require developers of multi-family residential development to provide recreation funds, or a combination of land and funds, to the Town.

In 2007, special legislation enacted by the North Carolina General Assembly was passed giving the Town of Cary authority to require developers of multi-family units to provide recreational area funds to the Town, or a combination of funds and land dedication. This will allow the Town to acquire recreational land or areas to serve the multi-family residential development or other multi-family developments or residential subdivisions in the immediate area. Based on direction provided by the Town Council, staff and the consultant have prepared draft Land Development Ordinance amendments to implement the special legislation and to update the existing ordinance regarding residential subdivisions for consistency with statutory language.

SUMMARY OF PROCESS AND ACTIONS TO-DATE

PUBLIC HEARING COMMENTS (April 19, 2012)

The Town Council public hearing was held on April 19, 2012. Staff and the consultant presented the proposed LDO amendments. Council asked for clarification on the basis for using 65 percent of the single family recreation fund requirement to calculate the multi-family fund requirement. Staff explained that while a fund requirement equal to 80 percent of the single family requirement could be justified, Council could reduce that percentage to provide a buffer. Council chose 65

percent, due in part to national averages that more closely followed 65 percent. Council also asked about the timing of implementation. Staff indicated that site/subdivision plan applications submitted on or after July 1, 2012 would be subject to the funds requirement. No citizens spoke about the proposed amendments.

PLANNING AND ZONING BOARD WORK SESSION (*March 30, 2012*)

The Planning and Zoning Board held a work session on March 30, 2012 to discuss the proposed amendments. The board asked whether the proposed fund requirement would be waived for affordable housing multi-family developments or for multi-family developments within the downtown Business Improvement District. Staff indicated that the funds cannot be waived, but the Town can make the payment of funds in these cases if Council chooses to do so. It was also asked what the proposed multi-family payment per unit (\$2,384) represented as a percentage of the overall cost to develop a unit of multi-family residential. While staff does not have access to actual development cost data, a very general approximation was derived by determining the average tax value per unit of a few more recently developed apartment communities in Cary. Based on those tax values, the proposed fund requirement of \$2,384 per unit is approximately 2.1 percent of the tax value per unit. The five-year average single family fund requirement of \$3,667 is 1.3 percent of the median owner-occupied household value of \$289,000 indicated in the 2010 Census data. Board members asked the amount of funds that would have been collected by the Town last year if the multi-family fund requirement had been in place at that time. Site plans were approved in 2011 for 516 multi-family units; if building permits were pulled for all 516 (payment of funds would be required at issuance of building permit), then that would have resulted in \$1,230,144 total funds collected. No site plans for multi-family development have been approved to-date for 2012.

CHANGES AFTER THE PLANNING AND ZONING BOARD WORK SESSION

Minor adjustments have been incorporated in the proposed text amendments to improve clarity and consistency. One of those clarifications is that the five-year rolling average shall be based on those subdivided developments for which valuations were made and funds were assessed (see corresponding adjustment to proposed LDO wording in the text below). A minor increase in the proposed multi-family fund requirement for FY 2013 resulted in a fee of \$2,384 per unit (as presented at the Planning and Zoning Board work session) instead of the \$2,353 (as presented at the public hearing).

PLANNING AND ZONING BOARD MEETING (*May 21, 2012*)

The Planning and Zoning Board discussed the fact that the proposed fund requirements cannot be waived for affordable housing projects or projects in the proposed Business Improvement District, but council can choose to have the Town pay these funds. Discussions also included funds being due at issuance of a building permit versus time of subdivision plat approval as is done for subdivided residential, the fact that 65 percent of the subdivided residential land dedication requirement of one-thirty-fifth of an acre per unit translates to one-fifty-fifth of an acre per unit, and that this would be the land dedication requirement for multi-family should the Town choose to accept a land dedication. There was also discussion about how the multi-family fund requirement per unit related to the overall value of a multi-family unit compared to how the subdivided residential fund requirement related to the value of a subdivided residential unit, as well as the assumption that these costs will likely be passed on to purchasers or renters of the residential units.

The Planning and Zoning Board recommended approval of the proposed LDO amendments by a vote of 9-0.

FISCAL IMPACT

Due to the variability of development patterns, the amounts of actual recreation funds and/or land dedications are not easily predicted. Any revenues that materialize will be accounted for in the general capital reserve and be utilized as a funding source for future appropriations to applicable PRCR capital projects.

STAFF RECOMMENDATION

Staff recommends the Town Council approve the Round 21 LDO Amendment (Recreation Area Funds).

PROPOSED LDO AMENDMENT TEXT

8.2 STANDARDS FOR SUBDIVISIONS AND USES REQUIRING SITE PLANS

8.2.3 Dedication Land for Parks and Greenways

General Provisions

The subdivider of land for residential or non-residential purposes shall be required to dedicate a portion of land or pay a fee make a payment-in-lieu thereof, for public park and/or greenway development, to serve the recreational needs of the residents of the subdivision or development and/or provide connectivity. The dedication of land shall consist of two categories: parks and greenways.

(1) *Park Dedication*

~~Lands dedicated for public park development shall be based on any residential development of four or more units (see the provisions of the Condominium Act, N.C. Gen. Stat. Chapter 47c). Developers shall dedicate a portion of such land being subdivided for residential purposes shall be dedicated or pay a fee in lieu thereof, in accordance with this section for public park development, to serve the recreational needs of the residents of the subdivision or development. immediate neighborhood, except where payment of funds in lieu of land dedication is approved pursuant to Section 8.2.4 of this Ordinance. Developers of multi-family dwelling units not requiring subdivision plan approval shall provide funds whereby the town may acquire recreational land or areas to serve the development or more than one multi-family development or residential subdivision, except where dedication of land is approved, pursuant to Section 8.2.4 of this Ordinance.~~

(2) *Greenway Dedication*

Lands granted for public greenway development will be required for both residential and non-residential development for those locations recommended in the most recently approved Town of Cary's Parks, Recreation and Cultural Resources Facilities Master Plan for park and greenway development (or any proceeding plan addendums).

~~(3) *Multi-Family Dwelling Units*~~

~~Multi-family dwelling units do not have to comply with the parkland dedication requirements. These dwellings are required to address greenway dedication as well as reserve open space for use in the development based on the requirements of this section.~~

(B) Amount of Parkland to be Dedicated

(1) *General Requirement*

At least one-thirty-fifth of an acre shall be dedicated for each ~~traditional~~-single family dwelling unit planned or proposed ~~in the subdivision plat or development, on the Planned Development master plan, Mixed Use District preliminary development plan, or reflected on a subdivision plat,~~ except that any land to be so dedicated that lies within the ~~Flood Hazard Area~~ FEMA 100-year floodplain, wetlands, regulated stream buffers, or that has slopes greater than 15 percent shall be dedicated at a rate of at least one-twentieth of an acre per dwelling unit; such areas shall be reflected on the subdivision plat for the dedicated parcel.

(2) Planned Developments

- (a) For planned developments, the lands dedicated under this section may be credited toward the ~~open space,~~ park, and recreation land requirements set forth in Section 8.2.4 of this Ordinance. Planned Developments shall dedicate public parklands in accordance with Table 8.2-1 below. The parkland dedication requirement shall be capped at 20 acres for Planned Developments.

TABLE 8.1-2: AMOUNT OF REQUIRED DEDICATED RECREATION LAND FOR PLANNED DEVELOPMENTS			
Number of Acres in Development	Percent of Development in Open Space	Average Gross Density	Amount of Required Dedicated Recreation Land per Owned Unit
10 to 49	5.0	0 to 4 units/acre	Payment in-lieu of dedication only to be applied at the equivalent value of 1/35 acre per unit, not to exceed 20 acres
10 to 49	5.0	4.1 to 8 units/acre	Payment in-lieu of dedication only to be applied at the equivalent value of 1/35 acre per unit, not to exceed 20 acres
51 to 75	7.5	0 to 4 units/acre	1/35 acre per unit, not to exceed 20 acres
51 to 75	7.5	4.1 to 8 units/acre	1/35 acre per unit, not to exceed 20 acres
76 and above	10.0	0 to 4 units/acre	1/35 acre per unit, not to exceed 20 acres
76 to 100	10.0	4.1 to 8 units/acre	1/35 acre per unit, not to exceed 20 acres
101 to 200	12.5	4.1 to 8 units/acre	1/35 acre per unit, not to exceed 20 acres
201 and above	15.0	4.1 to 8 units/acre	1/35 acre per unit, not to exceed 20 acres

- (b) ...
(c) ...
(d) ...
(e) ...

(C) Nature of Parkland to be Dedicated

Except as otherwise required by the Town Council at the time of Planned Development master plan approval, site and/or subdivision plan approval, or Mixed Use District preliminary development plan approval, all dedications of land shall

meet the following criteria. These criteria should be considered general guidelines to ensure that the dedication of land is suitable for park development.

- (1) **Unity...**
- (2) **Usability...**
- (3) **Shape...**
- (4) **Location...**
- (5) **Access...**
- (6) **Topography...**
- (7) **Dedication of Lakes...**

(b) Its construction shall comply with the latest versions of Stormwater Best Management Practices and Dam Operation and Safety Manual by the North Carolina Department of Environmental and Natural Resources where applicable, and shall include a primary spillway, emergency spillway, and drain, and all materials shall meet Town specifications.

(D) Dedication of Greenway Land

- (1) Easement dedication for greenway purposes is a separate requirement from parkland dedication, though the land dedicated for greenway purposes may be counted towards parkland dedication requirements, except for easements dedicated for multi-use trails [as indicated in Section 7.10.4 (C)].
- (2) Locations of proposed greenways will be based on the currently approved Town's Parks, Recreation and Cultural Resources Master Plan.
- (3) If the currently adopted master plan for the Town of Cary indicates a future greenway through a proposed development, whether residential or non-residential, a strip of greenway land through this area shall be dedicated to the Town, at a minimum of 30 feet, but not to exceed 50 feet in width; widths of easements may be reduced to 20 feet in those cases where the developer is constructing the greenway trail. Widths of greenway easements for multi-use trails [see 7.10.4 (C)] shall be determined by the Parks, Recreation and Cultural Resources ~~staff~~ Director.

(E) Procedure for Dedication of Parkland and Greenway Land

The dedication of such land shall be reviewed and approved ~~as part of the preliminary plat or, in the case of planned development, the master plan at the time of Planned Development master plan approval, site and/or subdivision plan approval, or Mixed Use District preliminary development plan approval as applicable.~~ The ~~sub-divider~~ applicant shall designate on the ~~preliminary subdivision plat and the master applicable plan, if any, the area or areas of land to be dedicated pursuant to this section. Where FEMA 100-year floodplain, regulated stream buffers, slopes greater than 15 percent, or wetlands falling under the jurisdiction of State or Federal agencies have been certified to exist on the property, the preliminary subdivision plat or the master plan applicable plan shall also identify the boundaries of such areas wetlands.~~ Upon receipt of the ~~preliminary subdivision plat or the master applicable plan, the Planning Director shall submit a copy thereof to the Director of Parks, Recreation and Cultural Resources for review by the Parks, Recreation and Cultural Resources Advisory Board. If the development in consideration is to be approved administratively, the recommendation of the Director of Parks, Recreation and Cultural Resources shall be submitted to the Planning Department.~~

(F) Submission of Deed and Survey

Unless otherwise stipulated in a planned development master plan or Mixed Use District preliminary development plan, or required by law, an executed general warranty deed, free and clear of all liens, encumbrances and restrictive covenants, conveying the land to the Town of Cary, a reproducible paper boundary survey, shall be submitted no later than two years after the approval of the ~~initial site/and or subdivision plan~~ site plan, Planned Development master plan, Mixed Use District preliminary development plan, or prior to the issuance of 50 percent of the Certificates of Occupancy for the development (based on approved site/subdivision plans and approved master plan), whichever is earlier. The Town Council may grant an extension of time.

~~(G)~~ — Reserved Land

~~Planned Developments with more than 700 approved residential units may be required by the Town Council to reserve a maximum of 10 acres in addition to the dedication requirements in Section 8.2.3(B) for purchase by the Town as parkland. This land shall remain reserved until such time as 50 percent of the Certificates of Occupancy are issued for residential units approved in the initial Master Land Use Plan for the Planned Development unless otherwise approved by the Town Council. For Planned Developments existing on October 28, 1993, any additional land added to the Planned Developments shall be treated as a new Planned Development for the purposes of calculating the land dedication requirements. Except as otherwise approved by Town Council, the reserved land shall meet the following criteria:~~

~~(1)~~ — Location

~~The reserved land shall be contiguous with any non-flood plain portion of the dedicated parkland; and~~

~~(2)~~ — Usability

~~The total reserved tract shall be outside the Flood Hazard Area, alluvial soils, lakes and other water bodies, and wetlands subject to Federal or State regulatory jurisdiction, and shall not include Urban Transition Buffers; and~~

~~(3)~~ — Shape

~~The reserved land shall comply with the requirements of Section 8.2.3(C)(3); and~~

~~(4)~~ — Topography

~~The reserved land shall comply with the requirements of Section 8.2.3(C)(6).~~

~~(H)~~ — Purchase Price of Reserved Land

~~The Town may purchase all or any portion of the reserved land. The purchase price shall be based upon the value of the land on the date the Master Land Use Plan is approved by the Town Council. Any disagreements as to the purchase price between the Town and the planned unit development applicant shall be resolved in the same manner as payment-in-lieu disputes according to the procedure found in Section 8.2.4(E).~~

NOTE: The existing Section 8.2.4, shown below in strike-through text, is proposed to be deleted and replaced with a new Section 8.2.4, as shown in the text that follows.

8.2.4 — Payments of Fees in Lieu of Land Dedication

(A) — General

The payment of fees, in lieu of the dedication of land under Section 8.2.3 above, may occur at the request of the sub divider or developer. The payment of fees in lieu of land dedication also may be required by the Town Council at the time of preliminary plat approval, or master land use plan approval in the case of a Planned Development, upon finding that all or part of the land required to be dedicated under Section 8.2.3 is not suitable for public recreation and open space purposes, or upon finding that the recreational needs of the proposed development can be met by other park, greenway, or recreational facilities planned or constructed by the Town within reasonable proximity to the development, or upon finding that existing parkland is adequate to serve the development.

(B) — Procedure for Approval

The payment of such fees in lieu of land dedication shall be reviewed and approved as part of the preliminary plat or, in the case of Planned Development, the master land use plan. Any sub divider or developer wishing to make such payment shall attach to the application for preliminary plat approval, or the application for approval of the master land use plan for a Planned Development, a letter requesting the payment of fees in lieu of land dedication. Upon receipt of the preliminary subdivision plat or the master land use plan, the Planning Director shall submit a copy thereof, along with the letter, to the Director of Parks, Recreation and Cultural Resources for review by the Parks, Recreation and Cultural Resources Advisory Board. The Parks, Recreation and Cultural Resources Board shall submit any and all recommendations concerning the payment of fees in lieu of dedication to the Planning and Zoning Board. In the event of a dispute between an applicant who wants to make payment in lieu, and a recommendation by the Parks, Recreation and Cultural Resources Board that facilities should be provided, the Town Council shall make the final determination.

(C) — Time of Payment

The fees in lieu of dedication shall be paid prior to recording any lot(s) in the subdivision to which the fees relate.

(D) — Amount of Payment

- (1)** — Where the payment of cash to the Town is to be made in lieu of dedication of land as permitted by this section, the sub divider/developer shall provide to the Town, at the sub divider/developer's cost/expense, a current written appraisal of the fair market value of the land to be annexed, zoned, platted, or developed, as the case may be.
- (2)** — Each appraisal shall be performed by a North Carolina licensed real estate appraiser.
- (3)** — The Parks, Recreation and Cultural Resources Director may waive the requirement of an appraisal where the sub divider/developer provides to the Town documentation evidencing the fair market value of the subject property, which in the opinion of the Parks, Recreation and Cultural Resources Director reasonably estimates the land's fair market value.
- (4)** — The appraisal or documentation of the land's fair market value, along with other evidence that, in the Town's opinion, aids in the determination of fair market value, may be used in the determination

~~of the amount of any payment in lieu of land dedication permitted by this section.~~

- ~~(5) Nothing in this section shall limit or preclude the Town Council from requiring a written appraisal notwithstanding a waiver of the appraisal requirement granted by the Parks, Recreation and Cultural Resources Director.~~

~~(E) Disagreements As To Amount~~

~~In the case of disagreement between the Town and the applicant regarding the fair market value of the property, such determination shall be made by a special appraisal committee consisting of one professional appraiser appointed by the Town Manager, one professional appraiser appointed by the applicant, and one professional appraiser appointed by the first two committee appointees. This committee shall view the land and hear the contentions of both the Town and the applicant. The findings of the committee shall be by a majority vote and shall be certified to the Town Council in writing within 30 days of the date the third member is appointed to the committee. The costs of the appraiser appointed by the applicant shall be borne entirely by the applicant; the Town shall bear all other costs associated with the committee.~~

~~(F) Use of Funds~~

~~All monies received by the Town pursuant to this section shall be used only for the acquisition or development of parks, greenways, open space sites, and related facilities, and in accordance with Policy Statement No. 65 (Recreation Payment-in-Lieu Funds for Parks and Greenways), as may be amended from time to time by the Town Council.~~

The new 8.2.4 follows:

8.2.4 Payments of Funds, or Funds in Lieu of Land Dedication, For Acquisition or Development of Recreation, Park or Open Space Sites

(A) Funds for Dwelling Units Requiring Subdivision Plan Approval

If land to be dedicated does not meet the requirements of Section 8.2.3 of this Ordinance, or is not suitable for public recreation purposes, or if the recreational needs of the proposed development can be met by other park, greenway, or recreational facilities planned or constructed by the Town within reasonable proximity to the development, or if existing parkland is adequate to serve the development, a payment or partial payment of funds ("subdivision recreation fund payment") in lieu of a land dedication shall be made. Recommendations regarding payment of funds in lieu of a dedication of land will be made by the Town at the time of subdivision plan approval, or master land use plan approval in the case of a Planned Development, or as part of the preliminary development plan for a Mixed Use District.

(1) Amount of Payment

- (a)** Where the payment of funds to the Town is to be made in lieu of dedication of land as permitted by this section, the amount of such subdivision recreation fund payment shall be based on the value of the development or subdivision for property

tax purposes pursuant to G.S. 160A-372(c). For the purpose of determining such value of the development or subdivision, the Town shall obtain a current written appraisal of the fair market value of the land to be developed or subdivided. For the purpose of this Section 8.2.4, "fair market value" means the value of the development or subdivision for property tax purposes.

- (b) Each appraisal shall be performed by a North Carolina licensed real estate appraiser.
- (c) The Parks, Recreation and Cultural Resources Director may waive the requirement of an appraisal where the subdivider/developer provides to the Town documentation evidencing the fair market value of the subject property, which in the opinion of the Parks, Recreation and Cultural Resources Director, reasonably estimates the fair market value.
- (d) The appraisal or documentation of the land's fair market value, along with other evidence that, in the Town's opinion, aids in the determination of fair market value, may be used in the determination of the amount of any payment in lieu of land dedication permitted by this section.
- (e) The Director of Parks, Recreation, and Cultural Resources shall make the final determination of the payment amount.

(2) Procedure for Approval

The payment of subdivision recreation funds in lieu of land dedication shall be approved as part of, or prior to, approval of the subdivision plan or, in the case of Planned Development, the master land use plan or, in the case of a Mixed Use District, the preliminary development plan. Upon receipt of the application to make a subdivision recreation fund payment, the Planning Director shall submit a copy thereof to the Director of Parks, Recreation and Cultural Resources for review by the Parks, Recreation and Cultural Resources Advisory Board. In the event of a dispute between an applicant who wants to make a subdivision recreation fund payment and a recommendation by the Parks, Recreation and Cultural Resources Advisory Board that land shall be dedicated, the Town Council shall make the final determination. A combination of partial payment of funds and partial dedication of land (pursuant to Section 8.2.3 (C) through (F), as applicable), may be required if the Town Council determines that this combination is in the best interest of the citizens of the area to be served.

(3) Time of Payment

The subdivision recreation fund payment shall be made prior to recording any lot(s) in the subdivision to which the fees relate. Payment may be phased in accordance with a phasing plan approved as part of the approved site/subdivision plan.

(4) Appeal of Payment Amount

Appeal of the subdivision recreation fund payment amount shall be made to the Zoning Board of Adjustment in accordance with Section 3.21 of this Ordinance.

(B) Funds for Multi-Family Dwelling Units Not Requiring Subdivision Plan Approval

Pursuant to N.C. Session Law 2007-321, developers of multi-family dwelling units not requiring subdivision plan approval shall provide funds ("multi-family recreation fund payment") whereby the town may acquire recreational land or areas to serve the development or more than one multi-family development or residential subdivision, except where dedication of land is approved pursuant to this Section 8.2.4(B). Such funds may be combined with funds received from residential subdivisions pursuant to Section 8.2.4(A) of this Ordinance and used for the acquisition or development of recreation, park or open space sites.

(1) Amount of Payment

- (a) The developer shall pay a multi-family recreation fund payment for each dwelling unit. The multi-family recreation fund payment shall be equal to 65 percent of the five-year rolling average subdivision recreation fund payment per dwelling unit. The five-year rolling average subdivision recreation fund payment per dwelling unit shall be calculated by: (1) determining the subdivision recreation fund payments assessed for the previous five calendar years; (2) for each subdivision that was assessed a payment during that time period, determining the cost per dwelling unit of such payment; and (3) calculating the average of each such per dwelling unit payment.
- (b) A combination of partial payment of funds and partial dedication of land pursuant to Section 8.2.3 (C) through (F) of this Ordinance, as applicable, may be required if the Town Council determines that this combination is in the best interest of the citizens of the area to be served. Land to be dedicated to the Town in lieu of payment of funds shall be in an amount equal to 1/55 of an acre for each dwelling unit for which dedication is to be made in lieu of fund payment, except that land that lies within a FEMA 100-year floodplain, wetlands, regulated stream buffers or that has slopes greater than 15 percent shall be dedicated at a rate of at least one-fortieth of an acre per dwelling unit.

(2) Time of Payment

The multi-family recreation fund payment shall be made in accordance with an approved phasing plan, or prior to the issuance of the first Building Permit if there is no approved phasing plan.

(3) Appeal of Payment Amount

Appeal of the multi-family recreation fund payment amount shall be made to the Zoning Board of Adjustment in accordance with Section 3.21 of this Ordinance.

Adopted: 6/14/2012

Effective: 7/1/2012

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

(Ordinance No. 2012-LDO-05 is also on file in the town clerk's office.)

**b. Comprehensive Plan Consistency for LDO Amendments – Round 21
(Recreation Area Funds)**

Subject: In accordance with N.C.G.S. 160A-383, consideration of adoption of a statement of reasonableness and consistency, which indicates the text amendments have been thoroughly evaluated and are reasonable and in the public interest.

Proposed Council Action: Council may take action

Speaker: Mr. Doug McRailey

Option A *(recommended if proposed LDO amendments are approved):*

CONSISTENCY AND REASONABLENESS STATEMENT

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: The Round 21 LDO Amendment (Recreation Area Funds) is consistent with the Comprehensive Plan.

Section 2: Based upon information presented at the public hearings, and based upon the recommendations and detailed information developed by staff and/or the Planning & Zoning Board contained in the staff report, and considering the criteria of Section 3.3.3 of the Town of Cary Land Development Ordinance, the Round 21 LDO Amendments (Recreation Area Funds) is reasonable and in the public interest.

Option B *(recommended if proposed LDO amendments are denied):*

CONSISTENCY AND REASONABLENESS STATEMENT

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: The Round 21 LDO Amendment (Recreation Area Funds) is consistent with the Comprehensive Plan.

Section 2: Based upon information presented at the public hearings, and based upon the recommendations and detailed information developed by staff and/or the Planning & Zoning Board contained in the staff report, and considering the criteria of Section 3.3.3 of the Town of Cary Land Development Ordinance, denial of the Round 21 LDO Amendment (Recreation Area Funds) is reasonable and in the public interest.

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval. (This action approves Option A.)

3. Operations Committee, June 7, 2012 *(any committee consent agenda item pulled for discussion will be discussed at the end of the committee discussion portion of the agenda, which is item G on this agenda)* **(Mrs. Robinson)**

- a. **Recognition of Progress Energy Incentive Funds (AD12-017)**

Committee unanimously recommended recognizing \$5,000 from Progress Energy's Energy Efficiency for Businesses Program and appropriating these funds to the ARRA-EECBG Project GG1088 for expenditure on additional energy efficiency upgrades to Town facilities.

STAFF REPORT

Operations Committee, June 7, 2012

Recognition of Progress Energy Incentive Funds (AD12-017)

Consideration of recognizing \$5,000 from Progress Energy's Energy Efficiency for Businesses Program and appropriating these funds to the ARRA-EECBG Project GG1088 for expenditure on additional energy efficiency upgrades to Town facilities

Speaker: Ms. Emily Barrett

From: Benjamin T. Shivar, Town Manager

Prepared by: Emily Barrett, Sustainability Manager

Approved by: Benjamin T. Shivar, Town Manager

Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

The Town has used federal Energy Efficiency and Conservation Block Grant (EECBG) funds to improve energy efficiency in Town facilities. Progress Energy has an incentive program to rebate a portion of the costs of these retrofits. Staff recommends Town Council recognize and appropriate up to \$5,000 in rebates to the ARRA-EECBG Project GG1088 for expenditure on additional energy efficiency upgrades.

Discussion

Using Department of Energy ARRA-EECBG grant funds, the Town has done energy efficiency retrofits such as lighting retrofits, lighting controls and HVAC controls, on the Herb Young Community Center and parking lot, the Garmon Operations Center, the Bond Park Senior Center and the Bond Park Community Center. Progress Energy has an incentive program to refund a portion of the costs of these retrofits. On January 5, 2012, staff asked council to recognize \$70,000, but since each project is reviewed separately, staff underestimated the total amount of incentives that the Town could receive. So this additional request of \$5,000 will cover all anticipated rebates.

The terms of the EECBG grant agreement require that these funds be used to implement further energy efficiency upgrades.

Fiscal Impact

Since federal grant funding through the Department of Energy's EECBG program was used to implement the energy efficiency improvements, and the rebates from Progress Energy will be used to implement additional improvements, there is no fiscal impact beyond continued administration of the EECBG grant.

Staff Recommendation

Staff recommends Town Council recognize and appropriate up to \$5,000 in rebates to the ARRA-EECBG Project GG1088 contracted services account for expenditure on additional energy efficiency upgrades.

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

- b. Appropriation for the Purchase of 105, 109 and 113 Walnut Street (AD12-019)**
Committee unanimously recommended appropriating funds \$1,950,000 from General Fund fund balance for the purchase of 105, 109 and 113 Walnut Street and to address associated closing and demolition costs, with \$78,625 to be appropriated to the GG5003 contracted services account and \$1,871,375 to the GG5003 land and site acquisition account.

STAFF REPORT

Operations Committee, June 7, 2012

Appropriation for the Purchase of 105, 109 and 113 Walnut Street (AD12-019)

Consideration of purchasing the indicated downtown properties and appropriating funds to facilitate the purchase

Speaker: Mr. Ed Gawf

From: Benjamin T. Shivar, Town Manager

Prepared by: Stacey Teachey, Sr. Budget and Management Analyst

Approved by: Benjamin T. Shivar, Town Manager

Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

The Town has entered into an option agreement with the Paul Fairbetter Family Trust and Jane G. Fairbetter for the purchase of 105, 109, and 113 Walnut Street for a total of \$2,911,000. Staff recommends Town Council appropriate \$1,950,000 from General Fund fund balance to complete this transaction and address associated closing and demolition costs.

Background

Property acquisition in the block bounded by Park Drive, Academy Street, Dry Avenue, Walnut Street and Walker Street began in 2003. A variety of potential uses have been discussed, and a design charette is being planned for this summer for the area.

Discussion

The purchase of the Fairbetter properties will give the Town 2.57 of the remaining 3.37 acres desired.

Fiscal Impact

Operating: The Town's Facilities Management division will maintain the properties upon purchase. The projected FY 2013 operating costs total \$20,000, \$10,000 for mowing and \$10,000 for clearing dead trees. Upon council approval, \$20,000 will be added to the FY 2013 Public Works budget via the list of changes for council approval on June 28, 2012.

Funding: \$7,205,000 has been appropriated to-date to the GG5003 TCAP – Land – Town Center Park project. \$4,698,022 has been encumbered/expended. Another \$1,427,000 will be utilized for the purchase, closing costs and demolition associated with three other properties in the same block. The GG5003 available project balance (net of these anticipated expenditures) is \$1,079,978.

Total purchase price, closing costs and demolition costs for the Fairbetter properties totals \$2,989,625. Staff requests Town Council approve the appropriation of \$1,950,000 from General

Fund fund balance to the GG5003 project for the Fairbetter property and related costs. These funds should be budgeted as follows for expenditure purposes: \$78,625 in the GG5003 contracted services account and \$1,871,375 in the GG5003 land and site acquisition account.

Staff Recommendation

Staff recommends Town Council appropriate \$1,950,000 from General Fund fund balance for the purchase of 105, 109 and 113 Walnut Street and to address associated closing and demolition costs.

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

c. Pamlico Drive Area: Higgins Greenway Trail and Stream Restoration Improvement Project (EN12-068)

Committee unanimously recommended appropriating \$387,366 of unrestricted general capital reserve fund balance to the PR1125 Pamlico Drive – Higgins Greenway Extension for completion of construction.

STAFF REPORT

Operations Committee, June 7, 2012

Pamlico Drive Area: Higgins Greenway Trail and Stream Restoration Improvement Project (EN12-068)

Consideration of appropriating additional funds to the PR1125 Higgins Trail Greenway and Stream Restoration Project for completion of construction

Speaker: Mr. Tim Bailey

From: Tim Bailey, PE, Engineering Director and Doug McRainey, Parks, Recreation, and Cultural Resources Director

Prepared by: Mike Babuin, PG, Environmental Specialist

Approved by: Benjamin T. Shivar, Town Manager

Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

In 2010 Town Council approved funding for design services and construction related to conversion of the stream restoration project located on an unnamed tributary to Swift Creek (GG1082) into a flood impact minimization project designed to help alleviate flooding of residential dwellings along Pamlico Drive. This project is tied together from a design and construction perspective with the Higgins Greenway Trail improvement project (PR1125), as well as the nitrogen BMP grant project (GG1061) that has State-mandated regulatory requirements concurrent with project completion. Project construction has been ongoing since 2011 by North State Environmental. Due to unforeseen construction challenges, staff recommends the appropriation of an additional \$387,366 to PR1125 to address these issues as necessary to complete construction.

Discussion

Staff has identified several new and previously unforeseen challenges as part of construction efforts related to the greenway and stream restoration project. These include the need for more Class B rip rap, modifications and replacement of existing stormwater drainage pipes – including possible concrete encasements, additional undercutting requirements, soil excavation costs, driveway approaches and curbing at Union Street and Chatham Street, additional grading and earthwork moving costs, additional geotechnical investigations and other contractual services, testing requirements, and issues associated with the boardwalk pilings. The appropriation of an

additional \$387,366 to the PR1125 project will address the indicated issues and should allow for project completion.

Fiscal Impact

Operating: There are no operating impacts associated with this staff report. The final construction of the stream restoration and greenway trail improvements will not affect the overall facility's annual maintenance costs.

Funding: \$1,464,666 has been appropriated to-date to the PR1125 Pamlico Drive – Higgins Greenway Extension project. \$1,464,666 has been encumbered/expended leaving a zero balance in the project. Staff requests Town Council appropriate an additional \$387,366 to this project from unrestricted general capital reserve fund balance. If approved, this appropriation would bring total PR1125 appropriations to \$1,852,032 and should be budgeted within the following PR1125 accounts for expenditure purposes: \$153,200 Contracted Services and \$234,166 Construction.

Staff Recommendation

Staff recommends Town Council approve the appropriation of \$387,366 of unrestricted general capital reserve fund balance to the PR1125 Pamlico Drive – Higgins Greenway Extension project as detailed above.

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

d. Green Level Church Road Improvements (EN12-070)

Committee unanimously recommended awarding the Green Level Church Road Improvements Project to Rea Contracting, a Division of the Lane Corporation for \$547,567.29. Committee further recommended recognizing and appropriating a \$13,925 MI Homes developer payment to the ST1209 project, appropriating \$196,075 from general capital reserve street payment-in-lieu fund balance to address the remaining ST1209 funding need, and distributing the remaining funds as described in the staff report. The recommendation of award by Town Council represents a preliminary determination as to the qualifications of the bidder and no legal binding acceptance of the bids of offer occurs until the Town has executed a written agreement. The contract award is subject to the contractor providing all bonds, insurance and other required documents set forth in the bid documents and executing a contract in a form agreeable to the Town.

STAFF REPORT

Operations Committee, June 7, 2012

Green Level Church Road Improvements (EN12-070)

Consideration of a Bid Award for the Green Level Church Road Improvements Project (ST1209)

Speaker: Mr. Tim Bailey

From: Tim Bailey, PE, Director of Engineering
Prepared by: Tom Ellis, PE, Transportation Engineer
Approved by: Benjamin T. Shivar, Town Manager
Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

The Engineering Department received bids for the Green Level Church Road Improvements Project on May 22, 2012. Construction of this project is scheduled to start this summer and be completed in the fall. After reviewing the bid proposals, staff recommends the project be awarded to Rea Contracting, a Division of the Lane Construction Corporation for \$547,567.29. Staff further recommends Town Council recognize \$13,925 in developer payments to the project and appropriate \$196,075 from general capital reserve street payment-in-lieu fund balance to address the ST1209 funding need.

Discussion

This project consists of realigning and widening approximately 600 feet of Green Level Church Road south of Morrisville Parkway. This project also includes a permanent intersection with Austin Pond Drive, which serves the Greystone subdivision. Completion of this project will improve traffic flow along Green Level Church Road in the vicinity of Morrisville Parkway and Green Hope School Road. The tabulation of bids received is included in Table. 1. The Engineer’s Estimate is \$681,462.10.

Table 1: Bids Received

Contractor	Total Base Price
Rea Contracting	\$547,567.29
Triangle Grading and Paving	\$659,877.80
Barnhill Contracting	\$674,998.50
FSC II, LLC dba Fred Smith Company	\$710,660.00
Sullivan Eastern	\$726,489.00

Fiscal Impact

There are no operating impacts associated with this work. After the one-year warranty period during which the contractor is responsible for maintenance, Green Level Church Road will be maintained by the North Carolina Department of Transportation.

Funding

\$469,842 is appropriated to the ST 1209 Green Level Church Road project. \$12,454 has been expended for design and permitting services, leaving an available project balance of \$457,388. Staff received a \$13,925 developer payment from MI Homes related to the Greystone subdivision. The ST1209 revenue budget should be increased by \$13,925 to reflect this payment. These funds should then be budgeted in the ST1209 construction account for expenditure purposes.

The appropriation of an additional \$196,075 is then required to award the contract and provide construction contingency, on-call geotechnical and material testing services and minor design amendments. Construction administration and inspections associated with the project can be provided by Town staff. Staff recommends appropriating \$196,075 from general capital reserve street payment-in-lieu fund balance to address the ST1209 funding need. The remaining available project funds should be distributed as follows: \$60,000 in contracted services and the remaining funding into the ST1209 construction account for expenditure purposes.

Staff Recommendation

Staff recommends awarding the Green Level Church Road Improvements Project to Rea Contracting, a division of the Lane Corporation for \$547,567.29. The recommendation of award by Council represents a preliminary determination as to the qualifications of the bidder and no legal binding acceptance of the bids of offer occurs until the Town has executed a written agreement. The contract award is subject to the contractor providing all bonds, insurance and other required documents set forth in the bid documents and executing a contract in a form agreeable to the Town.

Staff recommends Town Council recognize and appropriate a \$13,925 MI Homes developer payment to the ST1209 project. Staff also requests Town Council appropriate \$196,075 from

general capital reserve street payment-in-lieu fund balance to address the remaining ST1209 funding need and distribute the funds as described in the fiscal impact section of this staff report.

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

e. Contract 5 – Western Wake Regional Wastewater Management Facilities (EN12-071)

Committee unanimously recommended awarding the Western Wake Regional Wastewater Management Facilities – Contract 5 project to Garney Construction for \$22,349,425. The recommendation of award by Council represents a preliminary determination as to the qualifications of the bidder and no legally binding acceptance of the bid or offer occurs until the Town has executed a written agreement.

STAFF REPORT

Operations Committee, June 7, 2012

Contract 5 – Western Wake Regional Wastewater Management Facilities (EN12-071)

Consideration of bid award for the Western Wake Regional Wastewater Management Facilities Contract 5 – Effluent Outfall Pipeline

Speaker: Mr. Tim Bailey

From: Tim Bailey, PE, Engineering Director
Prepared by: Betsy Drake, PE, Engineer
Approved by: Benjamin T. Shivar, Town Manager
Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

The Town of Cary, on behalf of the Western Wake Partners, received bids for Western Wake Regional Wastewater Management Facilities Contract 5 on Thursday, May 10, 2012. The project includes the construction of the effluent outfall pipeline from the Western Wake Water Reclamation Facility to the Cape Fear River. Construction of this project is scheduled to start in summer 2012 and be completed in the spring of 2014. After reviewing the bid proposals, staff recommends the project be awarded to Garney Construction for \$22,349,425.

Discussion

Contract 5 will provide the effluent conveyance system for the Western Wake Regional Wastewater Management Facilities. Construction of the Effluent Outfall Pipeline includes installation of 51,400 feet of 54-inch force main and 7,900 feet of 48-inch force main from the Effluent Pump Station to the discharge point in the Cape Fear River near Buckhorn Dam.

Bid results are tabulated below. The Engineer's Estimate was \$38,000,000. All bids received were considerably lower than the Engineer's Estimate. Staff recommends selecting Garney Construction on the basis of bid prices.

Bid Table

Contractor	Bid Price
Garney Construction	\$22,349,425.00
John D. Stephens, Inc.	\$23,184,231.00
Sullivan Eastern, Inc.	\$23,475,630.00
Reynolds, Inc.	\$23,674,153.50
SJ Louis Construction	\$23,789,000.00
Oscar Renda	\$25,118,335.00

Contractor	Bid Price
Devere Construction Company	\$25,582,674.08
Park Construction Corporation of NC	\$25,986,023.13
D. H. Griffin	\$26,261,885.00
JF Wilkerson Construction	\$31,653,974.30

Fiscal Impact

Operating: This project is one of eight construction contracts for the Western Wake Regional Wastewater Management Facilities (WWRWMF). Cary, as Lead Agency, will include all operating costs in the Town's annual budget, with recognition of revenue from Apex reimbursement, as outlined in the Interlocal Agreement between the Western Wake Partners.

Funding: A total of \$39,887,959 has been appropriated to-date by the Western Wake Partners for Contract 5. A total of \$688,396 has been encumbered/spent. The remaining balance of \$39,199,563 is adequate to cover the total bid of \$22,349,425. Based on total bid price, no additional appropriation needs are anticipated for these projects.

Staff Recommendation

Staff recommends awarding Contract 5 to Garney Construction for \$22,349,425.00. The award recommendation will be reviewed by the Western Wake Policy Advisory Committee, and it is anticipated that they will recommend award at their meeting in early June 2012. The recommendation of award by Council represents a preliminary determination as to the qualifications of the bidder and no legally binding acceptance of the bid or offer occurs until the Town has executed a written agreement.

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

f. Contract 2 – Solids Treatment Facility, Western Wake Regional Water Reclamation Facility (EN12-073)

Committee unanimously recommended awarding the Western Wake Regional Wastewater Management Facilities Contract 2 – Solids Handling Facility project, with selected alternate bid item, to Encore Construction Company for \$26,637,000. The recommendation of award by Council represents a preliminary determination as to the qualifications of the bidder and no legally binding acceptance of the bid or offer occurs until the Town has executed a written agreement.

STAFF REPORT

Operations Committee, June 7, 2012

Contract 2 – Solids Treatment Facility, Western Wake Regional Water Reclamation Facility (EN12-073)

Consideration of a Bid Award for the Western Wake Regional Wastewater Management Facilities Contract 2 – Solids Handling Facility

Speaker: Mr. Tim Bailey

From: Tim Bailey, PE, Engineering Director
 Prepared by: Alexandra Jones, PE, Engineer
 Approved by: Benjamin T. Shivar, Town Manager
 Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

The Town of Cary, on behalf of the Western Wake Partners, received bids for Contract 2 – Solids Treatment Facility, Western Wake Regional Water Reclamation Facility (WWRWRF), Project SW1123, on Thursday, April 26, 2012. The project includes construction of dewatering equipment and a biosolids dryer system to handle solids from the WWRWRF treatment works. Construction of this project is scheduled to start this summer and be completed by the summer of 2014. After reviewing the bid proposals, staff recommends the project be awarded to Encore Construction Company for \$26,637,000.

Discussion

This project will provide construction of the biosolids dewatering and drying components of a new water reclamation facility for the Western Wake Partners. It is one of four construction contracts that will build the entire new Western Wake Water Reclamation Facility. The engineer’s estimate for this work was approximately \$26.8 million. The bid price with alternate includes prices on one alternate item, which staff recommends selecting on the basis of matching similar electrical equipment already selected for the WWRWRF, which will offer long-term maintenance cost savings.

The following contractors submitted bid proposals for the project:

Contractor	Base Bid Price	Bid Price with Alternate
Encore Construction Company	\$26,630,000	\$26,637,000
Crowder Construction Company	\$26,797,000	\$26,797,000
Archer Western	\$26,982,100	\$26,989,100
Shook Construction	\$27,470,500	\$27,477,500
Wharton Smith	\$27,622,000	\$27,622,000
PC Construction	\$28,093,000	\$28,128,000
Adams Robinson Construction	\$31,507,000	\$31,517,000

The Western Wake Partners Policy Advisory Committee (PAC) approved the recommendation of award on May 9, 2012. Before award of contracts, the PAC advises the Lead Agency on selection of outside consultants and contractors.

Fiscal Impact

Operating: This project is one of eight major construction contracts for the Western Wake Regional Wastewater Management Facilities (WWRWMF). Once the new WWRWMF begins operation Cary, as Lead Agency, will include all operating costs in the Town’s annual budget, with recognition of revenue from Apex reimbursement as outlined in the Interlocal Agreement between the Western Wake Partners.

Funding: A total of \$151,742,900 has been appropriated to-date to the SW1123 WWRWMF – New Water Reclamation Facility project. A total of \$95,463,475 has been encumbered/expended, leaving a balance of \$56,279,425, which is adequate to cover the total bid of \$26,637,000. It is anticipated that the remaining balance of \$29,642,425 will also cover Contract 3, which will be bid later as part of the ongoing Western Wake Regional Wastewater Management Facilities construction.

Staff Recommendation

Staff recommends awarding the project, with selected alternate bid item, to Encore Construction Company for \$26,637,000.00. The recommendation of award by Council represents a preliminary determination as to the qualifications of the bidder and no legally binding acceptance of the bid or offer occurs until the Town has executed a written agreement.

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

g. Contract 4 – Effluent Pump Station, Western Wake Regional Water Reclamation Facility (EN12-074)

Committee unanimously recommended awarding the Western Wake Regional Wastewater Management Facilities Contract 4 – Effluent Pump Station project to Crowder Construction Company for \$5,622,000. The recommendation of award by Town Council represents a preliminary determination as to the qualifications of the bidder and no legally binding acceptance of the bid or offer occurs until the Town has executed a written agreement.

STAFF REPORT

Operations Committee, June 7, 2012

Contract 4 – Effluent Pump Station, Western Wake Regional Water Reclamation Facility (EN12-074)

Consideration of a bid award for the Western Wake Regional Wastewater Management Facilities Contract 4 – Effluent Pump Station

Speaker: Mr. Tim Bailey

From: Tim Bailey, PE, Engineering Director
Prepared by: Alexandra Jones, PE, Engineer
Approved by: Benjamin T. Shivar, Town Manager
Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

The Town of Cary, on behalf of the Western Wake Partners, received bids for Contract 4 – Effluent Pump Station, Western Wake Regional Water Reclamation Facility (WWRWRF), Project SW1124, on Thursday, May 10, 2012. The project includes pumps and supporting equipment to pump treated wastewater from the WWRWRF treatment works (Contract 1) currently under construction to the Cape Fear River via the WWRWRF effluent pipeline (Contract 5). Construction of this project is scheduled to start this summer and be completed in 2014. After reviewing the bid proposals, staff recommends the project be awarded to Crowder Construction Company for \$5,622,000.

Discussion

This project will provide construction of the treated wastewater (effluent) pumping components of a new water reclamation facility for the Western Wake Partners. This project also provides construction of the cascade aeration structure near the discharge point of the effluent pipeline at the Cape Fear River. It is one of four construction contracts that will build the entire new Western Wake Water Reclamation Facility. The engineer's estimate for this work was approximately \$9.6 million.

The following contractors submitted bid proposals for the project:

Contractor	Bid Price
Crowder	\$5,622,000
Encore	\$5,710,000
Choate*	\$5,836,000
Haren	\$5,962,000
Shook	\$6,159,000
English	\$6,262,500
Dellinger	\$6,395,459
Wateree	\$6,650,000

Contractor	Bid Price
TA Loving	\$6,990,000

*The bid from Choate did not include the total amount of work anticipated to be performed by minority business subcontractors; therefore their bid is non-responsive.

The Western Wake Partners Policy Advisory Committee (PAC) will consider the recommendation of award on June 12, 2012. Before award of contracts, the PAC advises the Lead Agency on selection of outside consultants and contractors.

Fiscal Impact

Operating: This project is one of eight major construction contracts for the Western Wake Regional Wastewater Management Facilities (WWRWMF). Once the new WWRWMF begins operation Cary, as Lead Agency, will include all operating costs in the Town's annual budget, with recognition of revenue from Apex reimbursement as outlined in the Interlocal Agreement between the Western Wake Partners.

Funding: A total of \$11,682,460 has been appropriated to-date to the SW11243 WWRWMF – Effluent Pump Station project. A total of \$1,413,616 has been encumbered/expended, leaving a balance of \$10,268,844, which is adequate to cover the total bid of \$5,622,000.

Staff Recommendation

Staff recommends awarding the project to Crowder Construction Company for \$5,622,000.00. The recommendation of award by Town Council represents a preliminary determination as to the qualifications of the bidder, and no legally binding acceptance of the bid or offer occurs until the Town has executed a written agreement.

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

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- h. **Old Apex Road Sidewalk Project Condemnation Resolution (EN12-075)**
Committee unanimously recommended approval and execution of condemnation resolutions associated with the Old Apex Road Sidewalk Project.

STAFF REPORT

Operations Committee, June 7, 2012

Old Apex Road Sidewalk Project Condemnation Resolution (EN12-075)

Consideration of a condemnation resolution for the Old Apex Road Sidewalk Project

Speaker: Mr. Tim Bailey

From: Tim Bailey, PE, Director of Engineering
 Prepared by: Yulonda Moore
 Approved by: Benjamin T. Shivar, Town Manager
 Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

Staff is working with property owners to secure the necessary easements for construction of the Old Apex Road Sidewalk Project (ST1116/ST1147). Staff requests approval of a condemnation resolution to minimize disruption to the construction schedule.

Background

The Old Apex Road Sidewalk project includes the construction of a five-foot sidewalk and variable width utility strip. The project will tie into an existing sidewalk just north of the High House Road/Old Apex Road intersection to Murphy Drive. The project also consists of constructing a five-foot sidewalk and five-foot utility strip at 523 Old Apex Road to complete a gap within the existing sidewalk along the eastern side of Old Apex Road.

Discussion

Negotiations have been productive, and staff has been able to reach amicable settlements with all but one owner. Staff has had numerous conversations and exchanged correspondence with the owner and is hopeful that a settlement will be reached. However, in order to maintain the construction schedule, staff requests approval of the condemnation resolution. Staff will continue working with the owner to reach an agreement until condemnation becomes necessary.

The property affected is as follows:

John W. Turner Heirs
800 Old Apex Road
PIN 0754904637

Fiscal Impact

If condemnation becomes necessary, the Town will incur the cost of eminent domain proceeding, estimated between \$1,600 and \$5,000, that will be paid from ST1116.

Staff Recommendation

Staff recommends approval and execution of the appropriate resolution authorizing condemnation.

A RESOLUTION AUTHORIZING CONDEMNATION
TO ACQUIRE CERTAIN PROPERTY OF
"JOHN W. TURNER HEIRS"

WHEREAS, the governing body of the Town of Cary hereby determines that it is necessary and in the public interest to acquire certain property owned by the John W. Turner Heirs for the following public purpose:

To protect the public health, to provide the public with an adequate and sound transportation system, and to improve such system to meet the need for expanded or upgraded services, the Town of Cary is condemning the herein described easement interests, specifically, to construct and maintain the Old Apex Road Sidewalk Project.

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

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

1. The Town of Cary shall acquire by condemnation, for the purposes stated above, the property and easement interest in a portion of that certain property shown in Book of Maps 1973, Page 201, Wake County Registry, entitled "Property of John Willis Turner Estate," and further identified as property located at 800 Old Apex Road, Cary, NC and identified by PIN 0754904637.

The property interest areas taken are more particularly described as follows:

SIDEWALK EASEMENT

BEGINNING AT A POINT on the southern property line of the Grantors, same being the northern property line of Judith C. Abee, Trustee, now or formerly, said point being an existing iron pipe in the existing western right of way of Old Apex Road, said point also being the southeastern property corner of the Grantors and the northeastern property corner of Judith C. Abee, Trustee, now or formerly, thence leaving said existing right of way proceeding along said property line S 87°11'20" W 7.67', thence leaving said property line N 16°25'00" E 69.81', thence N 08°59'40" W 10.65', then N 27°43'30" E 29.16' to the point of intersection with the northern property line of the Grantors, thence proceeding along said property line S 77°18'30" E 7.93' to the point of intersection with the existing western right of way of Old Apex Road, thence leaving said property line proceeding along said existing right of way S 17°24'00" W 106.03' to the **POINT AND PLACE OF BEGINNING**, containing 941 square feet, more or less, according to a map by the Town of Cary Engineering Department entitled "Right of Way and Easement Map for the Property of John W. Turner Heirs, Old Apex Road Sidewalk Project# ST1116, Sheet 1 of 1," dated 02/23/12.

TEMPORARY CONSTRUCTION EASEMENT

COMMENCING AT A POINT on the southern property line of the Grantors, same being the northern property line of Judith C. Abee, Trustee, now or formerly, said point being an existing iron pipe in the existing western right of way of Old Apex Road, said point also being the southeastern property corner of the Grantors and the northeastern property corner of Judith C. Abee, Trustee, now or formerly, thence leaving said existing right of way proceeding along said property line S 87°11'20" W 7.67' to the **POINT AND PLACE OF BEGINNING**, thence continuing along said property line S 87°11'20" W 5.29', thence leaving said property line N 16°05'40" E 109.33' to the point of intersection with the northern property line of the Grantors, thence proceeding along said property line S 77°18'30" E 6.78', thence leaving said property line S 27°43'30" W 29.16', thence S 08°59'40" E 10.65', thence S 16°25'00" W 69.81' to the point of intersection with the southern property line of the Grantors, said point being the **POINT AND PLACE OF BEGINNING**, containing 506 square feet, more or less, according to a map by the Town of Cary Engineering Department entitled "Right of Way and Easement Map for the Property of John W. Turner Heirs, Old Apex Road Sidewalk Project# ST1116, Sheet 1 of 1," dated 02/23/12.

Following construction of the street and/or sidewalk, and slope easement, this temporary construction area will be graded and restored, using conventional engineering practices, and all temporary easements shall terminate.

2. The attorneys representing the Town of Cary are directed to institute the necessary proceedings under NCGS § 40A-1, et. seq. as authorized by NCGS § 160A-296(a)(3) and/or other appropriate statutory provisions and local acts to acquire the property herein described.

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

(Resolution No. 2012-35 is also on file in the town clerk's office.)

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- i. **Appropriation for Health and Dental Claims in the Self Insurance Fund (HR12-04)**
Committee unanimously recommended appropriation of \$1,500,000 from the health and dental fund balance to the health expenditure claims account and an appropriation of \$250,000 of health and dental fund balance to the dental claims expenditure account.

STAFF REPORT

Operations Committee, June 7, 2012

Appropriation for Health and Dental Claims in the Self Insurance Fund (HR12-04)

Consideration of appropriating health and dental fund balance to cover FY 2012 related expenses

Speaker: Mr. Dale Johnson

From: Valiria Willis, Director of Human Resources
Prepared by: Dale Johnson, Employee Benefits Manager
Approved by: Benjamin T. Shivar, Town Manager
Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

Throughout the fiscal year, staff monitors expenditure levels in the health and dental self-insurance fund and compares them to funding projections made at the beginning of the fiscal year. The Human Resources and Budget staffs, along with the assistance of the Town's insurance consultants and third party administrators, currently estimate that mid-year appropriations from existing funding available in the health and dental fund balance are needed to help ensure budgetary authority is not exceeded in FY 2012. Staff recommends additional mid-year funding totaling \$1.75 million is allocated to the health and dental claims accounts (\$1,500,000 for health and \$250,000 for dental).

Background

The Town of Cary chose the more flexible and fiscally prudent funding option of self insurance for health coverage beginning in FY 2003 and dental coverage beginning in FY 1994, rather than entering into contracts with insurance carriers for fully insured plans. Historically, the expenditure increases have been lower than market trends compared to fully insured plans for each type of coverage. Since these plans have been self-insured, strategic plan modifications have been made including adjusting coverage and reinsurance levels, increasing co-pay amounts, increasing deductibles, and raising dependent premiums. The Town has also focused more on wellness and prevention programs for both personal and work-related injuries and illnesses that have been effective in managing cost levels over many years.

Discussion

With regard to the health insurance fund for FY 2012, current projections indicate that health claims expenditures are growing at a rate higher than anticipated due to increasing costs of health procedures, prescriptions, and retiree health claims. The FY 2012 adopted budget projected health insurance expenditures to grow seven percent over FY 2011 costs, instead of the current estimate of 13 percent.

With regard to the dental claims expenditures, FY 2012 plan design changes have successfully provided a competitive dental plan with a more realistic and predictable cost structure with current projections coming in below the adopted budget. During the last quarter of previous fiscal years the Town of Cary has experienced unexpected variability in claims expenditures. This request is to help ensure we do not exceed budget authority should an unexpected increase occur in late FY 2012.

Fiscal Impact

Current estimates for FY 2012 indicate that an additional \$704,094 (six percent of adopted expenditure budget) may be needed to cover health related expenditures, while dental related expenditures are projected to be under budget by \$49,861 (five percent of adopted expenditure budget).

Because claims can be highly variable from month to month, staff recommends that additional allocations of fund balance be made at this time. All of the additional mid-year funding recommended for the health and dental claims expenditures through the end of FY 2012 are currently available in the form of fund balance within the respective fund. The health and dental self-insurance fund had a fund balance at the beginning of FY 2012 of \$6 million following FY 2011 annual expenditures of \$13.4 million.

There is a lag time for expense processing, so claims incurred in May and June are sometimes not fully processed through the system until August or September, long after the actual end of the fiscal year on June 30. Because Town Council cannot approve appropriations for FY 2012 after the actual end of the fiscal year, staff believes the conservative approach of allocating additional health and dental fund balance (\$1,500,000 for health and \$250,000 for dental) will help ensure budgetary expenditure authority is not exceeded for FY 2012. Should any amount of expenditure authority not be needed during the year (e.g. claim levels do not spike at year end), all remaining unspent funding will return to health and dental fund balance.

If expenditures occurring throughout the remainder of FY 2012 utilize all of the budgetary authority (including the additional mid-year appropriations referenced above), it is anticipated the health and dental fund balance at the end of FY 2012 will equal \$4.25 million, or about 32 percent of adopted expenditure budget in the health and dental fund.

Staff Recommendation

Staff recommends Town Council:

- 1) Approve a \$1,500,000 appropriation of health and dental fund balance to the health expenditure claims account; and
- 2) Approve a \$250,000 appropriation of health and dental fund balance to the dental claims expenditure account.

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

j. Justice Assistance Grant (JAG) Funding (PD12-017)

Committee unanimously recommended recognizing \$10,802 in federal grant revenue from the Department of Justice to the General Fund Justice Assistance revenue account and approving the appropriation of \$10,802 of grant funding to the Police Department's small equipment account for the purchase of the light bars.

STAFF REPORT

Operations Committee, June 7, 2012

Justice Assistance Grant Funding (PD12-017)

Consideration of the recognition of funds to be awarded by the United States Department of Justice and appropriation for LED Light Bars for Police Cars

Speaker: Captain Tracy Jernigan

From: Patricia Bazemore, Chief of Police

Prepared by: Captain Tracy Jernigan

Approved by: Benjamin T. Shivar, Town Manager

Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

Staff requests the Cary Town Council recognize \$10,802 in federal grant funds revenue into the General Fund as awarded by the Department of Justice to the General Fund Justice Assistance revenue account. This funding is awarded to agencies to assist in paying for programs, equipment and supplementing crime fighting strategies. Staff recommends grant funding of \$10,802 be recognized and appropriated to the Police Department's small equipment account for the purchase of four LED light bars for police cars.

Background

In FY 2009 the police department received funding in the budget to replace 12 outdated light bars on police vehicles in our fleet. This was the start of a light bar replacement program intended to replace older light bars in future fiscal year budgets as equipment ages out. With the awarding of JAG grant funding, we have been able to continue this program each year. In July of 2009, staff report PD10-001 was approved by Cary Town Council, which authorized \$18,185 in JAG grant awards for the purchase of eight additional new light bars. In July of 2010, staff report PD11-003 was approved by Cary Town Council, which authorized \$15,831 in JAG grant awards for the purchase of seven additional light bars. In November of 2011, staff report PD12-007 was approved by Cary Town Council, which authorized \$13,367 in JAG grant awards for the purchase of five additional light bars. So far, 32 of 67 light bars have been replaced on police vehicles identified in the replacement plan.

Discussion

The Town of Cary received notification that it is the recipient of additional JAG funding in the amount of \$10,802 as part of the FY 2012 federal budget year. This federal award is administered by the Office of Justice Programs and is specifically for the purchase of police equipment or supplementing personnel cost for programs supported and defined by the Department of Justice. There are no matching funds required by the Town of Cary for this grant.

The Town of Cary Police Department proposes to use \$10,802 in allocated JAG funding to purchase four new LED light bars for our existing fleet.

Funding will be used to continue upgrading our current light bar systems to enhance safety and allow a more efficient operation of police related equipment installed in cars.

Fiscal Impact

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

Staff Recommendation

Staff recommends the Cary Town Council approve the following actions to authorize the police related expenditures in the amount of \$10,802.

- 1.) Recognize \$10,802 in federal grant revenue into the General Fund as awarded by the Department of Justice to the General Fund Justice Assistance revenue account.
- 2.) Appropriate \$10,802 of grant funding to the Police Department's small equipment account 010-5110-522-3370 (for the purchase of the light bars).

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

k. Senior Center Usage Policy Revision (PR12-29)

Committee unanimously recommended approving proposed revisions to Policy Statement 102 – Senior Center Operations.

STAFF REPORT

Operations Committee, June 7, 2012

Senior Center Usage Policy Revision (PR12-29)

Consideration of revising Policy Statement 102 – Senior Center Operations.

Speaker: Mr. Dwayne Jones

From: Doug McRainey, Director

Prepared by: Dwayne Jones, Recreation Manager

Approved by: Benjamin T. Shivar, Town Manager

Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

The Parks, Recreation and Cultural Resources Department (PRCR), reviews its policies at least every five years to ensure they are up-to-date and meet current needs. Policy 102, the first of several to be reviewed, was found to be dated regarding its alcohol policy, compared to community centers. The policy revisions, which include permitting alcohol, will provide increased opportunities for reservations and continue to protect the Town's investment in its facilities without compromising safety. Staff recommends approval of the revisions to Policy Statement 102 – Senior Center Operations.

Background

Per Cary Code of Ordinance Sec. 22-79, consumption of malt beverages and unfortified wine, commonly known as beer and wine, may be allowed on Town property.

In terms of the application of ordinance, each PRCR facility has its own operation's policy dealing with alcohol. Community centers (Herb Young, Bond Park, and Middle Creek) are covered by Policy Statement 76. Other Town facilities such as Page-Walker Arts & History Center and Cary Arts Center are covered under their operations policy. Policy 102–Senior Center Operations covers functions at the Cary Senior Center.

As applied to the senior center, the current policy allows the following:

- Alcohol, in the form of a “Champagne or Wine Toast” only for weddings and celebrations in recognition of the honored guest/s may be permitted during a rental with prior approval from the Parks, Recreation and Cultural Resources Department. This toast will not exceed more than one glass of alcohol per person. All other alcohol, including beer is prohibited.

Policy Statement 102, as it relates to the consumption and sale of alcohol, limits the consumption of alcohol. PRCR staff has worked with Risk Management, Legal and Police to review and revise the operation policy regarding use of alcohol in community centers and recommends extending this policy update to Senior Center Operations.

Discussion

Staff is requesting to update Policy Statement 102 to better reflect current use of the senior center. The key components of the policy that need to be amended include:

1. Updating language regarding use of alcohol to mirror Community Center Use Policy.
2. Removing redundant language regarding fees and programming that are included in the annual budget.

Each of these issues is addressed in detail below:

1. The updates for this section mirror recent revisions to the Community Center Use Policy approved by Council in December 2011. Current Policy 102 – Senior Center Operations,

does not define “alcohol”. To prevent confusion, the policy has been revised to define alcohol as “malt beverages and unfortified wine”, which is commonly known as beer and wine. Staff has included a statement that possession and consumption of liquor is prohibited. Community Center staff has implemented a procedure that requires renters to complete an application to serve “beer and wine” as part of the reservation process. The application clearly outlines the rules and regulations of allowing alcohol during rentals. This procedure has been successful at community centers, and Policy 102 has been revised to include this as a requirement prior to approving the reservation. To protect the Town’s investment, the Community Center Policy requires the renter to provide proof of host liquor liability insurance coverage. For individual citizens, this requirement is generally met by providing a copy of a standard homeowner’s policy. For businesses, this requirement is generally met by providing a copy of standard business liability coverage. The procedure has been implemented at community centers, and there have been no issues with renters being able to meet this requirement; therefore this language has been incorporated into Policy 102. As part of the policy review process, it is important to maintain existing language that gives staff the authority to require police security at the renter’s expense, and that users comply with all regulations of the North Carolina Alcohol Beverage Control Commission.

2. Policy 102 includes language that defines registration guidelines and program fees for senior programs. Program registration is already covered in an existing policy (Policy 18). In addition, fees are reviewed on an annual basis with the budget process. This language is redundant with other operational guidelines and is recommended to be removed from Policy 102.

Other revisions to the policy have been made to bring it in line with current practice. These revisions have no major impact on the user.

Fiscal Impact

There are no operating budget impacts associated with the recommendations contained in this staff report.

Staff Recommendation

Staff recommends Town Council approval of revisions to Policy Statement 102 – Senior Center Operations.

POLICY STATEMENT 102

OPERATIONS POLICY FOR CARY SENIOR CENTER

Prepared by: ~~Mary Henderson, Director of Parks, Recreation and Cultural Resources~~ Dwayne Jones, Recreation Manager

Supersedes: ~~7/11/2000 (also deleted Policy 82)~~ 5/25/2005

Adopted by Council: 5/26/2005

Effective: 5/26/2005

Purpose

To adopt an official policy for the operation of the Cary Senior Center, a public facility designed to primarily serve Cary residents age 55 and older.

Statement of Philosophy:

Cary Senior Center program offerings will be based on the Cary Senior Center Mission Statement:

The Cary Senior Center is supervised by the Town of Cary’s Parks, Recreation and Cultural Resources Department’s Senior Program staff. The Cary Senior Center strives to provide quality leisure activities and services to all adults ages 55 and older. These activities are designed to

assist, inform, entertain and enrich the lives of the Town of Cary's citizens. The Cary Senior Center also facilitates the needs of senior adult clubs in the Cary area. It is our goal to improve the lives of Cary's senior citizens through our offerings.

Definitions

Senior Citizens Clubs - Recognized Senior Citizen Clubs by the Town of Cary must meet the following criteria:

1. Minimum of 90 percent of membership must be 55 and older with the exception that spouses 54 and younger may join the club.
2. Minimum of 75 percent of total club membership must be residents of the Town of Cary.

These clubs are divided into three categories:

1. Senior Citizen Social/Civic Clubs must meet the above criteria, keep a copy of their current by-laws or mission statement (if available) and membership (if allowed by the by-laws) at the Cary Senior Center and receive all of the club benefits of meeting at the Cary Senior Center listed in item 4 of this policy.
2. Senior Citizen Church Affiliated Clubs must be sponsored by and meet at a local church, meet the above criteria, keep a copy of their current by-laws or mission statement (if available) and membership (if allowed by the by-laws) at the Cary Senior Center. These clubs will receive b, c, e and f of club benefits listed in item 4 of this policy.
3. Activity Based Senior Citizen Clubs must meet the above criteria, keep a copy of their current by-laws or mission statement (if available) and membership (if allowed by the by-laws) at the Cary Senior Center. These clubs will receive b, c, e and f of the club benefits listed in item 4 of this policy.

Coverage

This policy, upon adoption by the Town Council, shall be applicable to the operation and use of the Town-owned Cary Senior Center until such time that the policy statement is altered, modified, or rescinded by the Town Council.

Policy

The Town Council of the Town of Cary hereby establishes the following policy:

1. Facility: The Cary Senior Center is designed to provide multi-purpose utilization of the building including three classrooms, one media room, a conference room, exercise room, first-aid room, counseling room, offices, two multipurpose rooms, kitchen, outdoor areas and restrooms.
2. Facility Usage: The following priority shall be established for scheduling functions in this facility:
 - a. Town sponsored and co-sponsored senior citizen programs and activities.
 - b. Programs offered by Resources for Seniors, Inc.
 - c. Programs and activities sponsored by Senior Citizen Clubs recognized by and located within the Town of Cary.
 - d. Activities for other ages provided by or co-sponsored by the Town of Cary and other approved sponsors.

- e. Rentals for activities and events for private functions held by individuals and groups who are residents of the Town of Cary.
 - f. Rentals for activities and events for private functions held by individuals and groups who are non-residents of the Town of Cary.
3. General Hours of Operation: The Senior Center shall be available for use during times as established by the Cary Town Council. The Department Director or his/her designee shall reserve the right to alter hours of operation due to weather, health or safety of the public or employees.
4. Cary Senior Citizen Club Benefits: The Town of Cary will provide at the Cary Senior Center the following support at no cost to recognized senior citizen clubs as based in club definitions:
- a. Space for up to two weekday scheduled meetings and/or a maximum of six meeting hours, with entire club membership, per month with advance notice of six months of any permanent schedule changes (space permitting). All room reservations and set-up requests must be made with Cary Senior Center Supervisor's approval.
 - b. Space for one scheduled meeting with club board/advisory committee per month (maximum three hours) with one or more weeks notice (space permitting). All room reservations must be made with Cary Senior Center Supervisor's approval.
 - c. The free weekday rental of one shelter ~~at Bond or Ritter Park per year~~, per club with three months notice. All reservations must be made with Cary Senior Center Supervisor's approval.
 - d. Coffee (with condiments and paper products) will be provided for each club during their scheduled club meetings. Clubs must provide all other refreshment supplies. All posted kitchen rules must be followed by all that use the kitchen area.
 - e. Listing of Club meeting time, location, days and Club President information in the Town of Cary Senior Center quarterly brochure and mailing of that brochure to all club members (if allowed in Club by-laws).
 - f. One evening event, after 5 p.m., once per year for the entire club to meet as a whole, space permitting, with a minimum of three months advance notice.

~~5. Program Registration and Fees~~

- ~~a. There will be a two week priority registration period for Cary residents.~~

~~b. Classes & Workshops:~~

~~Fees for participation in classes shall be set to recover 100 percent of instructor fees plus 100 percent of supplies. Non-residents shall pay an additional 20 percent of resident registration fees with a minimum of \$5.00. (Exception: One-day workshop, additional non-resident fee equal to 20 percent of instructor fee with a minimum of \$1.00.)~~

~~c. Day and Overnight Trips:~~

~~Fees for day trips are 100 percent of bus cost plus 100 percent of admission fees (based on a minimum number of riders). Staff travel costs are to be divided~~

~~among all travelers expenses. Non-residents shall pay an additional 20 percent of resident registration fees with a minimum of \$5.00.~~

~~d. Senior Special Events and Dances:~~

~~Direct supply and/or meal costs will be divided among all participants (resident and non-resident will have same fee).~~

~~e. SeniorNet classes and workshops:~~

~~All participants in SeniorNet must join the national organization prior to registering for any classes. Cary residents and non-residents pay the same membership fee. Class fees will be based on recommendations from SeniorNet and the ability to provide sufficient funds to replace lab supplies and equipment. These fees will be set annually in the Town of Cary operating budget. The Cary resident two-week priority registration period is waived for these classes and workshops. Non-residents shall pay an additional 20 percent of resident registration fees with a minimum of \$5.00 for classes, workshops and labs.~~

6. General Rules of Use of the Facility:

a. An employee shall be on duty in the facility during all hours of operation or whenever the facility is open to the public.

~~b. All Town of Cary ordinances must be adhered to unless otherwise stated in this policy.~~

b. The following shall be prohibited within or on the premises of the facility:

- (1) Smoking within the building (smoking is permitted in designated areas outside the facility)
- (2) All illegal drugs and other substances
- (3) Weapons of all kinds except law enforcement officers in the execution of their duties and public demonstrations as approved by the Department Director
- (4) Animals of any kind except those serving the needs of the handicapped and those used in public demonstrations or programs as approved by the Department Director
- (5) The use of profanity or profane gestures
- (6) Possession and consumption of liquor and alcoholic beverages.

Exception: Possession and consumption of alcoholic beverages may be allowed pursuant to the following conditions. For purposes of this Policy, "alcoholic beverages" means malt beverages and unfortified wine (beer and wine) with less than 16 percent alcohol by volume; and "liquor" means fortified wine, spirituous liquor, and mixed beverages; all as defined by the North Carolina Alcoholic Beverage Control Commission.

(a) Alcoholic beverage possession and consumption shall be allowed during Town-sponsored and co-sponsored programs and activities. Additionally, alcoholic beverage possession and consumption shall be allowed during a facility rental for programs and activities not sponsored or co-sponsored by the Town upon proper application by rental users as described below.

(b) Rental users shall submit an "Application to Serve Beer and Wine" which must be approved by facility staff, and pay all applicable fees as outlined in the annual budget of the Town of Cary. Possession and consumption of alcoholic beverages in

connection with facility rentals by rental users shall be limited to the room or rooms that have been rented by that user.

- (c) Additional police security may be required at the rental user's expense. Such need will be at the discretion of the facility Supervisor.
- (d) Rental user shall comply with all regulations of the North Carolina Alcohol Beverage Control Commission.
- (e) Rental users must provide proof of host liquor liability insurance coverage from a licensed insurer, or proof that caterer or bartender has liquor liability coverage. The caterer must also provide general liability coverage naming the Town of Cary as Additional Insured.
- (f) Consumption of alcoholic beverages for Police training purposes shall be exempt from sub-paragraph (a) through (e) above.

(7) Any type of behavior that is detrimental to the normal operation of the facility or the safety of the public or employees

- c. Food, beverage or other sales are prohibited except ~~those with prior approval by the Department Director.~~ (1) food, beverages, alcoholic beverages, and other items may be sold at Town sponsored or co-sponsored programs and activities; and (2) food, beverages, alcoholic beverages, and other items may be sold by a non-profit organization at its activities and programs as approved by the Department Director. Food and beverages are permitted only in designated areas.
- d. The person making the application to reserve the facility must be at least 21 years of age and must assure adequate supervision when using the facility.
- e. Upon request of the Department Director, police security will be required (at the user's expense) and general liability insurance must be purchased.
- ~~f.~~ f. Any person or group using the facility shall be responsible for the breakage, loss or damage to the facility and equipment and shall bear the full replacement cost for such breakage, loss or damage.
- ~~e.~~ g. Persons and groups using the facility shall be responsible for any personal items brought into the facility and shall remove same at the end of each scheduled use time and shall return any Town owned equipment to its designated place within the facility as directed by the facility supervisor.
- ~~f.~~ h. Any person/group violating any of the above general rules is subject to immediate suspension from the facility and prosecution in the event of a law enforcement violation as provided in the Code of Ordinances of the Town of Cary.
- ~~g.~~ i. The facility shall be open only to persons who are upon the premises for specific programs, activities, functions or other official Town business.
- ~~h.~~ j. The Department Director or his/her designee may implement any other action deemed necessary to protect the health and welfare of the public, employees or the facility.
- ~~i.~~ Alcohol is prohibited with exception of approved rentals as outlined in #8e of this policy.

7. SeniorNet Computer Learning Center/Media Center use:
 - a. The Computer Learning Center shall be scheduled according to the following priority:
 - (1) Classes, workshops and labs for SeniorNet members only.
 - (2) Classes, workshops and labs for all others.
 - b. SeniorNet Computer Learning Center guidelines are to be followed at all times.
 - c. All computer improvements and enhancements will be the responsibility of the SeniorNet Computer Learning Center volunteers and sponsors in coordination with the Cary Senior Center staff.
 - d. Town of Cary Parks, Recreation and Cultural Resources Department has final approval of the use of the Computer Learning Center schedule, programs and participation.
8. Reservation/Rental Priority:
 - a. Town sponsored and co-sponsored reservations may be made at any time.
 - b. Non-Town sponsored usage - Residents:
 - (1) Sunday-Thursday not more than three months in advance.
 - (2) Friday and Saturday not more than six months in advance.
 - c. Non-Town sponsored usage – Non Residents:
 - (1) Sunday-Thursday not more than two months in advance.
 - (2) Friday and Saturday not more than five months in advance.
 - d. Reservations for use of the facility shall be made as outlined in the “Cary Senior Center” Standard Procedure #61. All persons making reservations shall pay a reservation /damage deposit at the time of reservation. All fees will be due at least 30 days prior to the reservation. A 10 percent surcharge will be assessed for all late rental fees.
 - e. Non-profit organizations pay 50 percent of total rental fees for rentals between the hours of 8 a.m. to 2 p.m. Monday through Friday.
 - f. ~~Alcohol, in the form of a “Champagne or Wine Toast” only for weddings and celebrations in recognition of the honored guest/s may be permitted during a rental with prior approval from the Parks, Recreation and Cultural Resources Department. This toast will not exceed more than one glass of alcohol per person. All other alcohol, including beer is prohibited.~~
9. Cancellation of Rentals:
 - a. The Department Director, or his designee, reserves the right to make cancellations at any time. Cancellation notices will be issued as far in advance as possible. All reservations/damage deposits and usage fees will be returned in full if cancellation is initiated by the Department.

- b. Cancellation ~~(for dates other than Friday and Saturday evenings in the month of December and New Year's Eve)~~ may be initiated by the party making the reservation up to 30 days prior to scheduled use without liability. All cancellation notices must be submitted in writing to the facility supervisor. Cancellations made within 30 days of the scheduled use will result in forfeiture of reservation/damage deposit.
 - c. Cancellations for Friday and Saturday evenings in the month of December and New Year's Eve may be initiated by the party making the reservation up to the last working day of September without liability. All cancellation notices must be submitted in writing to the facility supervisor. Any organization or sponsor who fails to notify the facility supervisor of a cancellation prior to the last working day in September prior to December reservation date will forfeit reservation/damage deposit.
 - d. No cancellations will be accepted within five working days of scheduled usage. Party making a cancellation within five working days of usage will be liable for payment of rental fees and other charges in full.
10. Program fees and fees for use of the facility shall be those as adopted by the Cary Town Council in the annual budget of the Town of Cary.

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

(Policy Statement 102 is also on file in the town clerk's office.)

I. Cary Tennis Park Budget Adjustment (PR12-30)

Committee unanimously recommended approving a budget adjustment recognizing an additional \$90,000 in Cary Tennis Park revenues and appropriation of \$90,000 in personnel expenditure authority for the Cary Tennis Park.

STAFF REPORT

Operations Committee, June 7, 2012

Cary Tennis Park Budget Adjustment (PR12-30)

Consideration of a budget adjustment to recognize increased revenue and expenses beyond FY12 budget appropriations

Speaker: Mr. William Davis

From: Doug McRaney, Director, PRCR

Prepared by: William Davis, Athletic Manager

Approved by: Benjamin T. Shivar, Town Manager

Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

The volume of instructional programs, lessons, and tournament activity at the Cary Tennis Park in FY 2012 has been higher than anticipated. Incremental revenues associated with these activities have offset the associated costs, and additional expenditure authority is needed to complete the fiscal year. Staff recommends that an additional \$90,000 in personnel expenditure authority be added to the FY 2012 Cary Tennis Park budget to be funded by the recognition of \$90,000 in additional revenues.

Discussion

Due to an increase in instructional programs, lessons and tournaments conducted by Cary Tennis Park above the level anticipated in the original budget, staff requests recognizing an additional \$90,000 in revenue and a corresponding appropriation of \$90,000 in personnel expenditure authority. The adopted FY 2012 revenue budget for the Cary Tennis Park was \$1,197,415, and the current estimated level of revenues for the year is \$1,290,000.

Fiscal Impact

Because the level of increased revenues offset the increased expenditures, there is no net direct fiscal impact.

Staff Recommendation

Staff recommends recognition of an additional \$90,000 in Cary Tennis Park revenues and appropriation of an additional \$90,000 in personnel expenditure authority for the Cary Tennis Park.

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

m. Extension of Management Contract for the Koka Booth Amphitheatre (PR12-31)

Committee unanimously recommended exercising the extension provision in the amended SMG contract to extend SMG's management of the Koka Booth Amphitheatre for two more years, through the 2014 season.

STAFF REPORT

Operations Committee, June 7, 2012

Extension of Management Contract for the Koka Booth Amphitheatre (PR12-31)

Consideration of a two-year extension of SMG's management contract for the Booth Amphitheatre

Speaker: Mr. Lyman Collins

From: Doug McRaney, Director, PRCR

Prepared by: Lyman Collins, Cultural Arts Manager

Approved by: Benjamin T. Shivar, Town Manager

Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

Staff recommends extending the management contract between the Town and SMG, a private management company headquartered in Philadelphia, for the day-to-day management of Koka Booth Amphitheatre. This contract agreement is separate from the annual management plan and budget that is presented to Council for approval each October. The contract extension is presented now to provide the required 100 day notice to SMG if Council decides not to renew the contract. Staff recommends approval of the extension provision in the amended SMG contract to extend SMG's management of the Koka Booth Amphitheatre for two more years, through the 2014 season.

Discussion

In 2001, Town Council authorized staff to contract with SMG to provide private management services for the new Amphitheatre. The original three-year contract provided for two year extensions of the contract. In 2004, as part of the agreement for the first extension, the contract was amended to provide greater inducement for SMG to meet the annual approved budget. This

amendment called for a reduction in the management fee if the approved budget was not met. The contract was extended without further amendments in 2006 and 2008. The 2004 amendment has been effective. Since the 2005 season when the contract amendment came into force, the Amphitheatre has performed better than the approved budget. Under this proposed extension, the penalty amendment will remain in effect.

The following table illustrates the approved budget subsidy for the Amphitheatre compared to actual results for the last four years for which we have final, audited numbers:

	2008	2009	2010	2011
Budgeted subsidy	\$198,830	\$222,437	\$210,067	\$199,846
Actual subsidy	\$172,937	\$82,212	\$156,184	\$198,757
Difference (unused subsidy)	\$25,893	\$140,225	\$53,883	\$1,089

As shown above, SMG continues to manage the Amphitheatre within the approved annual budget subsidy. However, the table also illustrates the volatility of the touring concert industry. Between the uncertain economy, the changing touring concert availability and the increased competition in the Triangle market, it is advisable to continue conservative budget forecasts. The 2012 Management Plan and Budget includes a subsidy of \$168,191, which is about 10 percent above the subsidy average of \$152,523 for the past four years.

Current Status

Below is staff's assessment of SMG's progress on the facility goals:

1. Provide performances by nationally acclaimed artists.

SMG continues to succeed in reaching this goal. By regularly assessing the viability of national promoters, SMG has allowed the Amphitheatre to continue to provide a wide array of touring acts. The market, however, is changing with the opening of the Downtown Raleigh Amphitheatre as well as the Durham Performing Arts Center's summer concert bookings. This changing market dynamic makes the role of the national promoter an increased area of importance for the Amphitheatre to maintain both its place in the market and a successful financial status, given that national concerts are the primary revenue driver for the facility's budget.

2. Continue to offer, develop and expand opportunities with the North Carolina Symphony.

SMG fully recognizes that the Symphony relationship is a cornerstone of programming at the Booth Amphitheatre. SMG has developed positive working relationships with various symphony staff members and been mindful to control overall costs to the Symphony, especially in the current tight financial framework. The Amphitheatre currently provides artist fee support to at least two concerts each season, which allows for greater variety in performances.

3. Develop a Summer Theatre program specifically designed for the Amphitheatre.

This goal has been one of the most difficult one to achieve over the past eleven years, but in the last two years SMG has made significant progress and has worked to develop a significant program. Two Shakespeare plays have been presented in each of the past two years with audiences growing with each performance (though last year's production was hampered by Hurricane Irene). Both years the productions have been recognized by the theatre critic from *The Independent* as significant additions to Triangle theatre. This year the production has been moved from late summer to early fall to allow for better coordination with area schools. The theatre program has the potential to grow and may provide additional programming opportunities for the facility.

4. Develop partnerships for performances with quality local, regional and statewide performing arts organizations.

This area continues to offer the opportunity to grow for the Amphitheatre, especially as arts organizations in Cary continue to grow. The annual *An American Celebration* concert on Memorial Day continues to feature local performing arts ensembles. It must be noted, though,

that the opening of the Cary Arts Center has taken some of the pressure to serve local arts groups. When the Amphitheatre opened, there was no other space to accommodate local organizations. Nonetheless there continues to be a variety of opportunities to work with area performing arts organizations, and SMG supports keeping the facility as accessible to the groups as is practical.

5. Develop festivals that provide community participation and help establish a community identity.

SMG has been very successful in working with both outside festival vendors (such as for Great Grapes or Beer, Bourbon and Barbeque) and local organizations (such as for Diwali). More recently, the annual Reel-ly Scary Cary Halloween movie series has evolved into its own festival event, and has proved to be both fun and popular.

6. Develop a rental program for the use of the Amphitheatre that does not compete with performance times.

This is an area that continues to grow, and SMG has done an excellent job of balancing the performance needs of the facility with potential rental opportunities. Also, SMG maximizes opportunities working with programs such as road races and charity events during morning hours and still provide time for event set up for evening activities.

7. Provide cooperative opportunities with the Amphitheatre neighbors.

Neighborhood relations have continued to evolve, and SMG has worked to improve these relationships. Through the Amphitheatre Advisory Committee, SMG established a communication network to provide information to both business and residential neighbors. Noise levels remain the most obvious area of neighbor concern, but the sound monitoring system has provided an important tool to ensure compliance with approved sound levels. SMG has included financial penalties in its contracts with promoters as part of its efforts to insure compliance. Changes in the locations of sound monitoring equipment in 2010 have gone a long way in balancing neighborhood concerns with the needs of audiences inside the venue. Ensuring compliance with noise level restrictions remains an area that staff continues to emphasize, but there has been a marked decrease in noise complaints over the past two years.

8. Provide revenue that more than offsets the operating costs.

This goal remains an important target for both SMG and staff to aim for, and SMG continues to manage the facility in a way that reduces overall costs and remains within the approved subsidy. Nonetheless, staff must point out that because of the nature of the touring concert industry and other entertainment variable, it is rare for facilities of this type to produce revenue in excess of expenditures. SMG has made a number of positive moves in this direction including sponsorships, season tickets, preferred parking and concessions. In its report, SMG makes several other recommendations, and staff supports exploring those options with SMG and will bring forward recommendations as appropriate as part of the annual Management Plan and Budget approval process in October.

Fiscal Impact

The management fee was initially established at \$50,000. The contract calls for the management fee to be adjusted annually based on the percentage change in the *Consumer Price Index*. As seen in the following table, it has not increased over the past four seasons. The last increase was in 2008. Consistent with the facility's conservative budget practices, it was budgeted to increase in the 2012 season but current trends indicate it will remain the same this season.

	2008	2009	2010	2011
Fee	\$58,423	\$58,423	\$58,423	\$58,423

Summary

Staff is bringing this contract extension to Council now because the Town is required to give SMG 100 days notice if it is our intent not to renew. If Town Council elects not to renew the contract

extension, SMG staff will operate the facility through the current season that ends on October 31, 2012 and after that time the management of the facility will come directly under Town management. Staff will need this time to review and then recommend other arrangements for management of the facility prior to the start of the 2013 season.

If Council approves this extension, SMG will present to Town Council its 2013 Management Plan this October, including next season's budget.

Staff Recommendation

Exercise the extension provision in the amended SMG contract to extend SMG's management of the Koka Booth Amphitheatre for two more years, through the 2014 season.

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

n. Request for Additional Funding for Utility Systems Management (USM) in FY2012 (PWUT12-20)

Committee unanimously recommended approving the transfer of an additional \$80,000 in budget authority to the USM Division's supplies account funded by the North Cary Water Reclamation Facility's contracted services account.

STAFF REPORT

Operations Meeting, June 07, 2012

Request for Additional Funding for Utility Systems Management (USM) in FY2012 (PWUT12-20)

Consideration of appropriating additional funding for supplies in the Utility Systems Management (USM) Division of PWUT

Speaker: Mr. Jamie Revels

From: Jamie Revels, P.E., Utilities

Prepared by: John D. Holloway, PWUT Operations Analysis Supervisor

Approved by: Benjamin T. Shivar, Town Manager

Approved by: Michael Bajorek, Assistant Town Manager

Executive Summary

During FY12, the USM division encountered a variety of wastewater pump repair and/or replacement expenditures beyond expected corrective maintenance levels. As a result, USM's FY12 supplies account, originally funded at \$243,800, will not be sufficient to complete the fiscal year. Staff anticipates needing additional spending authority of \$80,000, a 2.5 percent increase for the overall FY12 USM budget of \$3,155,941. Staff recommends transferring \$80,000 from the North Cary Water Reclamation Facility's contracted services account to the USM Division's supplies account.

Background

During FY12, USM tracked and evaluated unanticipated pump failures that resulted in pump repair or replacement. Since these pumps, parts, and supplies are essential for continued operation of the wastewater pump stations, their continued service is important to flow management and odor control. As a result, associated repairs were required to sustain wastewater pumping operations. Examples of locations and cost include: Swift Creek PS - two pumps repaired and carbon replaced - approximately \$41,000; Kit Creek PS - two pumps repaired and a grinder rebuilt - approximately \$69,000; Morris Branch - one pump repaired, a grinder rebuilt, and carbon - replaced approximately \$32,000; West Cary PS - a grinder rebuilt -

\$15,000; and one pump replaced each at Jones Franklin and Thresher Court PS's - approximately \$25,000. These repairs were conducted in a proactive manner, and no sewer overflows occurred at the 44 pump stations maintained by USM.

Throughout the year, staff continued to evaluate the impact of these repairs to the overall USM budget and concluded additional funds will be required to sufficiently support the division's FY12 expenditures. Although the additional budget allocation of \$80,000 is less than the referenced repairs above, material cost savings and operational variations resulted in savings in other accounts within the division to absorb some of these additional costs.

An additional \$80,000 of funding is estimated to be added to the USM supplies account (030-7030-572-3300). This allocation, along with the movement of funds within other accounts, will sufficiently fund expenditures through the end of this fiscal year, which ends June 30, 2012.

The USM budget for supplies was \$243,800 for FY12, and with this allocation and other adjustments within the division, the anticipated total supplies allocation is \$383,800. While staff does not anticipate this significant of a trend to result in FY13, additional funding for corrective maintenance was budgeted for the FY13 budget.

Fiscal Impact

The FY 2012 adopted budget included \$243,800 for supplies in the USM Department. Current expenditure trends indicate that \$80,000 of externally funded spending authority will be needed to complete the year. It is recommended to transfer the needed budget authority from the North Cary Water Reclamation Facility's contracted services account (030-7051-572-4500). Savings exist in this account due to lower than budgeted costs associated with the Durham County wastewater treatment agreement.

Staff Recommendation

Staff recommends Town Council approve transferring an additional \$80,000 in budget authority to the USM Division's supplies account funded by the North Cary Water Reclamation Facility's contracted services account (030-7051-572-4500).

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

o. Update to Chapter 2 of the Town Code and to Policies 143 and 150 to remove references to the Town Center Review Commission (TC12-008)

Committee unanimously recommended setting a public hearing for July 26, 2012 for the Town Code amendments to remove references in the Code to the Town Center Review Commission and other miscellaneous changes and approving proposed amendments to Policies 143 and 150.

STAFF REPORT

Operations Committee, June 7, 2012

Update to Chapter 2 of the Town Code and to Policies 143 and 150 to remove references to the Town Center Review Commission (TC12-008)

Consideration of 1) calling a public hearing to be conducted on July 26, 2012 to consider removing references in the Town Code pertaining to the Town Center Review Commission and other miscellaneous changes to the boards/commissions portion of Chapter 2; and 2) consideration of updating Town Policies 143 and 150 to remove references to the Town Center Review Commission

Speaker: Ms. Sue Rowland

From: Sue Rowland, Town Clerk
 Prepared by: Sue Rowland, Town Clerk
 Approved by: Benjamin T. Shivar, Town Manager
 Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

Staff recommends Town Council set a public hearing for the Town Code amendments to remove references in the Code to the Town Center Review Commission and other miscellaneous changes. Staff also recommends Town Council approve amendments to Policies 143 and 150 at the same time the ordinance amendment is on a council agenda for final action.

Background

At the 2012 Council/Staff Retreat, the council directed staff to move forward with the appropriate steps to eliminate the Town Center Review Commission (TCRC). Council approved an ordinance amendment at its May 24, 2012 council meeting to eliminate the TCRC from the Land Development Ordinance. It was staff's intent to bring Town Code and policy amendments to the May 24 council meeting as well, to be processed simultaneously with the LDO amendment. However, legal staff advised that a public hearing is required to remove references to the TCRC from the Town Code as well. This housekeeping staff report is the final step in the process to remove references in Town Code and policies to the TCRC.

Discussion

Below are the proposed ordinance amendments necessary to remove the TCRC from the Town Code as well as other miscellaneous amendments to the Town Code pertaining to boards/commissions. Also, below are suggested amendments to Town Policies 143 and 150, which remove references to the TCRC from these documents. A public hearing and a Planning and Zoning Board (P&Z) recommendation is required for the Town Code amendments. Although no public hearing or P&Z recommendation is required for the policy amendments, both are included in this staff report to show all changes needed. Town Code and Policy amendments will be on the same council agenda for final vote.

The proposed schedule follows:

Committee meeting (for ordinance and policy amendments):	<i>June 7, 2012</i>
Town Council Public hearing date (for ordinance amendments)	<i>July 26, 2012</i>
Proposed date of Planning and Zoning Board meeting (for ordinance amendments)	<i>August 20, 2012</i>
Proposed date of final action by Council (for ordinance and policy amendments):	<i>September 13, 2012</i>

The ordinance and policy amendments follow:

Amend Chapter 2 of the Town Code as follows:

ARTICLE V. BOARDS AND COMMISSIONS AND AUTHORITIES

Sec. 2-162. ~~Definitions and requirements for a public hearing.~~ General Provisions.

(a) *Definitions.*

- (1) **Board.** For the purposes of this article, the word "board" shall mean and include any board, commission, committee, agency or similar group made up in whole or in part of nonelected appointees of the town council, whether established by general statute, charter, ordinance, resolution, motion or otherwise. Notwithstanding the preceding, for special committees, task forces and the like this Article shall apply only as appropriate, and the mayor shall have appointment

responsibility as provided in Town Code section 2-33.

- (2) **Board Year.** Board year shall mean a 12-month time period beginning with the term effective date.

(b) *Use of provisions.* Unless otherwise required by North Carolina General Statutes, where any provision of this article conflicts with any provisions imposed elsewhere in the Code, the provisions of this article shall be deemed to be controlling.

~~—(c) Any change to this Article requires a public hearing before the town council. Amendments to Section 2-171, 2-172, and 2-174 shall be in accordance with the procedures set forth in N.C.G.S. § 160A-364.~~

Sec. 2-171. Planning and zoning board.

~~(c) *Officers.* The town council shall appoint one of the planning and zoning board members to serve as the chair of the planning and zoning board. The town council shall appoint one planning and zoning board member as a member of and chair for the town center review commission.~~

Sec. 2-172. Zoning board of adjustment.

(c) Board decisions. ~~Decisions on variances and appeals of administrative actions~~ **As appropriate, decisions** rendered by the board shall be recorded with the register of deeds in the county where the property subject to the decision is located.

Sec. 2-174. Town center review commission.

~~—(a) *Membership.* The town center review commission shall consist of seven members appointed by the town council. All members shall reside within the corporate boundaries of the town. The membership of this commission shall be composed of at least two members with expertise in the areas of architecture, urban design, landscape architecture, engineering, planning, art, or other similar fields; at least one member who is a downtown business owner; at least one member who is a resident of the town center plan area; and one member who is a member of the planning and zoning board. If representation as described above cannot be achieved due to the applications received, the town council may make other appropriate appointments in keeping with the intent of this review commission.~~

~~—(b) *Alternate member.* The town council may, in its discretion, appoint an alternate member from within the corporate boundaries of the town to serve on the town center review commission in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. The alternate member shall be appointed for the same term, at the same time, and in the same manner as regular members. The alternate member, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.~~

~~—(c) *Officers.* The town council appointed planning and zoning board representative shall serve as the chair of the town center review commission.~~

~~—(d) *Amending section.* Amendments to this Section 2-174 shall be in accordance with the procedures set forth in N.C.G.S. § 160A-364.~~

The policy amendments follow:

**Policy Statement 143
Rules of Procedure for the Cary Town Council**

Prepared By: Sue Rowland, Town Clerk
Adopted by Council: ~~3/27/2008~~ **9/13/2012**
Supersedes: ~~8/14/2005~~ **3/27/2008**
Effective: ~~3/27/2008~~ **9/13/2012**

Purpose

The purpose of this policy statement is to develop favored procedures for council to look to and follow. It is hoped that these procedures will facilitate communications between and among council members and staff, provide efficient and equitable procedures to follow in and out of public meetings, and provide general information and recommendations about how the council conducts Town business. This policy is based in large part on N.C. law, but the policy is not designed to create any additional rights or obligations and does not provide any procedural rights to any person. The failure of council or any other person to adhere to the recommended procedures described herein shall not affect the validity of any meeting or action taken by council. To the extent there is conflict or any discrepancy between these procedures and the NC General Statutes, case law, or Town ordinances (collectively "law"), the law shall prevail.

Rule 1. Regular Meetings

The council shall hold regular meetings according to a schedule adopted by the council in December of each year setting forth dates, times, and locations of all regular meetings **and regular monthly work sessions** for the next calendar year. A copy of the council's meeting schedule will be filed with the Town Clerk, and the Town Clerk will prepare one public notice each year announcing these meetings. The Town Clerk will also include these meetings on the Town's Web calendar.

Rule 2. Special, Emergency and Recessed (or Adjourned) Meetings

A. Special Meetings

1. The mayor or the mayor pro tem or any two council members may at any time call a special meeting of the council by signing a written notice that is maintained in the Town Clerk's office. This written notice will include the date, time, and place of the meeting and subject(s) to be considered. This written notice shall be provided to the Town Clerk to allow public notice to be posted at least 48 hours before a special meeting called in this manner. This public notice shall be:
 - a. provided to each council member;
 - b. posted on the principal bulletin board of the public body or, if the public body has no such bulletin board, at the door of its usual meeting room;
 - c. provided to each newspaper, wire service, radio station, television station and person who has filed a written request for notice with the Town Clerk;
 - d. posted on the Town's Web calendar.
2. A special meeting may also be called or scheduled by vote of the council in open session during another duly called meeting (as distinguished from a "recessed meeting" – Rule 2, Item C). The motion calling for the special meeting shall specify the date, time, place, and subjects to be considered. At least 48 hours before the meeting that is called in this manner, the Town Clerk shall post a public notice and distribute it as follows:
 - a. provided to each council member not present at the meeting when the special meeting was called, and it shall be provided to these council members at least 48 hours before the meeting;

- b. posted on the principal bulletin board of the public body or, if the public body has no such bulletin board, at the door of its usual meeting room;
 - c. provided to each newspaper, wire service, radio station, television station and person who has filed a written request for notice with the Town Clerk;
 - d. posted on the Town's Web calendar.
3. Only those items of business specified in the notice may be discussed or transacted at a special meeting.

B. Emergency Meetings

Emergency meetings may be called only because of generally unexpected circumstances that require immediate consideration by the council. Only business connected with the emergency may be considered at an emergency meeting. There are two methods that may be used for calling an emergency meeting:

1. The mayor, the mayor pro tem, or any two council members may at any time call an emergency meeting of the council by signing a written notice that is maintained in the Town Clerk's office. This written notice shall state the date, time, and place of the meeting and the subjects to be considered. The notice shall be delivered to the mayor and each council member or left at his or her usual dwelling place at least six hours before the meeting.
2. An emergency meeting may be held at any time when the mayor and all members of the council are present and consent thereto, or when those not present have signed a written waiver of notice.

In either method above, notice shall also be given to each local newspaper, local wire service, local radio station and local television station that has filed a written request with the Town Clerk and has provided a telephone number for emergency notification. Notice to media outlets shall be given either by telephone or by the same method used to notify the members of the public body and shall be given immediately after notice has been given to the public body.

C. Recessed (or Adjourned or Continued) Meetings

A properly called regular, special, or emergency meeting may be recessed (or adjourned or continued) to a date, time, and place as specified by motion made in open session at the regular, special, or emergency meeting. No further notice is necessary for a recessed session of a properly called regular, special, or emergency meeting.

Rule 3. Organizational Meeting

On the date and at the time of the first regular meeting in December following a general election in which council members are elected, or at an earlier date, if any, set by the incumbent council, the newly elected members shall take and subscribe the oath of office. Any member not present at the organizational meeting may take the oath at any time thereafter. At this meeting, the council shall also elect a mayor pro tempore from its membership. In addition, the mayor shall appoint council members to serve on council committees (refer to Rule 13) and as liaisons to boards and commissions and outside organizations that request a council liaison. This organizational meeting shall not be held before the municipal election results are officially determined, certified, and published in accordance with state law.

Rule 4. Agenda

A. Agenda Preparation and Dissemination for Regular Meetings

1. The Town Council agenda is prepared by the Town Clerk based on information from:
 - a. Council Committees: Committees make a recommendation to the full council. If the recommendation is unanimous from both staff and committee, the issue will be placed on the consent agenda portion of the council agenda. Items requiring any supermajority vote (i.e., certain waivers, ordinances introduced on first reading, etc.) may be placed on the consent agenda if deemed non-controversial, and the staff report will outline the special vote requirement. Otherwise, the issue will be placed on the council agenda for discussion.
 - b. Boards or Commissions who have a role in the development process as outlined in the Land Development Ordinance: The Planning and Zoning Board, ~~Town Center Review Commission~~, Parks, Recreation and Cultural Resources Advisory Board, and the Public Art Advisory Board all have a role in the development process (i.e., rezonings, site/subdivision plans, Land Development Ordinance amendments, etc.). Staff will include details of these board recommendations in the staff report/data sheet that is prepared for the Web and linked to the agenda, including details of the minority opinion. If the recommendation is unanimous from both staff and the boards and requires simple majority vote, the issue will be placed on the consent agenda portion of the council agenda. Otherwise, the issue will be placed on the council agenda for discussion.
 - c. Staff: All staff initiated items that go directly to council instead of through the committee process must be approved by the department director and the Town Manager in order to be placed on a council agenda. If the Town Manager determines that it is non-controversial, then the issue will be placed on the consent agenda. Otherwise, the issue will be placed on the council agenda for discussion.
 - d. Council Members:
 - (1) Council members serve as liaisons to various Town of Cary and outside organizations. Any council member who wants to provide a report from an outside group to which he/she serves as liaison or about a program in which he/she has participated (i.e., Chamber's inter-city visit) should advise the Town Clerk to add this to the appropriate council agenda. It is the requesting council member's responsibility to prepare a concise report and provide this report to the Town Clerk for placement on the Web by the agenda deadlines. It is the responsibility of all council members to review this report prior to the meeting. At the meeting the presider will ask the council member who prepared the report if there is any new information to add that is not in the report. The council will have an opportunity to ask questions

about the report. No action/vote is necessary to accept, receive or approve the report.

- (2) Council Member Initiated Agenda Items (with the exception of reports, which are addressed in Item (1) above): The council values initiatives and ideas from its members and also respects the time and resources required by staff in preparing staff reports. Council member initiated requests will be handled exclusively in the following manner.
- (a) The council member requesting that an item be placed on the agenda shall first obtain the support of another council member.
 - (b) The council member making the request will ~~e-mail~~ **email** the Town Clerk showing a copy of the ~~e-mail~~ **email** to the second council member who supports the request. The ~~e-mail~~ **email** should contain details about the requested agenda item.
 - (c) Staff will determine the appropriate agenda on which to place this council member initiated request. Staff will send an ~~e-mail~~ **email** to all council members with a copy to all department directors advising every one of the details of the agenda item, the agenda on which the item will appear, and the names of the two council members who brought forth this request.
 - (d) Staff will include the details of the ~~e-mail~~ **email** referenced in Item (c) above on the Web site, and this information will be linked to the agenda item.
 - (e) There will not be a staff report/recommendation at the meeting when this item first appears on the agenda. The council member who made the request will verbally explain the request.
 - (f) At the meeting when the item first appears on the agenda, the council as a whole may take one of the following four actions:
 - (i) Discuss the issue and take action at the meeting if no information is required from staff and if council does not seek public input, or
 - (ii) Refer the request to the appropriate committee meeting, at which time a staff report with staff recommendation will be prepared, or
 - (iii) Refer the request to a future council meeting, at which time a staff report with staff recommendation will be prepared, or

- (iv) Decide *not* to pursue the council initiated request.
 - e. Other entities that are affiliated with the Town (i.e., those which have Cary citizen liaisons who are appointed by the mayor and/or council [such as Triangle Transit Authority], those which the Town pays membership dues [all organizations in the legislative dues/memberships budget account –such as the N.C. League of Municipalities, Triangle J, etc.], or those with which we have a regional partnership [such as the Wake County Public School System, other Wake County municipalities, etc.]):
 - (1) The council agrees that the purpose of these outside agency reports being on a council agenda is to advise the council of their activities. If these organizations request to make reports to the council, they will work with the Town Clerk, who will identify the appropriate council meeting. The organization will provide an electronic report in html format, including an executive summary in time to meet the agenda deadlines. The Town Clerk will place the report on the Web, and it will be linked to the Web agenda. It is the responsibility of all council members to review this report prior to the meeting. At the meeting the presider will ask the organization's representative if there is any new information to add that is not in the report. The council will have an opportunity to ask questions about the report. No action/vote is necessary to accept, receive or approve the report.
 - (2) If the agency affiliated with the Town requests council action (instead of a request to only make a report to provide information – such as a request for the council to adopt a resolution to support their initiative), then they will work with the Town Clerk, who will determine the appropriate agenda on which to include the request. A report will be prepared by the appropriate Town staff member and placed on the Web and linked to the agenda and will meet all agenda deadlines.
2. The Town Clerk will prepare the draft agenda on Friday, two weeks before the meeting and will make it available electronically to all staff and council members.
 3. Staff, council members, and other entities who are eligible according to this policy to request agenda items must inform the Town Clerk of any additional agenda items to add to the draft agenda no later than 5 p.m. on Tuesday, the week before the meeting.
 4. Documents associated with a particular council meeting (staff reports, minutes, maps, etc.) must be submitted electronically in a format determined by the Town staff to ensure ADA compliance to the Town Manager's Office by 5 p.m. Tuesday, the week before the meeting.
 5. All staff reports must be approved by the Department Director, Assistant Town Manager, and Town Manager before being electronically submitted to the Town Clerk.

6. The clerk will ~~e-mail~~ **email** the final draft agenda to the council members prior to placing it on the Web.
 7. The Town Clerk will post the final agenda including all associated reports, with the exception of draft minutes to be approved, on the Web by 5 p.m. on Friday, the week before the meeting. No further changes will be made to the agenda once it has been posted on the Web.
 8. Draft minutes to be approved on a council agenda will be ~~e-mailed~~ **emailed** to council members the Friday prior to the council meeting at which they are scheduled to be approved. Council members will provide the town clerk any suggested changes to these minutes by the following Monday at noon. The clerk will post these draft minutes to the Web by 5 p.m. on the Monday prior to the council meeting and will link them to the council meeting agenda.
 9. Recognizing that sometimes emergency staff generated items may come up after the agenda is posted to the Web, that sometimes an applicant may want to remove an item from a particular agenda and add it to a future agenda, and that sometimes an agenda item is no longer necessary because it is settled before the meeting, the council acknowledges the importance of having a systematic approach to deal with these issues. Any item that falls into these categories will be communicated to the town clerk, who will show it at the end of the Web agenda as possible "addendum" to the council meeting agenda; the associated staff report and information will be linked to the item if time permits prior to the meeting. If time does not permit, then a written report will be provided to each council member at the meeting. The full council will consider modifying the agenda to include these "addendum" items at the beginning of the meeting when they adopt the agenda (refer to Rule 4, Item C). Simple majority vote is required to make these amendments to the agenda.
- B. Agenda Preparation and Dissemination for Special, Recessed and Emergency Meetings
1. Special Meetings
These meetings are recognized to be more informal than regular meetings. It is not necessary for the council to officially adopt the agenda. The public notice for a special meeting may serve as the agenda. The council may not add items to the agenda of a special meeting.
 2. Recessed and Emergency Meetings
An agenda will not be prepared for recessed or emergency meetings.
- C. Adoption of Agenda at Regular Meetings
- As its first order of business at each regular meeting, the council shall discuss any proposed revisions to the agenda and adopt an agenda for the meeting. The council may by majority vote add staff generated emergency items that have come up since the agenda was posted to the Web site, delete items from the agenda for which action is no longer required, or postpone items to a future meeting.
- D. Consent Agenda at Regular Meetings
- The council may designate a part of the regular meeting agenda as the "Consent Agenda." Items shall be placed on the consent agenda by those preparing the proposed agenda if they are believed to be non-controversial and routine. Any council member may remove an item from the consent agenda and place it on the regular agenda for discussion. The consent agenda will be handled separately from

the adoption of the regular agenda. All items on the consent agenda shall be voted on and adopted by a single motion, with the minutes reflecting the motion, second, and vote on each item.

E. **Open Meetings Requirement**

The council shall not deliberate, vote, or otherwise take action on any matter by reference to a letter, number, or other designation, or other secret device or method, with the intention of making it impossible for persons attending a meeting of the council to understand what is being deliberated, voted, or acted on. The council may, however, deliberate, vote or otherwise take action by reference to an agenda, if copies of the agenda – sufficiently worded to enable the public to understand what is being deliberated, voted, or acted on – are available for public inspection at the meeting.

In addition, the council shall not use e-mail ~~email~~, instant message, or chat rooms during the meetings and shall not participate in private conversations with other members of the council, all of which could be perceived as deliberating in a secret method.

If circumstances prevent a council member from attending any type of council meeting, then that council member may request of the town clerk at least 48 hours in advance of the meeting to participate in the meeting by phone. The council member may participate in the discussion during the meeting by phone but may not vote. The meeting minutes will show the council member as absent and acknowledge that the council member participated in the discussion by phone. To ensure full disclosure and to meet the spirit and intent of wire tap laws, the mayor shall announce at the beginning of the meeting that the council member is participating in the meeting by phone.

Rule 5. Order of Business and Rules for Each Agenda Section

Items shall be placed on the agenda according to the order of business. The order of business and rules for each agenda topic for each regular meeting follow. By unanimous consensus or majority vote of the council, agenda items may be considered out of order.

A. Commencement

1. Call to Order

The presider will always begin the meeting at the appointed time with a quorum present.

2. Ceremonial Opening

A rotation system among council members who wish to participate will be used. The council member may take approximately 1.5 minutes to provide an invocation, allow for a moment of silence, lead the Pledge of Allegiance, or any combination thereof. Council members should not invite outside persons to handle this portion of the agenda.

3. Adoption of Agenda

Staff will provide the council with a list of items that are staff emergency-type items that staff suggests to be added to the agenda; items that no longer need council action; and items that should be postponed to a future meeting. The presider will also ask the council if any such matter has come

to their attention that is not on the list provided by staff. The council may adopt the agenda as written or modify the agenda as proposed by majority vote.

B. Consent Agenda

Refer to Rule 4, Item D. When possible, any council member wishing to remove an item from the consent agenda should advise the staff in advance.

1. Regular Consent Agenda

2. Land Development Ordinance Consent Agenda Items

Items on this portion of the agenda will include rezonings, site/subdivision plans, comprehensive plan amendments, mixed uses, Land Development Ordinance amendments, and other land development items.

3. Committee Consent Agenda

C. Recognitions and Reports

Recognitions shall include recognition of staff or the public for special accomplishments or achievements and presentation of proclamations that are requested to be presented at a council meeting. Staff recognitions shall be recommended by the department director and approved by the Town Manager. Proclamation presentations shall be requested by a council member, department director, or citizens. The Town Clerk shall continue to work with all parties to schedule proclamation presentations outside the council meeting process whenever possible.

Reports shall include reports from council liaisons and outside entities who qualify according to Rule 4. All reports should be provided electronically to meet the staff established deadlines, and this information will be linked to the agenda on the Town's Web site. At the meeting, the representative will be recognized, afforded the opportunity to bring forth new information not in the report, and answer any questions from the council. A power point presentation will not be given at the council meeting.

D. Public Speaks Out

Any individual or group who wishes to address the council at a regular meeting shall abide by the following rules. Public address to the council is not allowed at special or emergency meetings or any recessed special or emergency meeting.

- 1. Speakers should provide contact information to the clerk prior to speaking;*
- 2. Speakers must come to the podium closest to the town clerk to make their remarks; special accommodations will be made for persons with disability with appropriate advanced notice to the town clerk;*
- 3. Speakers should clearly state their names;*
- 4. Speakers may speak on any topic unless it is a topic for which a public hearing is being held on the same regular meeting agenda;*
- 5. All comments should be directed to the full council, not to an individual council member;*
- 6. Speakers should be concise;*

7. *Speakers should avoid repetition;*
8. *Groups should designate a spokesperson when possible;*
9. *Limit comments to three minutes or less;*
10. *An individual may only speak one time during the "Public Speaks Out" portion of each regular meeting agenda;*
11. *Speakers should provide 11 copies of any handout materials to the town clerk for distribution to the council and for the public record;*
12. *The "Public Speaks Out" portion of the agenda is limited to one hour unless waived by the council by majority vote.*

The council does not take action on public comment unless all members present unanimously agree to do so, but they may refer the matter to staff for follow up.

E. Public Hearings

The council shall follow all N.C. laws and local ordinances with regard to legally required public hearings. The council may also call for public hearings on issues that do not require a legal public hearing. The council agrees that the purpose of public hearings is to receive public input. The council shall not engage in debate with speakers during public hearings. The council will hold all questions and comments until after the public hearing is closed.

Items may be referred following the public hearing to the next stage in the process (i.e., Planning and Zoning Board) by unanimous consensus. If there is not unanimous consensus, then the council will refer by motion, second and vote. The council concurs that if an outside party (applicant) has paid all applicable fees to use an established Town process (i.e., rezoning, etc.), then that person is entitled to the full process.

The council establishes the following rules for public hearing:

1. *Speakers should provide contact information to the clerk prior to speaking;*
2. *Speakers must come to the podium closest to the town clerk to make their remarks; special accommodations will be made for persons with disability with appropriate advanced notice to the town clerk;*
3. *Speakers should clearly state their names;*
4. *Speakers should be concise;*
5. *Speakers should avoid repetition;*
6. *Speakers should adhere to the five minute time limit;*
7. *Speakers may only speak once per public hearing;*
8. *Unused minutes are not transferable to other speakers;*
9. *Individuals should designate a spokesperson for large groups;*
10. *Speakers should provide the Town Clerk with 11 copies of any document or materials to be presented to the council;*
11. *Speakers should direct comments to the entire council and not to individual council members.*

F. Land Development Ordinance Discussion Items

The details of all board/commission recommendations, including the minority opinion, will be included on the staff report/data sheet so that council can study these recommendations prior to the meeting. At the meeting, the staff will present the agenda item. The planning and zoning board chairperson and town center review board chairperson will follow the staff presentation and will present the board

recommendation and minority opinion. In addition to Land Development Ordinance discussion items, any item pulled from the Land Development Ordinance consent agenda will be discussed during this part of the meeting.

G. Committee Discussion Items

In addition to discussion items referred to council by committee, any item pulled from the committee consent agenda will be discussed during this part of the meeting.

H. Old/New Business

In addition to old and new business items on the regular meeting agenda, any item pulled from the regular consent agenda will be discussed during this part of the meeting. Council-initiated requests (refer to Rule 4, Item A) shall be on the agenda as a new business item.

I. Closed Session

The council may hold closed sessions as provided by law. The council shall only commence a closed session after a motion to go into closed session has been made and adopted during an open meeting. The motion shall state the purpose of the closed session as provided by N.C. law. Only those actions authorized by statute may be taken in closed session. No general policy matter may be discussed in closed session unless permitted by law. A motion to adjourn or recess shall not be in order during a closed session. The council expects that closed session discussions and topics will be treated with confidentiality to protect and not frustrate the purpose of the closed session. Specifically, closed session discussions will not be discussed outside of the closed session. Closed session minutes, with a general account, once subject to public inspection, should serve to inform the public of the content of the closed session.

J. Adjournment

The council shall adjourn meetings in open session.

Rule 6. Office of the Mayor

The mayor shall have the following authority:

1. To preside over public meetings of the council;
2. To vote upon all measures before the council;
3. To be counted for quorum purposes;
- 4.* To rule motions in or out of order;
- 5.* To determine when a speaker has gone beyond reasonable standards of courtesy in his or her remarks and to entertain and rule on objections from other members on this ground;
- 6.* To answer questions of procedure;
7. To preserve order and decorum;
8. To call a brief recess at any time;
9. To adjourn in an emergency;
10. To appoint all special committees, except where the council shall otherwise order;
11. To execute documents as approved by council on behalf of the Town.

*The mayor or the council members may request guidance from the Town Attorney on the above issues. If an issue arises not addressed in these rules of procedures, the Town

Attorney may utilize Robert's Rules of Order or Suggested Rules of Procedure for a City Council (by Fleming Bell) to provide guidance to the council.

The mayor as the meeting presider shall follow the principles below, which were taken from "Roberts Rules in Plain English":

- "Be on time and start on time."
- "Be organized. The presiding officer should have a detailed, well prepared agenda and stick to it."
- "Be prepared. The presiding officer should be familiar with the procedural rules..."
- "Be a teacher. The presiding officer should keep the group working together by explaining procedure clearly and communicating the next order of business. If a motion is confusing, it is his [her] duty to clarify it. This may mean helping a member rephrase a motion."
- "Be in control of the floor. The presiding officer should 'assign' the floor by recognizing those members who wish to speak by calling them by name. No other member may interrupt or call out remarks without being out of order. The presiding officer should remind such a member that the floor has been assigned and request that his [her] remarks be held until the floor has been assigned to him [her]. In addition, private discussion between members while another has the floor is out of order and disruptive members should be reminded of this rule."
- "Be impartial. The presiding officer should impartially call on members wishing to speak. He [she] should give members on both sides of an issue an opportunity to speak..."
- "Be composed. The presiding officer should remain calm and objective, keeping the meeting moving."
- "Be precise. The presiding officer should always restate the motion before taking a vote. After taking the vote, he [she] announces the result of the vote by interpreting the action taken. The presiding officer should always be certain about the results of a voice vote. He [she] may retake the vote by requesting a show of hands on his [her] own accord."
- "Be focused. The presiding officer should not allow irrelevant discussion. Restate the question and, if necessary, directly request the member to 'confine remarks to the pending question'."
- "Be temperate. The presiding officer should use the gavel sparingly, tapping it once to open and close the meeting."

Rule 7. Office of the Mayor Pro Tempore

At the organizational meeting the council shall elect from its membership a mayor pro tempore to serve at the council's pleasure. The mayor pro tempore shall be entitled to vote on all matters and shall be considered a council member for all purposes, including the determination of whether a quorum is present. The mayor pro tempore shall perform the duties of the mayor in the event of the absence of the mayor, or in case of sickness of the mayor or other causes which would prevent the mayor from attending to the duties of the office.

If both the mayor and mayor pro tempore are absent from a meeting, the council may elect from among its members a temporary chairperson to preside at the meeting.

Rule 8. Action by the Council

The council shall proceed by motion, unless the council agrees to proceed by unanimous consensus (such as referring items to the Planning and Zoning Board). Seconds are required to all motions. Only one motion at a time shall be allowed. Any motion shall be reduced to writing by the member making it upon the request of the presiding officer or any council member. Motions may be withdrawn at any time. Motions shall be adopted by a majority of the votes cast unless otherwise required by these rules or by the laws of North Carolina. A majority is defined as more than half.

Any vote may be made by written ballot if requested by any two council members present. All votes shall be yeas and nays and shall be entered in the record on request of one member. All ballot votes require a quorum present and voting.

Every member of the council must vote unless excused by the remaining members according to state law. A member who wishes to be excused from voting shall so inform the presiding officer, who shall take a vote of the remaining members. No member shall be excused from voting except upon matters in which the member has a conflict of interest (as outlined in the N.C. General Statutes and case law). In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote.

Rule 9. Council Direction to Staff

If during a meeting an individual member of the council gives direction to staff, the presider will immediately ascertain if that direction is approved by the council (either by unanimous consensus or by motion, second and vote). This will ensure that council as a group is clearly articulating direction to staff.

Rule 10. Debate/Discussion by Council

The council recognizes and appreciates the importance of council discussion at every stage in each process. Debate/discussion shall be allowed prior to requiring a motion and second. During the debate/discussion, the presider shall call on a member who has not spoken on the issue before recognizing someone who has already spoken.

Council members should avoid personal remarks directed towards individual council members. The presiding officer shall politely rule all such remarks as out of order.

The council shall follow the following debate/discussion principles, which were taken from "The Complete Idiot's Guide to Robert's Rules":

- "It is a good idea to begin your debate by telling the members which side you are speaking on..."
- "Organize your thoughts. Pay close attention to your delivery. Speak clearly and slowly, project your voice, and say it like you mean it. Organize your thoughts into two or three main points and communicate them during your debate time...Keep focused on the major reasons why you have taken your stand. Consider this as part of your meeting preparation." *It's a good idea to bring your concise notes to the meeting with you and actually take notes during the meeting to help you frame your debate/discussion comments.*
- "Only speak when called on" [by the presiding officer].
- "Direct all comments to the chair. Avoid directing comments to another member."
- "Don't be disruptive. Side conversations are not allowed. Neither is walking around the room in a manner that is disruptive to the meeting."
- "You can make corrections. If you hear information that you know is inaccurate, you have the right to call attention to the inaccuracy and to have the accurate information shared with the group. This must be done politely."

Rule 11. Quorum

A majority of the council, including the mayor but excluding vacant seats, shall constitute a quorum. A majority is more than half. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining a quorum.

Rule 12. Minutes

A. Regular, special, recessed and emergency meeting minutes

The town clerk or designee will attend the meetings and prepare full and accurate minutes. The minutes will be a detailed summary account of the meeting, with statements attributed to individual council members and speakers at the meeting. A draft of the minutes will be provided on the Web to meet the agenda deadlines for the following meeting. Staff and council members shall review these minutes while they are in draft form, and advise the Town Clerk of any changes that should be made. The Town Clerk will make the appropriate changes to the draft minutes. The draft minutes will be on the consent agenda at a subsequent meeting for council approval. The Town Clerk may correct typographical errors to the minutes after the council has approved them, but no substantive changes may be made to the minutes without council approval.

In addition to minutes, the Town Clerk shall prepare an "Action Agenda" and post it to the Web the day after the regular meeting to show the council's action on each agenda item. The purpose of this document is to provide the public with a record of the council action even prior to the minutes being prepared.

B. Closed Session Minutes

Closed session minutes will be prepared in accordance with all applicable state laws.

Rule 13. Committees of the Council

The mayor shall appoint special committees of the council at each organizational meeting, unless the council shall otherwise order. The purpose of council committees is to facilitate the efficiency and effectiveness of the Town council meetings by researching, studying, and deliberating issues on behalf of, and at the direction of, the full council. For maximum effectiveness in developing recommendations that are most likely to be accepted by the full council, committee chairs should consider input from other council members, as well as staff and the public. The committee should make a recommendation to the council, either on consent or discussion, and if unable to do so because of a lack of information or other reasons, will table the item until a future committee meeting. Committee items will be placed on a council consent agenda if the committee unanimously recommends approval of staff's recommendation. Otherwise, the items will be discussed by the full council. Public input at committee meetings is at the discretion of the chair.

Minutes of committee meetings will be action only minutes.

**POLICY STATEMENT 150
GENERAL RULES OF ORDER FOR TOWN OF CARY BOARDS AND COMMISSIONS
AND OTHER GROUPS APPOINTED BY THE TOWN COUNCIL**

Prepared by: Sue Rowland, Town Clerk, and Karen C. Gray, Deputy Town Clerk

Supersedes: ~~July 27, 2006~~ **October 8, 2009**

Adopted by Council: ~~October 8, 2009~~ **September 13, 2012**

Effective: ~~October 8, 2009~~ **September 13, 2012**

Purpose:

This policy for boards/commissions, committees, task forces and other groups appointed by the Town Council (hereinafter "boards") establishes the general structure and implements general rules of order for these boards.

This policy is not designed to create any additional rights or obligations, nor does it establish any procedural rights to any person that are not already provided for by law. The failure of any board member to adhere to the recommended procedures described herein shall not affect the validity of any meeting or action taken. To the extent there is conflict or any discrepancy between these rules of order and the North Carolina General Statutes, case law, or Town ordinances (collectively "law"), the law shall prevail.

Board Structure:

All boards will utilize the following structure.

Element A: Purpose and Scope

Element A Goal Statement: *Each board will have a clear, well defined scope of work, life span, responsibilities and measurable outcomes*

Element A, Strategy 1: Each board will have a mission statement.

Element A, Strategy 2: Each board will have a defined lifespan.

Element A, Strategy 3: Each board will have a set of clearly identified responsibilities, tasks, deliverables, or work outcomes so that progress towards achieving the board's particular mission can be measured and evaluated.

Element A, Strategy 4: Any proposed new board shall be established with clear understanding of the board's mission statement, lifespan, products/outcomes/deliverables and well defined roles and responsibilities for the liaisons.

Element B: Rules and Procedures

Element B Goal Statement: *Each board will have clearly defined and appropriately adopted rules and procedures.*

Element B, Strategy 1: Town Code Chapter 2, Article V, Boards/Commissions, sections 2-161 through 2-170 shall serve as the bylaws for all boards, along with the board or commission specific sections 2-171 through 2-180.

Element B, Strategy 2: This policy, Policy Statement 150, General Rules of Order for Boards, shall serve as the general rules of order for all boards and will contain all general parliamentary procedures.

Element B, Strategy 3: Each board shall adopt board-specific rules of order establishing board-specific, non-parliamentary operating procedures or procedures above and beyond the general rules of order specific to a particular board (i.e., agenda development, etc.).

Element C: Work Plan/Goal Setting

Element C Goal Statement: *Boards will establish measurable goals and work plans that detail how and by what date they will achieve their goals.*

Element C, Strategy 1: Council-established goals will be part of the board goals and work plans.

Element C, Strategy 2: Each board will establish their own board-specific goals that are in concert with the council goals.

Element C, Strategy 3: Each board will meet on a schedule commensurate with workload and board responsibilities.

Element C, Strategy 4: The boards will measure and report their performance to council on a schedule established by the Deputy Town Clerk.

Element D: Orientation

Element D Goal Statement: *Appropriate staff will provide orientation/training to all new board members and refresher training to returning board members.*

Element D, Strategy 1: The deputy town clerk will provide general orientation to all newly appointed board members.

Element D, Strategy 2: The deputy town clerk will provide special training to all board chairs to educate them on their role as meeting facilitators.

Element D, Strategy 3: The deputy town clerk will provide "refresher" information to all board members on the North Carolina Public Records Act and Open Meetings Law and all related Town policies and procedures at least twice per year.

Element D, Strategy 4: Each board staff liaison will provide board-specific orientation/training to new members.

Element E: Role of Liaisons

Element E Goal Statement: *Each board will have an appointed Council liaison and an assigned staff liaison with clearly defined roles, responsibilities, and expectations.*

Element E, Strategy 1: Each board will have a Council liaison and a staff liaison.

Element E, Strategy 2: All liaisons will follow established general guidelines regarding roles, responsibilities, and expectations applicable to all boards.

Element E, Strategy 3: Board-specific liaison roles and responsibilities will be established.

Element E, Strategy 4: Liaison roles, responsibilities, and expectations will be communicated to the board members.

Element E, Strategy 5: The general and board-specific liaison guidelines will be evaluated and revisions made to remain current and effective.

General Rules of Order:

The following general rules of order shall apply to all boards. The Zoning Board of Adjustment, and other quasi-judicial boards as may exist from time to time, may vary the terms of these General Rules of Order as appropriate or necessary by adopting board specific rules to meet the special requirements of quasi-judicial boards.

1. Roles Defined

a. General Role of Council Liaison

At the organizational meeting in each election year, the mayor will appoint a council liaison to each board. The council liaison represents the council as a whole in the liaison role to a particular board and facilitates dialogue between the board and the full council. The council liaison shall refrain from advocating a personal perspective. The council liaison is not included in the board's membership for quorum purposes and does not deliberate or vote on matters before the board. The council liaison shall bring a fair and balanced perspective and shall not impose personal biases on any of the boards.

The council liaison shall communicate with the board chair throughout the year to ensure boards focus on their missions and roles and to stay abreast of board activities. Council liaisons shall be accessible to board chairs to offer feedback and guidance.

Because each board is unique, it is the council liaison's responsibility to work with the board chair, board members and the board staff liaison and determine the council liaison's board-specific role, which shall be included in the board-specific rules of order. For example, some may determine that council liaison attendance at most or all board meetings is beneficial; others may determine that attendance at a few specific meetings each year is beneficial; others may determine that an occasional phone call or ~~e-mail~~ **email** to the board chair to facilitate communication is sufficient.

When council liaison assignments change, the new council liaison will meet with the board chair and staff liaison prior to their first board meeting to become knowledgeable of the board's work. The new council liaison will work with the board chair, board members and the board staff liaison to determine the council liaison's level of involvement with the board (as outlined above). This information will be updated as needed in the board-specific rules of order.

b. General Role of Staff Liaison

The town manager, or designee, will designate the appropriate staff to serve as staff liaisons to the boards. The staff liaison is not included in the board's membership for quorum purposes and does not deliberate or vote on matters before the board. Staff liaison duties include:

- Provide professional advice and guidance to the board;
- Support the functions of the board's meetings and activities;
- Develop and implement a board-specific orientation and training program for new members;
- Work with the chair to develop the board's meeting agenda;
- Ensure that meeting notifications and recordkeeping occurs consistent with applicable state laws and Town policies;
- Assist the chair in keeping the board on track and focused according to its mission;
- Advise boards on appropriate process for moving forward issues and recommendations to council;
- Educate and update boards on relevant Town initiatives and activities; and
- Consider board input related to Town issues and activities.

The staff liaison shall work with the board chair, board members and council liaison to establish board-specific staff liaison responsibilities, which will be included in the board-specific rules of order.

c. Role of Deputy Town Clerk

The deputy town clerk is responsible for the administrative work to maintain the boards. This includes recruiting for vacancies on the boards, providing general orientation for board members, special training to all chairs, training for staff liaisons, and working closely with the staff liaisons to ensure that these rules of order are explained to the board members. The deputy town clerk will also provide information on the state's Sunshine Laws (public records and open meetings) to all board members.

2. Board Specific Rules of Order

Each board shall maintain board-specific rules of order that are consistent with this policy and shall include, but are not limited to, a reference to these general rules of order, the name and purpose of the board, any officers and duties not included in these rules of order, general rules specific to the board, liaison responsibilities specific to the board, meeting information (including cancellation procedures), etc. Each board shall approve their own board-specific rules of order and any amendments, and this document shall be posted on the Town's Web site.

3. Meetings

Each December council adopts a comprehensive meeting schedule for the Town which takes into account Town-observed holidays and other frequently observed holidays and events. Once adopted, the meeting schedule is then posted in a public notice. ~~In addition, for scheduling purposes only, a default schedule is developed for boards that meet on an as-needed basis. For those boards, appropriate public notice will be issued to provide at least 48 hours notice of each meeting and will provide the date, time, location and purpose of each meeting. All board members and staff associated with boards should keep these dates open in the event a meeting needs to be scheduled on those dates throughout the year. In addition, a~~Appropriate public notice, as required by law, will be given for any special meeting or work session that is not included on the regular meeting schedule.

4. **Agenda**

The purpose of the agenda is to organize materials to be considered and to give members an opportunity to study the issues before the meeting.

Board agenda are prepared by the staff liaison, chair, or both, based upon information received from council, staff, and/or board members. The Planning and Zoning Board, ~~Town Center Review Commission~~, Parks, Recreation and Cultural Resources Advisory Board, and the Public Art Advisory Board all have a role in the development process (i.e., rezonings, site/subdivision plans, Land Development Ordinance amendments, etc.), and their agenda will include links to reports prepared by staff.

The staff liaison will ensure that the agenda is available electronically at least five days prior to the board meeting. No changes will be made to the agenda once it has been posted on the Web. However, changes may be made at the beginning of the meeting if agreed to by a majority of the members present. Any documents associated with a particular board meeting (staff reports, minutes, etc.) that are submitted electronically should be in a format determined by the Town staff to ensure ADA compliance.

Items shall be placed on the agenda according to the order of business. The order of business for a regular meeting agenda follows. By unanimous consensus or majority vote of the board, agenda items may be considered in an order different from that shown on the agenda.

- Call to Order: The presider (usually the chair) will always begin the meeting at the appointed time with a quorum present;
- Roll Call: The presider will announce the names of those members who are absent for the record (alternatively, the board may agree that the staff responsible for preparing minutes will include a list of members present and absent, thus eliminating the need for roll call);
- Adoption of agenda: The board will adopt the agenda, as is, or with modifications by motion, second and vote of majority;
- Swearing in of witnesses, if required: A Town staff member who is a Notary Public may perform this duty in addition to other persons granted this authority by state law or other governing documents;
- Approval of previous meeting minutes: The board will adopt the minutes, as is, or with modifications by motion, second and vote of majority;
- Action and discussion items, reports, information items (including any public hearings or public evidentiary hearings);
- Old/New Business: these items must be specifically identified on the agenda or added with the adoption of the agenda;
- Adjournment: The board shall adjourn meetings by motion in open session.

5. **Open Meetings Requirement**

All boards will adhere to the letter and spirit of the Open Meetings Law. Board members shall not deliberate, vote, or otherwise take action on any matter with the intention of making it impossible for persons attending a meeting of the board to understand what is being deliberated, voted, or acted on. Board members should strive to be clear about the matters they are considering and should refrain from referencing an item by letter, number, or other designation which might be conceived as a secret device or method. The board may deliberate, vote or otherwise take action by reference to an agenda, if copies of the agenda – sufficiently worded to enable the public to understand what is being deliberated, voted, or acted on – are available for public inspection at the meeting.

In addition, the board shall not use e-mail ~~email~~, instant message, text messaging, chat rooms, or other private communication methodologies during the meetings, all of which might be perceived as deliberating in secret.

6. Quorum

Unless otherwise set forth in board-specific rules of order or other governing documents, a majority of the board, including the chair but excluding vacant seats, shall constitute a quorum. A majority is more than half of the board. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining a quorum.

7. Role of the Chair, Vice-Chair and Temporary Chair

The Town Council appointed chair shall be entitled to vote on all matters and shall be considered a board member for all purposes, including the determination of whether a quorum is present.

The chairs shall have the following authority:

- To preside over public meetings of the board;
- To vote upon all measures before the board;
- To be counted for quorum purposes;
- To preserve order and decorum;
- To call a brief recess at any time; and
- To adjourn in an emergency.

The chairs may also:

- Rule motions in or out of order.
- Determine when a speaker has gone beyond reasonable standards of courtesy in his or her remarks and to entertain and rule on objections from other members on this ground.
- Answer questions of procedure.

Annually at the organizational meeting each board will elect from its membership a vice chair to serve in the chair's absence or in case of sickness of the chair or other causes which would prevent the chair from attending to his or her duties. The vice chair shall be entitled to vote on all matters and shall be considered a board member for all purposes, including the determination of whether a quorum is present. When called upon to preside over meetings in the absence of the chair, the vice chair will have all authorities as the chair.

If both the chair and vice chair are absent from a meeting, the board will elect from among its members a temporary chair to preside at the meeting. The temporary chair shall be entitled to vote on all matters and shall be considered a board member for all purposes, including the determination of whether a quorum is present. When called upon to preside over meetings in the absence of the chair and vice chair, the temporary chair will have all authorities as the chair.

The chair as the meeting presider shall follow the principles below, which were taken from "Roberts Rules in Plain English":

- "Be on time and start on time."
- "Be organized. The presiding officer should have a detailed, well prepared agenda and stick to it."
- "Be prepared. The presiding officer should be familiar with the procedural rules."
- "Be a teacher. The presiding officer should keep the group working together by explaining procedure clearly and communicating the next order of business. If a

motion is confusing, it is his [her] duty to clarify it. This may mean helping a member rephrase a motion.”

- “Be in control of the floor. The presiding officer should ‘assign’ the floor by recognizing those members who wish to speak by calling them by name. No other member may interrupt or call out remarks without being out of order. The presiding officer should remind such a member that the floor has been assigned and request that his [her] remarks be held until the floor has been assigned to him [her]. In addition, private discussion between members while another has the floor is out of order and disruptive members should be reminded of this rule.”
 - “Be impartial. The presiding officer should impartially call on members wishing to speak. He [she] should give members on both sides of an issue an opportunity to speak.
 - “Be composed. The presiding officer should remain calm and objective, keeping the meeting moving.”
 - “Be precise. The presiding officer should always restate the motion before taking a vote. After taking the vote, he [she] announces the result of the vote by interpreting the action taken. The presiding officer should always be certain about the results of a voice vote. He [she] may retake the vote by requesting a show of hands on his [her] own accord.”
 - “Be focused. The presiding officer should not allow irrelevant discussion. Restate the question and, if necessary, directly request the member to ‘confine remarks to the pending question’.”
 - “Be temperate. The presiding officer should use the gavel sparingly, tapping it once to open and close the meeting.”

8. Action by boards

Actions of the boards shall proceed by motion, unless agreed to proceed by unanimous consensus. Seconds are required to all motions. Only one motion at a time shall be allowed. Motions may be withdrawn at any time prior to a vote or in accordance with the law. Motions shall be adopted by a majority of the votes cast unless otherwise required by these rules or by the laws of North Carolina. A majority is defined as more than half of the board members present for the vote.

Every member of the board should actively participate in voting unless excused by the remaining members in accordance with state law. A member who wishes to be excused from voting shall so inform the chair, who shall take a vote of the remaining members. No member should be excused from voting except upon matters in which the member has a conflict of interest (as outlined in the North Carolina General Statutes and case law). In all other cases, a failure to vote by a member who is physically present in the meeting, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. However, board members are encouraged to make their voting positions clear by verbalizing their votes rather than allowing their silence to represent an affirmative vote. If a vote is unclear to the chair, then it will be up to the chair to call for a vote by hand.

9. Public Hearings (if required)

The boards shall follow all North Carolina laws and local ordinances with regard to legally required public hearings. The purpose of public hearings is to receive public input. The board members should not engage in conversation or debate with speakers during public hearings. The board will hold all questions and comments until after the public hearing is closed.

The following rules apply to public hearings:

1. Speakers must come to the podium to make their remarks;

2. Speakers should clearly state their names;
3. Speakers should be concise;
4. Speakers should avoid repetition;
5. Speakers should adhere to the five minute time limit;
6. Speakers may only speak once per public hearing;
7. Unused minutes are not transferable to other speakers;
8. Individuals should designate a spokesperson for large groups;
9. All speakers should provide their names and contact information to the staff person taking the minutes;
10. Speakers should provide the staff person who is taking the minutes with any documents or materials to be presented to the board;
11. Speakers should direct comments to the entire board and not to individual board members.

The Board of Adjustment, and any other quasi-judicial board, should adopt variations to these rules as required or appropriate for public evidentiary hearings.

10. Debate/Discussion by Board Members

Debate/discussion shall be allowed prior to requiring a motion and second. During the debate/discussion, the presider shall call on a member who has not spoken on the issue before recognizing someone who has already spoken. The Board of Adjustment may adopt variations to these provisions for public evidentiary hearings.

Board members should avoid personal remarks directed towards individual board members, individual staff members, and individual council members. The presiding officer shall politely rule all such remarks as out of order.

The board members shall follow the debate/discussion principles outlined in Policy Statement 143 Rules of Procedure for the Cary Town Council, reiterated below:

- “It is a good idea to begin your debate by telling the members which side you are speaking on.”
- “Organize your thoughts. Pay close attention to your delivery. Speak clearly and slowly, project your voice, and say it like you mean it. Organize your thoughts into two or three main points and communicate them during your debate time. Keep focused on the major reasons why you have taken your stand. Consider this as part of your meeting preparation.” It’s a good idea to bring your concise notes to the meeting with you and actually take notes during the meeting to help you frame your debate/discussion comments.
- “Only speak when called on” [by the presiding officer].
- “Direct all comments to the chair. Avoid directing comments to another member.”
- “Don’t be disruptive. Side conversations are not allowed. Neither is walking around the room in a manner that is disruptive to the meeting.”
- “You can make corrections. If you hear information that you know is inaccurate, you have the right to call attention to the inaccuracy and to have the accurate information shared with the group. This must be done politely.”

11. Minutes

Generally, the minutes of all boards are considered public records. However, if the board’s session is closed, the minutes from the closed portion of the meeting may not become accessible by the public for a certain period of time, depending upon the circumstances and subject matter of the meeting. The public records laws should be relied upon in determining when all records, including minutes, are deemed public records. The staff member that is designated as the secretary or liaison to the board shall be considered the custodian of the minutes and should treat such documents as public record laws require.

The law requires that all minutes be “full and accurate”. The purpose of minutes is to provide a record of the actions taken by a board and not to provide a transcript of the discussions that occurred during the meeting. The minutes can also provide evidence on behalf of the board, that the board followed proper procedures in taking its actions. If no action is taken, the minutes may simply reflect that the meeting occurred, include the subject of the meeting and that no action occurred. It is not necessary to reflect the conversations and discussions of the board. The minutes should reflect motions made and seconds, identify the movants, dissenting votes, the general summary for the dissenting vote (or minority opinion), and the order in which the items before the board are addressed. All minutes shall be in written form. Minutes should contain enough information to act as an official record of the action taken, they should serve as a guide to staff and council in describing what action, if any, is recommended by the board, and they should be sufficient to be submitted as legal evidence as necessary. It is not necessary to record all discussions, particularly those discussions upon which no action is taken. Minutes for closed sessions shall be kept in accordance with the law and should provide a general account of the closed session so that a person not in attendance would have a reasonable understanding of what transpired.

The following is an outline which may serve as a template for the boards in the preparation of meeting minutes.

- Name/identity of the board;
- Date, time and location of meeting;
- Time meeting called to order;
- Names of board members in attendance and those absent;
- Statement of whether or not there was a quorum present;
- Identification of subjects for consideration;
- Motions and seconds;
- Any conflicts of interest or abstainments from voting and votes thereon;
- Vote/Action taken by board;
- Dissenting opinion;
- Time meeting adjourned.

Board minutes shall be placed on the Web at least five days prior to the board’s next meeting. Often it is necessary for this to occur earlier based on the council meeting schedules (if the board recommendation is necessary for a council meeting agenda).

Each board shall vote to approve the minutes at its next meeting. Board members may suggest corrections to the minutes when they are in draft form. All board member suggested corrections should comply with this policy. Board members should not propose amendments to the minutes that conflict with this policy.

If audio recordings of board meetings are created, then the staff liaison shall maintain these audio recordings in accordance with the public records laws and Town policy.

12. Committees of the Boards

Each board except the Zoning Board of Adjustment may create committees from its membership to facilitate the efficiency and effectiveness of the board’s business by researching, studying, and deliberating issues on behalf of, and at the direction of, the full board. The meetings of these committees are public meetings and must comply with the open meetings law. The public notice may serve as the agenda for committee meetings. Items may not be added to the agenda of a committee meeting. Minutes of committee meetings shall comply with this policy. Recommendation and reports of any committee will be made to the full board for discussion and/or recommendation.

13. Parliamentary Procedure Resources

When questions arise about parliamentary procedure that are not addressed by these general rules of order or the board-specific rules of order, the following resources may be consulted: Suggested Rules of Procedures for Small Local Government Boards (by Fleming Bell), Suggested Rules of Procedure for a City Council (by Fleming Bell), and Robert's Rules of Order, Newly Revised, 10th Edition.

14. Coverage (Effective Date and Application)

This policy, upon adoption of the Town Council, shall be applicable to all council appointed boards and committees until such time that the policy statement is altered, modified or rescinded by the Town Council.

Fiscal Impact

The Town will incur the expense of the two legally required public hearing advertisements in the newspaper; this expense will be absorbed by funds allotted for advertising expenses.

Staff Recommendation

Staff recommends Town Council set a public hearing for July 26, 2012 for the Town Code amendments to remove references in the Code to the Town Center Review Commission and other miscellaneous changes. Staff also recommends Town Council approve amendments to Policies 143 and 150 at the same time the ordinance amendment is on a council agenda for final action (final action is anticipated to occur at the September 13, 2012 council meeting).

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

p. Resolution Pertaining to Sealing and Unsealing of Closed Session Minutes and General Accounts (TC12-009)

Committee unanimously recommended adopting a resolution detailing the process for sealing and unsealing closed session minutes and general accounts.

STAFF REPORT

Operations Committee, June 7, 2012

Resolution Pertaining to Sealing and Unsealing of Closed Session Minutes and General Accounts (TC12-009)

Consideration of adoption of a resolution detailing the process for sealing and unsealing closed session minutes and general accounts

Speaker: Ms. Sue Rowland

From: Sue Rowland, Town Clerk

Prepared by: Sue Rowland, Town Clerk

Approved by: Benjamin T. Shivar, Town Manager

Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

Staff recommends Town Council adopt a resolution detailing the process for sealing and unsealing closed session minutes and general accounts.

Discussion

Town Clerk and Legal staff have worked together to develop a resolution for council's consideration that establishes a process for sealing and unsealing closed session minutes and

general accounts. In developing this resolution, staff used resource materials from the UNC-CH School of Government as a guide.

The resolution follows:

**A RESOLUTION FOR THE SEALING AND UNSEALING
OF CLOSED SESSION MINUTES AND GENERAL ACCOUNTS**

WHEREAS, for the purposes of improvement, maintenance, and clarification, it is prudent to establish a clear policy outlining the procedure for the handling of sealed and unsealed closed session minutes and general accounts by the Town of Cary.

WHEREAS, the Town Clerk of the Town of Cary is charged with overseeing the closed and open session minutes and the closed session general accounts of council meetings, as required by NCGS §143-318.10.

WHEREAS, it is necessary and legally permissible to withhold (“seal”) closed session minutes and general accounts from public inspection so long as public inspection would frustrate the purpose of a closed session.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CARY, NORTH CAROLINA THAT:

(1) Full and accurate written minutes shall be kept of all public meetings, including both open and closed sessions.

(2) A written general account shall be kept of each closed session in such form that a person not in attendance would have a reasonable understanding of what transpired.

(3) The written minutes and general account of closed sessions may be combined into one record called “minutes”.

(4) Closed session minutes shall be approved by the Town Council during a subsequent closed session.

(5) All minutes of closed sessions shall be sealed, unless sealing is not legally permissible.

(6) The Town Attorney is authorized and directed to periodically review each set of closed session minutes to determine if their disclosure would no longer frustrate the purpose for which the closed session was held.

(7) Minutes pertaining to the attorney-client privilege shall be brought by the Town Attorney to the Town Council for unsealing, unless said minutes pertain to lawsuits fully and finally resolved. Other minutes may be brought to the Town Council by the Town Attorney for unsealing or may be unsealed as provided below.

(8) If the minutes are not required to be brought to the Town Council for unsealing, the Town Council authorizes the Town Attorney to unseal these minutes if the Town Attorney finds that disclosing the closed session minutes would not frustrate the purpose for which the closed session was held. No further council action is necessary to unseal closed session minutes pursuant to this paragraph.

(9) Following the unsealing of closed session minutes by the Town Attorney or Town Council, these documents shall be returned to the Town Clerk to release and make available for public inspection.

This Resolution shall become effective upon its adoption and shall apply both retroactively and prospectively.

Fiscal Impact

None

Staff Recommendation

Staff recommends Town Council adopt a resolution detailing the process for sealing and unsealing closed session minutes and general accounts.

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

(Resolution No. 2012-36 is also on file in the town clerk's office.)

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- q. **Resolution Donating Surplus Equipment to the Town of Benson (TS12-002)**
Committee unanimously recommended adopting a resolution to donate surplus computer equipment to the Town of Benson, NC as allowed by N.C.G.S. 160A-280 effective June 14, 2012.

STAFF REPORT

Operations Committee, June 7, 2012

Resolution Donating Surplus Equipment to the Town of Benson (TS12-002)

Consideration of a resolution to donate surplus computer equipment to the Town of Benson, NC as allowed by N.C.G.S. 160A-280

Speaker: Mr. Bill Stice

From: Bill Stice, Technology Services Director
Prepared by: Bill Stice, Technology Services Director
Approved by: Benjamin T. Shivar, Town Manager
Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

The Town of Cary Technology Services Department has several surplus computer items that could provide significant assistance to the Town of Benson for their technology operations instead of surplus them on the used market. Staff recommends Town Council adopt the resolution donating the computer equipment to the Town of Benson, NC effective June 14, 2012.

Background

Staff was recently approached by the School of Government Center for Public Technology at UNC-Chapel Hill about the Town of Benson's need for some computer equipment. The Town of Cary leases its computer equipment on a three year replacement schedule. Due to some project delays, some equipment was kept long enough to pay the equipment off, which gave the Town title to the equipment. Normally equipment owned by the Town would be surplus on the used market, but it is usually of nominal value.

Discussion

The Town of Benson has very old computer equipment and is in need of newer technology. Even though the equipment being considered for donation is between four and six years old, it is newer and more capable than Benson's current equipment. Staff has discussed Benson's needs with their Town Manager and Assistant Town Manager, and this equipment will give them several years of service at a time when they cannot afford to replace their existing equipment. Staff thinks

this will be a good use of the equipment, and it will be commendable to assist another local government in need. Technology Services will work with the Town of Benson to get the equipment delivered and set up. Benson's resources will be used to load their current software applications and databases and for ongoing support.

Fiscal Impact

The equipment is estimated to have a surplus value of approximately \$3,000 or less. The equipment consists of : 12 Gateway Profile 6 desktop computers, Serial Number 0039295565, Serial Number 0039283449, Serial Number 0039283409, Serial Number 0039283426, Serial Number 0039283434, Serial Number 0039283443, Serial Number 0039283419, Serial Number 0039295573, Serial Number 0039295562, Serial Number 0040416260, Serial Number 0040416257 and Serial Number 0040438306; one Hewlett Packard half rack; one Aberdeen Stirling 114T server Serial Number AB1829352; one IBM X345 server Serial Number KPYHGL6; and one Gateway E9425-R data storage unit Serial Number 0040406589.

Staff Recommendation

Staff recommends Town Council adopt the resolution donating the computer equipment to the Town of Benson, North Carolina effective June 14, 2012.

Resolution By the Town of Cary Approving Donation of Personal Property to The Town of Benson, NC Pursuant to G.S. 160A-280

WHEREAS, the Town of Cary owns, 12 Gateway Profile 6 desktop computers, Serial Number 0039295565, Serial Number 0039283449, Serial Number 0039283409, Serial Number 0039283426, Serial Number 0039283434, Serial Number 0039283443, Serial Number 0039283419, Serial Number 0039295573, Serial Number 0039295562, Serial Number 0040416260, Serial Number 0040416257 and Serial Number 0040438306; one Hewlett Packard half rack; one Aberdeen Stirling 114T server Serial Number AB1829352; one IBM X345 server Serial Number KPYHGL6; and one Gateway E9425-R data storage unit Serial Number 0040406589 (collectively 'Equipment') which Equipment is surplus and unused ; and

WHEREAS, North Carolina General Statute § 160A-280 authorizes a city in this state to donate any personal property that a governing board deems to be surplus, obsolete or unused to another governmental unit; and

WHEREAS, the Town of Benson NC is in need of and will benefit from the Equipment; and

WHEREAS, in accordance with G.S. 160A-280 a public notice was posted at least five days prior to the Town Council adopting this resolution.

THEREFORE THE CARY TOWN COUNCIL RESOLVES THAT:

1. The Town Council of the Town of Cary hereby determines the Equipment to be surplus, obsolete and unused and as authorized by G.S. 160A-280, donates to the Town of Benson the Equipment: 12 Gateway Profile 6 desktop computers, Serial Number 0039295565, Serial Number 0039283449, Serial Number 0039283409, Serial Number 0039283426, Serial Number 0039283434, Serial Number 0039283443, Serial Number 0039283419, Serial Number 0039295573, Serial Number 0039295562, Serial Number 0040416260, Serial Number 0040416257 and Serial Number 0040438306; one Hewlett Packard half rack; one Aberdeen Stirling 114T server Serial Number AB1829352; one IBM X345 server Serial Number KPYHGL6; and one Gateway E9425-R data storage unit Serial Number 0040406589.
2. The Town Manager or designee is directed to convey Equipment to the Town of Benson for no consideration.
3. The Town Manager of The Town of Cary is authorized to execute any instruments

necessary to convey the Equipment in the manner authorized by this Resolution.

Adopted this the 14th day of June, 2012.

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

(Resolution No. 2012-37 is also on file in the town clerk's office.)

r. Strategic Energy Action Plan (AD12-018)

Committee unanimously recommended approving the recommended Strategic Energy Action Plan.

STAFF REPORT

Operations Committee, June 7, 2012

Strategic Energy Action Plan (AD12-018)

Consideration of staff's recommended Strategic Energy Action Plan

Speaker: Ms. Emily Barrett

From: Benjamin T. Shivar, Town Manager

Prepared by: Emily Barrett, Sustainability Manager

Approved by: Benjamin T. Shivar, Town Manager

Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

As a deliverable for the Department of Energy's Energy Efficiency and Conservation Block Grant (EECBG) program, Town staff developed a Strategic Energy Action Plan for Council's consideration. This plan includes an energy reduction goal with an associated energy management plan for Town operations. This plan is near term enough to be meaningful to staff, acknowledges the operational and service-driven nature of our organization, and addresses the key energy using categories of Town operations: 1) water and wastewater, 2) fleet, and 3) buildings and streetlights. The overall goal is a 13 percent reduction of energy use (BTU) from the projected 2020 "business as usual" energy estimate for Town operations. Staff estimates that once attained, this reduction in energy use will result in a yearly avoided cost of approximately \$1,500,000 and a yearly reduction of 7,000 metric tonnes of carbon dioxide equivalent. The subgoals that will help the Town achieve this overall goal are: three percent reduction in projected water and wastewater energy use, 20 percent increase in average miles per gallon for the Town fleet, five percent reduction in the miles driven, and 30 percent reduction in building and streetlight energy use. The intent of the plan is to lead by example regarding energy efficiency and cost management with aggressive but realistic goals. Staff recommends Town Council approve the Strategic Energy Action Plan.

Discussion

Energy Study—Where We Have Been

Using Department of Energy EECBG grant funds, the Town worked with the University of North Carolina's Institute for the Environment to develop an in-depth by-department five-year profile of the Town's energy use, including electricity, natural gas, propane, and fleet fuel. This March 2011 document, "Inventory of Energy Use and Greenhouse Gas Emissions, Report on Municipal Operations from 2005 to 2010," outlines the Town's energy use and associated emissions, including greenhouse gases and nitrogen oxides, an emission that impacts local air quality predominantly in the summer months.

The report also outlined four key recommendations:

- 1) Begin an energy management program,
- 2) Create a strategic energy plan,
- 3) Implement a fleet efficiency policy to guide new purchases, and
- 4) Promote energy literacy throughout the town.

The Strategic Energy Action Plan herein outlines a path forward for Town operations to address these four recommendations.

Energy Model—Looking Ahead

In order to model what the different reduction strategies will look like in the future case, the Town worked with a consultant, who is an expert in energy and emissions forecasting and reduction strategies, to put key conservative assumptions into the forecast model.

Key assumptions of the model:

- Buildings include existing Town operated buildings and those in the Capital Improvement Plan
- Population growth rate at 2.5 percent
- Utility cost escalation at a conservatively low level used in energy-related financial arrangements including:
 - for electricity, one percent, conservatively low interpretation of the National Institute of Standards and Technology, 85-3273-24, Energy Price Indices and Discount Factors for Life-cycle Cost Analysis – 2009;
 - for natural gas, approximately one percent, U.S. Energy Information Administration, Annual Energy Outlook 2010, DOE/EIA-0383(2010), reference the Henry Hub Spot Price Natural Gas Projections;
 - for fleet fuel, three percent, U.S. Energy Information Administration, Annual Energy Outlook 2011, DOE/EIA-0383(2011).
- Transportation growth rate was set to be the same as population growth rate, 2.5 percent

After building the model that showed future “business as usual” energy use, staff consulted literature, other municipalities, the State Energy Office and other local resources regarding possible reduction strategies for the major energy categories in Town. A multi-departmental team determined that the following subgoals were aggressive, but achievable: three percent reduction in projected water and wastewater energy use, 20 percent increase in average miles per gallon for the Town fleet, five percent reduction in the miles driven, and 30 percent reduction in building and streetlight energy use. When the model takes these subgoals into account, the overall goal is approximately a 13 percent reduction of energy use from the project 2020 “business as usual” energy estimate for Town operations. The model shows that once attained, this reduction in energy use will result in a yearly avoided cost of approximately \$1,500,000 and a yearly reduction of 7,000 metric tonnes of carbon dioxide equivalent.

Why this approach?

Staff researched the many formats that other municipalities and other governmental entities have used to set energy reduction goals. The Town set the 2020 goal with the following intentions:

- That the goal be near-term enough that it is meaningful
- That it acknowledge the operational and service-driven nature of our organization
- That it address the key categories of energy use in Town operations

Environmental Advisory Board (EAB) Feedback

The EAB assisted in the development of this plan, providing input and feedback, and concurred with the final draft. The board also requested to participate in the review and update of the plan every three years.

Council's approval

Council's approval will formalize the goal and demonstrate to citizens that we strive to be efficient in delivering services. It will also be a foundation and benchmark to return to when discussing energy in the Town.

Fiscal Impact

Approval of this plan does not commit the Town to any expenditure, however the plan as a whole will assist the Town in ongoing efforts to control costs. Once the goal is achieved in 2020, the Town will save \$1,500,000 on a yearly basis. Specific expenditure approval associated with implementation of the Strategic Energy Action Plan will come before Town Council in subsequent annual budgets.

Staff Recommendation

Staff recommends Town Council approve the attached Strategic Energy Action Plan.

STRATEGIC ENERGY ACTION PLAN
TOWN OF CARY, JUNE 2012

EXECUTIVE SUMMARY

PURPOSE

In a concerted effort, the Town of Cary is establishing an energy reduction goal with associated strategies to actively improve energy practices in order to lower costs and reduce emissions that contribute to environmental pollution. The plan will serve as a guide to sound energy decision-making, improving the efficient use of energy while maintaining high levels of service in all areas.

ESTABLISHING A GOAL

Since the Town's energy use is driven by the services it provides, and since the Town continues to grow, there is a certain fixed level of energy use that Town operations will use. Future energy use (and associated costs and emissions) was estimated to the year 2020, using current town operational energy use and growth and cost increase factors. This estimate includes all existing buildings and buildings and operations planned on the Capital Improvement Plan.

Staff examined the major categories of energy use and determined reduction percentages that are achievable and realistic using technology and operational change to yield the following overall goal. The term "business as usual" means that this is the level of energy use that we can anticipate if the Town did not drive energy reduction further.

<p>Overall Goal:</p> <p>13 percent reduction in energy use from the projected "Business as Usual" energy use estimate by 2020</p> <p>Anticipated Savings and Emissions from Achieving this Goal: \$1,500,000 savings/yearly and yearly reduction of 7,000 metric tonnes of carbon dioxide</p>
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Subgoals that will help us achieve this overall goal:

- Fleet—Increase average miles per gallon (MPG) for town fleet by 20 percent; Reduce miles driven by five percent
- Buildings—30 percent reduction in energy use
- Water & Wastewater—Three percent reduction in energy use across these two categories

KEY ELEMENTS OF THE PLAN

4 Strategic Focus Areas for Energy Management for the Town of Cary:

- A. Energy Data Management
- B. Energy Supply Management
- C. Energy Demand Management
 - 1. Energy Use in Buildings and Streetlights
 - 2. Energy Use in Water and Wastewater Treatment and Transport
 - 3. Energy Use from Vehicles and Motorized Equipment
- D. Organizational Integration and Education

Key performance indicators for the Town:

- Total energy use (MMBTU, million British thermal units), total cost (\$), total emissions (MTCDE, metric tonnes carbon dioxide equivalent); and each of these for fleet, buildings, water and wastewater
- Energy use per citizen (MMBTU/citizen), Energy cost per citizen (\$/citizen), Emissions per citizen (MTCDE/citizen)
- For buildings, energy use per gross square foot (btu/gsf)
- For water and wastewater, energy use per volume treated (btu/MG) and energy use per citizen (btu/citizen)
- Average miles per gallon (MPG) per vehicle class and yearly number of miles traveled

PLAN OF ACTION

- **Existing Conditions (2010)** - we own and operate 92 buildings, varying in age and totaling approximately 500,000 square feet and we own and maintain 681 vehicles and large equipment pieces.
- **Baseline Energy Consumption (2010)** – we utilize 67,759,011 kWh of electricity at a cost of \$ 6.5 million, 543,667 therms of natural gas at a cost of \$ 433,000, 23,506 gallons of propane at a cost of \$ 72,500 and 693,421 gallons of fleet fuel at a cost of \$1.2 million. This is a total energy cost of \$8.2 million.
- **Implementation** - we will seek to institutionalize energy efficiency as a worthwhile value by:
 - Making all Town departments responsible for meeting the goals and requirements of this Plan. The sustainability manager will coordinate and work with Town departments to regularly report to management on the effectiveness of the Plan, including energy and cost saving impacts of the Plan.
 - Ensuring that personnel who work with energy equipment or are involved in energy-related decisions receive training for implementing this Plan.
 - Providing training and technical resources to assist the Facilities staff in evaluating various energy-saving technologies.
 - Serving as a positive example to the community by demonstrating the benefits of energy efficiency and, where possible, renewable energy resources.

- **Reporting and Plan Review** - we expect to update Council on the key performance indicators yearly and to review the plan extensively every third year. Staff will aim to have the update and/or review done by the end of August so the results may be used for the following year's budget development.

Focus A: Energy Data Management						
Strategy 1.	Collect, update, and quality control utility data to support management of energy as an important cost center					
Activities	Last Milestone	Frequency	Due On	Estimate of Avoided Cost (Savings)	Cost	Accountability
Geo-locate all electric meters and cross check with utility's description of location	2011	Every five to seven years	2016 to 2018	--	\$2,000	PWUT
Create web-based system viewable by staff with seven years of electricity data for every meter, building, and department.	System ready for use, March 2012.	One Time	NA	TBD	\$7,500/year recurring; \$4,000 one-time set up	Sustainability and Finance
Update Web-based system for electricity accounts monthly.	Training will occur spring of 2012	Monthly	Monthly	Should save at least 2-4 staff hours/month.	Staff time	Finance
Update Web-based system with natural gas and water accounts.	Planned implementation by FY 2014	Monthly	Monthly	TBD	TBD	TBD
Submeter Fire Station #8	Construction began spring 2012	One Time	spring 2013 construction completion	TBD	Part of the high performance specifications for construction approved by council on May 13, 2010	Engineering, PWUT, Sustainability
Submeter Town Hall and Install an Energy Management Software with a dashboard that can accommodate future buildings	RFP being drafted spring/summer 2012	One Time	fall 2012	TBD	TBD after RFP process—already budgeted for in FY11, rolled to FY12	Sustainability, PWUT, TS, Engineering

Focus B: Supply Side Management (Utility Side)						
Strategy 1.	Actively manage the cost of utilities and fleet fuel					
Strategy 2.	Utilize incentive programs					
Activities	Last Milestone	Frequency	Due On	Estimate of Avoided Cost (Savings)	Cost	Accountability
Ongoing familiarity with Progress Energy Rates so any available rate increase opt-outs are captured	Eight largest meters, rate opt out on November 2010	As needed—rates could change 1X/year	As needed—triggered by revised rates at the NC Utilities Commission	\$1,650,000.00/10 years	Staff time	PWUT & Sustainability
Train staff on energy management principles	June 2011—Four staff trained, two have obtained Professional Energy Manager Certifications	As needed	As needed	TBD	The June 2011 training was a free program offered by the NC Department of Commerce; Ongoing training must be budgeted	Sustainability
Progress Energy Rate Review	Review conducted March 2012	Every other year for all accounts. For new large accounts, after six months.	March 2014	\$14,148.59/year (this represents the March 2012 identified savings)	Four hours staff time	PWUT & Sustainability
Daily gasoline fleet fuel costs obtained	Daily	Daily	Daily	Two percent savings over the state contract (FY 2011)	Staff time	Finance
Daily B20 fleet fuel costs obtained	Daily	Daily	Daily	4.5 percent savings over the state contract (FY 2011)	Staff time	Finance
Negotiation of propane costs	FY 2011 Vendor Change to Assure	As needed when state contract changes	As needed	Current vendor marginally more than state contract, however vendor	Staff time	Finance

Focus B: Supply Side Management (Utility Side)						
Strategy 1.	Actively manage the cost of utilities and fleet fuel					
Strategy 2.	Utilize incentive programs					
Activities	Last Milestone	Frequency	Due On	Estimate of Avoided Cost (Savings)	Cost	Accountability
	Operational Consistency			selected by Town provides essential reliability		
Apply for Progress Energy Incentives	Ongoing	As needed	As needed	Incentives applied for thus far total over \$75,000—and these funds will be used for more energy retrofit projects, per the grant terms	Staff time	PW&UT and Sustainability
Review of past utility billing to assure that there were no errors in past billing	Planned for FY 2013	Every four years	FY 2017	TBD	Typically these projects can be bid for no cost—in return for a percentage of the rebates provided	Sustainability
Utilize peak shaving at the Western Wake Water Reclamation Facility	Planned for 2014	Ongoing	Ongoing	TBD	Staff time, Engineering Services	PWUT
Timing operations during off peak hours at utility plants when possible	Ongoing	Ongoing	Ongoing	TBD	Staff time	PWUT

Focus C: Energy Demand Management (Town Side)						
1. Energy Use in Buildings and Streetlights						
Strategy 1.	Conduct energy audits to identify opportunities for conservation					
Strategy 2.	Identify and implement no-cost energy efficiency projects					
Strategy 3.	Identify and implement energy efficiency projects with paybacks of five years or fewer					
Strategy 4.	Include energy efficiency projects in regular budget development process and continue to pursue grant funds to offset costs					
Activities	Last Milestone	Frequency	Due On	Estimate of Avoided Cost (Savings)	Cost	Accountability
HVAC and/or lighting retrofits done at James Jackson Operations Center, Bond Park Community Center, Bond Park Senior Center, Herb Young Community Center, Parking Deck, and Town Hall	All will be completed by September 2012	One Time	One Time	TBD	100 percent grant funded, \$277,000	PWUT
Audits and retrofits of six existing fire stations	Ongoing	One Time	Audits completed April 2012 and retrofits completed FY 2013	TBD	100 percent grant funded, \$145,000	Fire Department
Retrocommissioning of Town Hall to determine energy saving opportunities in the buildings with the highest KBtu/sqft	Final report delivered April 2012	One Time	One Time	TBD	100 percent grant funded, \$195,000	PWUT
LED streetlight pilot	Installation completed Dec. 2010	Ongoing	Ongoing	\$5,256/year	100 percent grant funded, \$35,215	Engineering
LED streetlight project to replace fixtures and do a	Included in budget	One Time project with ability to	NA	\$170,000/year in reduced electricity	Up front capital cost of \$995,000.	Sustainability, Engineering,

Focus C: Energy Demand Management (Town Side)						
1. Energy Use in Buildings and Streetlights						
Strategy 1.	Conduct energy audits to identify opportunities for conservation					
Strategy 2.	Identify and implement no-cost energy efficiency projects					
Strategy 3.	Identify and implement energy efficiency projects with paybacks of five years or fewer					
Strategy 4.	Include energy efficiency projects in regular budget development process and continue to pursue grant funds to offset costs					
Activities	Last Milestone	Frequency	Due On	Estimate of Avoided Cost (Savings)	Cost	Accountability
lighting analysis, and where needed a lighting upgrade, on all Town roads and one pilot neighborhood	process for FY 2013—in CIP for FY 2014	expand to DOT streets in the future		charges		Finance
Develop a new building SOP or policy to assure energy and water efficiency in new construction	Planned for FY 2013	One Time	FY 2013 with review every three years (review due FY 2016)	TBD	Staff time	Sustainability, Engineering, PWUT
Develop a building operational SOP or policy for existing buildings (to include temperature set points, appliance efficiency guidelines, etc.)	Planned for FY 2013/ FY 2014	One Time	FY 2013 with review every two years (review due FY 2015)	TBD	Staff time	All departments
Develop an Asset Management Plan	Underway, planned completion is FY 2014	On-going	On-going	TBD	Staff time with assistance from Energy Management Consultant	PWUT

Focus C: Energy Demand Management (Town Side)						
1. Energy Use in Water and Wastewater Treatment and Transport						
Strategy 1.	Conduct third party evaluation of water and wastewater operations for energy efficiency opportunities					
Strategy 2.	Use life cycle cost analysis to evaluate energy efficient equipment when new equipment is needed					
Strategy 3.	Analyze processes for opportunities to meet operational needs and save energy					
Activities	Last Milestone	Frequency	Due On	Estimate of Avoided Cost (Savings)	Cost	Accountability
Third party evaluation of water and wastewater plants for energy efficiency opportunities	Planned	Every third year	FY 2014	TBD	TBD	PWUT
Minimize onsite aerated sludge holding	Ongoing	Ongoing	Ongoing	TBD	Staff time	PWUT
Variable frequency drives on pumping systems	In place; as needed upon replacement or original purchase	Ongoing	Ongoing	TBD	Staff time, pump cost differential	PWUT
Energy efficient finished water pump motors	In place	Ongoing	Ongoing	TBD	Motor cost	PWUT
Energy efficient aeration systems at Western Wake Water Reclamation Facility	Planned	Ongoing	Ongoing	TBD	System cost	PWUT
Replacing aging aeration systems	As needed	Ongoing	Ongoing	TBD	Replacement cost if system not broken	PWUT

Focus C: Energy Demand Management (Town Side)						
1. Energy Used in Vehicles and Motorized Equipment						
Strategy 1.	Diversify fuel types to buffet the Town against price fluctuations					
Strategy 2.	Pilot new fleet technologies to increase fuel efficiency and determine if operationally appropriate and cost effective					
Strategy 3.	Seek to reduce the number of miles traveled in a way that meets operational need and reduces cost					
Strategy 4.	Vehicle Right-Sizing—we will seek to purchase vehicles that are the right size for the job and no larger					
Strategy 5.	Fleet Utilization—we will seek to fully utilize all vehicle assets and we will sell or shift under-utilized assets when practical					
Activities	Last Milestone	Frequency	Due On	Estimate of Avoided Cost (Savings)	Cost	Accountability
Pilot alternatively fueled vehicles including hybrid and all-electric options	All-electric Nissan Leaf received May 2012	As practical and possible with Town and grant funds	As needed	~\$19,311 per year	Staff time; 100 percent grant funded through three grants—\$208,746	PWUT
Pilot anti-idling technologies (three police vehicles and two utility vehicles)	Installed FY 2012	Ongoing	Ongoing	TBD	Staff time; grant funded-\$12,000; budgeted \$15,975	PWUT
Robust biodiesel (B20) program	Ongoing	Ongoing	Ongoing	TBD	TBD	PWUT
Monthly Sustainable Fleet Team meetings to review alternative fuels and technologies	Ongoing	Ongoing	Ongoing	NA	Staff time	PWUT, Sustainability
Yearly Fleet Utilization Review	Summer 2011 the NC Solar Center Did a Free Analysis	Yearly	Summer 2012 staff will conduct analysis	TBD	Staff time	PWUT
Teleconferencing for Fire Department	Planned	One Time	FY 2013	TBD	Staff time; TBD based on RFP	FD

Focus C: Energy Demand Management (Town Side)						
1. Energy Used in Vehicles and Motorized Equipment						
Strategy 1.	Diversify fuel types to buffet the Town against price fluctuations					
Strategy 2.	Pilot new fleet technologies to increase fuel efficiency and determine if operationally appropriate and cost effective					
Strategy 3.	Seek to reduce the number of miles traveled in a way that meets operational need and reduces cost					
Strategy 4.	Vehicle Right-Sizing—we will seek to purchase vehicles that are the right size for the job and no larger					
Strategy 5.	Fleet Utilization—we will seek to fully utilize all vehicle assets and we will sell or shift under-utilized assets when practical					
Activities	Last Milestone	Frequency	Due On	Estimate of Avoided Cost (Savings)	Cost	Accountability
Aquastar will removing 10 of the highest mileage cars from the road	Aquastar fully installed in FY 2012	Ongoing	Ongoing	\$2,000 per year	Co-benefit, so no cost associated for this plan	Finance
No Idling SOP for Fire Department	Under Development	One Time	FY 2013	TBD	Staff time	FD
During each year's budget preparation staff will critically consider selecting replacement vehicles that are appropriate for the operational need, with an eye toward opportunities to down-size	Ongoing	Ongoing	Ongoing	TBD	Staff time	All Departments
Develop a Sustainable Vehicle Procurement Policy to formalize above	Planned FY 2013	Planned	Ongoing	TBD	Staff time	

Focus D: Organizational Integration and Education and External Communication						
Strategy 1.	Educate and inform staff on the Strategic Energy Action Plan and how they can work to assist the Town in surpassing these goals					
Strategy 2.	Formally recognize staffers who recommend or innovate regarding energy and sustainability					
Strategy 3.	Friendly competitions to drive down waste of energy					
Strategy 4.	Include this plan on the external website					
Activities	Last Milestone	Frequency	Due On	Estimate of Avoided Cost (Savings)	Cost	Accountability
Sustainability manager speaks briefly to all New Employee Training Classes about the Town's approach to energy conservation	Ongoing	Ongoing	Ongoing	TBD	Staff time	Sustainability
Formal recognition of staffers who recommend energy and sustainability initiatives	Planned	Planned	In development for FY 2013/ FY 2014	TBD	Staff time	Sustainability, HR
Intranet site to educate and inform staff on what the Town is doing on energy	Planned	Planned	In development for FY 2013/ FY 2014	TBD	Staff Time	Sustainability
Fire Department energy competition between fire houses	Planned	Planned	In development for FY 2013/ FY 2014	TBD	Staff time supported by EPA grant	Sustainability, FD

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

s. FY2012 Street Improvements (EN12-066)

Committee unanimously recommended awarding the FY 2012 Street Improvements Project to Rea Contracting, a Division of The Lane Construction Corporation, for \$1,252,683.60 including both the Base Bid and the Old Apex Road Optional Bid. Committee further recommended authorizing staff to use any remaining balance towards the application of surface treatments on additional streets by change order. The recommendation of award by Council represents a preliminary determination as to the qualifications of the bidder and no legally binding acceptance of the bid or offer occurs until the Town has executed a written agreement. The contract award is subject to the contractor providing all bonds, insurance and other required documents set forth in the Bid Documents and executing a contract in a form agreeable to the Town.

STAFF REPORT

Operations Committee, June 7, 2012

FY2012 Street Improvements (EN12-066)

Consideration of a Bid Award for the FY 2012 Street Improvements Project

Speaker: Mr. Tim Bailey

From: Tim Bailey, PE, Director of Engineering
Prepared by: Kyle Hubert, PE, Transportation Engineer
Approved by: Benjamin T. Shivar, Town Manager
Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

The Engineering Department received bids for the FY 2012 Street Improvements Project on May 22, 2012. Staff received a total base bid price to repair pavement and resurface 119 street segments totaling 7.6 miles. In addition, staff received an optional bid price to repair pavement and resurface three street segments of Old Apex Road totaling 0.3 miles. After reviewing the Base Bid and the Old Apex Road Optional Bid, staff recommends the project be awarded to Rea Contracting, a Division of The Lane Construction Corporation, for \$1,252,683.60 including both the Base Bid and the Old Apex Road Optional Bid.

Background

Council approved the list of streets to be included in the FY 2012 Street Improvements Project (EN12-051) on March 7, 2012. Since then, 10 street segments have been removed from the list for various reasons including inconsistent Pavement Condition Index (PCI) with actual street conditions. Exhibit I herein includes more detail associated with the street segments removed.

Discussion

The Engineering Department received bids for the FY 2012 Street Improvements Project on May 22, 2012. Staff received a total base bid price to repair pavement and resurface 119 street segments totaling 7.6 miles as listed herein as Exhibit I. In addition, staff received an optional bid price to repair pavement and resurface three street segments of Old Apex Road totaling 0.3 miles due to low PCI ratings as listed in Exhibit II (herein). The engineer's estimate for the base bid was \$1,455,492.85 and \$112,751.40 for the Old Apex Road option for a total bid price of \$1,568,244.25. Maintenance of this section of Old Apex Road was recently transferred from

NCDOT to the Town. The following table includes additional bid information. Construction is expected to begin in late July and be completed in early November.

Contractor	Base Bid	Old Apex Road Optional Bid	Base Bid and Old Apex Road Optional Bid
Rea Contracting	\$ 1,140,581.00	\$ 112,102.60	\$ 1,252,683.60
Triangle Grading and Paving	\$ 1,557,870.78	\$ 125,112.04	\$ 1,682,982.82
Barnhill Contracting	\$ 1,586,994.98	\$ 122,645.31	\$ 1,709,640.29

Many Town streets built in the late 1980s and early 1990s are approaching or have exceeded their 20-year service life. Conditions of many of these streets have begun to deteriorate, and performing maintenance repairs and resurfacing in the near future will be significantly less expensive than waiting several years. A total of 10 miles or 2.3 percent of Town maintained streets were repaired and resurfaced in the 2010 Street Improvements Project, and only 4.6 miles or 1.1 percent of streets were repaired and resurfaced in 2011. The 2012 Street Improvements, including the Old Apex Road Bid Option, includes 7.9 miles or 1.9 percent of the Town's streets. Staff has continued to closely review pavement maintenance needs and budgeting due to these factors. The upcoming bond referendum is one tool to balance maintenance needs with available funding. Staff will continue to monitor and adjust future budget recommendations.

Currently, the Street Improvements Program consists primarily of addressing the street segments with the lowest PCI ratings by performing pavement repairs followed by resurfacing with a new layer of asphalt pavement. Staff is exploring options to expand our Street Improvements Program to include surface treatments as a preventative maintenance strategy. Surface treatments are coatings applied to the existing asphalt and are typically applied to streets in relatively good condition (PCI range between 50 and 80) to help extend the pavement life.

Surface treatments:

- Seal cracks to help prevent water from damaging the subgrade
- Help protect against environmental distress including oxidation and weathering
- Are about half the cost of an asphalt resurfacing
- Require some drying time depending on specifications and weather conditions

Specific candidates under consideration for surface treatments are included in Exhibit III herein. Awarding the FY 2012 Street Improvements Project to Rea Contracting will result in a project balance of \$128,796.97. After further analysis of surface treatments, staff recommends consideration for any remaining balance to be allocated for application of surface treatments on additional street segments by change order.

Fiscal Impact

The FY 2012 Capital Improvements Budget includes a \$1,500,000 appropriation to the 2012 Street Improvements project (ST1215). A total of \$118,519.43 of this appropriation has been expended to primarily cover the cost to complete the 2012 Pavement Condition Rating Survey and explore options to enhance our current Pavement Management System including cost projections and preventative maintenance strategies. As part of the approval process of streets to be included in the FY 2013 Street Improvements Project, staff will present more information on cost projections and preventative maintenance strategies.

Staff Recommendation

Staff recommends the project be awarded to Rea Contracting, a division of The Lane Construction Corporation, for \$1,252,683.60 including the Base Bid and the Old Apex Road Optional Bid. Staff recommends Town Council approval to move forward with using any remaining balance towards the application of surface treatments on additional streets by change

order. Existing appropriations within ST 1215 address the funding needs associated with this bid award. The recommendation of award by Council represents a preliminary determination as to the qualifications of the bidder and no legally binding acceptance of the bid or offer occurs until the Town has executed a written agreement. The contract award is subject to the contractor providing all bonds, insurance and other required documents set forth in the Bid Documents and executing a contract in a form agreeable to the Town.

Exhibit I

FY 2012 Street Improvements Base Bid Street Segments

Street	From	To	PCI
HADLEY CREEK DR	CARPENTER BROOK DR	CUL DE SAC	20
WELCHDALE CT	HEATHRIDGE LN	CUL DE SAC	29
PALMER MEADOW CT	BOLTSTONE CT	CUL DE SAC	30
PARK VILLAGE DR	MILLERS CREEK DR	CHERRY GROVE DR	31
SMOKEHOUSE LN	CLYDESDALE CT	CUL DE SAC	33
BROOK CREEK DR	FRYAR CREEK DR	LEWEY STONE CT	36
CASTLEBURY CREEK CT	ABNORMAL BREAK	CASTLEBURY CREEK CT	37
BROOKCLIFF LN	FARMINGTON WOODS DR	HUNTWOOD LN	38
VERSAILLES DR	CHALON DR	BRITTANY PL	38
MUIR WOODS DR	LONESOME PINE DR	CUL DE SAC	38
PARKSCENE LN	PARKARBOR LN	PARKMEADOW DR	38
HEATHRIDGE LN	LAUREL HOLLOW PL	PENNSBURY CT	38
REED ST	BARNES ST	KYLE ST	39
TRAPPERS SACK RD	CASTALIA DR	BIGHORN CIR	39
MODENA DR	GIVERNY PL	LUDSTONE CT	39
HALLS MILL DR	HALLS MILL DR	CUL DE SAC	39
WHITEBERRY DR	WEDGEMERE ST	CATCHPENNY CT	39
LEWEY BROOK DR	STILLMAN CREEK DR	PINESTONE CT	40
<u>HEATER ALLEY *</u>	<u>E PARK ST</u>	<u>FAIRVIEW RD</u>	<u>40</u>
FOREST PARK WAY	DUNCAN HILL CT	RENSHAW CT	41
HIGHLANDS LAKE DR	SCOTWINDS CT	KALMIA LN	41
STONELEIGH DR	KETTLEBRIDGE DR	BARCLADINE CT	42
<u>CHALON DR *</u>	<u>US 64 HWY</u>	<u>BORDEAUX LN</u>	<u>42</u>
SCOTIA PL	LOCHMERE DR	STRATHBURGH LN	42
PENCHANT CT	KINGSWOOD DR	FRESNO PL	42
ESPLANADE CT	EMILE ZOLA DR	CUL DE SAC	43
TORREY PINES DR	PRESTONWOOD PKY	ROYAL CLUB DR	43
TORREY PINES DR	ROYAL CLUB DR	CUL DE SAC	43
STREAMVIEW DR	FRYAR CREEK DR	CARPENTER BROOK DR	43
CRANBORNE LN	BARRIEDALE CR	PARKGATE DR	43
RIGGSBEE FARM DR	HICKORYWOOD BV	MARBLECREEK LN	43
SILK HOPE DR	MINT HILL DR	SNOW CAMP DR	43
MARQUETTE DR	OLYMPIC DR	LANTANA CR	44
HIGH MEADOW DR	CARY PKY	HANOVER PL	44
PARKHOLLOW CT	PARKMEADOW DR	CUL DE SAC	44
DONALDSON DR	QUINCY CT	WALNUT ST	44
FARMINGTON WOODS DR	EXECUTIVE CIR	BISSETT DR	45
CASTALIA DR	SPRING BUD DR	SILVER LINING LN	45
POCONO LN	TRAILING OAK	CUL DE SAC	45

Street	From	To	PCI
DOMINION HILL DR	ROZELLE VALLEY LN	BARCLAY VALLEY DR	45
ROSSWOOD PL	NORMANDALE DR	CUL DE SAC	45
KEYSTONE DR	THORPE DR	ARROW HEAD WAY	46
CASTALIA DR	FLINTLOCK CT	HIGH HOUSE RD	46
CREEK PARK DR	OLD PROS WAY	HOGANS VALLEY WAY	46
CEDARPOST DR	LEGAULT DR	CUL DE SAC	46
TARBERT DR	BRODICK CT	HADDINGTON DR	46
CHERRY GROVE DR	SILK HOPE DR	PARK VILLAGE DR	46
HIGHLAND TRL	BALMORAL DR	LOHCARRON LN	47
GLENSTONE LN	PIPERWOOD DR	CUL DE SAC	47
BRADWYCK DR	BRECKENWOOD DR	BETSWORTH CT	47
HUNTSMOOR LN	SW CARY PKY	SADDLEHORN CT	47
KORBEL PL	ARVO LN	CUL DE SAC	47
<u>CASTALIA DR *</u>	<u>TRAPPERS RUN DR</u>	<u>COUGAR CT</u>	48
PLACID PL	RUNNING CREEK RD	CUL DE SAC	48
<u>ARLINGTON RIDGE *</u>	<u>OLYMPIC DR</u>	<u>BISCAYNE CR</u>	48
PARK VILLAGE DR	MARTINS POINT PL	TOWN CREEK DR	48
ELECTRA DR	BLACK ANGUS RN	ANGORA CT	48
CAPISTRANE DR	CARSWELL LN	BYRD HILL CT	48
HALLS MILL DR	SILK HOPE DR	PARK VILLAGE DR	48
SLOAN DR	HUDSON CT	MONTREAL CT	49
CAMERON POND DR	MAGALLOWAY DR	BEACON FALLS CT	49
ACCOLADE DR	WALDO ROOD BV	PALADIN PL	49
W CHATHAM ST	NORMANDALE DR	SOLSTICE CR	49
FRYAR CREEK DR	PARK YORK LN	CASTLEBURY CREEK CT	49
LYNDEN VALLEY CT	LANTERN RIDGE LN	CUL DE SAC	49
JODHPUR DR	SW CARY PKY	GATEPOST LN	49
NOTTINGHAM DR	WOODCREEK DR	NOEL ANN CT	49
BAYOAK DR	PHAUFF CT	ADVENTURE TRL	49
TAYPORT CT	ROTHES RD	CUL DE SAC	50
KILBRECK DR	KINGUSSIE CT	KILMORACK DR	50
GRIFFIS ST	RUSTIC RIDGE RD	CARRIAGE LN	50
BRADWYCK DR	WHEATSBURY DR	BRECKENWOOD DR	50
LAURA DUNCAN RD	TOWN LIMIT	CAROSTONE CT	50
PARKWIND CT	PARKCANYON LN	CUL DE SAC	50
BORDEAUX LN	CHARLEMAGNE CT	GOVAN LN	50
SUDBURY DR	MAYNARD RD	GRANDE MEADOW WAY	50
BELL ARBOR CT	EDGEMORE AVE	CUL DE SAC	50
MAPLE ST	MORNINGSIDE DR	DEAD END	51
WICKLOW DR	MAYNARD RD	ARRUNDALE DR	51
VICKSBURG DR	CHALMETTE CT	MEDALLION CR	51
WIDDINGTON LN	FAWLEY CT	SOUTHWOLD DR	51
PARK VILLAGE DR	NEWTON GROVE RD	MILLERS CREEK DR	51
MINT HILL DR	GOLD POINT DR	SILK HOPE DR	51
SNOW CAMP DR	SILK HOPE DR	GOLD POINT DR	51
<u>VENETIAN CT **</u>	<u>REGENCY PKY</u>	<u>GIOVANNI CT</u>	51
OAKMIST DR	RUSHINGWATER DR	CUL DE SAC	51

Street	From	To	PCI
HEATHRIDGE LN	YOUNGSFORD CT	WALDENBROOK CT	51
MODENA DR	PACOVAL PL	CHIMO CT	51
CRICKENTREE DR	PENNY RD	SERENCE CT	51
CROSSWIND DR	RUSTIC TRL	WHITTLEWOOD DR	52
CAVISTON WAY	ACKWORTH CT	WALCOTT WY	52
REED ST	KYLE ST	PAT DR	52
LOCHMERE DR	CARY PKY	MACIE ST	52
ARVO LN	KORBEL PL	CUL DE SAC	52
CRABTREE CROSSING PKY	SUMMER LAKES DR	EATON PL	52
W CHATHAM ST	N HARRISON AVE	PARKTHROUGH ST	52
PARKWHISPER CT	PARKMEADOW DR	CUL DE SAC	52
DOWNING FOREST PL	PARK YORK LN	MURDOCK CREEK CT	52
DRYWOOD PL	BELHAVEN RD	DEAD END	52
GIVERNY PL	MODENA DR	CUL DE SAC	52
WHITE OAK DR	HEMLOCK ST	BEECH ST	52
GABLES POINT WAY	BARONS GLENN WY	MACARTHUR DR	52
<u>WEST LAKE RD *</u>	<u>OPTIMIST FARM RD</u>	<u>WEST LAKE ELEM/MIDDL</u>	<u>52</u>
KEY WEST MEWS	GREGORY DR	COCONUT MEWS	53
BUENA VISTA DR	CHULA VISTA CT	MARILYN CR	53
GLEN BONNIE LN	HIGH MEADOW DR	CAMERON CT	53
GLASGOW RD	PERTH CT	RONALDSBY DR	53
<u>WALDO ROOD BLV ***</u>	<u>TOWN LIMITS</u>	<u>COLLINS RD</u>	<u>53</u>
<u>CHALON DR *</u>	<u>BORDEAUX LN</u>	<u>US 64 HWY</u>	<u>53</u>
DEODORA CT	HONEYSUCKLE LN	CUL DE SAC	53
MORAVIA LN	WESTHIGH ST	KINDRED WAY	53
PARKMIST CIR	PARKMEADOW DR	CUL DE SAC	53
CUMBERLAND GREEN DR	CRESTPOINT CT	CROMWELL CT	53
PRESTONWOOD PKY	BRIDLE CREEK DR	HIGH HOUSE RD	53
STILLMAN CREEK DR	LEWEY BROOK DR	CUL DE SAC	54
FARMINGTON WOODS DR	BISSETT DR	KILDAIRE WOODS DR	55
VERSAILLES DR	BRITTANY PL	LAKE PINE DR	55
CASTLEBURY CREEK CT	FRYAR CREEK DR	CASTLEBURY CREEK CT	55
PRESTONWOOD PKY	HIGH HOUSE RD	BRIDLE CREEK DR	55
HALLS MILL DR	PARK VILLAGE DR	BELL ARTHUR DR	56
PENCHANT CT	FRESNO PL	CUL DE SAC	56
<u>E PARK ST *</u>	<u>WALKER ST</u>	<u>HEATER ALLEY</u>	<u>57</u>
HIGHLAND TRL	LOHCARRON LN	KELTY CT	58
GLASGOW RD	RONALDSBY DR	ANNANDALE DR	58
CRABTREE CROSSING PKY	SUMMER LAKES DR	BALSAMWOOD CT	58
WIDDINGTON LN	FAWLEY CT	SOUTHWOLD DR	58
<u>RIGGSBEE FARM DR *</u>	<u>DAVIS DR</u>	<u>HICKORYWOOD BV</u>	<u>58</u>

Note: Street segments designated with asterisks have been removed from the FY 2012 Street Improvements Project

* Inconsistent Pavement Condition Index (PCI)

** Under Warranty

*** NCDOT maintained

Exhibit II

FY 2012 Street Improvements Old Apex Road Optional Bid Street Segments

Street	From	To	PCI
OLD APEX RD	FALCONE PKY	MURPHY DR	48
OLD APEX RD	MURPHY DR	HOWLAND AVE	52
OLD APEX RD	HOWLAND AVE	HIGH HOUSE RD	65

Exhibit III

FY 2012 Street Improvements Surface Treatment Street Segments

Street	From	To	PCI
N WALKER ST	CHATHAM ST	CEDAR ST	52
S ACADEMY ST	ZEV SUMMIT LN	PARK ST	53

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

t. Walnut Street Sidewalk/Waterline Rehabilitation Project Condemnation Resolution (EN12-069)

Committee unanimously recommended approval and execution of condemnation resolutions associated with the Walnut Street Sidewalk/Waterline Rehabilitation Project. ~~Committee further recommended staff proceed with Option A, a four-foot sidewalk with a 2.5 foot utility strip, for the property located at 112 Walnut Street.~~ ***(After the Operations Committee meeting Town staff was able to settle with the owner of the property located at 112 Walnut Street. This recommended condemnation resolution and actions are no longer necessary.)***

STAFF REPORT

Operations Committee, June 7, 2012

Walnut Street Sidewalk/Waterline Rehabilitation Project Condemnation Resolution (EN12-069)

Consideration of approval of a condemnation resolution for the Walnut Street Sidewalk/Waterline Rehabilitation Project

Speaker: Mr. Tim Bailey

From: Tim Bailey, PE, Director of Engineering
Prepared by: Yulonda Moore, Real Estate Specialist
Approved by: Benjamin T. Shivar, Town Manager
Approved by: Michael J. Bajorek, Assistant Town Manager

Executive Summary

Staff is working with property owners to secure the necessary easements for construction of the Walnut Street Sidewalk and Waterline Rehabilitation Project (ST1135 and WT 1154). Staff requests direction on what design to proceed with for the property located at 112 Walnut Street and the approval of the appropriate condemnation resolutions herein to minimize disruption to the construction schedule.

Background

The Walnut Street Sidewalk and Waterline Rehabilitation Project include the construction of a sidewalk, in addition to upgrading the existing waterline to a 12-inch waterline along the south side of Walnut Street from the intersection of Kildaire Farm Road to Tanglewood Drive. The waterline then crosses Walnut Street to Ryan Road, where it runs along the eastern right of way of Ryan Road, turning and running along the back of Village Square Shopping Center, where it will tie into an existing waterline on Maynard Road.

Discussion

Negotiations have been productive, and staff has reached amicable settlements with the majority of the affected owners; ~~however, staff has worked with several owners reevaluating the design of the project along their properties to minimize impacts and have not been able to reach a settlement. In one such case, staff continues to work with the owner of 112 Walnut Street to finalize a design to minimize impacts to his property. The original design across the property calls for a four-foot sidewalk with a 2.5-foot utility strip (Option A). At the July 14, 2011 Town Council meeting, council approved a five-foot sidewalk with utility strip from Kildaire Farm Road to Ralph Drive, with staff flexibility, narrowing to a four-foot sidewalk with no utility strip at 112 Walnut Street per the owner's wishes (Option B). Staff incorporated the design changes of Option B, hoping to reach an amicable settlement with the owner. Unfortunately, all attempts at settlement have been unsuccessful. Condemnation is necessary to maintain the project schedule. Staff will continue negotiations to reach a mutual settlement while continuing condemnation procedures. The owners and properties affected are as follows:~~

GTT Corporation
682 Cary Towne Boulevard
PIN 0763970659

~~John David McLawhorn, III
112 Walnut Street
PIN 0763594676~~

Walnut Street, LLC
108 Walnut Street
PIN 0763593696

Fiscal Impact

For parcels where condemnation becomes necessary, the Town will incur the cost of eminent domain proceedings, estimated to be between \$1,600 and \$5,000 that will be paid from ST 1135 and WT 1154.

Staff Recommendation

Staff recommends approval and execution of the appropriate resolutions authorizing condemnation, ~~and staff requests direction from Town Council on which design and associated condemnation resolution to proceed with (Option A or Option B) for the property located at 112 Walnut Street.~~

The Condemnation Resolutions follow:

A RESOLUTION AUTHORIZING CONDEMNATION
TO ACQUIRE CERTAIN PROPERTY OF
"G.T.T. CORPORATION"

WHEREAS, the governing body of the Town of Cary hereby determines that it is necessary and in the public interest to acquire certain property owned by G.T.T. Corporation for the following public purposes:

To protect the public health, to provide the public with an adequate and sound water system, and to improve such system to meet the need for expanded or upgraded services, the Town of Cary is condemning the herein described easement interests, specifically, to construct and maintain the Walnut Street Waterline Rehabilitation Project (WT 1154).

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

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

1. The Town of Cary shall acquire by condemnation, for the purposes stated above, the property and easement interest in a portion of certain tracts described in Deed Book 1984, page 253, Wake County Registry.

The easement area taken is more particularly described as follows:

UTILITY AND PIPELINE EASEMENT

COMMENCING AT A POINT, said point being an existing iron pipe located in the existing western right of way of SE Maynard Road, said point located on the eastern property line of the Grantors, said point being the northeastern property corner of the Grantors and the southeastern property corner of The Town of Cary with PIN 0763984095, thence leaving said point proceeding along the existing western right of way of SE Maynard Road S 01°41'42" E 42.13' to the **POINT AND PLACE OF BEGINNING**, thence continuing along said right of way S 01°41'42" E 20.00', thence leaving said existing right of way S 87°24'12" W, 26.15', thence S 01°27'19" E, 10.83', thence N 88°33'27" W, 20.03', thence N 01°27'19" W, 12.77', thence N 84°04'46" W, 75.44', thence S 00°33'54" W, 18.65', thence N 88°33'27" W, 20.00', thence N 00°33'54" E, 19.28', thence S 89°58'05" W, 79.20', thence S 03°09'37" E, 18.81', thence S 86°50'23" W, 20.00', thence N 03°09'37" W, 19.41', thence S 88°33'27" W, 87.94', thence S 01°26'33" E, 15.39', thence S 89°21'06" W, 32.55', thence N 01°26'33" W, 14.94', thence S 88°33'27" W, 19.00', thence S 00°45'23" E, 27.97', thence S 89°14'37" W, 20.00', thence N 00°45'23" W, 27.73', thence S 88°33'27" W, 87.09', thence N 89°10'55" W, 70.71', thence S 00°48'52" W, 82.66', thence N 89°11'08" W, 28.69', thence N 00°48'52" E, 82.66', thence N 89°10'55" W, 21.92', thence S 00°48'52" W, 83.02', thence S 89°53'00" W, 20.00', thence N 00°48'52" E, 83.34', thence N 89°10'55" W, 26.14', thence S 00°06'38" E, 109.66', thence S 89°53'06" W, 39.72', thence N 00°49'05" E, 110.29', thence N 89°10'55" W, 51.98', thence S 00°06'08" E, 18.39', thence S 89°53'52" W, 20.00', thence N 00°06'08" W, 18.71', thence N 89°10'55" W, 51.33', thence S 00°06'08" E, 15.83', thence S 89°53'52" W, 20.00', thence N 00°06'08" W, 16.15', thence N 89°10'55" W, 34.26', thence N 00°46'09" E, 74.71', thence N 45°38'57" W, 178.86', thence S 44°21'03" W, 42.78', thence N 45°38'57" W, 26.15', thence N 44°21'03" E, 42.78', thence N 45°38'57" W, 30.65', thence N 56°18'07" W, 49.25' to the point of intersection with the existing eastern right of way of Ryan Road, thence proceeding along said right of way N 33°51'26" E, 20.00', thence leaving said right of way S 56°18'07" E, 51.06', thence S 45°38'57" E, 246.11', thence S 00°46'09" W, 36.67', thence S 89°15'57" E, 49.22', thence S 00°44'03" W, 20.00', thence N 89°15'57" W, 49.23', thence S 00°46'09" W, 6.63', thence S 89°10'55" E, 359.32', thence N 01°26'33" W 11.46', thence N 88°33'27" E 20.00', thence S 01°26'33" E 11.59', thence N 88°33'27" E, 273.31', thence S 89°26'06" E, 66.50', thence S 84°06'24" E, 108.44', thence N 87°15'50" E, 22.16' to the **POINT AND PLACE OF BEGINNING**, containing 37,811 square feet, more or less, according to a map by the Town of Cary Engineering Department entitled "Easement Map for the Property of G.T.T. Corp., The Village Square, Sheet 1 of 1," dated 5/25/11.

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

A RESOLUTION AUTHORIZING CONDEMNATION
TO ACQUIRE CERTAIN PROPERTY OF
"WALNUT ST., LLC,
A NORTH CAROLINA LIMITED LIABILITY COMPANY"

WHEREAS, the governing body of the Town of Cary hereby determines that it is necessary and in the public interest to acquire certain property owned by Walnut Street, LLC, a North Carolina limited liability company for the following public purpose:

To protect the public health, to provide the public with an adequate and sound transportation system and water system, to improve such system to meet the need for expanded or upgraded services, the Town of Cary is condemning the herein described easement interests, specifically, to construct and maintain the Walnut Street Sidewalk/Waterline Rehabilitation Project.

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

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

1. The Town of Cary shall acquire by condemnation, for the purposes stated above, the property and easement interest in a portion of certain tracts described in Deed Book 12850 at page 1136.

The property interest areas taken are more particularly described as follows:

SIDEWALK & UTILITY AND PIPELINE EASEMENT

BEGINNING AT A POINT, said point being an existing iron pipe located in the existing southern right of way of Walnut Street, said point located on the eastern property line of the Grantors, same being the western property line of John D. McLawhorn, III, now or formerly, said point also being the northeastern property corner of the Grantors, thence leaving said existing right of way proceeding along the eastern property line of the Grantors S 00°26'29" W, 5.74', thence leaving said property line S 70°32'23" W, 3.73', thence N 89°40'03" W, 8.80', thence S 00°59'57" W, 5.65', thence N 89°00'03" W, 11.44', thence N 00°59'57" E, 6.86', thence N 00°59'57" E, 2.00', thence S 89°45'26" W, 37.56', thence S 72°32'34" W, 11.80', thence N 89°33'31" W, 9.50' to the point of intersection with the western property line of the Grantors, same being the eastern property line of Michael and Rita Whalen, now or formerly, thence proceeding along said property line N 00°26'29" E, 1.32', thence N 00°26'29" E, 4.72' to the point of intersection with the existing southern right of way of Walnut Street, thence proceeding along said right of way N 89°14'02" E, 82.02' to the **POINT AND PLACE OF BEGINNING**, containing 445 square feet, more or less, according to a map by the Town of Cary Engineering Department entitled "Easement Map for the Property of Michael J. and Rita M. Whalen and Walnut Street, LLC, Project # ST 1135/WT 1154, Sheet 1 of 1, Revised 1/20/12," dated 2/3/11.

TEMPORARY CONSTRUCTION EASEMENT

TCE AREA 1

COMMENCING AT A POINT, said point being an existing iron pipe located in the existing southern right of way of Walnut Street, said point located on the eastern property line of the Grantors, same being the western property line of John D. McLawhorn, III, now or formerly, said point also being the northeastern property corner of the Grantors, thence leaving said property line proceeding along said existing right of way S 89°14'02" W 82.02' to the point

of intersection with the western property line of the Grantors, same being the eastern property line of Michael and Rita Whalen, now or formerly, thence leaving said existing right of way proceeding along the western property line of the Grantors S 00°26'29"W 6.04' to the **POINT AND PLACE OF BEGINNING**, thence leaving said property line S 89°33'31" E, 9.50', thence N 72°32'34" E, 11.80', thence N 89°45'26" E, 37.56', thence S 00°59'57" W, 2.00', thence S 89°45'26" W, 37.52', thence S 72°32'34" W, 11.80', thence N 89°33'31" W, 9.43' to the point of intersection with the western property line of the Grantors, same being the eastern property line of Michael and Rita Whalen, thence proceeding along said property line N 00°26'29" E, 2.03' to the **POINT AND PLACE OF BEGINNING**, containing 116 square feet, more or less, according to a map by the Town of Cary Engineering Department entitled "Easement Map for the Property of Michael J. and Rita M. Whalen and Walnut Street, LLC, Project # ST 1135/WT 1154, Sheet 1 of 1, Revised 1/20/12," dated 2/3/11.

TCE AREA 2

COMMENCING AT A POINT, said point being an existing iron pipe located in the existing southern right of way of Walnut Street, said point located on the eastern property line of the Grantors, same being the western property line of John D. McLawhorn, III, now or formerly, said point also being the northeastern property corner of the Grantors, thence leaving said right of way proceeding along said property line S 00°26'29" W 5.74' to the **POINT AND PLACE OF BEGINNING**, thence continuing along said property line S 00°26'29" W, 12.58', thence leaving said property line S 88°33'27" W, 12.07', thence N 61°53'23" W, 13.26', thence S 89°00'03" E, 11.44', thence N 00°59'57" E, 5.65', thence S 89°40'03" E, 8.80', thence N 70°32'23" E, 3.73' to the **POINT AND PLACE OF BEGINNING**, containing 178 square feet, more or less, according to a map by the Town of Cary Engineering Department entitled "Easement Map for the Property of Michael J. and Rita M. Whalen and Walnut Street, LLC, Project # ST 1135/WT 1154, Sheet 1 of 1, Revised 1/20/12," dated 2/3/11.

Following construction of the street and/or sidewalk, and slope easement, this temporary construction area will be graded and restored, using conventional engineering practices, and all temporary easements shall terminate.

2. The attorneys representing the Town of Cary are directed to institute the necessary proceedings under NCGS § 40A-1, et. seq. as authorized by NCGS § 160A-296(a)(3) and/or other appropriate statutory provisions and local acts to acquire the property herein described.

A RESOLUTION AUTHORIZING CONDEMNATION TO ACQUIRE CERTAIN PROPERTY OF "JOHN DAVID MCLAWHORN, III"

WHEREAS, the governing body of the Town of Cary hereby determines that it is necessary and in the public interest to acquire certain property owned by John David McLawhorn, III, for the following public purpose:

To protect the public health, to provide the public with an adequate and sound transportation system and water system, to improve such system to meet the need for expanded or upgraded services, the Town of Cary is condemning the herein described easement interests, specifically, to construct and maintain the Walnut Street Sidewalk/Waterline Rehabilitation Project.

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

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

1. ~~The Town of Cary shall acquire by condemnation, for the purposes stated above, the property and easement interest in a portion of certain tracts described in Deed Book 5937 at page 0832.~~

The property interest areas taken are more particularly described as follows:

SIDEWALK & UTILITY AND PIPELINE EASEMENT

BEGINNING AT A POINT, said point being an existing iron pipe located in the existing southern right of way of Walnut Street, said point being the northeastern property corner of the Grantors, same being the northwestern property corner of Michael Remedios, now or formerly, said point located on the eastern property line of the Grantors, thence leaving said right of way proceeding along said property line S 00°26'29" W, 4.21', thence S 00°26'29" W, 1.86', thence leaving said property line N 89°33'31" W, 10.43', thence N 72°20'37" W, 12.25', thence S 89°49'33" W, 47.50', S 00°59'57" W, 2.00', thence S 00°59'57" W, 4.95', thence S 89°37'33" W, 10.00', thence N 00°59'57" E, 4.99', thence N 00°59'57" E, 2.00', thence S 89°49'33" W, 4.09', thence S 70°32'23" W, 7.73' to the point of intersection with the western property line of the Grantors, same being the eastern property line of Walnut Street, LLC, now or formerly, thence proceeding along said property line N 00°26'29" E, 5.74' to an existing iron pipe located on the existing southern right of way of Walnut Street, said point being the northwestern property corner of the Grantors and the northeastern property corner of Walnut Street, LLC, now or formerly, thence leaving said property line proceeding along said existing southern right of way of Walnut Street S 89°33'31" E, 90.99' to the **POINT AND PLACE OF BEGINNING**, containing 385 square feet, more or less, according to a map by the Town of Cary Engineering Department entitled "Easement Map for the Property of John David McLawhorn, III, Michael R. Remedios, Dolores B. Griffin, Trustee, Project # ST 1135/AWT 1154, Sheet 1 of 1, Revised 1/20/2012," dated 2/7/11.

OPTION B

TEMPORARY CONSTRUCTION EASEMENT

TCE AREA 1

COMMENCING AT A POINT, said point being an existing iron pipe located in the existing southern right of way of Walnut Street, said point being the northwestern property corner of the Grantors, and the northeastern property corner of Walnut Street, LLC, now or formerly, said point located on the western property line of the Grantors, and the eastern property line of Walnut Street, LLC, now or formerly, thence leaving said right of way proceeding along said property line S 00°26'29" W 5.74' to the **POINT AND PLACE OF BEGINNING**, thence leaving said property line N 70°32'23" E, 7.73', thence N 89°49'33" E, 4.09', thence S 00°59'57" W, 2.00', thence S 89°49'35" W, 3.89', thence S 70°32'23" W, 7.93' to the point of intersection with the western property line of the Grantors, same being the eastern property line of Walnut Street, LLC, now or formerly, thence proceeding along said property line N 00°26'29" E, 2.06', to the **POINT AND PLACE OF BEGINNING**, containing 23 square feet, more or less, according to a map by the Town of Cary Engineering Department entitled "Easement Map for the Property of John David McLawhorn, III, Michael R. Remedios, Dolores B. Griffin, Trustee, Project # ST 1135/AWT 1154, Sheet 1 of 1, Revised 1/20/2012," dated 2/7/11.

TCE AREA 2

COMMENCING AT A POINT, said point being an existing iron pipe located in the existing southern right of way of Walnut Street, said point being the northeastern property corner of the Grantors, same being the northwestern property corner of Michael Remedios, now or

formerly, said point located on the eastern property line of the Grantors, thence leaving said right of way proceeding along said property line S 00°26'29" W, 4.21', thence S 00°26'29" W, 1.86' to the **POINT AND PLACE OF BEGINNING**, thence continuing along said property line S 00°26'29" W, 5.43', thence leaving said property line N 89°33'31" W, 9.81', thence N 60°00'03" W, 14.29', thence S 89°49'35" W, 47.40', thence N 00°59'57" E, 2.00', thence N 89°49'33" E, 47.50', thence S 72°20'37" E, 12.25', thence S 89°33'31" E, 10.43' to the point of intersection with the eastern property line of the Grantors, same being the western property line of Michael Remedios, now or formerly, said point being the **POINT AND PLACE OF BEGINNING**, containing 193 square feet, more or less, according to a map by the Town of Cary Engineering Department entitled "Easement Map for the Property of John David McLawhorn, III, Michael R. Remedios, Delores B. Griffin, Trustee, Project # ST 1135/WT 1154, Sheet 1 of 1, Revised 1/20/2012," dated 2/7/11.

Following construction of the street and/or sidewalk, and slope easement, this temporary construction area will be graded and restored, using conventional engineering practices, and all temporary easements shall terminate.

2. The attorneys representing the Town of Cary are directed to institute the necessary proceedings under NCGS § 40A-1, et. seq. as authorized by NCGS § 160A-296(a)(3) and/or other appropriate statutory provisions and local acts to acquire the property herein described.

OPTION B

~~A RESOLUTION AUTHORIZING CONDEMNATION TO ACQUIRE CERTAIN PROPERTY OF "JOHN DAVID MCLAWHORN, III"~~

WHEREAS, the governing body of the Town of Cary hereby determines that it is necessary and in the public interest to acquire certain property owned by John David McLawhorn, III, for the following public purpose:

To protect the public health, to provide the public with an adequate and sound transportation system and water system, to improve such system to meet the need for expanded or upgraded services, the Town of Cary is condemning the herein described easement interests, specifically, to construct and maintain the Walnut Street Sidewalk/Waterline Rehabilitation Project.

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

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

1. The Town of Cary shall acquire by condemnation, for the purposes stated above, the property and easement interest in a portion of certain tracts described in Deed Book 5937 at page 0832.

The property interest areas taken are more particularly described as follows:

SIDEWALK AND UTILITY & PIPELINE EASEMENT

BEGINNING AT A POINT, said point being an existing iron pipe located in the existing southern right of way of Walnut Street, said point located on the eastern property line of the Grantors and the western property line of Michael R. Remedios, now or formerly, said point located at the northeastern property corner of the Grantors, thence leaving said existing right of way proceeding along the eastern property line of the Grantors S 00°26'29" W, 4.21', thence S 00°26'29" W, 1.86', thence leaving said property line N 89°33'31" W, 10.43', thence N 84°00'45" W, 11.65', thence

S 89°53'11" W, 47.61', thence S 00°59'57" W, 2.00', thence S 00°59'57" W, 5.00', thence S 89°37'33" W, 10.00', thence N 00°59'57" E, 4.99', thence N 00°59'57" E, 2.00', thence S 89°49'33" W, 4.09', thence S 83°01'49" W, 7.33' to the point of intersection with the western property line of the Grantors, same being the eastern property line of Walnut Street, LLC, now or formerly, thence proceeding along said property line N 00°26'29" E, 6.55' to the point of intersection with an existing iron pipe located in the existing southern right of way of Walnut Street, said point being the northwestern property corner of the Grantors, said point located on the western property line of the Grantors and the eastern property line of Walnut Street, LLC, now or formerly, thence leaving said property line proceeding along said existing right of way S 89°33'31" E, 90.99' to the **POINT AND PLACE OF BEGINNING**, containing 565 square feet, more or less, according to a map by the Town of Cary Engineering Department entitled "Easement Map for the Property of John David McLawhorn, III, Michael R. Remedios, Delores B. Griffin, Trustee, Project# ST1135/WT1154, Sheet 1 of 1," dated 2/7/11.

TEMPORARY CONSTRUCTION EASEMENT

AREA 1

COMMENCING AT A POINT, said point being an existing iron pipe located in the existing southern right of way of Walnut Street, said point located on the western property line of the

OPTION A

Grantors, same being the eastern property line of Walnut Street, LLC, now or formerly, said point being the northwestern property corner of the Grantors, thence leaving said existing right of way proceeding along said property line S 00°26'29" W 6.55' to the **POINT AND PLACE OF BEGINNING**, thence leaving said property line N 83°01'49" E, 7.33', thence N 89°49'33" E, 4.09', thence S 00°59'57" W, 2.00', thence S 89°49'35" W, 3.90', thence S 83°01'49" W, 7.50' to the point of intersection with the western property line of the Grantors, same being the eastern property line of Walnut Street, LLC, now or formerly, thence proceeding along said property line N 00°26'29" E, 2.02' to the **POINT AND PLACE OF BEGINNING**, containing 23 square feet, more or less, according to a map by the Town of Cary Engineering Department entitled "Easement Map for the Property of John David McLawhorn, III, Michael R. Remedios, Delores B. Griffin, Trustee, Project# ST1135/WT1154, Sheet 1 of 1," dated 2/7/11.

AREA 2

COMMENCING AT A POINT, said point being an existing iron pipe located in the existing southern right of way of Walnut Street, said point located on the eastern property line of the Grantors and the western property line of Michael R. Remedios, now or formerly, said point located at the northeastern property corner of the Grantors, thence leaving said existing right of way proceeding along the eastern property line of the Grantors S 00°26'29" W, 4.21', thence S 00°26'29" W, 1.86' to the **POINT AND PLACE OF BEGINNING**, thence proceeding along said property line S 00°26'29" W, 5.43', thence leaving said property line N 89°33'57" W, 9.81', thence N 69°14'16" W, 13.11', thence S 89°53'07" W, 47.54', thence N 00°59'57" E, 2.00', thence N 89°53'11" E, 47.61', thence S 84°00'45" E, 11.65', thence S 89°33'31" E, 10.43' to the **POINT AND PLACE OF BEGINNING**, see site plan Option A, containing 193 square feet, more or less, according to a map by the Town of Cary Engineering Department entitled "Easement Map for the Property of John David McLawhorn, III, Michael R. Remedios, Delores B. Griffin, Trustee, Project# ST1135/WT1154, Sheet 1 of 1," dated 2/7/11.

Following construction of the street and/or sidewalk, and slope easement, this temporary construction area will be graded and restored, using conventional engineering practices, and all temporary easements shall terminate.

~~2. The attorneys representing the Town of Cary are directed to institute the necessary proceedings under NCGS § 40A-1, et. seq. as authorized by NCGS § 160A-296(a)(3) and/or other appropriate statutory provisions and local acts to acquire the property herein described.~~

ACTION: Robison moved to approve the consent agenda. Adcock provided the second; council granted unanimous approval.

(Resolution No. 2012-38 is also on file in the town clerk's office.)

C. RECOGNITIONS, REPORTS, AND PRESENTATIONS

1. Presentation of a proclamation to the Middle Creek High School Mustangs Varsity Baseball Team congratulating them on their 26-7 season record and for winning the 2012 NCHSAA State 4A baseball title. **(Mayor Weinbrecht)**

The mayor presented the following proclamation to the Middle Creek High School Mustangs Varsity Baseball Team and coaching staff.

RECOGNIZING JUNE 14, 2012 AS MIDDLE CREEK HIGH SCHOOL MUSTANGS VARSITY BASEBALL TEAM DAY IN THE TOWN OF CARY

WHEREAS, Middle Creek High School opened in 2002, and in its first 10 years has earned local, state and national recognition for student achievements in academics, the arts and athletics.

WHEREAS, in the 2003 inaugural varsity baseball season, the team posted a 2-16 record on the field, established high academic standards, and athletic and professional conduct standards. These academic standards are consistently upheld with baseball players' grade point averages ranking at or near the top of all student athletes.

WHEREAS, the young men selected to play on the 2012 team started out as a group of individuals. With the guidance of head coach Jeremy Thompson and his coaching staff, these players focused on work ethic, toughness and desire and transformed themselves into a winning team, with each player making valuable contributions.

WHEREAS, the 2012 team completed the regular season with an 18-6 record. They entered the state playoffs as a number two seed in the North Carolina East Region representing the Tri-9 Conference. The Mustangs advanced to the East Regional Championship Series after winning two of three games in a three-game series.

WHEREAS, by virtue of winning the East Regional, the Mustangs earned the right to play the North Carolina West Region Champions at the Durham Bulls Stadium. The Mustangs won the North Carolina High School Athletic Association (NCHSAA) State 4A Baseball Championship in two games – the first state championship title for any men's sport in the school's history.

NOW, THEREFORE, I, Harold Weinbrecht, Jr., Mayor of the Town of Cary, North Carolina, on behalf of the Cary Town Council, congratulate the Middle Creek High School Mustangs Varsity Baseball Team on their 26–7 season record, and for winning the 2012 NCHSAA State 4A baseball title. Furthermore, I hereby proclaim June 14, 2012 as Middle Creek High School Varsity Baseball Day in the Town of Cary. I encourage all Cary citizens to join with us in celebrating the Mustang's tremendous accomplishments on and off the field.

PROCLAIMED this 14th day of June, 2012.

(Proclamation No. 12-048 is also on file in the town clerk's office.)

D. PUBLIC SPEAKS OUT (one hour time limit)

No one spoke.

E. PUBLIC HEARINGS

1. Budget Public Hearing

Subject: Public hearing on the proposed Fiscal Year 2013 Budget.

Proposed Council Action: No action required; the council will take action on the budget at the June 28, 2012 council meeting

Speaker: Mr. Scott Fogleman

The mayor opened the public hearing.

Ms. Carrie Knowles, Director of the Cary Cross Current Chamber Music Arts Festival, thanked the council for their support of the cultural and arts programs.

Mr. Chris Marin, incoming Chair of the Lucy Daniels Center, thanked the council for their continued support of this organization. He spoke about the work of the Center, and explained they are the largest non-profit provider of mental health services in the Triangle.

Ms. Elizabeth Adams thanked the council for their support of the Black Creek Watershed Association. She urged council to implement retrofits for watershed retention devices in lieu of constant maintenance and repair of the Black Creek Greenway. She stated this is an innovative, cost-effective approach and may result in a 2013 Environmental Protection Agency (EPA) grant.

Ms. Ann Rollins, Executive Director of the Alice Aycock Poe Center for Health Education, stated they provide individuals with the necessary tools to make informed, responsible choices that will positively impact their present and future health. She said this is their first year to apply for a Cary non-profit request. She asked council to support this request.

Ms. Leigh Duque, Executive Director of Interact, thanked the council for their continued support of this organization. She spoke about the work of this non-profit organization and the growing need for their services. She stated Interact served more than 400 Cary residents last year who were direct victims of domestic and sexual violence, and they served more than 2,000 Cary residents through Interact's school and community based programming last year. She stated Interact counselors responded to hundreds of calls from Cary families last year.

The mayor closed the public hearing.

2. Downtown Business Improvement District

Subject: Public hearing on the proposal to establish a Downtown Business Improvement District.

Proposed Council Action: No action required; the council will take action on this request at the June 28, 2012 council meeting

Speaker: Mr. Scott Fogleman

The Town of Cary is considering the establishment of a business improvement district (BID) in the downtown area as part of its downtown redevelopment plan. To help advance the timing of potential private investment in the downtown core, the Town will use the BID to mitigate impact fees for three years for new private development in the downtown area beginning July 1, 2012.

The proposed BID area is focused in the center of downtown and extends out approximately one-fourth of a mile. It predominantly includes properties already zoned as high density mixed use (see **Exhibit A** attached to and incorporated herein).

Purpose of BID

A Municipal Service District (commonly referred to as a Business Improvement District or BID) is authorized by North Carolina General Statutes and is used to define special service areas where projects or activities are provided to a greater extent than throughout the entire jurisdiction. Per state law, BIDs can only be formed at the beginning of a fiscal year.

While BIDs are typically used to generate funds, the Town - at the recommendation of the UNC-School of Government - plans to use the BID designation to encourage development by reimbursing itself for impacts fees associated with improvement permits that private developers would normally have to pay for a period of three years: July 1, 2012 to June 30, 2015. The tax rate for property owners in the BID will remain the same as the rest of the Town of Cary.

Key Dates:

June 14, 2012 - Public hearing

June 28, 2012 - Council vote on BID

July 1, 2012 - Effective date of BID

Process to Establish a BID

The process of establishing a BID includes issuing a report to property owners in the BID at least four weeks prior to a required public hearing. The public hearing must take place prior to Town Council approval, and a BID may only begin at the start of a fiscal year. The proposed schedule associated with establishing a BID in downtown Cary is as follows:

- **Tuesday April 17, 2012:** Town Council approved moving forward with the process of forming a Downtown Business Improvement District.
- **Thursday May 10, 2012:** Council calls for a required public hearing on the establishment of the BID to be held at its Thursday June 14, 2012 Council meeting.
- **Friday May 11, 2012:** Staff mails notification to all property owners in the potential BID. A report detailing the background, purpose, and schedule was included with the mailed notifications and is attached to and incorporated herein as **Exhibit B**. By state law, this mailing must occur at least four weeks prior to the required public hearing on the establishment of the BID.
- **Thursday June 14, 2012:** Public Hearing on BID at Town Council meeting.
- **Thursday June 28, 2012:** Council vote on BID resolution with effective date of July 1, 2012.

RESOLUTION ESTABLISHING A BUSINESS IMPROVEMENT DISTRICT IN DOWNTOWN CARY, NORTH CAROLINA

WHEREAS, the North Carolina General Statutes authorizes Municipal Service Districts per Article V, Sec. 2(4) of the constitution of North Carolina effective July 1, 1973, as this may be cited hereafter as "The municipal Service District Act of 1973".

WHEREAS, the city council of any city may define any number of service districts in order to finance, provide or maintain for the districts one or more of the following services, facilities or

functions in addition to onto a greater extent than those financed, provided or maintained for the entire city.

WHEREAS, a city may appropriate funds for use within defined service districts in addition to those appropriated for use throughout the city, in order to finance, provide or maintain for the district services provided therein in addition to or to a greater extent than those financed, provided or maintained for the entire city.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CARY, NORTH CAROLINA

Section 1: The Town Council hereby establishes a municipal service district located within the Downtown of the Town of Cary based upon the finding that there is a need for downtown revitalization services within the defined municipal service district to a demonstrably greater extent than the remainder of the Town.

Section 2: The needed services to be provided in the Downtown Business Improvement District may include but are not limited to: cleaning and hospitality services, enhanced sidewalk and furniture cleaning, enhanced landscaping services, graffiti removal, litter and weed removal, hospitality and ambassador services; promotion and marketing through promotional materials, maps, co-op ads and more, special events and festivals, enhancement of the pedestrian environment, enhancement of the street environment, and improvement of district image, and encouraging an increased level of private investment through the mitigation of impact fees (the Town paying impact fees due on permits issued) for a period of three years from July 1, 2012 through June 30, 2015. These services are expected to generate additional economic development through an increase in street level activity, retail and business recruitment, residential growth, tax base growth, job creation growth, and property value growth within the Business Improvement District.

Section 3: That the boundaries of the downtown municipal service district shall include the properties shown inside the area on the map entitled "Downtown Business Improvement District" dated July 1, 2012, and maintained in the Office of Town Clerk, and attached to this Resolution.

Section 4: That this resolution shall take effect beginning on July 1, 2012.

Budget Director Scott Fogleman presented the report herein.

The mayor opened the public hearing.

Mr. Robert Sox, a downtown resident, stated downtown redevelopment will likely mean downtown residents will need to move. He encouraged council to take actions to preserve the quality of life for Cary residents who live downtown, and allow them to remain in their homes.

Frantz wants the properties on both sides of West Chatham Street down to South Dixon Avenue included in the BID. Fogleman said that alteration can be made if council chooses, as long as any properties added to the BID boundary are contiguous.

ACTION: Frantz moved to include the properties along West Chatham Street on both sides of the street down to South Dixon Avenue. Robinson provided the second; council granted unanimous approval.

Town Attorney Chris Simpson suggested continuing the public hearing to the next council meeting.

ACTION: Adcock moved to continue the public hearing to the June 28, 2012. Frantz provided the second; council granted unanimous approval.

3. Bailey Park

a. Rezoning 12-REZ-07

Location: Approximately 10.5 acres located at Evans Road and Bailey Park Lane

Current Zoning: Residential 40 (R-40) and Residential 20 (R-20)

Proposed Zoning: Residential 8 Conditional Use (R8-CU) - Limited to single family residential and uses permitted in Park and Open Space Use Category

Proposed Council Action: Refer to the Planning & Zoning Board

Speaker: Ms. Debra Grannan

REQUEST

To amend the Town of Cary Official Zoning Map to rezone approximately 10.43 acres located at Evans Road and Bailey Park Lane from Residential 20 (R-20) and Residential 40 (R-40) to Residential 8 Conditional Use (R-8-CU). The condition proposed by the applicant would limit the use to single family detached residential use and uses allowed under the "Park and Open Space" use category of Chapter 5 of the Land Development Ordinance, with the exception that "public athletic fields" shall be prohibited.

There is a proposed Comprehensive Plan Amendment (12-CPA-02) associated with this case.

NOTE: The purpose of the rezoning is to determine whether the land uses and densities allowed in the proposed zoning district are appropriate for the site.

SUBJECT PARCELS

Property Owner(s)	Wake County Parcel Numbers (10-digit)	Real Estate IDs	Current Zoning	Deeded Acreage
Herbert Bailey PO Box 1225 Cary, NC 27513	0764192337	0028681	R-20	0.66
Herbert Bailey (same as above)	0764191496	003210	R-20	0.76
Herbert Bailey (same as above)	0764192272	0021232	R-20	0.66
Herbert Bailey (same as above)	0764195168	0150886	R-40	1.39
Herbert Bailey (same as above)	0764196344	0150890	R-40	1.00
Herbert Bailey (same as above)	0764195632	0297359	R-40	1.56
Herbert and Anita Bailey 505 Silvergrove Drive Cary, NC	0764191555	0003159	R-20	0.79
CCR Properties 201 Evans Estate Drive Cary, NC 27513	0764198603	0365273	R-40	2.61

Property Owner(s)	Wake County Parcel Numbers (10-digit)	Real Estate IDs	Current Zoning	Deeded Acreage
John and Prenetta Evans 1138 Evans Road Cary, NC 27513	0764194507	0150892	R-40	1.0
Total Area			10.43 ±	

BACKGROUND INFORMATION

Applicant & Agent	Jerry Turner and William Hood Jerry Turner and Associates, Inc. 905 Jones Franklin Road Raleigh, NC 27606 jerryturner@jerryturnerassoc.com (919) 851-7150		
Acreage	10.43 ±		
General Location	1100 block of Evans Road and Bailey Creek Lane		
Tentative Schedule	Public Hearing June 14, 2012	Planning & Zoning Board October 15, 2012	Town Council November 15, 2012
Land Use Plan Designation	Medium Density Residential (MDR) and Low Density Residential (LDR)		
Existing Zoning District(s)	R-20 and R-40		
Existing Zoning Conditions	None		
Proposed Zoning District(s)	Residential 8 Conditional Use (R-8 CU)		
Proposed Zoning Conditions	Use shall be limited to single family detached residential and uses allowed under the "Park and Open Space" use category of Chapter 5 of the Land Development Ordinance, with the exception that "public athletic fields" shall be prohibited.		
Town Limits	The parcel, located at 1130 Evans Road, is inside Cary's corporate limits. The remaining parcels are outside the Cary corporate limits, but inside Cary's planning jurisdiction. Annexation will be required at the time of site plan review.		
Valid Protest Petition	To be determined prior to the public hearing.		
Staff Contact	Debra Grannan Senior Planner Debra.grannan@townofcary.org (919) 460-4980		

SITE CHARACTERISTICS

Streams: According to Cary's most current GIS maps, the site is impacted by a stream buffer. Field determination will be required at the time of site plan review.

Floodplains or Wetlands: Cary's most current GIS maps do not identify any floodplains or wetlands on the subject property; however field determination will be required at the time of site plan review.

Topography: The elevation of the properties closest to Evans Road ranges between 440 to 450 feet. There is a gradual decrease in the elevation on the properties to the west of Evans Road, with elevations ranging between 420 and 430 feet.

Adjacent Uses

North – Single family Detached and Attached Residential (Chesapeake Landing Condominiums)
 South – Single family Detached
 East – Single- Family Detached
 West – Single family Detached and Vacant (Zoned Residential)

CONSISTENCY WITH LAND DEVELOPMENT ORDINANCE

Density and Dimensional Standards

	Existing Zoning District R-40	Proposed Zoning District Residential 8 Conditional Use (R8 CU) **
Max. Gross Density (du/ac)	1.08 du/ac	5.44
Min. Lot Size (Square Feet)	40,000	8,000
Minimum Lot Width (Feet)	With septic tank/well 150 (160 for corner lots) With public sewer: 125 (135 for corner lots)	60 (70 for corner lot)
Roadway Setback (Feet)	From thoroughfare: 50 From collector: 30 From other streets: 20	From thoroughfare: 50 From collector: 30 From other streets: 20
Side Yard Setback (Feet)	With septic tank/well 20 With public sewer: 15	10
Rear Yard Setback (Feet)	30	20
Maximum Building Height (Feet)	35 *	35 *
<p><i>* Height may be increased one foot for every foot provided in addition to the minimum setbacks. ** The proposed zoning condition applies to the permitted uses. The dimensional standards are consistent with Conventional R8 zoning</i></p>		

Landscape Buffer

In accordance with the LDO, at the time of subdivision plan approval a 20-foot-wide landscape area, planted to a Type-B (semi-opaque) standard will be required between the proposed single family detached dwellings and the existing single family detached residential uses surrounding the property. A 40-foot Type A (opaque) buffer will be required between the proposed use and the multi-family attached residential to the north.

Streetscape

Evans Road is designated as a thoroughfare; therefore, in accordance with Chapter 7 of the LDO, a 50-foot-wide Type-A (opaque) streetscape will be required adjacent to Evans Road at the time of subdivision plan approval.

Traffic

The current zoning designations for the subject properties are 2.87 acres of R-20 and 7.56 acres of R-40. This combined zoning has the potential to generate 20 trips during the AM peak hours and 18 trips during the PM peak hours. This calculation was made according to code #210 (Single family Detached Housing) in the ITE Trip Generation Manual. The proposed zoning of R-8-CU for 10.43 acres has the potential to generate 49 AM and 63 PM peak-hour trips assuming a maximum of 56 single family units. This would be an increase of 29 AM and 45 PM peak-hour trips. Since this increase in trips is under the 50 peak-hour trip threshold established in the LDO,

no traffic study is required at the time of rezoning. A traffic study may be required at the time of development plan review.

SUMMARY OF PROCESS AND ACTIONS TO-DATE

Notification

On May 29, 2012 the Planning Department mailed notification of a public hearing on the request to property owners within 400 feet of the subject property. Notification consistent with General Statutes was published in The Cary News on May 30 and June 6, 2012. Notice of the public hearing was posted on the property May 30, 2012.

Neighborhood Meeting

According to the applicant, a community meeting to discuss the proposed rezoning was conducted on April 4, 2012 at 7 p.m. at Cary First Christian Church located at 1109 Evans Road. The applicant reported that they presented the case and responded to questions about which properties would be included and the nature of the proposed development.

CRITERIA FOR CONSIDERATION IN REVIEWING REZONINGS

Section 3.4.1(E) of the Land Development Ordinance sets forth the following criteria that should be considered in reviewing rezonings:

1. The proposed rezoning corrects an error or meets the challenge of some changing condition, trend or fact;
2. The proposed rezoning is consistent with the Comprehensive Plan set forth in Section 1.3 (LDO);
3. The Town and other service providers will be able to provide sufficient public safety, educational, recreational, transportation and utility facilities and services to the subject property while maintaining sufficient levels of service to existing development;
4. The proposed rezoning is unlikely to have significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife and vegetation;
5. The proposed rezoning will not have significant adverse impacts on property in the vicinity of the subject tract; and
6. The proposed zoning classification is suitable for the subject property.

APPLICABLE COMPREHENSIVE OR AREA PLAN REQUIREMENTS

Comprehensive Plan Element	Consistent	Not Consistent	Not Applicable
Land Use Plan		✓	
Parks, Recreation, and Cultural Resources Facility Master Plan	✓		
Growth Management Plan	✓		
Affordable Housing Plan			✓
Comprehensive Transportation Plan	✓		
Open Space and Historic Resources Plan	✓		

Land Use Plan

The town-wide Future Land Use Plan currently designates a portion (7.93 acres) of the 10.43-acre subject site as appropriate for Medium Density Residential (MDR), which is defined as three to eight dwelling units per acre (attached or detached). The applicant’s request for a zoning of R-8-CU is in keeping with a future land use designation of medium density residential. The remaining portion (2.61 acres) of the 10.43-acre site has a future land use designation of Low Density Residential (LDR), defined as single family detached with one to three dwelling units per acre. Thus, the applicant’s request to apply R-8-CU zoning to the 2.61-acre portion of the site is not in keeping with the Future Land Use Plan. In associated case 12-CPA-02, the applicant is

requesting that the future land use designation of the 2.61 acres be changed from Low Density Residential to Medium Density Residential.

Growth Management Plan

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

1. R1 Guiding Principle: Ensure that adequate infrastructure and services are available concurrently with new development.
2. L1 Guiding Principle: Concentrate growth near existing and planned employment centers and available and planned infrastructure to minimize costly service-area extensions.
3. A1 Guiding Principle: Increase permitted densities in preferred growth areas to encourage desired forms of development.

Affordable Housing Plan

The Affordable Housing Plan includes the following goals that are relevant to this case:

1. Provide for a full range of housing choices for all income groups, families of various sizes, seniors, and persons with special challenges.
2. Facilitate the creation of a reasonable proportion of the Town of Cary's housing as affordable units through additional homeownership opportunities for individuals and families earning between 60 percent and 80 percent of area median income and affordable apartments for individuals and families earning up to 60 percent of the area median income.
3. Encourage the location of high density housing within walking and convenient commuting distance of employment, shopping, and other activities, or within a short walk of a bus or transit stop, through "mixed use" developments, residences created on the upper floors of nonresidential downtown buildings, and other creative strategies.
4. Assure a quality living environment and access to public amenities for all residents, present and future, of the Town of Cary, regardless of income.

Comprehensive Transportation Plan

Evans Road is designated as a Major Thoroughfare

Existing Section: Five-lane section with curb and gutter (69-foot roadway, 91-foot right-of-way)

Future Section: Five-lane section with curb and gutter (69-foot roadway, 91-foot right-of-way)

Sidewalks: Existing on both sides

Bicycle Lanes: Existing signed route with wide outside lanes

Transit: No existing or planned transit bus routes

Status of Planned Improvements: All planned improvements completed

Parks, Recreation & Cultural Resources Facilities Master Plan

According to the Parks, Recreation and Cultural Resources Facilities Master Plan there are no issues related to this site.

Recreation funds will be required for residential development in accordance with the Land Development Ordinance.

Open Space Plan

According to the Open Space Plan there are mixed conifers and hardwoods in the northeast corner of this site; the undeveloped parcels were designated as proposed open space conservation area.

Historic Preservation Master Plan

According to the Historic Preservation Master Plan, the subject site contains no known historic resources.

OTHER REFERENCE INFORMATION

Schools

The school information is being provided for your review; however, the Wake County Board of Education controls capital projects for school capacities and student assignment.

Assigned Schools	20 th Day Enrollment*	Permanent Seat Capacity	Average Percent Occupied	Projected Range of Additional Students**
Northwoods Elementary	607	591	103%	16 - 23
West Cary Middle	702	1170	60%	3 - 9
Cary High School	2250	2198	102%	4 - 10
Total Projected range of additional students				23 - 42
<i>Current Enrollment and Building Capacity is based on the 20th day of the school year for 2011-2012 as supplied by the Wake County Public School System.</i>				
² The <i>Projected Number of Additional Students</i> is a rough approximation. The actual number of students will vary depending on variables, such as the number of bedrooms, dwelling size, and other factors. For example: a site with 57 three-bedroom homes could yield 23 additional students, while 57 homes with greater than three-bedroom units could yield 42 students. The basis for making this calculation is based on multipliers provide from Wake County Schools Office of Student Assignment. At rezoning, student yield cannot be accurately determined due to unknown variables.				

APPLICANT’S JUSTIFICATION STATEMENT

The following statements are provided by the applicant (shown below in italics) in response to the criteria established in the application (shown below in bold) and do not necessarily represent the views or opinions of the Town of Cary. Any statements as to the type, the quality, or the physical features are at the direction of the applicant and may be formulated into a condition.

1. Any issues with the size of the tract?

Response: The size of the tract is appropriate and conducive to the single family use being proposed. The tract is of ample size to accommodate the requested single family use as well as all required buffers.

2. How is the request compatible with the comprehensive plan (i.e. Land Use, Transportation, Open Space and Historic Resources)?

Response: The request satisfies the goals and requirements of the comprehensive plan.

3. What are the benefits and detriments to the owner, neighbors and the community?

Response: The proposed rezoning is compatible with the existing and approved residential development in the immediate area of the proposed rezoning. Evans Estates (zoned R-8) is to the south of the property, Chesapeake Landings, a condominium community is located to the north and Bailey Creek subdivision (zoned R-12) along with a larger single family parcel is located to the west. The proposed rezoning will provide consistency in the development within the immediate area, adding to the character of the neighborhood and community. The proposed development would be most similar to Evans Estates and would be the least dense portion of this neighborhood.

4. How are the allowable uses with the proposed rezoning compatible with, or how do they relate to, the uses currently present on adjacent tracts?

Response: As stated above, the proposed rezoning is compatible with and similar in nature with the existing and approved development on the adjacent tracts.

5. What reductions/amendments and/or modifications to the development standards of the LDO are being requested and how are they justified? (PDD, new or amended) Applicants must list these items and/or clearly highlight them within the Planned Development document.

Response: Not Applicable

**ORDINANCE FOR CONSIDERATION
12-REZ-07 Bailey Park**

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP OF THE TOWN OF CARY TO CHANGE THE ZONING OF APPROXIMATELY 10.43 ACRES LOCATED AT EVANS ROAD AND BAILEY CREEK LANE BY REZONING FROM RESIDENTIAL 40 (R-40), AND RESIDENTIAL 20 (R-20) TO RESIDENTIAL 8 CONDITIONAL USE (R-8-CU).
BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CARY:

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

PARCEL & OWNER INFORMATION

Property Owner(s)	Wake County Parcel Numbers (10-digit)	Real Estate IDs	Deeded Acreage
Herbert Bailey PO Box 1225 Cary, NC 27513	0764192337	0028681	0.66
Herbert Bailey	0764191496	003210	0.76
Herbert Bailey	0764192272	0021232	0.66
Herbert Bailey	0764195168	0150886	1.39
Herbert Bailey	0764196344	0150890	1.00
Herbert Bailey	0764195632	0297359	1.56
Herbert and Anita Bailey 505 Silvergrove Drive Cary, NC	0764191555	0003159	0.79
CCR Properties 201 Evans Estate Drive Cary, NC 27513	0764198603	0365273	2.61
John and Prenetta Evans 1138 Evans Road Cary, NC 27513	0764194507	0150892	1.0

Property Owner(s)	Wake County Parcel Numbers (10-digit)	Real Estate IDs	Deeded Acreage
Total Area			10.43 ±

Section 2: That this Property is rezoned from Residential 40 and Residential 20 to Residential 8 Conditional Use subject to the individualized development conditions set forth herein, if any, and to all the requirements of the Cary Land Development Ordinance (LDO) and other applicable laws, standards, policies and guidelines, all of which shall constitute the zoning regulations for the approved district and are binding on the Property.

Section 3: The conditions proposed by the applicant to address conformance of the development and use of the Property to ordinances and officially adopted plans, to address impacts reasonably expected to be generated by the rezoning, and to promote the public health, safety and general welfare, and accepted and approved by the Town are:

Use shall be limited to single family detached residential use and uses allowed under the "Park and Open Space" use category of Chapter 5 of the Land Development Ordinance, with the exception that "public athletic fields" shall be prohibited.

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

b. Comprehensive Plan Amendment 12-CPA-02

Location: 133 Bailey Park Lane

Current Land Use Plan Designation: Low Density Residential (LDR)

Proposed Land Use Plan Designation: Medium Density Residential (MDR)

Proposed Council Action: Refer to the Planning & Zoning Board

Speaker: Ms. Anna Reading

REQUEST

This Comprehensive Plan Amendment case is a request to change the land use designation of 2.61 acres located at 133 Bailey Park Lane in northern Cary. The applicant is proposing to change the long-range land use designation of the property from Low Density Residential (LDR) to a designation of Medium Density Residential (MDR).

The subject property is a portion of a larger, 10.5-acre tract for which the applicant is requesting R-8-CU zoning – see companion rezoning case 12-REZ-07.

NOTE: The purpose of a comprehensive plan amendment is to evaluate the appropriateness of a proposed land use and/or other issue, need, or opportunity for the subject parcel(s) of land.

SUBJECT PARCELS

Property Owner(s)	County Parcel Number(s) (10-digit)	Real Estate ID(s)	Deeded Acreage
CCR Properties 201 Evans Estate Drive Cary, NC 27513	0764198603	0365273	2.61
Total Area			2.61 acres

BACKGROUND INFORMATION

Applicant & Agent	Applicant	Agent
	Jerry Turner	William B. Hood

	Jerry Turner and Associates 905 Jones Franklin Road Raleigh, NC 919-851-7150 jerryturner@jerryturnerassoc.com	Jerry Turner and Associates 905 Jones Franklin Road Raleigh, NC 919-851-7150 whood@jerryturnerassoc.com
Acreage	2.61 acres	
General Location	133 Bailey Park Lane, located off Evans Road in northern Cary	
Tentative Schedule	Town Council Public Hearing June 14, 2012	Planning and Zoning Board Public Hearing August 20, 2012
	Town Council September 13 or September 27, 2012 ¹	
	¹ <i>The date of this meeting will be determined after the Planning and Zoning Board recommendation. This case will go to the first meeting Town Council meeting of the month if there is unanimous approval by the Planning and Zoning Board; otherwise, it will go to the second Town Council meeting of the month as a discussion item.</i>	
Land Use Plan Designation	Low Density Residential (LDR)	
Proposed Land Use	Medium Density Residential (MDR)	
Existing Zoning District(s)	R-40	
Staff Contact	Anna Readling, Senior Planner 919-469-4084 anna.readling@townofcary.org	

SUMMARY OF PROCESS AND ACTIONS TO-DATE

Notification

On May 29, 2012 the Planning Department mailed notification of a public hearing on the request to property owners within 400 feet of the subject property. Notification consistent with General Statutes was published in The Cary News on May 30 and June 6, 2012. Notice of the public hearing was posted on the property May 30, 2012.

COMPREHENSIVE PLAN SUMMARY

A. Land Use Plan

The town-wide Land Use Plan currently designates the subject parcel as Low Density Residential (LDR), which is defined by the plan as single family detached residential dwellings, one to three dwelling units per acre. The applicant is requesting that the land use plan designation be changed from LDR to Medium Density Residential (MDR). Medium Density is defined as three to eight dwelling-units per acre with a mixture of residential uses allowed, including single family detached, single family attached (townhouses, duplexes, triplexes), and low-rise apartments.

Comparison of Existing and Requested Land Use Plan Designations

For the subject 2.61-acre parcel, the range of residential densities that might conform to the existing and proposed land use plan designations is depicted below. Note, however, that the precise future density will depend on the specific zoning approved for the property.

Land Use Plan	Possible Number of Dwellings
Current: Low Density Residential	2 – 7 units
Proposed: Medium Density Residential	7 – 20 units

B. Parks, Recreation & Cultural Resources Facilities Master Plan

According to the Parks, Recreation and Cultural Resources Facilities Master Plan there are no issues related to this site.

Recreation funds will be required for residential development in accordance with the Land Development Ordinance.

C. Growth Management Plan

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

1. R1 Guiding Principle: Ensure that adequate infrastructure and services are available concurrently with new development.
2. L1 Guiding Principle: Concentrate growth near existing and planned employment centers and available and planned infrastructure to minimize costly service-area extensions.
3. A1 Guiding Principle: Increase permitted densities in preferred growth areas to encourage desired forms of development.

D. Affordable Housing Plan

The Affordable Housing Plan includes the following goals that are relevant to this case:

1. Provide for a full range of housing choices for all income groups, families of various sizes, seniors, and persons with special challenges.
2. Facilitate the creation of a reasonable proportion of the Town of Cary's housing as affordable units through additional homeownership opportunities for individuals and families earning between 60 percent and 80 percent of area median income and affordable apartments for individuals and families earning up to 60 percent of the area median income.
3. Encourage the location of high density housing within walking and convenient commuting distance of employment, shopping, and other activities, or within a short walk of a bus or transit stop, through "mixed use" developments, residences created on the upper floors of nonresidential downtown buildings, and other creative strategies.
4. Assure a quality living environment and access to public amenities for all residents, present and future, of the Town of Cary, regardless of income.

E. Comprehensive Transportation Plan

Evans Road is designated as a Major Thoroughfare

Existing Section: Five-lane section with curb and gutter (69-foot roadway, 91-foot right-of-way)

Future Section: Five-lane section with curb and gutter (69-foot roadway, 91-foot right-of-way)

Sidewalks: Existing on both sides

Bicycle Lanes: Existing signed route with wide outside lanes

Transit: No existing or planned transit bus routes

Status of Planned Improvements: All planned improvements completed

F. Open Space Plan

According to the Open Space Plan there are mixed conifers and hardwoods in the northeast corner of this site; the undeveloped parcels were designated as proposed open space conservation area.

G. Historic Preservation Master Plan

According to the Historic Preservation Master Plan, the subject parcel contains no known historic resources.

APPLICANT'S JUSTIFICATION STATEMENT

Provided below are the applicant's responses to the Comprehensive Plan Amendment justification questions contained in the application form. (The application questions are repeated). Please note that the statements below are those of the applicant and do not necessarily represent the views or opinions of the Town of Cary.

1. Describe how the requested amendment is warranted due to changes in conditions, forecasts, or assumptions since the original Comprehensive Plan recommendations were

developed.

Response: *Prior to June 28, 2007 the parcel in question (pin 0764198603) was designated as Medium Density Residential on the Comprehensive Plan. The parcel was amended at that time to Low Density Residential to support an R-12 Rezoning request (07-REZ-01; 07-REZ-34) for the property to the east as well as the subject property.*

2. Describe how the requested amendment is warranted due to new issues, needs, or opportunities that have arisen in this geographic area since the original Comprehensive Plan recommendations were developed.

Response: *This property should have had a "split" land use designation from the beginning; the western (front part) as Medium Density and the eastern (rear part) as Low Density. A significant stream buffer and topographical feature separates these two areas and provides the appropriate boundary between Low and Density Residential Designations.*

3. Describe how the requested amendment is warranted due to changes in Town policies, objectives, or standards since the original Comprehensive Plan recommendations were developed.

Response: *This change would be consistent with the Town's desire for Medium Density closer to Evans Road and to respect the Low Density nature of Evans Estates, Bailey Creek, and the Greenway area.*

4. Describe how the requested amendment is warranted due to errors or omissions in the current Comprehensive Plan.

Response: *We believe this tract should have had a "split" designation from the beginning due to adjacent properties and land uses, and physical, dimensional features of the tract.*

CRITERIA FOR CONSIDERATION IN REVIEWING COMPREHENSIVE PLAN AMENDMENTS

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

1. A change in projections or assumptions from those on which the Comprehensive Plan is based;
2. Identification of new issues, needs, or opportunities that are not adequately addressed in the Comprehensive Plan;
3. A change in the policies, objectives, principles, or standards governing the physical development of the Town or any other geographic areas addressed by the Comprehensive Plan; or
4. Identification of errors or omissions in the Comprehensive Plan.

Staff's PowerPoint presentation is attached to and incorporated herein as **Exhibit C**.

Mr. Jerry Turner, representing the landowners, stated the proposed rezoning is compatible with the surrounding area, and the comprehensive plan amendment encompasses a small portion of the total property area. He said the proposed use is in harmony with the community, and the streetscape improvements will benefit Evans Road.

The mayor opened the public hearing for the rezoning and comprehensive plan amendment. No one spoke; he closed the public hearing.

ACTION: Council referred 12-REZ-07 and 12-CPA-02 to the Planning and Zoning Board.

4. Comprehensive Plan Amendment 12-CPA-03 (Village at the Park Neighborhood Activity Center)

Location: 7505 Wake Road, 11525 Green Level Church Road and an unaddressed property located west of Green Level Church Road and south of Wake Road

Current Land Use Plan Designation: Office/Institutional (OFC/INS)

Proposed Land Use Plan Designation: Medium Density Residential (MDR) and Mixed Use (MXD)

Proposed Council Action: Refer to the Planning & Zoning Board

Speaker: Mr. Scott Ramage

REQUEST

This Comprehensive Plan Amendment case is a request to amend the Future Land Use Map of the Northwest Area Plan, for three parcels totaling approximately 39.7 acres. The parcels are at 7505 Wake Road, and 11525 and 0 Green Level Church Road, and are situated west of Green Level Church Road and south of Wake Road, immediately west and north of Alston Ridge Elementary School. The applicant's request is to change the future land use designation for the parcels from Office/Institutional (OFC/INS) to a combination of Medium Density Residential (MDR) and Mixed Use (MXD).

The applicant also requests a change to Map Note #3 on the Future Land Use Map. Note #3 contains additional recommendations for the area west of Alston Ridge Elementary, and south of the future westward extension of Kit Creek Road. The applicants propose to amend the text of Note #3 as follows, where new text is shown underlined and deleted text is struck-through:

“Along the western property boundary, the MDR area should transition to single family detached along the common boundary to the west, and the office area should transition to Transitional office building styles ~~should be used~~ having height, bulk, and design compatible with adjacent VLDR single family to the west.”

NOTE: The purpose of a comprehensive plan amendment is to evaluate the appropriateness of a proposed land use and/or other policy recommendation for the subject parcel(s) of land.

SUBJECT PARCELS

Property Owner(s)	County Parcel Number (10-digit)	Real Estate ID(s)	Calculated Acreage
HAB Properties LLC, and Cabernet Realty I LLC 333 Sherwee Dr. Raleigh, NC 27603-3521	0726985347	0045896	26.93
	0726985916	0082492	2.76
Ferrell, Betty Lou Ferrell, Betty Lou Trustee 1600 Morrisville Carpenter Rd Cary, NC 27519-8633	0726970344	0173518	10.01
Total Area			39.70 +/-

BACKGROUND INFORMATION

Applicant	Glenda Toppe Glenda S. Toppe & Associates 4139 Gardenlake Drive Raleigh, NC 27612 Phone: 919-605-7390 E-mail: glenda@gstplanning.com
Applicant's Contact	Glenda Toppe

Person	Phone: 919-605-7390 E-mail: glenda@gstplanning.com		
Acreage	89.83 +/- acres		
General Location	7505 Wake Road, and 11525 and 0 Green Level Church Road. The subject properties are located on the north and south sides of the future westward extension of Kit Creek Road, south of Wake Road, and west of Green Level Church Road.		
Tentative Schedule	Town Council Public Hearing June 14, 2012	Planning and Zoning Board Public Hearing August 20, 2012	Town Council Action September 13, 2012 ¹
	¹ The date of this meeting will be determined after the Planning and Zoning Board recommendation. This case will go to the first Town Council meeting of the month if there is unanimous approval by the Planning and Zoning Board; otherwise, it will go to the second Town Council meeting of the month as a discussion item.		
Existing Land Use Plan Designation	Office/Institutional, within a Neighborhood Activity Center (NAC), and subject to Notes 2 and 3 on the Northwest Area Plan Map.		
Proposed Land Use Plan Designation	Medium Density Residential (MDR) south of Kit Creek Road, and Mixed Use (MXD) north of Kit Creek Road, with a change to Map Note #3.		
Existing Zoning District(s)	A mix of both Residential-40 (R-40) and Office, Research, and Development (ORD) on both the north and south sides of Kit Creek Road, within a Neighborhood Mixed Use Overlay District (MUOD), and within the Jordan Lake Watershed Protection Overlay District.		
Town Limits	The subject properties are located outside the Cary corporate limits, but within the Cary Extraterritorial Planning Jurisdiction (ETJ).		
Staff Contact	Scott Ramage, Principal Planner Phone: 919-462-3888 scott.ramage@townofcary.org		

SUMMARY OF PROCESS AND ACTIONS TO-DATE

Notification

On May 29, 2012 the Planning Department mailed notification of a public hearing on the request to property owners within 400 feet of the subject property. Notification consistent with General Statutes was published in The Cary News on May 30 and June 6, 2012. Notice of the public hearing was posted on the property on May 30, 2012.

COMPREHENSIVE PLAN SUMMARY

A. Land Use Plan

For the subject parcels, the governing land use element of Cary's Comprehensive Plan is the Northwest Area Plan.

Current Land Use Plan Designation

The *Future Land Use Map* of the Northwest Area Plan currently recommends the subject parcels be developed as Office/Institutional (OFC/INS), as part of an overall mixed-use Neighborhood Activity Center (NAC). In addition, the Future Land Use Map includes two Map Notes that contain additional recommendations for the subject parcels, as follows:

- Map Note #2 applies to the portion of the subject area north of the future westward extension of Kit Creek Road, and currently states that “OFC/INS uses near the VLDR area to the west should us residentially-compatible building styles having height, bulk, and design compatible with single family uses.”
- Map Note #3 applies to the portion of the subject area south of the future westward extension of Kit Creek Road, and west of Alston Ridge Elementary School. The note currently states that “Transitional office building styles should be used having height, bulk, and design compatible with adjacent VLDR single family to the west.”

In Notes #2 and #3 above, the term “VLDR” stands for “Very Low Density Residential,” and refers to properties west of the activity center, where residential densities should not exceed one dwelling per acre, and lot sizes of 2-3 acres should be used, unless using clustered subdivision design.

Requested Land Use Plan Designation

For the area north of the future westward extension of Kit Creek Road (approximately 13.6 of the total 39.7 acres), the applicant requests to change the future land use designations from Office/Institutional (OFC/INS) to Mixed Use (MXD). For the area south of the future westward extension of Kit Creek Road (approximately 26.1 of the total 39.7 acres) the applicant requests to change the land use designation from Office/Institutional to Medium Density Residential (MDR).

In addition, the applicants propose to amend the text of Map Note #3 as follows, where new text is shown underlined and deleted text is struck-through:

“Along the western property boundary, the MDR area should transition to single family detached along the common boundary to the west, and the office area should transition to
~~Transitional~~ office building styles should be used having height, bulk, and design compatible with adjacent VLDR single family to the west.”

Medium Density Residential (MDR) is typically defined as single family housing at three to eight dwellings per acre, with housing that typically includes types such as single family detached, semi-detached/attached homes, townhomes, patio homes, and/or duplexes. Multi-family housing is typically not envisioned within most MDR areas, however within the Northwest Area it may be considered when using clustered/conservation site design that preserves significant amounts of the site as permanent open space. A variety of neighborhood-compatible and complimentary institutional uses may also be considered within MDR areas, such as churches, schools, and daycare facilities.

Mixed Use (MXD) is defined in the Northwest Area Plan as containing “a mix of commercial, office, and medium to high-density residential uses.” The Plan also notes that “land uses in mixed-use areas may be mixed either side-by-side on adjacent lots, sites, or individual tenant spaces in a multi-tenant building, or vertically within buildings,” and that “a single use should not substantially dominate an entire area designated as Mixed Use.” Institutional uses that are compatible and complimentary to the development of a mixed-use area may also be considered – such as churches, schools, libraries, and daycare facilities.

Comparison of Existing and Requested Land Use Plan Designations

Since the subject parcels are located within a mixed-use Neighborhood Activity Center, the following table provides information about the mix of land uses, by acreage, with and without the proposed amendment.

Land Use Category	Acres	
	Current Plan	Amended Plan
Low Density Residential	24.63	24.63
Medium Density Residential	0	26.10

Land Use Category	Acres	
	Current Plan	Amended Plan
High Density Residential (apts.)	52.46	52.46
Institutional (elementary school)	18.35	18.35
Office/Institutional	90.14	50.44
Mixed Use	21.60	35.20
Activity Center Total	207.18	207.18

As can be seen in the table above, the activity center currently has no land allocated to Medium Density Residential (MDR) uses, and the proposed amendment would add about 26 acres of MDR.

Section 6.2.5 of Chapter 6 of the town-wide Land Use Plan provides a set of metrics that can be used to describe and evaluate mixed-use activity centers. It should be noted, however, that since area plans provide parcel-level land use recommendations for their activity centers based on extensive community input during the planning process, the metrics given in Chapter 6 should not be considered as definitive for this particular activity center.

The following table provides estimates of the total amount of development that could likely be supported over the entire activity center, at some point in the future when the center is fully built out. The table is based on existing development within the NAC, existing zoning approvals, and projections for the remaining areas. For the approximately 13.6-acre Mixed Use (MXD) area proposed by the applicant, the table assumes 70 percent of that land will be used for MDR, 15 percent for commercial/retail, and 15 percent for office/institutional. The dwelling count and floor space ranges are based on typical per-acre ranges presently experienced for the type of development.

Land Use Category	Projected Buildout Estimate	
	Current Plan	Amended Plan
Low Density Residential dwellings	54	54
Medium Density Residential dwellings	0	100-290
High Density Residential units (apts.)	710	710
Hotel Rooms (per approved PDD)	115	115
Institutional (elementary school) floor space	105,389	105,389
Office/Institutional floor space, est. range (sq. ft.)	610,000 - 970,000	360,000 - 570,000
Commercial/Retail floor space, est. range (sq. ft.)	152,200	160,000 - 170,000

B. Parks, Recreation & Cultural Resources Facilities Master Plan

According to the Parks, Recreation and Cultural Resources Facilities Master Plan there are no issues related to the three subject parcels. Greenway requirements associated with other parcels within the overall PDD are spelled out in the existing, approved PDD document.

A payment of recreation funds will be required for residential development, in accordance with the Land Development Ordinance.

C. Growth Management Plan

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

Guiding Principle L1: Concentrate growth near existing and planned employment centers and available and planned infrastructure to minimize costly service-area extensions.

Guiding Principle A1: Increase permitted densities in preferred growth areas to encourage desired forms of development.

D. Affordable Housing Plan

The Affordable Housing Plan includes the following goals that are relevant to this case:

- Provide for a full range of housing choices for all income groups, families of various sizes, seniors, and persons with special challenges.
- Encourage the location of high density housing within walking and convenient commuting distance of employment, shopping, and other activities, or within a short walk of a bus or transit stop, through "mixed use" developments, residences created on the upper floors of nonresidential downtown buildings, and other creative strategies.

E. Comprehensive Transportation Plan

Kit Creek Road is designated as a minor thoroughfare (rural reservation)

Existing Section:

Future Section: Two-lane undivided with rural reservation, 88-foot right-of-way

Sidewalks: Required on both sides

Bicycle: N/A

Green Level Church Road is designated as a major thoroughfare.

Existing Section: Two-lanes, approximately 80-foot right-of-way

Future Section: Four-lanes with landscaped median, 100-foot right-of-way

Sidewalks: Required on both sides

Bicycle: 14-foot-wide outside lanes required

Wake Road is designated as a collector avenue.

Existing Section: Two-lanes, approximately 60-foot right-of-way

Future Section: Two- to three-lanes (where turn lanes may be needed), 58-70-foot right-of-way depending on the collector avenue option

Sidewalks: Required on both sides

Bicycle: Four-foot striped bicycle lanes required

Transit

The nearest existing bus transit service is provided by Triangle Transit's Route #311, with the nearest stop located on NC Hwy 55 near the intersection of Kit Creek Road, approximately a quarter mile east of the subject parcels. At present, the area is not served by C-Tran bus routes. The Town's long-range bus service expansion plans currently envision C-Tran bus service along Green Level Church Road, extending as far north as Kit Creek Road and the eastern edge of the subject parcels. However, no date has been set for such a service expansion, and the long-range service expansion plans have not yet been finalized or ratified, and are subject to change and funding.

F. Open Space Plan

According to the Open Space Plan the subject parcels were not identified as priority conservation areas; no significant natural resources were identified.

G. Historic Preservation Master Plan

Other than a cell tower on the Ferrell property, there are no existing structures on the subject parcels.

APPLICANT'S JUSTIFICATION STATEMENT

Provided below are the applicant's responses to the Comprehensive Plan Amendment justification questions contained in the application form. (The application questions are repeated). Please note that the statements below are that of the applicant and do not necessarily represent the views or opinions of the Town of Cary.

How is the proposed request reasonable? In explaining how it is reasonable, please address the following, if applicable:

1. Describe how the requested amendment is warranted due to changes in conditions, forecasts, or assumptions since the original Comprehensive Plan recommendations were developed.

Applicant's response: Since the adoption of the Northwest Area Plan/Land Use Plan, conditions in the area have changed. There is now an elementary school and a planned 9th-grade center.

2. Describe how the requested amendment is warranted due to new issues, needs, or opportunities that have arisen in this geographic area since the original Comprehensive Plan recommendations were developed.

Applicant's response: Since the adoption of the Northwest Area Plan (approximately ten years ago), there has been no office demand in this area. Much of the area designated for office lacks highway exposure. There is an opportunity to have land uses that will be an asset to the area as it is currently being developed. There will still be Office areas on the Land Use Plan and Village at the Park still has a large tract for shopping that will include office uses.

3. Describe how the requested amendment is warranted due to changes in Town policies, objectives, or standards since the original Comprehensive Plan recommendations were developed.

Applicant's response: Town policies advocate walking to services. By providing housing and a mixed-use component to the area, there can be more walking distance housing and less reliance on the automobile.

4. Describe how the requested amendment is warranted due to errors or omissions in the current Comprehensive Plan.

Applicant's response: Since the Land Use Plan was adopted, changes have occurred in the area making the current land use less viable. The proposed land use is a better fit for the area.

CRITERIA FOR CONSIDERATION IN REVIEWING COMPREHENSIVE PLAN AMENDMENTS

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

1. A change in projections or assumptions from those on which the Comprehensive Plan is based;
2. Identification of new issues, needs, or opportunities that are not adequately addressed in the Comprehensive Plan;
3. A change in the policies, objectives, principles, or standards governing the physical development of the Town or any other geographic areas addressed by the Comprehensive Plan; or
4. Identification of errors or omissions in the Comprehensive Plan.

Staff's PowerPoint presentation is attached to and incorporated herein as **Exhibit D**.

Ms. Glenda Toppe, representing the property owners, stated the applicant is requesting a comprehensive plan amendment from office/institutional (O&I) to medium-density residential (MDR) and mixed-use development (MXD). The three properties included in the request are in the mixed-use overlay district, so a rezoning cannot be requested at this time. Since the adoption of the Northwest Area Plan, an elementary school and a church site were added to the area, and a middle school is planned for the area.

Toppe stated the site planned for MDR use is south of a future extension of Kit Creek Road. She said map note #3 language has been changed (Page 71 of Exhibit D) to better protect the surrounding residential area. She believes this area lacks the necessary road exposure for viable office development. She stated the requested distribution of land uses will provide an excellent mix for the area.

Toppe stated the applicant will continue working with the community as this request moves through the process.

The mayor opened the public hearing.

Ms. Brenda Berry stated homeowners in this area ask council to consider low-density residential (LDR) in the O&I area, because they do not want any more apartments in this vicinity. She stated the Village at the Park representatives worked with homeowners in this area during its development process. She urged council to remember the park area while considering this request.

Ms. Betsy Phillips, representing her property and a neighboring homeowner, requested the density be lowered to transition from one to two acres to ensure consistency with the Chatham County/Cary draft land use plan.

The mayor closed the public hearing.

Frantz is concerned with the word "should" in Map Note #3 on Page 71 of Exhibit D, "Along the western property boundary, the MDR area "should" transition to single family detached along the common boundary to the west,...". He hopes this language will be strengthened as the request proceeds through the process.

ACTION: Council referred 12-CPA-03 to the Planning and Zoning Board.

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

N/A

G. COMMITTEE REPORTS (discussion items)

Operations Committee, June 7, 2012 (any item pulled from the committee consent agenda for discussion [agenda item B.3.] will be discussed during this portion of the agenda)
(Mrs. Robinson)

N/A

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

N/A

I. CLOSED SESSION

ACTION: Robinson moved to hold a closed session for the following reasons. Adcock provided the second; council granted unanimous approval.

PURSUANT TO G.S. 143-318.11(A)(1)(3), (4) AND (5), I MOVE THAT WE HOLD A CLOSED SESSION TO:

- 1. CONSULT WITH ATTORNEYS EMPLOYED BY AND/OR RETAINED BY THE TOWN IN ORDER TO PRESERVE THE ATTORNEY-CLIENT PRIVILEGE BETWEEN THE ATTORNEYS AND THE TOWN.**
- 2. INSTRUCT THE TOWN STAFF CONCERNING THE POSITION TO BE TAKEN BY OR ON BEHALF OF THE TOWN IN NEGOTIATING THE PRICE AND MATERIAL TERMS OF CONTRACTS OR PROPOSED CONTRACTS FOR ACQUISITION OF PROPERTIES OWNED BY:**

JAMES AND KIMBERLY DELOATCH, 1121 WAKE ROBIN LANE, CARY, NORTH CAROLINA 27519

RAMA AND ELIZABETH POLEFKA, 311 SOUTH HARRISON AVENUE, CARY, NORTH CAROLINA 27511

ROBERT DOLAN, 308-A SOUTH WALKER STREET, CARY, NORTH CAROLINA 27511

- 3. DISCUSS MATTERS RELATING TO THE LOCATION OR EXPANSION OF INDUSTRIES OR OTHER BUSINESSES IN THE TOWN, INCLUDING AGREEMENT ON A TENTATIVE LIST OF ECONOMIC DEVELOPMENT INCENTIVES THAT MAY BE OFFERED BY TOWN IN NEGOTIATIONS.**
- 4. TO PREVENT THE DISCLOSURE OF INFORMATION THAT IS MADE PRIVILEGED OR CONFIDENTIAL BY G.S. 143-318.10(E).**

J. ADJOURNMENT

ACTION: At 8:30 p.m. Adcock moved to adjourn. Robinson provided the second; council granted unanimous approval.