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**SUMMARY MINUTES OF A BUSINESS MEETING
OF THE CHAPEL HILL TOWN COUNCIL
MONDAY, FEBRUARY 9, 2004, AT 7:00 P.M.**

Item 6 - Concept Plan: Proposed Village Plaza Theatre

Town Planning Director Roger Waldon explained that this Concept Plan proposed to modify a previously approved Special Use Permit (SUP) for the Village Plaza Center renovation for the limited purpose of removing the requirement to improve Driveway D as indicated in Stipulation #4 of the approved SUP. The original SUP, issued on January 27, 2003, had authorized demolition of the Plaza Theater, he explained, and the applicant, Eastern Federal Corp., had sought approvals to begin construction. Mr. Waldon pointed out, however, that Stipulation #4 required the applicant to widen Driveway D and that doing so would require approval of the adjacent property owner. The applicant had not been able to get an agreement for cooperative measures with the adjacent property owner, he said, so they were asking that Stipulation #4 be deleted as a condition of approval.

Mr. Waldon noted that no mention of Driveway D had been made at the time of approval. He said that the Manager had recommended modifying the SUP, asking for expedited processing, and requesting that the scope of that hearing be limited to Stipulation #4. The Council had granted expedited processing last week. Mr. Waldon explained. He said that presentation of a Concept Plan tonight was the first step toward modifying the SUP. Since the Council had given expedited processing and narrowed the scope to one issue, the staff could bring the item back quickly, probably by March 15, 2004, Mr. Waldon said.

Mayor Foy pointed out that the item still must go through the advisory committee process.

The applicant's attorney, Wayne Hadler, of Beemer, Savery, Hadler & Jones, stated that Eastern Federal had been surprised to discover that Stipulation #4, regarding Driveway D, had remained in the SUP. He read a letter in which the Town Manager stated that Stipulation #4 had been included due to an error in the Town's process. Neither the applicant nor the staff had realized that Stipulation #4 would require the applicant to obtain the cooperation of an adjoining property owner who had made it clear that such cooperation would not occur, Mr. Horton had written.

Mr. Hadler interpreted the Manager's letter as saying that the theater project met the requirements of the ordinance without the improvements to Driveway D. Mr. Hadler noted that a 2001 study by RSH had suggested that Driveway D, while recommended, was not essential. And he pointed out that the final proposed development was substantially less than what RSH had considered. The RSH report had proposed that drivers would use access driveways during peak times, Mr. Hadler said. He noted that there would be on-site monitors to direct traffic to park on the applicant's site. Mr. Hadler argued that to bring this issue forward now in a contentious manner was not fair to the applicant and not in the Town's interest.

Attorney Michael Ortiz, representing Ginn & Company, said that Mr. Ginn had always been willing to sit down and negotiate a reasonable cross-access agreement between the parties. But a golden opportunity had been missed last year just before the Council's vote on this matter, he said, when the Council dropped the agreement at the applicant's request. Mr. Ortiz argued that simply deleting the requirement to improve Driveway D without addressing access and circulation would not solve anything and would make a bad situation worse. And simply granting a construction easement to fix one driveway would ignore the problems facing all of the neighboring property owners, he said. Mr. Ortiz referred to existing parking problems of neighboring property owners and argued that simply deleting Stipulation #4 would allow the theater to continue ignoring those concerns.

PBS & J Senior Traffic Engineer Todd Brooks, representing Ginn & Company, disputed whether driveway D was "nonessential" as Mr. Hadler had claimed. He said that intersections C and D would operate at Level of Service D and that the Town's consultant had assigned more than three times as much traffic approaching and departing the site to and from Franklin Street or to the north to Driveway D. Mr. Brooks asked why Driveway D carries so much traffic if it is not essential. He argued that eliminating Driveway D, or making it one way, would clog the driveway, block access to parking spaces, and force traffic into the parking lots.

In response to a question from Council Member Harrison, Mr. Brooks explained that it had been recommended that 4-6 p.m. on Friday and 11 a.m. to 1:00 p.m. on Saturday be added to the traffic study. But, he said, he had used Monday through Thursday peak hour figures from the Town in his analysis in order to show what would happen if Driveway D were not approved. Mr. Brooks stated that Mr. Ginn had retained his firm's services to study all elements of the site. No scenario exists that considers Driveway D not being improved, he said, adding that his firm was prepared to find a solution that would benefit all parties and provide adequate circulation and parking for both sites.

George Jones, a team leader at Whole Foods Market, described how he'd had to cope with traffic issues in that location. He had no faith that Eastern Federal would abide by its agreements because of his experiences with them not doing so in the past, he said.

Council Member Kleinschmidt asked Mr. Jones to clarify his remarks. Mr. Jones explained that an agreement by which for 30 Whole Foods employees had been allowed to park on Mark Properties had recently been cancelled. Mr. Jones repeated his view that traffic issues pose a significant threat to Whole Foods and that not paying attention to issues such as Driveway D could force Whole Foods to relocate.

Mayor Foy asked Mr. Jones what the 30 employee parking spaces on Mark Properties had to do with this project. Mr. Jones replied that it had been part of an overall arrangement that had been severed.

Council Member Greene expressed confusion about whether there was a cross-access agreement between Mark Properties and Eastern Federal Corp. Mr. Jones said that he thought there was a subordinate agreement.

Mayor Foy suggested getting an answer to that from someone else later in the meeting.

Chris Shaw, speaking on behalf of Crowell Little, owner of Gateway Plaza, attempted to clarify the issue about Whole Foods employees' parking spaces. Mr. Ginn had been renting 30 spaces from Mark Properties since 1995, he said, and later, the State Employees Credit Union began renting spaces in front of the movie theater. Both of those businesses had been concerned about losing those spaces, he said, and they eventually were told that the spaces would not be available to them. Mr. Shaw commented that it seemed odd to sever that arrangement now, since there was no construction going on.

Mr. Shaw explained that Mr. Little was concerned about Driveway D, which runs through his property. The Town had required Mr. Little to obtain a cross-access agreement with Mr. Ginn when Mr. Little acquired the Lowes property, he said. Mr. Shaw noted that there were several driveways between the two properties and pointed out that the Town had required cross-access easements to facilitate traffic flow. It took about a year to work that out but everything had been working well since, Mr. Shaw said. He explained that Mr. Little was concerned that not improving Driveway D would lead to congestion for his patrons and tenants when people are going in and out of the movie theater.

Jim Groot, of Red Hot and Blue Restaurant, recommended that the Town look at "real life experience." A 1,600-seat theater with only 109 parking spaces will only be profitable if patrons park everywhere else, he said. Mr. Groot asked why Mr. Gurlitz had drawn Driveway D to begin with if it was not needed. He said that Eastern Federal had been unwise to demolish the building before the plans had been approved and a building permit had been issued.

Mayor Foy noted that tonight's Concept Plan review was an opportunity to give guidance to the applicant. The Council would not make any recommendations at this time, he said.

Council Member Kleinschmidt attempted to clarify what had happened between the parties a year ago. He recalled that the original proposal had anticipated a cross-access agreement for parking. Both sides had met outside Council chambers and had reached an arrangement that seemed to work, he said. But then, when everyone came back in, the agreement had fallen apart and the Council never really knew why. Council Member Kleinschmidt stated that Ginn & Co. seemed to be holding out for a cross-easement. But they had refused to agree to one, he pointed out, and he requested that someone from Ginn & Company explain that discrepancy.

Mayor Foy pointed out that the Council had a letter from Ginn & Company "that goes through some rendition of the Ginn position on what happened and why." Mr. Ortiz

stated that Mr. Wilson, of Eastern Federal, and Mr. Ginn had met on January 13, 2003, for the purpose of trying to hammer out a cross-access agreement. And one was hammered out, he said, but it was a free flowing cross-access agreement that would not allow Ginn & Company to put up barriers if the overflow parking became unbearable. Mayor Foy noted that the Council would have plenty of opportunity to discuss this in greater detail when it came back for a decision in March. But they need to give some guidance to the applicant on how to proceed over the next few weeks, he said. Mayor Foy noted that the process, when started, had been based on cooperation among the three property owners. That was why the Council had initially given expedited review to the whole application, he pointed out. Mayor Foy characterized it as "troubling" that such cooperation had never come to fruition but the SUP had been granted. He did not necessarily agree that this had been an error, he said, noting that the Council had balanced a lot of issues when making its decision. Mayor Foy said that he found it a little disturbing to be asked to change the SUP now.

Mayor Foy stated that when the Town deleted the cross-access agreement the Manager had also assured them that a cross-access easement was still viable. Whether that is the case or not, he said, the Council had based their approval on an assumption that it was the case. Mayor Foy stressed that some agreement had to be in place between the property owners. "I think you have to do that," he said, adding that the Council did not have to get into the details of figuring that out. But somebody does before it comes back to the Council, said Mayor Foy.

Mr. Horton commented that the staff had never stated that there was a cross easement. But they had said that the SUP for the area showed an unimpeded connection between the two properties, he said.

Council Member Strom asked to hear from Eastern Federal on how they were addressing the concerns raised by citizens, adjacent businesses, and Council members. Eastern Federal's Architect Richard Gurlitz replied that there had been many opportunities for cross-access agreements and sincere negotiations between Ginn & Company and Eastern Federal. But at some point in the negotiations, very close to the Council approval on January 27, 2003, those negotiations fell apart, he said. Mr. Gurlitz stated that Mr. Ginn had implied that he did not have the power to go into such an agreement with Eastern Federal without violating his lease with Whole Foods. Mr. Gurlitz said that he believed Mr. Ginn had been in favor of the agreement but that his hands were tied.

The second issue, according to Mr. Gurlitz, was that Mr. Ginn had requested the following five points for the agreement: completely drop phase two; require a cross-easement agreement between Ginn & Co and Eastern Federal; move the box office away from Eastern Federal property and design the drive lane to drop traffic off at a different location; further reduce the number of movie screens to nine or add a second floor parking deck to help accommodate 11 screens; and, provide security as needed to direct traffic away from Ginn property on weekends and holidays.

Mr. Gurlitz said that Eastern Federal had met four of those five stipulations. That was when negotiations had broken down, he explained, and Eastern Federal had come back to the Council and asked for a vote on the project with the understanding that there were no cross-access easements.

Mayor Foy pointed out that Council Member Strom had asked a specific question about how traffic flow would be affected. Mr. Gurlitz replied that the Town had commissioned a traffic survey with a Charlotte firm with which the Town does business. He explained that the traffic consultant had considered that Driveways D and Driveway C, which is on Eastern Federal property, would take all of the traffic. The consultant had ignored Driveways A and B, which are on Mark Properties, he said.

Mayor Foy asked why entrances A and B had not been included in the study. Mr. Gurlitz replied that the traffic consultant and the Town Engineering Department had made that decision and that Eastern Federal had not been involved.

Council Member Strom ascertained that the consultant had been working with a 1,784-seat scenario. In the consultants "no build" 1,600-seat scenario, Mr. Gurlitz explained, service at intersection D would be Level C at the evening peak and Level B at the Saturday peak. The level C would then revert to level D, with three lanes and not considering driveways A and B, he said.

Council Member Kleinschmidt questioned an earlier description of Saturday peak as being from 11:00 a. m. to 1:00 p.m. Mr. Gurlitz agreed that this was not a peak time for a theater.

Council Member Harrison commented that two additional time periods had recently been added and that no one seemed to know if the original consultant had used those. Mr. Gurlitz suggested asking the consultant about that.

With regard to the expansion scenario, which included a 12,000 square foot restaurant, Mr. Gurlitz quoted the consultant as reporting that the site would generate an estimated 473 vehicles per hour at it's busiest on Saturday evening. If the theater were redeveloped alone, then the site would generate 495 daily trips of which there would be seven fewer morning peak hour trips, the consultant had written, said Mr. Gurlitz.

Council Member Verkerk asked if both parties would agree to mediation. Mr. Gurlitz replied that Eastern Federal would agree as long as it was time-limited. He pointed out that it had taken a year to negotiate the agreement between Ginn & Company and Crowell Little. "That's a long time to have a fenced-in property," Mr. Gurlitz said.

Mayor Foy remarked that he had been in favor of the project, but that this problem needed to be resolved regardless of the date set for resolution.

Council Member Ward explained that he had not supported the project because he had believed it would jeopardize the success of a number of local businesses. Driveway D is

a "lynchpin" to moving traffic in and out of that area, he said. Council Member Ward concluded that he could not support the project unless he is convinced that it will not harm existing businesses even though he would like that plot of land to be more productive than it is now or than it was before it was redesigned.

Council Member Ward asked what would happen to the parking spaces adjacent to Red Hot and Blue where the theater's property runs right down the middle of them. He also asked if Mr. Hadler's statement that the additional approved parking was consistent with the increase in theater seats and general Town policy was accurate. Mr. Waldon agreed to bring back answers to those questions.

With regard to the agreement between the Eastern Federal and Mark Properties, Mr. Gurlitz stated that an easement grants access between the two properties and allows Mark Properties to prevent its neighbor from parking there if the lot gets too full. But he understood that the agreement gets superceded by the SUP, which puts both parcels together, Mr. Gurlitz said. Mayor Foy asked that this be clarified when the item comes back.

Mayor Foy pointed out that Eastern Federal was willing to enter into mediation and ascertained that Mr. Ortiz would discuss that suggestion with Mr. Ginn and convey his response to the Manager. Mayor Foy asked Mr. Horton if the Town could use its offices to ensure that the mediation happened in a timely manner. Mr. Horton agreed, but pointed out that success would depend on the good faith of the two parties.

Mr. Groot told Council members that he had been one of those who had signed a petition asking the Town to expedite this at the start of the project. He had wanted Eastern Federal to have a fast and fair hearing, he said, noting that restaurant operators love movie theaters. But, Mr. Groot said, he was feeling troubled by one after another in a series of "not exactly accurate things," such as counting parking many different times and not requiring a cross easement when one had been required of Crowell Little. This was not a simple movie theater, he pointed out, but a new national concept of multiple screens. That changes how many people come, when they come, how they get in, and how they get out, said Mr. Groot. "If there are no fences, then the cows are going to be everywhere," he remarked, adding that mediation is great if it's done in good faith. But it's not useful if it means "let me do this thing and I'll use you land," said Mr. Groot.

COUNCIL MEMBER KLEINSCHMIDT MOVED, SECONDED BY COUNCIL MEMBER STROM, TO ADOPT R-8, REFERRING COMMENTS AND OTHER APPLICABLE MATERIAL TO THE APPLICANT AND THE MANAGER. THE MOTION WAS ADOPTED UNANIMOUSLY (8-0).

A RESOLUTION TRANSMITTING COUNCIL COMMENTS ON A CONCEPT PLAN FOR THE VILLAGE PLAZA MOVIE THEATRE (2004-02-09/R-8)

WHEREAS, a Concept Plan has been submitted for review by the Council of the Town of Chapel Hill, for the Village Plaza Movie Theatre; and

WHEREAS, the Council has heard presentations from the applicant, and citizens; and

WHEREAS, the Council has discussed the proposal, with Council members offering reactions and suggestions;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council transmits comments to the applicant regarding this proposal, as expressed by Council members during discussion on February 9, 2004, and reflected in minutes of that meeting.

This the 9th day of February, 2004.