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MINUTES OF REGULAR MEETING OF THE MAYOR AND COUNCIL  
OF THE TOWN OF CHAPEL HILL, MUNICIPAL BUILDING,  
WEDNESDAY, FEBRUARY 25, 1987, 7:30 P.M.

Mayor James C. Wallace called the meeting to order. Council Members present were:

Julie Andresen  
David Godschalk  
Jonathan Howes  
David Pasquini  
Nancy Preston  
R. D. Smith  
Bill Thorpe  
Arthur Werner



Also present were Town Manager David R. Taylor, Assistant Town Managers Sonna Loewenthal and Ron Secrist, and Town Attorney Ralph Karpinos.

Public Forum on Requesting Three New Revenue Sources

Manager Taylor said the Council had discussed potential revenue sources at their January retreat and asked that the staff do a preliminary report. He said on January 26 the Council called a public forum for tonight to hear citizen comments on ways in which the Town might raise additional revenues. Mr. Taylor commented that three specific areas to be discussed were a hotel/motel tax, real estate transfer tax, and admissions/entertainment tax. He stated the staff had mailed notices to over 70 community groups and held discussions with motel operators and University officials on the proposed revenue sources. He said it would be appropriate to hear from the public on this issue.

Roland Giduz, speaking as a resident, spoke in support of the admissions and entertainment tax. He said this would be a tax on the users, not just the citizens of Chapel Hill. He commented that this was a good source of revenue that needed to be tapped. He stated that since the University was against this option, the Town would have a hard time getting the General Assembly to pass legislation allowing the Town to create such a tax.

Grainger Barrett, speaking as Vice President of the Chamber of Commerce for Public and Governmental Affairs, spoke against the real estate transfer tax saying the Chamber would prefer that this alternative be tabled so that a more in depth study on its ramifications could be accomplished. He said the Chamber supported the idea of preservation of open space and recreation space but felt the proposed tax was unfair in its application. He said this tax would be levied on the sale of property and therefore would be a tax on the same tax base as the Town currently taxes through the property tax. He commented that this

tax would fall disproportionately on a segment of the population that happened to buy or sell property during a particular year. Mr. Barrett said that the result was that certain people would pay the tax and yet its benefits would be felt by all.

Nick Tennison, representing the Chapel Hill and Durham Homebuilders Association, spoke against the real estate transfer tax. He said such a tax would create an inflation of the price of homes in the area and place an extra burden upon first time homebuyers.

Council Member Andresen commented that Durham County was considering the possibility of having a real estate transfer tax that would be considered a luxury tax by exempting certain properties sold for less than a certain amount. She asked Mr. Tennison if this type of tax would be preferable. Mr. Tennison replied that it would not be better because in his opinion either option was wrong.

Jim Neal, representing the Chapel Hill Board of Realtors, spoke against the real estate transfer tax saying it would impose a burden on those buying and selling homes. He said it would be more practical to look at bond issues for infrastructure improvements.

Tom Heffner, speaking as President of the North Carolina Association of Realtors, said the Association opposed the transfer tax saying it was discriminatory and placed an additional tax burden on a specific segment of the population. He pointed out that the revenues from the transfer tax would be undependable. Mr. Heffner said he believed such a tax would discourage home ownership.

Charles Nottingham, speaking as Chairman of the Chapel Hill - Carrboro Chamber of Commerce's Task Force on the Room Tax, said the Chamber opposed the local room tax bill. He said the Chamber had concerns about the proposal ranging from the fact that none of the proposed tax dollars would be earmarked for travel-related industry needs to whether or not this tax would apply to boarding houses, bed and breakfast inns, and special housing units associated with the University. Mr. Nottingham stated that no one associated with the area's travel-related industry supported this proposal. (For copy of text, see Clerk's files.)

Council Member Andresen asked Mr. Nottingham if the Task Force had polled its entire membership on this issue. Mr. Nottingham replied that there had not been time to do this.

Council Member Werner asked what was the average room rate in Chapel Hill. Mr. Nottingham replied that he believed it to be between \$45 and \$50 a night.

Wesley Eagen, speaking as a resident of Mason Farm, spoke in support of the entertainment tax. He said living close to the

University's Smith Activities Center (SAC) meant having to deal with parking, noise, and garbage problems which occurred whenever there was an entertainment event at the SAC. He said he felt those who created the problems should help pay to alleviate them. He said the Town already needed additional police protection in the Mason Farm/Otey's Road area and the events at the SAC were just getting started. Mr. Eagen said the University and those associated with it should bear the cost of ensuring that the events held at the SAC do not create an undue burden on the residents. He said if the tax were to be approved, he would like to see part of the revenue earmarked for additional police protection, clean-up, parking, etc. in the area around the SAC.

Council Member Andresen commented that she had received several telephone calls concerning the trash problem in the residential area near the SAC and that the callers said they would support a tax on entertainment if the revenue would be used for improving the situation near the SAC.

Council Member Preston asked for clarification on the proposed real estate transfer tax and how it would be administered. Mr. Taylor responded that the staff proposed that such a tax would operate more efficiently if it were county-wide. He said if the Council voted in favor of requesting the State for such a tax, then he would ask the Council to meet with Orange County officials to discuss whether the County wished to also have the tax and to negotiate the method of collection. Mr. Taylor said that the Town felt it would be more efficient if Orange County collected the tax and then transferred the funds to the Town. He said if the County were to participate in the tax, then the Town would receive a specific portion of the tax.

Council Member Godschalk said the proposal was for three large increases in taxes all at one time. He asked for a quantitative estimate of the needs. He said the Town did not necessarily need all three revenue sources, even though there was a pressing need for transportation and street improvements.

Council Member Werner asked the staff to estimate the amount expected to be generated from each of the potential revenue sources. He asked if the decision on the transfer tax was dependent upon what the County wanted. Mr. Taylor replied no, but that it would be better received and implemented if it were a county-wide levy.

Council Member Werner said that a comment had been made that the property transfer tax could increase the potential down payment on a home by 20%. He said presumably the tax would be on the seller not the buyer. Manager Taylor said the intent was that the tax would be on the seller, but that it may be that the purchaser absorbed the costs as part of the closing.

Council Member Thorpe said the Council at their retreat directed the Manager to look at potential revenue sources. He agreed

there were problems at the SAC, and he thought this discussion was a good way to alert the University officials and get their attention on problems occurring as a result of events held at the SAC. He stated he thought the land transfer tax was a terrible idea. He commented that the Town had no way of ensuring that the tax will be "paid" by the seller of the property. Mr. Thorpe also said that he was against the hotel/motel tax saying people had to have a place to stay in Chapel Hill and should not be penalized for it.

Council Member Howes said the Council needed to pay careful attention to how the Town expected the funds to be used. He said it might be prudent to review the need for impact fees if development was causing the need for additional services, etc. Mr. Howes also stated that an admissions tax was valid since the impositions were caused by holding major events at night and during the week, something new since the SAC was opened.

COUNCIL MEMBER PRESTON MOVED, SECONDED BY COUNCIL MEMBER GODSCHALK TO REFER TO THE MANAGER AND ATTORNEY. THE MOTION PASSED UNANIMOUSLY, (9-0).

#### Petitions

Terry Zug, representing The Oaks Homeowners Association, petitioned the Council for additional stop signs to be placed at the intersections of Cleland and Rogerson; Cleland and Burning Tree; Burning Tree and Canterbury, and Burning Tree and Pinehurst. (For copy of petition, see Clerk's files.)

COUNCIL MEMBER WERNER MOVED, SECONDED BY COUNCIL MEMBER GODSCHALK MOVED TO REFER THE PETITION TO THE MANAGER. THE MOTION PASSED UNANIMOUSLY, (9-0).

Ronald Strauss, speaking as a resident of Wesley Drive, petitioned the Council to correct the traffic problems along Umstead Drive. He said Umstead Drive had become a speedy shortcut to Estes Drive and therefore extremely dangerous to joggers, pedestrians and children who use Umstead Park. He proposed two options for the Council to consider. These options were 1) to dead end Umstead Drive at the two parking lots on each side of the park and allow no traffic through the park; and 2) putting stop signs at the corners of Bradley, Pritchard, and Village Drive and the pedestrian crossing by the park. Mr. Strauss also suggested an underground crossing, a bridge, or at least a pedestrian crossing with a traffic light at the park. (For copy of petition, see Clerk's files.)

Council Member Smith commented that he thought that Umstead Drive had been opened to through traffic as part of an agreement with the developer of some apartments in the area and in exchange for property.

Council Member Howes commended the neighbors for their concerns and their thoughts as to possible alternatives. He said the Manager should consider all the options, including closing the road and the Council could hold a public hearing where citizens could come and indicate their concerns on this matter.

COUNCIL MEMBER HOWES MOVED, SECONDED BY COUNCIL MEMBER WERNER TO REFER TO THE MANAGER. THE MOTION PASSED UNANIMOUSLY, (9-0).

Grainger Barrett, an attorney representing J. S. Harder & Associates, petitioned the Council to defer action on the removal of all parking on the west side of Sage Road. He said his clients were the owners of Forum One office building that had been approved with a 20% reduction in required parking spaces to preserve specimen trees and that they were currently negotiating with adjacent property owners for additional property to provide more parking for the office site. He said his clients would prefer for the Council to adopt an ordinance which removed parking on the west side of Sage Road for a distance of 225 feet from the Forum One driveway, as well as the entire length of the east side, and give his clients additional time in which to negotiate for more parking space before adopting an ordinance removing parking for the rest of the west side of Sage Road. (For copy of petition, see Clerk's files.)

Council Member Andresen commented that she would like to thank Council Member Godschalk for his work on the Town's behalf at the joint meeting with Orange County last Monday night.

Council Member Andresen asked that item #10, Report on areas proposed to be rezoned for conformity with new Land Use Plan, be deferred until the March 9 meeting. The Council agreed to this request.

Joan Shapiro, David Boaz, Irene Briggaman, Stan Mandel, Robert Smythe, Lightning Brown, and Page Schaefer asked to speak to item #6, Chesley Subdivision.

Watts Hill, Jr. asked to speak to item #9, Homeownership Demonstration Project.

Tom Worth, Larry Benninger, and Bob Murchinson asked to speak to item #5, Northwood V subdivision.

Mike Brough and Jack Smyre asked to speak to item #7, Old Lystra subdivision.

Scott Gerlach and John Biggers, representing Pi Kappa Phi fraternity, petitioned the Council to grant a special noise permit for the annual "Burn-out Party" fund-raising event to benefit the Jaycee Burncenter. The event was scheduled for 2 p.m., Friday, April 10, three hours before the ordinance allows noise permits to be issued. Mr. Gerlach said because of concerns over traffic congestion, which he said the the fraternity had addressed, the

staff had ruled against recommending the Council grant the special permit. He said because of this, the fraternity was asking the Council to grant their petition.

Dr. J. C. Peterson, representing the Burn Center, spoke in support of the petition, saying the fraternity through this party helped fund operations at the Burn Center. He said the party was for a good cause. He urged the Council to grant the petition.

Council Member Smith said that the police should be present at the next meeting when the staff presented their response. He also commented that he felt the amplified music should be reduced in volume in an effort to reduce overall noise pollution.

Council Member Werner asked why the party could not be held on campus or at another site. Mr. Gerlach replied that Eringhaus Field was already scheduled for another event. He said in his opinion Finley Road provided a better site for traffic and parking, and would be less intrusive to the neighborhoods than a campus location.

Council Member Werner encouraged the fraternity to look for an alternative site.

Mr. Biggers said that the purpose of the petition was to ask the Council to grant the noise permit that evening. He said further delays would jeopardize the possibility of holding the party.

Council Member Howes stated that it was the Council's procedure to receive petitions and refer them to the Manager for comment and information.

COUNCIL MEMBER GODSCHALK MOVED, SECONDED BY COUNCIL MEMBER ANDRESEN TO REFER THE PETITION TO THE MANAGER. THE MOTION PASSED UNANIMOUSLY, (9-0).

Minutes

COUNCIL MEMBER WERNER MOVED, SECONDED BY COUNCIL MEMBER SMITH TO ADOPT THE MINUTES OF FEBRUARY 2, 1987 AS CIRCULATED. THE MOTION PASSED UNANIMOUSLY, (9-0).

COUNCIL MEMBER WERNER MOVED, SECONDED BY COUNCIL MEMBER GODSCHALK TO ADOPT THE MINUTES OF FEBRUARY 9, 1987 AS CIRCULATED. THE MOTION PASSED UNANIMOUSLY, (9-0).

Council Member Thorpe said that since the Council meetings were now going to be cablecast, it would probably be better for votes to be indicated by a show of hands. Mayor Wallace commented that he thought only the split votes should be indicated with a show of hands.

Northwood V

COUNCIL MEMBER ANDRESEN MOVED, SECONDED BY COUNCIL MEMBER PRESTON TO ADOPT RESOLUTION 87-2-25/R-1B.

Roger Waldon, Planning Director, said that the Council had on January 12th, annexed the property and referred the subdivision preliminary plat application back to the applicant for further changes. He said as a result of the discussion of the January 12th meeting the applicant had revised his plans eliminating the eight-lot cul-de-sac at the northwest corner of the property, and removed the "open space" strips along Weaver Dairy Road as part of the method of meeting the recreation space requirements. Mr. Waldon stated the applicant had extended the lot lines to Weaver Dairy Road and provided a 50-foot buffer easement over those lots bordering Weaver Dairy Road. He said the staff recommended that a note also be placed on the final plat prohibiting access from these lots directly onto Weaver Dairy Road. Mr. Waldon said with regard to the three-phase power line, the staff recommended that to mitigate intrusion into the buffer between Weaver Dairy Road and the existing Northwood II development, the line be placed along the south side of Weaver Dairy Road. He said the staff would prefer that the line be placed entirely underground but that the Development Ordinance did not allow the Town to require that a three-phase line be placed underground.

Council Member Andresen said maybe the Council should consider changing the Development Ordinance to allow the Town to require all power lines to be underground. Mr. Waldon said the reason the Development Ordinance did not include locating three-phase power lines underground was because it was generally extraordinarily expensive to do so and would represent an unreasonably large expenditure.

Council Member Smith asked if the Resource Conservation District (RCD) was part of the required recreation space and wondered if the difference in elevation from road "A" at lot 74 to lot 80 was too deep or steep to allow practical use. Mr. Waldon said the RCD was in part of the site and was included as part of the required recreation space. Mr. Ballentine, Engineer for the developer, said that the difference in elevation between the two lots was approximately 8 feet, but that it was a gradual change in elevation.

Council Member Godschalk commented that he did not like the idea of having the three-phase power line above ground. He asked how expensive would it be to place it underground? Mr. Rimer, Planning Board Chair, replied that he understood the cost to be approximately \$100.00 per foot and that this would mean a cost of around \$70,000. He pointed out that the three-phase line would be a high voltage feeder line to serve the subdivision as well as another substation. Council Member Godschalk said that as such it seemed to him that the power company should participate in the cost of putting in the line. He asked why the Town recommended that the developer acquire the right-of-way around the Fire Station when the Planning Board recommended that the right-of-way

be dedicated by the Town. Mr. Waldon said that the staff recommendation did not state the method by which the developer would acquire the right-of-way. He said this acquisition could be by the Town dedication, land swap, etc. Mr. Godschalk said it appeared to him that it was in the community benefit to orient the road around the Fire Station in the proposed manner and that the Town should consider dedication of the right-of-way.

Council Member Pasquini commented that he felt if the Town owned the property and the developer needed it for his project, then the developer should acquire it from the Town at the fair market price. He asked if this was the type of direction the Manager wanted from the Council with regard to that aspect of the proposed resolution. Manager Taylor said the staff recommendation for the developer to acquire the right-of-way meant to negotiate for money, land, underground power lines, or other things the Town could not require of the developer.

Council Member Pasquini asked if the power line would be buried along the frontage of the Fire Station. Mr. Waldon said the Development Ordinance did not allow for the Town to require that the three-phase line be placed underground, therefore the staff was not recommending that this take place.

Council Member Pasquini asked if the suitability for recreation space meant the land set aside to meet this requirement had to be considered dry and flat, and if so, did the proposed development meet this criteria. Mr. Waldon said the Development Ordinance did require that the recreation space be dry and flat, and that the proposal did not meet this requirement. He said that as such, it would require that the Council waive the suitability requirement. Mr. Waldon stated that part of the reason for the staff recommendation on this issue was because the area was a natural area for extension of greenway trails and that the trade-off was desirable.

Council Member Pasquini said he was in favor of having all the power lines underground even if it meant Duke Power doing it, or the Town, or further negotiations with the developer. Manager Taylor stated that the reason the staff had not recommended this was that the Ordinance did not allow for it. He said he recommended that the Council not give away the land so that they could use it as a bargaining tool.

Council Member Werner said he was also concerned about the power lines. He said other developments would occur along this stretch. Mr. Werner suggested that the Development Ordinance needed to be changed to allow the requirement of all power lines being placed underground.

Council Member Smith commented that if Duke Power wanted the three-phase line then they should pay to have it installed underground.



Tom Worth, an attorney representing the applicant, said they had been pursuing alternatives with the power line placement, even the possibility of locating the power line away from the road. He said Duke Power had indicated that they would not pay to have the lines placed underground. He said his client would prefer the Planning Board recommendation which included the dedication, not acquisition, of the right-of-way. He said he felt the Town had defaulted in its responsibilities in improving the right-of-way when it developed the Fire Station. He said he said he thought there was an affirmative obligation on the part of the Town according to its own Development Ordinance to improve that stretch of road and it did not do so. Mr. Worth said the applicant also requested that on the final plat a notation be added stating that the proposed street stub-outs other than Weaver Dairy Road should be closed if adjacent land was developed other than R-1 or R-2 single family to protect against an incompatible development.

Bob Murchison, speaking as a resident of Northwood, spoke against the proposal saying he was adamantly opposed to having the three-phase power line above ground both for aesthetics and safety concerns. He commented that he could not believe that it would be more expensive to erect overhead power lines and have to repair them each time there was a bad storm, than to place the power line underground. He suggested letting Duke Power pay for the installation of the power lines or let the potential homeowners for the subdivision pay for the installation. He said if he were a potential homebuyer he would rather pay for the lines being installed underground than to have them above ground blocking the views and creating hazards.

Larry Benninger, speaking as a resident of Northwood, said he was not opposed to the development but would prefer not to see the Weaver Dairy Road extension pass so close to the homes already developed.

COUNCIL MEMBER PASQUINI MOVED, SECONDED BY COUNCIL MEMBER WERNER TO AMEND THE MOTION SO THAT STIPULATION #3 STATE THAT "...THE THREE-PHASE ELECTRIC LINE PROPOSED ALONG WEAVER DAIRY ROAD BE PLACED UNDERGROUND ALONG THE SOUTH SIDE OF WEAVER DAIRY ROAD..."

Council Member Smith expressed concern that the exact location of the line had not been established and as such he felt the Council should delay action on this item until the location of the three-phase line had been determined.

Council Member Preston asked if the Council had the legal standing to require the electric line be placed underground? Attorney Karpinos replied that the ordinance did not authorize the stipulation. Mayor Wallace commented that the ordinance did not exclude it but was silent on the matter.

Attorney Karpinos said as the Manager's memorandum stated, the Development Ordinance did not allow the Town to require the

three-phase line to be place underground. He said Section 6.10 of the Ordinance said that all utility lines other than lines used only to transmit electricity between generating stations or substations, and three-phase electric power distribution lines shall be place underground. Mr. Karpinos stated that the ordinance said that all other utility lines shall be placed underground and did not authorize the Council to require a three-phase line underground.

Mayor Wallace commented that he still did not believe it prohibited the Council making it a condition of approval.

Council Member Godschalk asked if it were a possibility to keep the three-phase line out of this particular location along the proposed parkway. He asked if it were a feasible alternative.

Attorney Karpinos responded that as to whether or not the Ordinance was silent on this issue, the Ordinance did not allow the line to be placed underground. Mr. Karpinos stated that the question then became whether or not it was reasonable to require it to be placed underground under the subdivision standards in Chapel Hill. He said with regard to whether or not the Council could require that the line be placed in another location, he said that it would be a matter relating to the Utilities Commission's and Duke Power Company's obligations and the restrictions that are placed on Duke Power by the Utilities Commission.

COUNCIL MEMBERS PASQUINI AND WERNER AGREED TO REMOVE THEIR AMENDMENT FROM THE FLOOR.

COUNCIL MEMBER WERNER MOVED, SECONDED BY COUNCIL MEMBER PASQUINI TO AMEND STIPULATION #3 TO STATE THAT "... THE ELECTRIC LINE PROPOSED ALONG WEAVER DAIRY ROAD BE PLACED UNDERGROUND..."

Council Member Smith commented that Duke Power had already stated that it intended to use a three-phase line to serve the subdivision. He encouraged the Council to delay action on this item until the type and location of the power lines had been settled. He said he would like to make a motion to that effect.

COUNCIL MEMBERS WERNER AND PASQUINI AGREED TO REMOVE THEIR AMENDMENT FROM THE FLOOR.

COUNCIL MEMBER SMITH MOVED, SECONDED BY COUNCIL MEMBER THORPE FOR A SUBSTITUTE MOTION TO DEFER ACTION UNTIL SUCH TIME AS THE MATTER OF THE POWER LINE SERVING THE PROJECT IS DETERMINED AND REFER TO THE MANAGER AND ATTORNEY.

Council Member Godschalk said he was uneasy with delaying the project, which he said he thought had been very responsive to what the developer could do to address all of the Council's other concerns. He said the proposal as a result had turned out to be a very fine site plan and that he would vote against deferral. Mr. Godschalk said he believed the Council could place any

further negotiations in the Manager's hands so that he could work out the answers to the other Town concerns.

Council Member Smith said he did not believe the Manager would have any negotiating tools if the Council voted to approve the project at this point.

THE SUBSTITUTE MOTION CARRIED, (6-3) WITH COUNCIL MEMBERS GODS-CHALK, HOWES, AND PRESTON VOTING AGAINST.

THE MOTION TO DEFER CARRIED, (7-2), WITH COUNCIL MEMBERS GODS-CHALK AND HOWES VOTING AGAINST.

Annexation - Jessee Property

COUNCIL MEMBER PRESTON MOVED, SECONDED BY COUNCIL MEMBER GODS-CHALK TO ADOPT ORDINANCE 87-2-25/O-1. THE MOTION PASSED UNANIMOUSLY, (9-0).

The ordinance, as adopted, reads as follows:

AN ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF CHAPEL HILL, NORTH CAROLINA (87-2-25/O-1)

WHEREAS, the Council has been petitioned under G.S. 160A-31, as amended, to annex the area described herein; and

WHEREAS, the Town Clerk has certified the sufficiency of said petition and a public hearing on the question of this annexation was held at the Chapel Hill Municipal Building, 306 North Columbia Street, Chapel Hill, N.C. 27514, at 7:30 p.m. on the 8th day of December, 1986, after due notice by publication on the 28th day of November and the 7th day of December 1986; and

WHEREAS, the Council does hereby find as a fact that said petition meets the requirements of G.S. 160A-31, as amended;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Town of Chapel Hill, North Carolina:

SECTION I

By virtue of the authority granted by G.S. 160A-31, as amended, the following described property is hereby annexed and made part of the Town of Chapel Hill.

The areas to be annexed are described as follows:

Tract I:

BEGINNING at an iron stake in the center of Weaver Dairy Road at the northwest corner of J.M. Tillman Property, and running thence with his line South 4° 40' West 1750 feet to an iron stake in McClamroch's line; thence with the line North 86° West 950 feet

to a stake and pointers; thence North  $4^{\circ} 50'$  East 1885 feet to a point in the center of said road; thence along and with the center of said Weaver Dairy Road South  $50^{\circ} 20'$  East 300 feet to an iron stake; thence continuing with the center of said road North  $87^{\circ} 15'$  East 643 feet to the BEGINNING, and containing 35.10 acres, more or less, as shown on plat and survey of property of Southgate Jones heirs, dated August 1950, by Ralph Weaver, Registered Surveyor.

This property is the same property conveyed to Grantor by Kermit H. Hunter (single) on 28 May 1952 and recorded in Deed Book 140, page 564, Orange County Registry.

Tract II:

BEGINNING at a large hickory North 86 West 1638 feet from an iron stake in McClamroch's line, (said stake also being South  $4^{\circ} 40'$  West 1750 feet from an iron stake in the center of Weaver Dairy Road at the northwest corner of J. M. Tillman's property), and running thence from said large hickory North  $4^{\circ} 40'$  East 2335 feet to a rock; thence South  $86^{\circ}$  East 125 feet to another iron; thence from said other iron North  $33^{\circ}$  East 80 feet to an iron stake in the center of Weaver Dairy Road; thence along and with the center of said Weaver Dairy Road South  $23^{\circ}$  East 222 feet to an iron in the center of said road; thence along and with the center of said road South  $34^{\circ}$  East 150 to an iron; thence along and with the center of Weaver Dairy Road  $48^{\circ}$  East 368 feet to an iron in the center of said road; thence along and with the western line of land willed to Thomas Decatur Jones, III, South  $4^{\circ} 50'$  West 1885 feet to a stake in McClamroch's line; thence North  $86^{\circ}$  West 688 feet to the large hickory, the point and place of BEGINNING, and containing 35.10 acres, more or less, as shown on plat of property of Southgate Jones heirs date 28 August 1950, by J. Ralph Weaver, Registered Surveyor.

This property is the same property conveyed to Grantor by Kermit Hunter and wife, Josephine Hunter, on 3 September 1953 and recorded in Deed Book 148, Page 79, Orange County Registry.

SAVING AND EXCEPTING from the above tracts the following deed from Grantor to the Town of Chapel Hill on 21 December 1978 and recorded in Book 300, Page 274, Orange County Registry:

BEING a small lot or parcel of land, containing Two Thousand Five Hundred (2,500) square feet, and being a portion of 70.2 acres of land owned by the Grantor, which lot or parcel is situated on the boundary between the Grantor's property and a certain tract or parcel of land owned by the Town of Chapel Hill, consisting of 49.54 acres, more or less, and known as Cedar Falls Park, and situated a short distance south of Weaver Dairy Road (State Road 1733) and more particularly described as follows: The BEGINNING point of this lot is established by measuring a distance from a point in the southern right-of-way line of Weaver Dairy Road, located on the existing Baitty property line, and measuring from

said point South 29° 37' West a distance of 36.19 feet to the point and place of BEGINNING, running thence South 01° 06' 05" West 193.35 feet to an iron pin in the line of the property of the Town of Chapel Hill; running thence North 01° 06' 05" East 12.93 feet to a concrete monument; running thence South 88° 23' East with the property line of the Town of Chapel Hill, a distance of 193.35 feet to an iron pin, the same being the point and place of BEGINNING.

#### SECTION II

Upon adoption of this ordinance, the above described territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Chapel Hill and shall be entitled to the same privileges and benefits as other parts of the Town of Chapel Hill. Said territory shall be subject to municipal taxes according to G.S. 160A-58.10.

#### SECTION III

The Manager of the Town of Chapel Hill shall cause to be recorded in the offices of the Registers of Deed of Orange County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section I hereof, together with a duly certified copy of this ordinance.

This ordinance shall be effective upon adoption.

This the 25th day of February, 1987.

#### Zoning of Annexed Area - Jessee Property

COUNCIL MEMBER HOWES MOVED, SECONDED BY COUNCIL MEMBER GODSCHALK TO ADOPT ORDINANCE 87-2-25/O-2. THE MOTION PASSED UNANIMOUSLY, (9-0).

The ordinance, as adopted, reads as follows:

ORDINANCE ZONING NEWLY-ANNEXED LAND (87-2-25/O-2)

WHEREAS the Council of the Town of Chapel Hill has annexed property described as follows:

10.4 acres on Weaver Dairy Road, identified as that portion, Chapel Hill Township Tax Map Number 25, Lot 14, north of the Chapel Hill Zoning District Line;

and

WHEREAS the Council has considered appropriate zoning designations for this property in the context of surrounding land uses

and zoning, and in the context of Chapel Hill's Comprehensive Plan;

NOW THEREFORE BE IT ORDAINED by the Council of the Town of Chapel Hill that the Residential-1 zoning category be assigned to the above-mentioned property.

BE IT FURTHER ORDAINED that the Chapel Hill Zoning Atlas be amended accordingly.

This the 25th day of February, 1987.

#### Chesley Subdivision

COUNCIL MEMBER SMITH MOVED, SECONDED BY COUNCIL MEMBER PRESTON TO ADOPT RESOLUTION 87-2-25/R-2B.

Roger Waldon, Planning Director, said the proposal was an application for preliminary plat approval subdividing a 71 acre tract of land into 80 lots. He said the three key issues were access and circulation, stormwater management and zoning. Mr. Waldon commented that with regard to access and circulation, there were two plans for consideration (A & B). He said plan A proposed a connection from Weaver Dairy Road to Honeysuckle Road; plan B did not. He said there were advantages to each of the plans. He commented that the advantages of plan A were that it represented a better, overall road network; was consistent with past plans; would provide better, more efficient delivery of services, and would help relieve traffic congestion on Kenmore and Sedgefield. Mr. Waldon said the most significant advantage of plan B was that it better protected the Resource Conservation District. He also said that there would be fewer vehicles using the intersection of Honeysuckle Road and Red Bud without the connection, and that the staff believed the recreation area worked better with plan B.

Mr. Waldon stated that because of the lay of the land (steep slopes) there was concern about stormwater management. He said the staff felt the applicant had adequately addressed the storm water run-off issues. He stated that in applying the Town's Hydros Stormwater Management computer model, the staff believed that not only was stormwater run-off being adequately addressed on the site but that flooding in some areas below the site would actually be improved by the detention basins being proposed on-site.

Mr. Waldon said the third issue was zoning and that most of the site was zoned R-2. He said the subdivision was being proposed to meet R-1 standards. He commented that the one advantage to having the most of the site zoned R-2 was that there was more recreation area required of a subdivision in an R-2 zone. He pointed out that there was an additional recommendation from the Parks and Recreation Commission from their meeting of February 3

when they reviewed the subdivision for a second time at which they recommended that the Town acquire 10 acres of the site in the northwest corner as an addition to Cedar Falls Park.

Council Member Andresen asked Mr. Waldon to indicate on the map which were Class B and Class C streets in the proposals because she felt with the steep slopes in the site it might be better to have all the streets as Class C. Mr. Waldon pointed out the streets on the map and commented that most of them were Class B. Ms. Andresen also asked if plan B required a turning lane on Honeysuckle. Mr. Waldon said no. Council Member Andresen then asked Mr. Taylor why he had not agreed with the Parks and Recreation Commission's recommendation that 10 acres of the site be acquired. Manager Taylor responded that the current plan called for the applicant to dedicate approximately 2 acres of that land to the Town, plus additional land that was needed to make sure a nature trail was on Town property where it had previously been inadvertently placed on the applicant's property. He said the staff felt this recreation space was sufficient.

Council Member Preston commented that in resolution R-2b stipulation #3 called for a 30-foot public access between certain lots. She said she could not find this indicated on the preliminary plat. Mr. Waldon replied that stipulation #3 in R-2b was incorrect and that the staff would place the correct locations in the stipulation. Ms. Preston asked if stipulation #5, calling for a Class D buffer along the frontage was correct. Mr. Waldon replied yes.

Council Member Smith said he had received a letter from Dr. Smythe indicating concern about the stormwater run-off from the site as it would affect certain properties downstream. He said there was some questions as to whether or not the stormwater plan proposed was adequate to protect other properties downstream. Town Engineer George Small responded that Mr. Smythe's letter suggested reconstructing the culvert outfall and using an energy dissipator. He said using an energy dissipator was a viable alternative, but that a variance would probably be necessary to construct the dissipator. He also said there would be a question of who would own and maintain the dissipator. Mr. Smith said he was concerned that the homeowners would have serious problems with drainage, similar to what occurred in Colony Woods. He wondered if eliminating some of the lots would reduce the chance of problems occurring. Mr. Small said that the project was proposing to put in a detention basin which would take off the velocity problems and peak discharge flushing through the system. He said this would mean that the peak flooding problems would be lessened, not increased.

Council Member Werner commented that it was a nice proposal but that he was also concerned about off-site run-off problems. He asked if the Town's Hydros Model had been calibrated and how confident the staff felt about using it on this site. Mr. Small said the model was calibrated with NCDOT gauges, but that the

Town now had its own gauge, and that he was very confident that the model was sufficient to predict and indicate stormwater run-off from this site. Mr. Werner asked if the model had been used on the area downstream from the site. Mr. Small replied no. Mr. Werner then asked if the volume of run-off would increase with the development of the proposed subdivision and if the staff could predict what would occur downstream as a result. Mr. Small said the volume of run-off would increase, but that the flow of water would decrease. He said the affect on the downstream property should be the same if not better because the detention basins would capture the extra volume and meter it out over a longer period of time.

Alan Rimer, speaking as Planning Board Chair, said the Board recommended adoption of plan B. He said the current Development Ordinance did not require the use of detention basins in subdivision plat development. He said the developer was proposing to use detention basins that would mitigate the peak flow of stormwater from the site. He commented that the question of drainage was a policy issue that needed to be addressed Town-wide.

Sally Jessee, speaking as the applicant, said she was proposing a subdivision that had both the staff's and Planning Board's recommendation. She said at its current zoning, the site would allow for 270 lots, and if the entire site were rezoned to R-1, 210 lots would be allowed on the site. Ms. Jessee pointed out that she was only proposing an 80-lot subdivision with the average lot size for the entire site as three-quarters of an acre. She said she was proposing open space consistent with the higher density, R-2 zoning, and would be dedicating a recreation area to the Town in the northwest corner of the site to enable expansion of Cedar Falls Park and to ensure that a nature trail which had been inadvertantly placed on her property, remained part of the Town. She also said she was proposing a 6.5 acre greenway on the site.

Nancy Splitstone, representing Kimley-Horn and Associates, gave a presentation on the traffic impact of the proposed Chesley Subdivision. She said the amount of traffic generated from the subdivision was estimated to be 800 one-way trips in an average day, with the peak hour traffic flow of 50 vehicles entering the development and 30 vehicles exiting. She said they anticipated 80% of the traffic from the development to use Weaver Dairy Road to enter and exit the development.

Bruce Ballentine, representing Ballentine and Associates and as the consulting engineer for the proposed subdivision, said in response to requests from three adjacent property owners to the site, his firm had prepared a detailed stormwater management report for the development and pointed out that such a report was not generally done prior to preliminary plat approval. He said the purpose of the report was to evaluate the overall effect the proposed development would have on adjacent properties with respect to stormwater run-off. Mr. Ballentine said his firm had



used the Hydros Model developed specifically for the Town. He stated they first evaluated the existing conditions and then the conditions after development. The analysis showed that the net affect of the development as proposed would significantly decrease peak flows and velocities at the downstream property line. He said the proposal included the use of stormwater detention basins as a means of ensuring that the peak stormwater run-off was in fact less than prior to development. Mr. Ballentine pointed out that under the Town's current Development Ordinance, subdivisions were not required to use stormwater detention, and that even Special Use Permits only required that the development limit stormwater peak release for the 10-year storm to pre-development conditions. He said the proposed Chesley Subdivision far exceeded this requirement by significantly reducing stormwater peaks for the 2 through the 100-year storms.

Council Member Werner asked if the volume of stormwater run-off was increased? Mr. Ballentine said the increase in run-off varied from a 14% increase for a two-year storm to 3% additional run-off for a 100-year storm. He said this amounted to a total of 30,000 cubic feet. Mr. Ballentine said the difference was that the peak was reduced which would help flooding and the velocity was reduced which helped erosion, and the duration was extended from five minutes to a half-hour.

Council Member Andresen asked if Mr. Ballentine felt the suggestion of the use of an energy dissipator would be helpful for the three property owners downstream who were concerned about additional run-off. Mr. Ballentine replied yes and that it appeared that at one time there had been an energy dissipator under Honeysuckle Road in the Town culvert, but after twenty years without maintenance, it had broken down. He said it needed to be repaired whether or not the proposed development were built. Ms. Andresen asked Mr. Ballentine if he felt the improvements to the energy dissipator should be done by the Town. Mr. Ballentine replied yes.

Council Member Godschalk asked in terms of analysis of the drainage and planning for the proposal, if Mr. Ballentine had knowledge of any other subdivision in the Chapel Hill area that had proceeded to this level of detail and responsivity in trying to deal with these environmental issues. Mr. Ballentine replied no, that this was the first time analysis of this depth had been done at this stage of a development, but that the developer had felt it was necessary to help understand the drainage complexities of the site.

Ms. Page Schaefer, speaking as a resident of Honeysuckle Road, spoke in support of plan B without the connection to Honeysuckle Road. She also said if the Town could obtain the 10-acres in the northern section of the site to extend Cedar Falls Park it would greatly benefit the Town.

Irene Briggaman, speaking as a resident of Honeysuckle Road, expressed concern about the impact of the proposed development on her neighborhood. She said there was a letter from her in the Council's packet which addressed her concerns over the traffic problems at the intersection of Red Bud Road and Honeysuckle Road. She said any extension of Red Bud Road at the intersection would only exacerbate the problem. Ms. Briggaman suggested the Town purchase the strip of land at the southern end of the site behind Honeysuckle Road as park and open space thereby eliminating any possible extension of Red Bud Road.

Stan Mandel, speaking as a resident of Lake Shore Lane, spoke against the opening up of the Red Bud Road and Honeysuckle Road intersection. He commented that several accidents had already occurred at that intersection, including one that was almost fatal. He asked that the Council take his and other residents' concerns into consideration.

Council Member Werner asked if the Town had any plans for the intersection of Red Bud and Honeysuckle Road. Mr. Taylor said the Town did not have any plans for the intersection other than the normal plans for a subdivision intersection. He agreed that there were problems with speed on that section of the road, but the volume of cars was not that great, from a traffic engineering standpoint to require changes in the intersection. Mr. Werner asked if the Town should place stop signs at the intersection. Mr. Taylor responded that after the subdivision was developed the Town could look at the possibility of making the intersection a 4-way stop.

Council Member Smith said he had questions as a result of the letter sent to the Council from the consultant hired by three property owners who were concerned about stormwater run-off from the proposed Chesley Subdivision. He said the consultant offered several suggestions, one of which was to reconstruct the culvert outfall. Mr. Smith said this should be done prior to development of the subdivision. He asked the Manager if the Town was proposing to do this. Mr. Smith said the consultant also suggested relocating and stabilizing the channel and having covenants built into the property deeds requiring the property owners and/or the Town to maintain the stormwater control measures. He commented that he did not want to approve the subdivision without having these suggestions answered.

Manager Taylor responded that with regard to reconstructing the culvert outfall, he thought that meant reconstruction and maintenance of the energy dissipator. He said he thought the Town would be willing to do this. Mr. Taylor said with regard to relocating and stabilizing the channel, he understood the developer had agreed to do this. He asked for clarification from the developer's engineer. Mr. Ballentine responded that they planned to do so on that portion of the channel on the applicant's property. Mr. Taylor said he did not think the Town should agree to do the improvements on the existing private property owners' land. He

said as to the financial responsibility for stormwater management, it would be a major policy decision of the Council as to what financial responsibility the Town wished to enter into for the storm drainage system of the community. Mr. Taylor stated that up until this point the basic policy was that the Town did not assume the financial responsibility for every drainage system in the Town.

Mayor Wallace stated that after this agenda item the Council would consider only one more item (Old Chapel Hill Cemetery) that evening. He said the Council would recess the meeting and reconvene on Friday, February 27th at 6:00 p.m. to finish out the remainder of the agenda.

Robert Smythe, an environmental research consultant representing three property owners adjacent to the proposed Chesley Subdivision, expressed concern about the stormwater run-off from the proposed subdivision. He said the applicant's engineer predicted that the difference between a ten-year storm run-off now and after development occurred on the site would be less than 3" in elevation. He said he was not against using the Hydros Model, but that there were limitations to the model, not least of which was that this was the first application of the model to a subdivision. He commented that there was no evidence that the model could be relied upon for the accuracy of its estimations. He said the model took into consideration the run-off from additional land from outside of the Chesley tract that drains into it, but that the model and the detention plan based upon it did not protect against additional increases in stormwater run-off which might result if more land within the drainage basin were developed. Dr. Smythe said as a result, the three downstream property owners asked the developer to provide three things: 1) increase stormwater detention; 2) put in a new channel, to the east, from culvert to culvert; and 3) construct and maintain a proper energy dissipator. He said so far the developer had refused to agree to these things as worded in his proposal. He said the developer had suggested something less than what he was asking with regard to channel realignment and indicated that the Town ought to construct and maintain the energy dissipator. He asked the Council to withhold approval of the subdivision until these requests were answered.

Council Member Thorpe asked if the property owners houses were flooded in times of heavy storms. Dr. Smythe replied that the houses themselves did not become flooded but rather the yards did. He said the existing stream channel was eroding and flooding into the back yards and occasionally in the front yards. Mr. Thorpe commented that the residents needed help whether or not the project was approved. Dr. Smythe replied yes.

Council Member Werner said it appeared that the primary conflict with the engineer's calculations was that the error bounds were unknown. Dr. Smythe replied yes that there were not error bounds. Mr. Werner asked if Dr. Smythe were disagreeing with the

engineer's calculations that the peak would be lower. Dr. Smythe said yes, he was disagreeing with that calculation, and because of this and because there was no way to estimate the error bounds, he was requesting that additional stormwater management measures be taken.

Council Member Godschalk asked Dr. Smythe to comment on his background, if he were a civil engineer or hydrologic engineer, etc. Dr. Smythe replied that he had a doctorate in ecology and had worked for fifteen years on environmental management issues. He said he was not trying to tell the engineers how to design stormwater detention measures but rather pointing out the need for caution in acceptance of the model's predicted results without further input.

Council Member Godschalk asked for clarification that two of the three houses adjacent to the proposed subdivision were built in the Resource Conservation District and would not be allowed to be built under the current ordinance. Dr. Smythe agreed, but said that they had to deal with the situation as it was.

Joan Shapiro, speaking as one of the property owners adjacent to the southern end of the proposed subdivision, urged the Council to defer action on this subdivision until the stormwater management issues had been settled. She said the Town had an obligation to do so because of its actions in allowing the development of one of the neighboring properties which moved the drainage channel out of its natural boundary, and in the placement of Honeysuckle Road so that it acted as a detention dam.

David Boaz, speaking as another of the property owners adjacent to the southern end of the proposed subdivision, said he was concerned not only with the stormwater detention measures but also whether or not the developer had any right to install a sanitary sewer line within the drainage utility easement between his property and the Shapiro property. He introduced a letter from his attorney on this matter.

Lightning Brown, speaking on behalf of the Last Woods Group, said they believed the staff needed instruction and guidance from the Council on the issues involved in having roads cross the Resource Conservation District (RCD), specifically with regard to Section 6.9.2 of the Development Ordinance and Section 3.c of the Design Manual. He said they were happy to see the staff had not recommended having a road cross the RCD in the proposed subdivision.

Robert Epting, speaking as the general counsel for the Orange Water and Sewer Authority (OWASA), said OWASA did not wish to quarrel with the neighbors (Boaz and Shapiro's) but that there was a difference in opinion with regard to the sanitary sewer easement and its validity. He said that when a plat was recorded, showing an easement on the property for highway or water and sewer installation, etc., the law stated that an easement was

created by recordation of the plat. He said the recordation of the plat represented an offer of an easement, which in some circumstances, could be withdrawn if not accepted by a Town or County. Mr. Epting pointed out that in Orange County, OWASA controlled the water and sewer lines, etc. instead of the Town or County, and therefore, the Town or County would not be involved in accepting platted easements. He stated that at the next OWASA meeting the Board planned to adopt a resolution evidencing its intent to accept the offer of dedication of the easement in question. He said he did not feel this action was needed because of the Town's requirement that the easement be shown on the plat, as a condition of the previous subdivision, indicated that the Town approved and accepted the easement.

Council Member Andresen said since the hour was late, she wondered if the Council should continue discussion of this item until the Friday meeting as set earlier.

It was the general consensus of the Council to continue the discussion of this matter at the continuance of this regular meeting scheduled for Friday, February 27.

COUNCIL MEMBER HOWES MOVED, SECONDED BY COUNCIL MEMBER WERNER TO TABLE THE ITEM UNTIL FRIDAY, FEBRUARY 27 AT 6:00 P.M. THE MOTION TO TABLE PASSED UNANIMOUSLY, (9-0).

#### Old Chapel Hill Cemetery

Eunice Brock, speaking a Co-Chair of the Old Chapel Hill Cemetery Task Force, said she and Co-Chair Rebecca Clark, wished to bring the Council up-to-date on the status of their work. She said they had recently met with Vice-Chancellor Farris Womack who, as a result of the meeting, agreed to recommend to Chancellor Fordham that legal procedures be taken to establish ownership of the Cemetery to the Town since the University did not wish to have maintenance or operational responsibility for the cemetery. Ms. Brock commented that Vice-Chancellor Womack asked that the Town furnish the University a plan for improvements indicating sensitivity to historic preservation features. She said the Task Force would like to invite proposals from area landscape architects to develop a master plan for these improvements. She stated that the Task Force had three recommendations: 1) that the Council authorize the Manager to use \$15,000 in CIP funds to hire a landscape architect to develop a Master Plan for the Old Chapel Hill Cemetery; 2) that the Council continue funding for improvements to the cemeteries; and 3) that the Task Force be allowed to continue working on this project throughout the summer.

Council Member Preston thanked Ms. Brock and Clark, as well as the remainder of the Task Force, for their efforts in this matter.

Council Member Andresen asked about the Master Plan, what the Task Force envisioned, and why they set a figure of \$15,000 for

the cost. She said she thought this was expensive for a Master Plan. Ms. Brock said the \$15,000 figure was a rough estimate of the costs. She said they planned for improvements to the site to include the grave markers, lighting, rock walls, trees and turf, etc. Bruce Heflin, Public Works Director, said the Master Plan as discussed would do several things from providing a general blueprint of how things would be improved to spelling out specific procedures and details on how those improvements could be maintained, to fostering recommendations on the replacement of walls, grave markers, etc. He said the price was based on preliminary discussions with landscape architects in the region.

Mayor Wallace thanked Ms. Brock and Clark for their time and efforts in this matter.

COUNCIL MEMBER GODSCHALK MOVED, SECONDED BY COUNCIL MEMBER SMITH TO ADOPT RESOLUTION 87-2-25/R-5. THE MOTION PASSED UNANIMOUSLY, (9-0).

The resolution, as adopted, reads as follows:

A RESOLUTION CONCURRING WITH THE RECOMMENDATIONS OF THE OLD CHAPEL HILL CEMETERY TASK FORCE (87-2-25/R-5)

WHEREAS, the Old Chapel Hill Cemetery Task Force presented a status report to the Council on February 25; and

WHEREAS, the Task Force recommended hiring a landscape architect to prepare a plan for capital improvements to the cemetery and for ongoing maintenance; and

WHEREAS, the Council included \$25,000 in the 1986-87 Capital Improvements budget which is enough to both commission the preparation of the plan and to begin its implementation;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council concurs with the Task Force's recommendations to hire a landscape architect for about \$15,000; and

BE IT FURTHER RESOLVED that the issues between the Town and University of ownership shall be addressed before implementation of the plan is begun.

This the 25th day of February, 1987.

COUNCIL MEMBER HOWES MOVED, SECONDED BY COUNCIL MEMBER SMITH TO RECESS THE MEETING UNTIL FRIDAY, FEBRUARY 27, 1987 AT 6:00 P.M. THE MOTION PASSED UNANIMOUSLY, (9-0).

The meeting recessed at 12:20 a.m.