

MINUTES OF A CONTINUATION OF THE FEBRUARY 25, 1987 REGULAR  
MEETING OF THE MAYOR AND COUNCIL, TOWN OF CHAPEL HILL,  
MUNICIPAL BUILDING, MONDAY, MARCH 9, 1987, 5:00 P.M.

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

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

Council Member David Godschalk was absent, excused. Also present were Town Manager David R. Taylor, Assistant Town Managers Sonna Loewenthal and Ron Secrist, and Town Attorney Ralph Karpinos.

The continuation of the February 25th meeting was originally scheduled for Friday, February 27, but due to inclement weather that meeting date was cancelled and rescheduled to this evening.

Manager Taylor said that the ordinances and resolutions in the agenda items scheduled for the February 25th meeting and carried over to March 9 would be modified by the staff to show the correct dates of adoption in the Minutes of the meeting.

Chesley Subdivision

COUNCIL MEMBER HOWES MOVED, SECONDED BY COUNCIL MEMBER PRESTON TO REMOVE THIS ITEM FROM THE TABLE. THE MOTION PASSED UNANIMOUSLY, (8-0).

RESOLUTION 87-2-25/R-2B WAS ON THE FLOOR FOR DISCUSSION.

Manager Taylor stated that since the meeting of February 25, the staff, applicant and Dr. Smythe had been working on the proposal to find some compromises and solutions. He said the staff had prepared a memorandum noting the suggested changes in the stipulations in the resolution before the Council for adoption. He said along with the agreement that the Town would install the energy dissipator, the changes were as follows:

Renumber Stipulations 25 and 26 to 26 and 27.

Stipulation #3: That a 30' public access, pedestrian and non-motorized vehicle easement be provided to the recreation areas between the following lots on Plan B: 26-27, 40-41, 58-59, and 68-69.

Stipulation #6: That tree protection fences be installed at the grading limits prior to construction activity along Weaver Dairy Road and the first 250 feet of Redbud Road.

Stipulation #25: a) That the principal detention basin (detention basin #3) be completed prior to issuance of the 20th Certificate of Occupancy in the subdivision; and

b) That a stable open channel below detention basin #3 be established, continuing downgrade in or to the east of the present channel, without sharp turns, and connecting with or replacing the existing channel southward along the present Boaz-Shapiro property line; the entire channel from the detention basin to the Honeysuckle Road culvert is to meet engineering design and construction standards acceptable to the Orange County Erosion Control Officer; any part of the current channel not incorporated into this new channel is to be filled, or regraded or otherwise stabilized before issuance of the 20th Certificate of Occupancy in the subdivision.

Manager Taylor said as he understood it, the new stipulation #25 was a compromise agreed upon by the developer and the neighboring property owners.

Planning Director, Roger Waldon, pointed out the pedestrian easements on the map and indicated to the Council that the streets in the proposed subdivision were primarily required to be Class B streets.

Council Member Andresen suggested that since the site was so steep it would be better to develop the subdivision with Class C streets so as to minimize the amount of cut and fill. She recommended that this be made part of the resolution. Ms. Andresen commented that the developer had suggested the possibility of planting a row of trees at the entrance to the development and she thought this would be a desirable feature to make the development more attractive.

COUNCIL MEMBER WERNER MOVED, SECONDED BY COUNCIL PRESTON TO AMEND THE MOTION TO INCORPORATE THE CHANGES INDICATED BY MANAGER TAYLOR AND THAT A NEW STIPULATION BE ADDED TO STATE THAT ALL INTERIOR STREETS SHALL BE CONSTRUCTED TO CLASS C STANDARDS, EXCEPT THAT DESIGN MANUAL VERTICAL CURVATURES (K VALUES) SHALL BE REDUCED TO MINIMIZE CLEARING AND GRADING. LANDSCAPING AND EMBOSSED CONCRETE SHALL BE PERMITTED AT ENTRANCEWAYS TO THE DEVELOPMENT.

Council Member Pasquini said he was not sure the Council should be choosing different classes of streets and asked for clarification of the stipulation that embossed concrete be permitted at the entranceways to the development. Town Engineer, George Small, responded that street classifications were established to give a band of safe stopping distances, with a Class B street having K value that would be amenable with intersections. He said Class C streets did not allow intersecting streets. Mr.

Small agreed that by flattening out the curves on the site there would be more cut and fill.

Council Member Howes said that the point made about using Class C standards for the streets given the nature of the site was a valid one. He said that if the stipulation were included it ought to include a finding that the Council was departing from normal policy on this issue because it appeared appropriate in this case.

Mr. Small said the embossed concrete pavement was one that was usually dyed and imprinted with a design. He said this type of concrete was not in the design manual primarily because it was not used prevalently in this area when the Design Manual was written, and because one of the major problems associated with its use was that when it was placed perpendicular to the roadway the asphalt had a tendency to cup outward. He said this meant that it was a continual maintenance problem, but that it was used in several parts of the country.

Council Member Andresen said she had no problem with eliminating the embossed concrete from the stipulation, but she felt the Class C streets were important. She agreed with Council Member Howes that a disclaimer should be added to the stipulation pointing out that this was a departure from the Council's normal procedures because of the steep nature of the topography.

COUNCIL MEMBERS WERNER AND PRESTON AGREED TO AMEND THEIR MOTION WITH REGARD TO THE NEW STIPULATION TO READ THAT "... ALL INTERIOR STREETS SHALL BE CONSTRUCTED TO CLASS C STANDARDS, EXCEPT THAT DESIGN MANUAL VERTICAL CURVATURES (K VALUES) SHALL BE REDUCED TO MINIMIZE CLEARING AND GRADING. DUE TO THE SPECIAL NATURE OF THE TERRAIN THE COUNCIL FINDS THAT THIS EXCEPTION TO THE PROVISIONS OF THE DESIGN MANUAL TO BE APPROPRIATE.

Council Member Smith asked for clarification of the reason why the stormwater detention basin #3 was not required to be built until the 20th lot was developed. Manager Taylor responded that the detention basins #1 and #2 were adequate for the site unless phases 2 & 3 were built. He said if the applicant wanted to develop phases 2 & 3, then the stormwater detention basin #3 had to be completed prior to any new lots being developed.

Council Member Werner asked if the three residents who had expressed concern about the stormwater run-off had agreed with the stipulations as worded in the resolution. Dr. Smythe, representing the owners, responded that what the Manager had introduced to the Council was not exactly what he thought had been agreed to between the property owners, Town, and developer in that it did not use the same language as his March 3 memorandum. He said it did not address all their concerns, especially the question of what would happen if other properties develop.

Council Member Werner asked the Manager if he thought the stipulations included in Resolution-2b would take care of the citizens' concerns. Manager Taylor replied yes.

Council Member Howes said that Council Member Godschalk had asked to be excused from this meeting, as well as the regularly scheduled meeting of March 9. Mr. Howes said it would be prudent for the Council, for voting purposes, to formally excuse Dr. Godschalk from the proceedings if that was the wish of the Council. It was the general consensus of the Council to excuse Dr. Godschalk from the two meetings.

THE AMENDMENT PASSED UNANIMOUSLY, (8-0).

THE MOTION, AS AMENDED, PASSED UNANIMOUSLY, (8-0).

The resolution, as adopted, reads as follows:

A RESOLUTION APPROVING AN APPLICATION FOR PRELIMINARY PLAT "B" APPROVAL FOR CHESLEY SUBDIVISION (25-14) (87-2-25/R-2b)

BE IT RESOLVED by the Council of the Town of Chapel Hill that the Chesley Subdivision proposed by Marin Properties, identified as Chapel Hill Township Tax Map 25, Lot 14, if developed according to the Preliminary Plat B dated January 23, 1987 and the conditions listed below, would comply with the provisions of the Development Ordinance.

1. That the following improvements be made to Weaver Dairy Road:
  - a) That one-half of a 90-foot right-of-way be dedicated along the site's frontage;
  - b) That one-half of a 65-foot cross-section be built;
  - c) A bus pull-off and shelter be constructed at a location to be determined by the Transportation Department; and
  - d) That all plans be approved by the Town and the N. C. Department of Transportation prior to issuance of a Zoning Compliance Permit.
2. That the recreation area be dedicated and deeded to the Town of Chapel Hill for parks and recreation purposes only.
3. That a 30-foot public access, pedestrian and non-motorized vehicle easement be provided to the recreation areas between the following lots on Plan B: 26-27, 40-41, 58-59, and 68-69.
4. That the public water system and sanitary sewer system be approved as recommended by OWASA prior to issuance of the Zoning Compliance Permit.

5. That a Class D buffer be provided along the property's frontage with Weaver Dairy Road; and that any new plantings necessary to meet Town buffer requirements be installed prior to issuance of any Certificates of Occupancy.
6. That tree protection fences be installed at the grading limits prior to construction activity along Weaver Dairy Road and the first 250 feet of Redbud Road.
7. That an erosion control permit be obtained from the County Erosion Control Officer prior to issuance of a Zoning Compliance Permit.
8. That any agreement necessary to ensure responsibility for and maintenance of buffer easements be provided and approved by the Town Manager prior to approval of the final plat.
9. That the Town Manager approve a work zone traffic plan for work along/near Weaver Dairy Road prior to issuance of a Zoning Compliance Permit.
10. That any restrictive covenants applicable to lots adjacent to the Resource Conservation District not require greater setbacks than those required by the Development Ordinance.
11. That utility service laterals from utility lines located in streets be stubbed out to the front property line of each served lot before pavement of the streets, and that sanitary sewer laterals be capped off above ground.
12. That final street plans, grading plan, utility/lighting plan, stormwater management plan (with hydrologic calculations), and buffer planting plan be approved by the Town Manager before issuance of a Zoning Compliance Permit or application for final plat approval, and that such plans conform to plans approved as part of this application and demonstrate compliance with all applicable conditions and the design standards for the Development Ordinance and the Design Manual.
13. That the final utility/lighting plan be approved by OWASA, Duke Power, Public Service Gas Company of N.C., Southern Bell, and Carolina Cable before issuance of a Zoning Compliance Permit or final plat approval.
14. That no lot be created that would require a Resource Conservation District variance in order to be built upon.
15. That the final plat indicate, on all lots that contain portions of the Resource Conservation District, the buildable area(s) on those plats.

16. That the final plat indicate those lots which contain severe slopes and that a note be placed on the final plat indicating that those lots will be served by curbside garbage pickup only.
17. That the final plat provide a note indicating that "Development is restricted within the Resource Conservation District."
18. That all variances necessary for development within the Resource Conservation District be obtained before application for final plat or final plat approval.
19. That sight triangle easements be provided on the final plat.
20. That the developer shall be responsible for placement and maintenance of temporary regulatory traffic signs upon issuance of any Certificate of Occupancy, until such time that the street system(s) are accepted for maintenance by the Town.
21. That the names of the development, its streets, and building numbers be approved by the Town Manager prior to issuance of a Zoning Compliance Permit.
22. That the development may be phased out in accord with a phasing plan approved by the Town Manager.
23. That the final plat provide a note indicating that "sanitary sewer service may have to be complimented by an in-house pump" for those lots so affected.
24. That Certificates of Occupancy be issued only after all required public improvements are completed; if a phasing plan is approved by the Town Manager, no Certificates of Occupancy shall be issued for a phase until all required public improvements for that phase are complete.
25. a) That the principal detention basin (detention basin #3) be completed prior to issuance of the 20th Certificate of Occupancy in the subdivision; and  
b) That a stable open channel below detention basin #3 be established, continuing downgrade in or to the east of the present channel, without sharp turns, and connecting with or replacing the existing channel southward along the present Boaz-Shapiro property line; the entire channel from the detention basin to the Honeysuckle Road culvert is to meet engineering design and construction standards acceptable to the Orange County Erosion Control Officer; any part of the current channel not incorporated into this new channel is to be filled, or regraded or otherwise stabilized before issuance of the 20th Certificate of Occupancy in the subdivision.

26. All interior streets shall be constructed to class C standards, except that design manual vertical curvatures (k values) shall be reduced to minimize clearing and grading. Due to the special nature of the terrain the Council finds that this exception to the provisions of the design manual to be appropriate.
27. That the continued validity and effectiveness of this approval is expressly conditioned on the continued compliance with the plans and conditions listed above.
28. That if any of the above conditions is held invalid, this approval shall be void.

BE IT FURTHER RESOLVED that the Council hereby approves the application for preliminary plat approval for Chesley Subdivision in accord with plans and conditions listed above.

This the 9th day of March, 1987.

Council Member Werner asked that the Manager report back to the Council with regard to what the Town would be doing to install an energy dissipator at the Honeysuckle Road culvert.

COUNCIL MEMBER ANDRESEN MOVED, SECONDED BY COUNCIL MEMBER WERNER TO REFER TO THE MANAGER FOR PROPOSALS FOR AN ENERGY DISSIPATOR. THE MOTION PASSED UNANIMOUSLY, (8-0).

Old Lystra Road Subdivision

Manager Taylor asked that the Council discuss a procedural matter relating to this item prior to discussion of the subdivision application.

Ralph Karpinos, Town Attorney, said the applicant had raised a procedural question requesting that witnesses be sworn in this case and that he have the right to cross examine any person who testified. Attorney Karpinos stated that the Development Ordinance provided that all interested persons would be given the opportunity to speak and ask questions, however the Council had the right to place reasonable and fair limitations on comments, arguments and questions in order to avoid undue delay. Mr. Karpinos commented that the applicant also requested that the Council base its decision solely on the written and oral evidence presented at this meeting. He said the Development Ordinance provided that the Council base its action on its findings as to conformity with applicable regulations and that the Council may impose reasonable conditions on an approval to ensure compliance with applicable regulations. He also said that the Development Ordinance required the applicant to bear the burden of establishing that he was entitled to approval of the application. However, Mr. Karpinos said as a result of these procedural questions and because the Development Ordinance provided that the Council's decision on an application for preliminary plat approval may be

appealed to the Superior Court, he recommended that the Council adopt a resolution to provide for testimony in this case to be under oath and to refer the issue of sworn testimony in subdivision review cases to the Council's committee on the Procedures Manual.

COUNCIL MEMBER HOWES MOVED, SECONDED BY COUNCIL MEMBER PRESTON TO ADOPT RESOLUTION 87-2-25/R-3. THE MOTION PASSED UNANIMOUSLY, (8-0).

The resolution, as adopted, reads as follows:

A RESOLUTION APPROVING THE SWEARING OF WITNESSES IN OLD LYSTRA CASE (87-2-25/R-3)

BE IT RESOLVED that the Council of the Town of Chapel Hill approves and authorizes the swearing of witnesses in the Old Lystra Subdivision case;

BE IT FURTHER RESOLVED that the Council refers to the Council's committee studying its Procedures Manual the issue of sworn hearings for subdivisions for consideration of a possible change to provide for sworn testimony where an applicant submits a written request prior to Council's review.

This the 9th day of March, 1987.

COUNCIL MEMBER HOWES MOVED, SECONDED BY COUNCIL MEMBER PASQUINI TO ADOPT RESOLUTION 87-2-25/R-4 TO DENY THE APPLICATION.

Citizens wishing to speak to the Council about this proposal were sworn in by the Town Clerk.

Manager Taylor requested that the following documents be entered into the record of this meeting:

- Agenda #7a, February 25, 1987, Old Lystra Road - Application for Preliminary Plat Approval (Procedural Issues)
- Agenda #7b, February 25, 1987, Old Lystra Road - Application for Preliminary Plat Approval
- All attachments to Agenda items #7a&b
- The Town's adopted Thoroughfare Plan and Map
- All elements of the Town's Comprehensive Plan

He asked Planning Director, Roger Waldon, to give the staff report.



Roger Waldon, Planning Director, said that what was before the Council was an application to divide a 20.16-acre parcel into 11 residential building lots. He said the property was located on Old Lystra Road, 2500 feet south of its intersection with Mt. Carmel Church Road. Mr. Waldon stated that this item had been originally brought before the Council, placed on the agenda for January 26th when consideration was delayed at the request of the applicant. He said in the Council's memorandum was a Planning Staff Report that provided a detailed analysis of the application. He said rather than read the report, he would go over the key issues raised in the staff report and in subsequent discussions and correspondence with the Planning Board and Transportation Board. The key issues he wanted to focus upon, were coordination of the subdivision proposal with Laurel Hill Parkway, improvements to Old Lystra Road, and extension of public water and sewer service. In the staff's review of the application, he said they had found that the application, as submitted, was not approvable. The reasons focus on three key issues. The first dealt with Laurel Hill Parkway. Mr. Waldon said the adopted Chapel Hill - Carrboro Thoroughfare Plan called for extension of Laurel Hill Parkway through this property and the applicant's proposed subdivision failed to take into account this future street. He said the staff believed this would substantially disrupt the Thoroughfare Plan. He referred to a map of the preliminary plat before the Council. He pointed out the location of Old Lystra Road, the site, and recreation area. The map also indicated the proposed Laurel Hill Parkway alignment and where it would traverse the property. He said those present could see that the staff concern was about the way in which the subdivision proposal and the lot layout failed to take into consideration how the Parkway might ultimately be aligned and in fact proposed several residential dwelling lots in that alignment.

Mr. Waldon pointed out another map showing a larger area surrounding the site which included 15-501 Bypass, and upon which he pointed out the traffic corridors and the alignment of the Parkway (shown in red) over a larger area as it appeared in the adopted Thoroughfare Plan. He said that there were a couple of pieces of the Parkway which were already either in place on the ground or had been taken into account in the approval of other plans that had come before the Council. (Part of Parker Road and in another subdivision on the other side of 15-501 Parkway improvements were included in its condition for approval.) He said this indicated that the Parkway was in fact being tied down from two directions and that the proposal before the Council that evening was in the middle, between the two segments. Mr. Waldon said the proposed Parkway had been taken into account both by Chapel Hill and Carrboro in their review of applications in the path of this alignment. He said in summary, that the staff believed that the applicant's proposal did not meet the requirement of having streets which coordinated with existing and planned streets as authorized by State Statute and the Town's Development Ordinance.

Mr. Waldon said the second reason the staff felt the application was not approvable dealt with improvements to Old Lystra Road. He said on page three of the memorandum, the staff pointed out that Old Lystra Road was currently 18' of pavement with a 60' right-of-way, and was designated as a minor arterial in the Town's street system. He said Town standards for a minor arterial was for a 47' roadway width and an 80' right-of-way. He stated that the proposed subdivision as submitted did not provide for these improvements to Old Lystra Road along the site's frontage. Therefore, the staff believed the applicant's plan as submitted did not provide for the construction of community service facilities in accordance with Town policies and standards as set out in the Town's Comprehensive Plan and in the Development Ordinance.

He said the third main point that he wanted to highlight was the issue of extension of water and sewer service. Mr. Waldon stated that what was being proposed was a subdivision of lots that would be served, not with public water and sewer, but with private wells and individual waste water disposal systems. He pointed out that the proposed subdivision did lie within the Town's proposed urban services area. He indicated a map of the Land Use Plan as adopted by the Town last July, and stated that one of the main concepts of the Plan was an urban services area within which a full range of public services would be expected to be provided and within which annexation was also expected to occur at the appropriate time. Outside of the urban services area the expectation was that water and sewer services would not be provided and urban services would not be extended. He said the urban services line to the south, basically followed a ridge line and that the property in question was within that urban services area. He reiterated that both the Chapel Hill Land Use Plan and Joint Planning Area Land Use Plan adopted by both Chapel Hill and Orange County have as one of their foundations the concept of an urban services area. Mr. Waldon said the staff believed that the applicant's plan as submitted was not consistent with the orderly growth and development of the Town as outlined in the Comprehensive Plan, and was not proposing to have the lots developed with public water and sewer. He commented that the plan as submitted also did not provide for the construction of community service facilities in accordance with Municipal policies and standards as set out in both the Development Ordinance and Comprehensive Plan.

Mr. Waldon said in summary that the staff believed the plan as submitted to the Town and reviewed by the staff was not approvable for the reasons he had previously indicated.

Michael Brough, attorney representing the applicant, asked if he might be allowed to ask questions of Mr. Waldon. Mayor Wallace asked the Town Attorney if this would be appropriate. Town Attorney Karpinos responded that it would be appropriate to allow Mr. Brough to ask his questions.

Mr. Brough said he would be brief. He asked if the application would comply with all of the requirements of the ordinance except for the three areas noted (improvements to Old Lystra Road; provision for Laurel Hill Parkway; and extension of water and sewer).

Mr. Waldon responded that the three deficiencies seen by the staff were rather major and would require substantial redesign of the plan before the application could be approvable. He said there may or may not be additional deficiencies in specific provisions of the application. He said the three mentioned were very major and the ones the staff had focused on.

Mr. Brough asked if it was the Town's usual policy that if there were problems with the application the Town would specify what they were. He asked how an applicant would know what requirements an application did not comply with unless the staff told the applicant.

Mr. Waldon replied that what the staff had done was identify three major areas in which the application did not comply with the Town's standards and ordinance. He said upon review by the staff they believe that before the application could progress further it would need substantial redesign. Depending upon what the redesign was, there may or may not be new issues which could come up.

Mr. Brough asked if Mr. Waldon knew of any other deficiencies in the plan as submitted. He said he did not mean to be argumentative, but it was just that the applicant would like to know what all the deficiencies were. Mr. Waldon responded that there may or may not be other deficiencies.

Mr. Brough asked for clarification that the recommendation did not include construction of the Laurel Hill Parkway, but rather that the applicant preserve or dedicate the right-of-way. Mr. Waldon said that the staff recommendation said that the application did not take into account and did not meet the requirement of having streets which coordinate with existing and planned streets. Mr. Waldon said therefore that the staff's recommendation was for denial, and that one of the reasons for the recommendation of denial was that this application did not take into account existing and planned streets.

Mr. Brough asked if the application would comply if there were dedication of the area shown where the Parkway was proposed. He asked if this would be sufficient to satisfy the staff's concern for the Laurel Hill Parkway. Mr. Waldon said no, that that was not what was the application before the Town.

Mr. Brough said he understood that this was not the application before the Town, but what he was trying to understand was the staff's concern. He said Mr. Waldon had expressly said there was a problem in the fact that the application had to show the

Parkway to comply. If this were so, what would be necessary to be done to comply with the Parkway requirement; dedicate the road or build the road (dedicate the right-of-way or build the road).

Mr. Waldon repeated that what the staff had reviewed was the current application and that what the staff said in reviewing the application was that it was not approvable. It did not, clearly did not meet the requirement of coordinating with existing and planned streets.

Mr. Brough asked what the applicant would have to do to make it coordinate with existing and planned streets, with respect to the Laurel Hill Parkway. He said he was just trying to understand what was wrong with the application.

Mayor Wallace stated that at this point any further continuation of this discussion might very well be beyond the scope of this particular swearing in and that the Council had before it a set of specific questions. He said he did not believe that any kind of search party at this particular time was in order. Therefore he said he would rule Mr. Brough out of order at that time.

Mr. Brough said he had other questions he would like to ask.

Mayor Wallace stated that Mr. Brough was out of order.

Mr. Brough asked that he be allowed to ask two other questions. Town Attorney Karpinos responded that if Mr. Brough had another topic, it would not be out of order for him to ask his questions. Mayor Wallace pointed out that Mr. Brough had not indicated that the questions dealt with a different topic.

Mr. Brough said he would like to ask two other different questions. He asked if there would be access to the Batch property directly from the Parkway. He said he was concerned that the Parkway would be built such that the applicant would not have access to it from her property.

Mayor Wallace commented that this question was also beyond the scope of the authority of the Planning Director to attempt to answer in a public meeting related to this issue. Mr. Waldon said that what the staff would normally do, and that the staff had asked that the application be redesigned to show the Parkway, was that the staff would look at that design and what the access requirements were, etc. But, he said that this was not the application before the Town Council.

Mayor Wallace asked Mr. Brough if he had another question.

Mr. Brough asked if it were not true that on the application the Council had just approved, the Chesley subdivision, approximately one half of that subdivision was in an area designated on the Land Use Plan as open space.

Mayor Wallace stated that this question was distinctly beyond the purview of this particular discussion, which he was afraid was attempting to get out of hand. Therefore he asked Mr. Brough to refrain from further questions. He asked Mr. Waldon if he had anything further to say, otherwise he would go back to the Council to discuss the motions and ideas before it. He said if the Council wished to have a public hearing, surely proper motions could be made in the future to bring out all of the relative collateral questions, but as of this moment, what was being done here was simply compromising possibilities that might occur in the event that the Town might have such further proceedings. Therefore, he asked the Council to please proceed with what was before them.

Council Member Smith asked if there were someone else to speak.

Mayor Wallace said yes, that there were two people speaking in favor of the application. He asked them to come forward. He also said Mr. Rimer from the Planning Board and Mr. Small, Town Engineer were also sworn in for testimony.

Jack L. Smyre said he was Site Planning Department Director for the John R. McAdams Company, Inc., located in Chapel Hill, North Carolina.

Mr. Brough asked Mr. Smyre if he had prepared the site plan for this particular project. Mr. Smyre said he prepared and supervised the staff that did prepare the application.

Mr. Brough asked if in his work had Mr. Smyre become familiar with the Chapel Hill Development Ordinance. Mr. Smyre said he had been practicing in the area for close to two years now, and felt he was fairly familiar with the ordinance.

Mr. Brough asked Mr. Smyre if, to the best of his knowledge, the application complied with all of the requirements of the Ordinance with the exceptions, i.e. putting aside the issues of Laurel Hill Parkway and extension of the utilities. Mr. Smyre said it was his understanding that this was the point where the application was following the design review meeting, which the Town staff held. He said there were a number of items which were expressed to him orally at the meeting and in writing following the meeting. He said the engineering firm had responded to a number of minor ones on the plat with a revised plat, and that Mr. Brough had drafted a letter for the owner addressing the three items which had not been addressed by provision of the plat. He said those things were the Thoroughfare Plan issue, Laurel Hill Parkway; the extension of water and sewer to the property; and the dedication of additional right-of-way and the improvements to Old Lystra Road.

Mr. Brough asked Mr. Smyre if the applicant were to extend sewer lines to the property, would the applicant have to cross property she did not own. Mr. Smyre replied that in order for the applicant to run a gravity line to the tract, the applicant would have to cross other properties. He said the line that the property drained to was an outfall currently in place along Morgan Creek and the drainage path was along a drainage basin referred to as Wilson Creek and would have to cross other properties. Mr. Brough asked what other properties would have to be crossed. Mr. Smyre responded that it would depend on the path of the outfall chosen, and the most minimum path, he thought, would be about 7 or 8 parcels other than the applicant's having to be crossed.

Mr. Brough asked that Mr. Smyre's affidavit be placed in the record of the meeting, as well the information presented by the applicant and the staff. Mayor Wallace asked if Mr. Brough was requesting that an exhibit number be placed upon the affidavit. Mr. Brough said he did not think any other material had exhibit numbers, but that this was up to the Council. Mayor Wallace suggested that this be done and directed the Clerk to designate the affidavit as exhibit #2.

Mr. Brough said that the applicant had signed up, but unless the Council had questions of her, he did not think she needed to speak. He said her affidavit was included in the Council's packet. He said the only other matter of his presentation to the Council was his argument to the Council about the matters which had been presented to the Council.

Mayor Wallace asked if Mr. Brough would prefer to hear the other presentations prior to having his closing argument. Mr. Brough said he would prefer to hear what the others had to say, but he also questioned what was in the record of the meeting. He asked for clarification that all the information in the agenda packet, which included various memoranda from him, as well as Dr. Batch's affidavit, etc., was now a matter of record. Mayor Wallace replied that this was correct.

Alan Rimer, representing the Planning Board, said there were two other things he wanted to add to the discussion by Planning Director Roger Waldon. He said in the deliberation of this matter with the Planning Board they voted had 8-0 to deny the application. He said the other issues which were raised were clearly there and the Board had received a recommendation from the Parks and Recreation Commission that indicated that there needed to be certain changes made in the recreation area and that the potential for increasing the recreation area was necessary. He said that this was an issue that was at hand, but that it was not as near of the significance as the others were because adjustments could be made. But, he pointed out that this was clearly something that was of concern. He said access to the Gessinger property was also expressed at the meeting, with some discussion held on the access question. Mr. Rimer said it had been unclear to the Board that that matter had been resolved, either positively or negatively with respect to the Gessingers.

He commented that although subsequent information provided indicated that there had apparently been some resolution of that matter and that the Gessingers were satisfied with the resolution of the issue, that the Planning Board felt it had not been resolved. He stated that from the Planning Board's perspective, based on the information available at that meeting and the personal knowledge of some of the Planning Board members of some of the property, they felt based on experiences in that area that the slopes of the property were fairly steep and that the soils presented some potential for failure of the septic tank systems at some point in the future. He commented that even though that seemed to have been refuted by the applicant, the Planning Board had not been satisfied with this and with some of the testing that had been done, and had felt that the development itself was within the urban services area or should be designated as such. Mr. Rimer said that in itself, on face value, indicated denial. He said these three additional comments would simply go along in a minor nature of other problems in comparison to the other three mentioned.

Mayor Wallace commented that if Mr. Brough opened matters in his final argument that had not been covered by others, he hoped Mr. Brough would not be offended if the Mayor recognized increased rebuttal after he had finished. Mr. Brough replied that he had no objection.

Michael Brough, attorney representing the applicant, said for clarification of the record that he wanted to be sure of the disposition of certain matters. He said he heard the Manager indicate that there were several things being recognized as being introduced before the Council and into the record of the meeting, and he wanted to be sure he understood what those items were - the Comprehensive Plan, the Land Use Plan, and what? He said he wanted to be sure that this information, along with the Gessinger memorandum had been introduced as part of the record.

Attorney Karpinos responded that the Manager had entered into the record of the meeting the Thoroughfare Plan and map; all elements of the Town's Comprehensive Plan; and all of the agenda material.

Mr. Brough asked if the Development Ordinance could be included in the record of the meeting as well. Mayor Wallace asked if the Town's attorney had any objection to this request. Attorney Karpinos replied that he had no objection.

Mr. Brough said he and the applicant had not seen the map with the location of the Laurel Hill Parkway before, and in as much as that map with the proposed Parkway alignment was not part of the other documents, he would like this map also included in the record in some fashion or other. Mayor Wallace said there being no objection the map would be labeled exhibit #3.

Mr. Brough stated that his client was Dr. Deidre Batch. He said her application before the Council was for an 11-lot subdivision, but that the issue it presented went really to the heart of the constant tension that always existed in land use regulations between the private rights and the public need. He said in his remarks and argument to the Council, he wanted to try to accomplish two things: First, explain why he believed the Council had an interpretation to make. He said a comment was made earlier by Mr. Waldon that the application was not approvable in its present form. He said he wanted to argue first of all why he thought it was not merely a matter of looking at a plan and making an automatic determination in this case. He said there was a serious matter of interpretation before the Council. Second, he said he wanted to argue to the Council that the Ordinance should not in fairness and could not in law be interpreted in such a way to deny the application on the bases that had been proposed before the Council.

He said the first point was that the Ordinance did require interpretation. The staff had identified two sections of the Ordinance, 6.5.1 and 7.7.1 which were quoted in the materials as the basis upon which the application should be turned down. He said the essence of these planning documents was that these ordinance provisions refer to planning documents. Therefore, Mr. Brough said in essence what the staff was saying was that it was not the specific terms of the ordinance itself, in terms of substantive requirements, that required denial. He said it appeared that the staff in their opinion, by reference to these planning documents, found that the these proposals reportedly did not comply with what the plans seemed to suggest. He said what he wanted to argue was that the planning documents, appropriately interpreted require, or really apply, what they state was how the Town would like to see development occur. He commented that he thought Mr. Waldon used the term "expected" to occur. Mr. Brough said the planning documents told where the Town wanted the roads to go, where the urban services should be, but he argued that the plans themselves did not answer the extremely important question of to what degree could private property owners be required to bear the cost of implementing those plans. He stated that this was an extremely important issue and the plans did not respond to that issue. He gave as an example that the Land Use Plan narrative on page 8 said that a prominent visual landscape worthy of protection was a pasture off the NC 54 bypass. Mr. Brough said the plan showed this area as open space. He said it seemed to him most clearly that if the owner of that pasture came to the Town and said they wanted to develop that pasture in some way, the Town could not simply say he could not develop the property at all because that area was shown on the Land Use Plan as open space. He said it seemed to him that what occurred earlier this evening with the approval of the Chesley Subdivision demonstrated this point most clearly. He said it was indicated in earlier testimony before the Council that approximately one-half of the area within the subject parcel was shown as open space on the Land Use Plan, and yet the Council had approved the subdivision request. Mr. Brough commented that clearly that development was



not in compliance with the Town's Comprehensive Plan and Land Use Plan if one assumed the Land Use Plan to be a binding document stating something more than what the Town wanted to accomplish. Similarly in this case, Mr. Brough said, the planning documents indicated what the Town would like to see happen. The Town would like to see Laurel Hill Parkway constructed, would like to see utilities extended into the urban services area, and the Town would like to see improvements to Old Lystra Road. He said the applicant did not dispute the very strong need for these improvements to be made eventually. At some point in the future improvements were going to be needed in these areas. He said the point was that Chapel Hill also had the option of implementing the plans. He stated in other words Chapel Hill could implement the plans by bearing the cost itself. He said he thought it was important to note, at least in his judgment, that there had not been any indication of a recommendation, nor was any made to the applicant at any time that anything more than the right-of-way would be required. He said there had been no intimation, no suggestion in the staff report anywhere that construction of the road would be required. Mr. Brough stated that as such, he submitted that the staff had already made a determination that anything more than reservation of the right-of-way would be inappropriate. He said on the other hand, with respect to Old Lystra Road, the staff requested not only, and that they had been most specific in that area, they requested not only the dedication of the right-of-way, but also the construction of the improvements. Logic would have it, according to Mr. Brough, that if one was important or consistent with the planning, you would need both. But, he said, there was nothing, not word one, in that recommendation to suggest that construction of this right-of-way, of this proposed Parkway would be required of the developer. He commented that what the Council had was in fact a question of interpretation. He said the question being, should Dr. Batch be required as a condition of the subdivision approval to bear the full cost of the improvements that the public very much wanted to have. He said the staff had recommended that she should be required to bear these improvements or be denied the opportunity to develop the property. He said the Council's viewpoint on this must be broader than that; it must balance the public need against private property rights and hopefully the interpretation the Council would make would be a fair interpretation and indeed must be an interpretation that was reasonable and squared with Constitutional requirements. He said it was an interpretation the Council would have to make. Mr. Brough said nowhere in the Ordinance, nowhere in the plan, would the Council find the statement that if the developer proposed a subdivision in an area shown as proposed for an expected road, that the developer must give the land to the Town. He said one would not find that statement anywhere in the Town's plans nor in the Ordinance. He said one would look in vain for any kind of a statement that said if a developer wanted to develop in the urban services district they must install water and sewer lines to that area even if the costs were prohibited. He said with regard to that particular topic the Ordinance said just the opposite. Mr. Brough stated that one would not find a statement that said if

the land that the developer proposed to develop bordered a road that the Town wanted to see improved, the subdivider must improve the road even if no lots front on that road. He said the Ordinance contained language directly contrary to that implication. He said if these decisions were to be reached, it was not a matter of this application not being approvable, but rather that the Council would have to make the determination that somehow because those statements were in the plan about what the Town wanted to see, and this developer has not proposed to bear herself the full cost of implementing those plans, that the Council intended to turn the project down on that basis.

Mr. Brough said his second point was that if properly interpreted consistent with State law and Constitutional requirements, the application did comply with the Ordinance. As a preliminary point he offered two observations. He said there had been some question raised only before the Planning Board about the recreation provisions. He said the developer had stipulated and would stipulate in this hearing that if the Council in its wisdom determined that those were appropriate, then it was appropriate to pick up what the Recreation Commission had requested in terms of moving the line back fifty feet farther into the property. He said the developer would comply with this provision. Secondly, he said as indicated by Mr. Rimer, the Gessinger memorandum clearly indicated what the Gessinger's preference was with respect to the road location, but was of some concern to the Planning Board. He said if the Town was persuaded that some alternative location ought to be offered, that the Gessinger's frankly did not want being quite happy with the proposed location, his client was willing to concede to that request. Therefore, he commented that neither of these should be issues before the Council.

Mr. Brough continued saying that with regard to the three matters that were issues, the applicant felt an indisputable fact with regard to the Laurel Hill Parkway was that there was no relationship whatever between the need for the parkway and the proposed development, nor was there any benefit to be derived by this applicant and this property from the construction of the Laurel Hill Parkway. He said with respect to need he pointed to the Town's Thoroughfare Plan. He read an excerpt from the Plan that said the need for the Parkway was to provide an alternative for some traffic which would otherwise use the Bypass, and to help postpone severe congestion problems anticipated for this section of Mt. Carmel Church Road, US 15-501 South and the Bypass. He pointed out that this project was intended before the application came before the Council and the need for this project had nothing whatever to do with the 11-lots proposed. He said there was also no benefit to be derived by this project by the applicant. He asked who would suggest that it would be a benefit to have next to one's house the seven to eight thousand cars that the Transportation plan suggested would use the road. Mr. Brough commented that clearly this project was of no benefit to the developer. He said the intimation from the Town's planning documents, or rather a statement was made that the proposed Parkway was to be like the Blue Ridge Parkway. He pointed out

that the Blue Ridge Parkway was a minimum access parkway, and one could infer that the developer would not have access to the parkway once it was constructed. He said the lack of relationship between the need for the subdivision and any benefit to the subdivision and the need generated by the subdivision for the project and any benefit was important as it related to the Statutory and Constitutional requirements. He said there was a statement in general law with respect to the Statutory authority, that said that the Ordinance may provide for the coordination of streets and highways within proposed subdivisions with existing or planned streets and highways. He said that statement had never been interpreted in this state to authorize a town to require the dedication or reservation of a road going through a project that had nothing to do with that project. He said it was merely being requested of the developer simply because her property happened to lie in its path. He said the cases he had submitted in the memorandum from other states, clearly rejected that interpretation. He also pointed out that a proposed bill (House Bill 776) submitted to the General Assembly by the Town Council in 1983 was in essence an official map. He said what the bill proposed to do was to amend the Town's Charter to authorize the Town, when a development was proposed in an area where the Town had an official transportation plan, to require that before a building permit were issued in an area shown on a proposed right-of-way, that the Town would have up to 60 days to acquire that land by purchase or condemnation. In other words it gave the Town the authority to delay a project for some sixty days. He commented that that legislation was regarded as too controversial and was rejected by the General Assembly and not included in the 1983 Act that was finally adopted. He asked that if the Town did not have this authority, if it were too controversial, if the Town did not have the authority to delay for 60 days, how could the Town possibly have the authority to deny a project altogether if the developer failed to dedicate the property.

Mayor Wallace asked Mr. Brough how much longer he expected to be in his closing arguments. Mr. Brough responded about 10 minutes. Mayor Wallace said that was a considerable amount of time. Mr. Brough replied that he understood this but that the development before this on the agenda had gone on for hours, and that he had tried to save the Council a lot of time. Mayor Wallace said they should not try to compare the two issues. He said that in the last five or ten minutes Mr. Brough had wandered off the subject and suggested that he condense his remarks by trying to keep nearer to it. Mr. Brough said with all due respect to the Mayor and Council that this was an extremely important matter to his client, but if the Council wanted to set a time limit he would live with it. Mayor Wallace said that he thought five minutes should be enough time to sum up and pointed out that the Town Attorney had spoken no more than two minutes so far on this issue, and he did not want to be at the meeting indefinitely. He said the Council was fully aware of the issues involved in this matter, and as much as the Council had voted in matters to which Mr. Brough had repeatedly referred. Mr. Brough said he would try to conclude his remarks in five minutes. Mayor Wallace thanked him and commented that if he felt this was reversible error then by all means do so. Mr. Brough responded that he guessed they would probably find out. Mayor Wallace agreed and urged Mr. Brough to continue.

Mr. Brough said he recalled a statement made by one of the Council Members on one of the matters on the previous agenda where the developer needed some property from the Town and a statement was made that if the Town were to give this to the developer ought not the Town have some compensation for it. He said that it was difficult for him to reconcile that approach, for which he did not disagree, with the concept that if the Town needed property from the developer it could simply take it. He said there was a constitutional provision that said if the Town were to take the property the Town had to pay for it. He said there were cases in North Carolina submitted in the memorandum which showed this, and said that the law was clear in other states as well as North Carolina that only where there was a close relationship between the need for the project and benefit to the project could there be an imposition of this kind of exaction. He said the opinion on this matter was coming not just from him but also in a recent case involving the Town with the Wilco project where the Council had imposed a requirement that the applicant dedicate and widen a street. He said the applicant took this matter to the court and the court was persuaded by the same arguments and same cases Mr. Brough had cited in the memorandum to declare that action unconstitutional. He said he was suggesting to the Council that it ought to suggest to them that his comments were more than the wild opinion of an attorney representing his client. He said it seemed to him that the case before the Council was far more aggrievous than had been in the other circumstances, where at least under those circumstances there had been a commercial project where there was some relationship between the proposed improvement and the street. Mr. Brough said there was none in this case. He commented that he knew the cases could be distinguished on various bases, this being a subdivision ordinance, etc., but he said he felt the same Constitutional principals applied, and that they put the Council on notice that those Constitutional principals apply.

He said with respect to the utilities question, he thought the matter ought to be clear that the Ordinance provided that all development ought to be serviced with a public water supply and a public sanitary sewer system whenever reasonably practical. He said the Ordinance went on to provide that the health department could indicate, prior to getting the Zoning Compliance Permit, not prior to the time that a subdivision application was approved or disapproved, or had jurisdiction to make that determination. He said clearly that if the Ordinance meant anything, clearly it meant that under circumstances like this, where the evidence was that the total cost of extending those lines would be in excess of \$750,000, that under these circumstances the Ordinance could not be interpreted in any other way, but that this was a circumstance where it was not reasonably practical.

He said he would object strenuously to consideration of matters that were before the Planning Board on non-competent evidence. He said there were statements in the Planning Board brought to the Council's attention again this evening that raised questions about the appropriateness of these sites for handling septic tanks. He said the letter that was in the record now before the Council from the health department indicated that these sites were acceptable for sewage treatment. He said there was no

competent evidence in the record to suggest otherwise and the Town's Ordinance required that the health department make that determination.

Mr. Brough said with respect to the Lystra Road improvements, the Town's Ordinance, Section 7.7.4 said that every subdivided lot should front on a street meeting the standards of the Design Manual. He said it was clear from the face of the application that none of the lots before the Council in this subdivision front on Old Lystra Road. He said he had always understood previously that that statement in the Ordinance was the basis for requiring improvement of adjacent streets. He said it was clear that this street did meet the Town's standards. He stated that there was no basis whatever. He said going back to the Wilco case, it seemed to him it was very difficult to ignore the implications of that case. He commented that if the Court found it unconstitutional in one case to require the imposition of these types of conditions in a commercial project, it seemed inconceivable to him that the same result would not be obtained when one had 993 feet of frontage requiring them to widen the road from 18' to 47' and the project had nothing whatever to do with the need for that improvement.

Mr. Brough said in conclusion that the Council had an interpretation to make. He and his client respectfully requested that the Council make an interpretation that was fair and consistent with the constitutional principles. He said he appreciated the Council's attention to this matter and that he was available to answer any questions.

Mayor Wallace asked if any of the Council wished to ask questions of Mr. Brough.

Council Member Howes asked Town Attorney Karpinos if he would like to participate in a similar kind of argument.

Attorney Karpinos replied that he had reviewed and participated in the drafting of the Manager's memorandum and unless there were some specific questions he would no re-present the staff's position. He said that he would, however, like to make two brief points. He said first he asked if he were correct that Mr. Brough would not object if he objected to his reference to matters that were not in the record as well, such as the Chesley subdivision, which had not been introduced into evidence in any discussion. He said that matter was not before the Council. Mr. Karpinos said the second point was that with regard to the reference to the Wilco case he wanted to make the point that the Council had before them no recommendation that included an approval with conditions. He said the Wilco case involved the constitutionality of certain conditions of approval. He stated that rather what the Council had before them was a staff recommendation of denial, and in that regard he said he found this case closer in similarity to the Ghidorzi case than to the Wilco case.

Mayor Wallace said that previously the Council had produced a motion and if the Council would like to remake it and begin abinitio, he said he would entertain that. He said if it were agreeable the Council would start with no motion on the floor and he would entertain a motion from any member of the Council at this time.

COUNCIL MEMBER PASQUINI MOVED, SECONDED BY COUNCIL MEMBER ANDRESEN TO ADOPT RESOLUTION 87-2-25/R-4.

Council Member Werner said Mr. Brough had clearly despite his referring to the Council as a distinguished group of scholars raised a number of legal issues. He said he did not feel competent to deal with this matter. He said he would feel more comfortable referring many of these questions and arguments back to the Town's attorney to come back with a response in some form.

COUNCIL MEMBERS PASQUINI AND ANDRESEN AGREED TO WITHDRAW THEIR MOTION.

Attorney Karpinos said he had listened very closely to Mr. Brough and had not heard any new arguments that he had not presented in his memoranda both to the Council and him. He said if the Council would like a response in the form of an attorney/client memorandum with respect to the law, he said he would be happy to provide that. He said that if the Council wished to discuss this matter with respect to the potential litigation in a public session or executive session he said he would be happy to do that as well. He said he was prepared to comment on that now or if the Council preferred it in writing he could do that later. Mr. Karpinos said as he had previously stated he had participated in the discussions and preparation of the Manager's memorandum and recommendation which was before the Council.

Mayor Wallace said he personally felt the matter had gone on for a significant time and he felt the facts were quite clear, however he said it would not be out of order, and in view of the fact that so many others had spoken at such length it might be just as well for the attorney to issue an attorney/client statement. Therefore, he said, he would have no objection to having this matter referred to the Manager and Attorney for same and to come back to the Council at a later time. He asked for a motion to that effect in order to terminate this discussion for the moment.

Council Member Thorpe said that sometimes one just had to bite the bullet and he thought the Council ought to go ahead and take the recommendation to deny and move forward, and see what happened. He said the Council often referred items back to the Manager and they had a tendency to come back again and again. He said he would prefer to go ahead and vote on the item this evening and let the chips fall where they may.

Council Member Howes said his initial sympathies were with returning it when Mr. Brough started making his constitutional arguments, feeling that if the Council were going to deal with this issue on this basis, the Council ought to give the Town's attorney another shot at it and ought to have the benefit of his further reflections. He said if indeed Mr. Karpinos was confident in the material that he had earlier submitted to the Council and felt that nothing further had been presented which undermined his earlier arguments, he would be inclined to follow Mr. Thorpe's recommendation. He said it was apparent that if the Council followed the Manager's recommendation it seemed to him that in the end the courts would have to decide it and the sooner they got on with it, the better.

Mayor Wallace said he would entertain a motion.

COUNCIL MEMBER PASQUINI MOVED, SECONDED BY COUNCIL MEMBER ANDRESEN TO ADOPT RESOLUTION 87-2-25/R-4. THE MOTION PASSED UNANIMOUSLY, (8-0).

The resolution, as adopted, reads as follows:

A RESOLUTION DENYING AN APPLICATION FOR PRELIMINARY PLAT APPROVAL FOR OLD LYSTRA ROAD SUBDIVISION (87-2-25/R-4)

BE IT RESOLVED that the Council of the Town of Chapel Hill finds that the subdivision proposed by Dr. Dierdre V. Batch, on property identified as Chapel Hill Township Tax Map 122, Block B, Lot 2, if developed according to the plat dated September 1986 would not comply with all applicable regulations of the Town. The Council finds that the development, as proposed:

1. Is not consistent with the orderly growth and development of the Town as outlined in the Comprehensive Plan of the Town and, in particular the Land Use Plan, as required by Section 6.5.1 of the Development Ordinance.
2. Does not have streets which coordinate with existing and planned streets and highways as required by Sections 7.7.1 and 6.5.1 of the Development Ordinance.
3. Does not create conditions essential to the present and future public health, safety and general welfare as required by the Development Ordinance.
4. Does not provide for the construction of Community service facilities in accordance with municipal policies and standards as set out in the Comprehensive Plan and as required by Section 7.7.1 of the Development Ordinance.

BE IT FURTHER RESOLVED that the Council hereby denies the application for preliminary plat approval for Old Lystra Subdivision.

This the 9th day of March, 1987.

Homeownership Demonstration Project

Council Members Pasquini, Werner, and Preston expressed confusion over the information provided in the agenda packet. Mr. Pasquini also stated that Council Member Godschalk had asked several questions especially with regard to the disposition of the house at the last meeting that this item was before the Council and since Dr. Godschalk was not present, he felt the issue needed to be continued. He said he thought most of the questions but those posed by Mr. Godschalk could be answered that evening.

Manager Taylor said he would like to spend some time trying to solve the problems that evening. He said he had spoken with Mr. Godschalk who had called to tell him that on this matter he supported it except for giving preference to Town employees. Mr. Taylor said he felt that the staff had addressed the issues in the memorandum.

Upon further discussion it became apparent that the Council's memorandum was missing some of the pertinent information.

COUNCIL MEMBER PASQUINI MOVED, SECONDED BY COUNCIL MEMBER WERNER TO REFER TO THE MANAGER. THE MOTION PASSED UNANIMOUSLY, (8-0).

Land Use Plan Implementation - Potential Rezoning

Council Member Andresen said that she had received requests from certain property owners that their property be considered for potential rezoning. She said these properties were off Estes Drive and known as the Norem property.

Council Member Smith expressed concern about potential rezonings and the possibility such rezonings would create numerous non-conformities. He said he would prefer to see the zonings changed to reflect what was currently in place on the ground.

Council Member Werner asked that when this item came back to the Council that information be provided on the number of acres in area #10.

Council Member Thorpe asked that the staff look at the possibility of rezoning property that he owned on Legion Road.

The general consensus of the Council was to accept the report.

Chapel Hill Housing Authority - Payments in lieu of taxes

COUNCIL MEMBER WERNER MOVED, SECONDED BY COUNCIL MEMBER PRESTON TO ADOPT RESOLUTION 87-2-25/R-7.

Council Member Smith asked who inspected the work done at the Housing Authority. Manager Taylor replied that if the work required a building permit, the Town's Inspections' Department made inspections, otherwise the Housing Authority inspected its



own work. Council Member Smith expressed concern about the materials used in the housing units.

THE MOTION PASSED UNANIMOUSLY, (8-0).

The resolution, as adopted, reads as follows:

A RESOLUTION WAIVING THE 1985 AND 1986 PAYMENTS IN LIEU OF TAXES BY THE CHAPEL HILL HOUSING AUTHORITY (87-2-25/R-7)

WHEREAS, the Chapel Hill Housing Authority and the Town of Chapel Hill entered into a Cooperation Agreement on November 26, 1962; and

WHEREAS, as part of the Cooperation Agreement, the Town agreed not to "levy or impose any real or personal property taxes upon the local Authority;" and

WHEREAS, the Housing Authority agreed to make annual "Payments in Lieu of Taxes" as payment for public services and facilities received; and

WHEREAS, the Town, upon receipt of such payments, are required by the Agreement to distribute proportional shares to other eligible taxing bodies; and

WHEREAS, the failure of the Housing Authority to make any Payment in Lieu of Taxes does not result in any interest, penalties or liens; and

WHEREAS, the Housing Authority has requested the Town to allow the use of Payment in Lieu of Taxes to make major repairs to Housing Authority units, since federal funding for such improvements and major repairs has been significantly reduced; and

WHEREAS, the Council believes it an important community need that public housing units be maintained in a safe and sanitary manner and avoiding such repairs will lead to further deterioration which would become more costly to repair and impact negatively upon residents of public housing units; and

WHEREAS, the Council adopted Resolution 86-12-8/R-11 on December 8, 1986, authorizing a program of assistance to the Housing Authority to make necessary repairs and improve conditions in Housing Authority units;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council hereby formally waives the 1985 and 1986 obligation of the Chapel Hill Housing Authority to pay the Payment in Lieu of Taxes upon the execution of the Interlocal Cooperation Agreement to make major repairs and improvements to Housing Authority properties as approved by resolution of the Council on December 8, 1986.

This the 9th day of March, 1987.

Noise Ordinance - Update

Council Member Preston said that she had asked that this item be placed on the agenda. She stated that she would like the Manager to bring a report to the Council in about a year on the effectiveness of the newly adopted noise ordinance.

Council Member Andresen agreed that this would be a good idea and suggested the report also include information on the kinds of complaints and reasons why the Town had not issued amplified music permits.

COUNCIL MEMBER PRESTON MOVED, SECONDED BY COUNCIL MEMBER PASQUINI TO ADOPT RESOLUTION 87-2-25/R-8. THE MOTION PASSED UNANIMOUSLY, (8-0).

The resolution, as adopted, reads as follows:

A RESOLUTION REGARDING A REPORT ON THE AMENDED NOISE CONTROL ORDINANCE (87-2-25/R-8)

BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council requests the Manager to submit a report to the Council in February 1988 regarding:

- . whether the Police Department received more, less or about the same number of complaints as in 1986.
- . areas of Town where complaints most frequent.
- . enforcement procedures and extent of cooperation and compliance with the ordinance.
- . any other information which the Manager believes is appropriate.
- . any recommendations which the Manager deems appropriate, particularly concerning whether the new noise limits are satisfactory.

This the 9th day of March, 1987.

Sidewalk Improvements

COUNCIL MEMBER SMITH MOVED, SECONDED BY COUNCIL MEMBER PASQUINI TO ADOPT RESOLUTION 87-2-25/R-9. THE MOTION PASSED UNANIMOUSLY, (8-0).

The resolution, as adotped, reads as follows:

A RESOLUTION DESIGNATING THE USE OF SIDEWALK IMPROVEMENT FUNDS, AND AUTHORIZING THE TOWN MANAGER TO PROCEED WITH PROJECT DEVELOPMENT AND CONSTRUCTION (87-2-25/R-9)

WHEREAS, the projects listed in the Town's 1982 Sidewalk Plan have been reviewed; and

WHEREAS, other sidewalk projects requested subsequent to the development of the 1982 Sidewalk Plan have been reviewed; and

WHEREAS, five sidewalk projects have been designated as "top priorities" to provide for the greatest public good, as follows:

- . Willow Drive from Spruce Street to University Mall.
- . Franklin Street from Franklin Woods Apartments to Elliott Road.
- . South Columbia Street and Cameron Avenue in the vicinity of Fraternity Court.
- . Umstead Drive from Airport Road to Village Drive.
- . Elliott Road from Curtis Road to Franklin Street.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill, that the Manager is authorized to use designated sidewalk improvement funds for the design and construction of the sidewalk projects listed above, and in the order listed, to the extent made possible by said funds.

This the 9th day of March, 1987.

Auditors - Request for Proposals

COUNCIL MEMBER PRESTON MOVED, SECONDED BY COUNCIL MEMBER ANDRESEN TO ADOPT RESOLUTION 87-2-25/R-10.

Council Member Thorpe commented that he felt the resolution should say the "... Council hereby authorizes the Mayor to issue a Request for Proposals..."

THE MOTION PASSED UNANIMOUSLY, (8-0).

The resolution, as adotped, reads as follows:

A RESOLUTION AUTHORIZING THE MANAGER TO REQUEST PROPOSALS FOR THE SELECTION OF AN INDEPENDENT AUDITOR (87-2-25/R-10)

BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council hereby authorizes the Town Manager to issue a Request for Proposals from the Big Eight National Certified Public Accounting

firms for conducting the Town's annual independent audit for a period of three years beginning with the fiscal year ending June 30, 1987, but on the basis of annual negotiation after the completion of the first year contract.

This the 9th day of March, 1987.

On-Street Parking on Sundays

COUNCIL MEMBER HOWES MOVED, SECONDED BY COUNCIL MEMBER SMITH TO ADOPT ORDINANCE 87-2-25/O-3.

Council Member Andresen asked how many signs would used. Manager Taylor replied sixteen.

Council Member Pasquini said since there would be no parking after 2:00 p.m. he would prefer the area designated as no parking anytime and thus eliminate the need of having no parking signs.

Council Member Thorpe commented that the staff needed to be sure that Dr. Greene received a copy of the memorandum since he had initiated this discussion. Manager Taylor reponded that the staff had already sent Dr. Greene the information.

Council Member Pasquini asked if the Town were reacting to the complaints of just one citizen on this matter. Manager Taylor replied that his office had received numerous complaints.

Council Member Andresen said the Town should enact the ordinance and let the public make comments as to its effectiveness, etc.

Council Member Preston asked if parking on the sidewalks during church hours would still be permitted. Manager Taylor replied this was not provided for by ordinance.

THE MOTION CARRIED, (7-1), WITH COUNCIL MEMBER PASQUINI VOTING AGAINST.

The ordinance, as adopted, reads as follows:

AN ORDINANCE DESIGNATING PARKING ON PARTICULAR STREETS AT PARTICULAR TIMES (87-2-25/O-3)

BE IT ORDAINED by the Council of the Town of Chapel Hill that Chapter 21 of the Town Code of Ordinances is hereby amended as follows:

SECTION I

ADD the following subsection:

Sec. 21-27.4 Parking allowed during certain hours on Sundays

On Sundays between the hours of 8 a.m. and 2:00 p.m., parking will be permitted in the far right-hand lane on the sides of streets indicated below. At all other times, parking in these areas is prohibited.

| <u>Street</u> | <u>Side</u> | <u>From</u>   | <u>To</u>   |
|---------------|-------------|---|---|
| S. Columbia   | West        | A point 45 feet south of the intersection with Franklin Street  | A point 462 feet south of the intersection with Franklin Street |
| S. Columbia   | West        | A point 495 feet south of the intersection with Franklin Street | A point 571 feet south of the intersection with Franklin Street |
| E. Franklin   | North       | A point 25 feet east of the intersection with Henderson Street  | A point 208 feet east of the intersection with Henderson Street |
| E. Franklin   | North       | A point 25 feet east of the intersection with Robertson Lane    | A point 393 feet east of the intersection with Robertson Lane   |
| E. Franklin   | North       | A point 25 feet east of the intersection with Pickard Lane      | A point 413 feet east of the intersection with Pickard Lane     |
| E. Franklin   | North       | A point 48 feet east of the intersection with Hillsborough St.  | A point 486 feet east of the intersection with Hillsborough St. |
| E. Franklin   | North       | A point 506 feet east of the intersection with Hillsborough St. | A point 824 feet east of the intersection with Hillsborough St. |
| E. Franklin   | South       | A point 400 feet west of the intersection with Boundary Street  | A point 654 feet west of the intersection with Boundary Street  |
| E. Franklin   | South       | A point 25 feet west of the intersection with Battle Lane       | A point 139 feet west of the intersection with Battle Lane      |
| E. Franklin   | South       | A point 35 feet west of the intersection with Raleigh Street    | A point 586 feet west of the intersection with Raleigh Street   |

## SECTION II

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

## SECTION III

This ordinance shall become effective March 15, 1987.

This the 9th day of March, 1987.

Consent Agenda

Manager Taylor asked that item #16g, request for pawnshop license be deleted from the agenda.

Council Member Howes asked that item #16h, rescheduling of meetings, be removed from the consent agenda.

Council Member Thorpe asked that item #16a, Sage Road No Parking, be removed from the consent agenda.

COUNCIL MEMBER HOWES MOVED, SECONDED BY COUNCIL MEMBER ANDRESEN TO ADOPT RESOLUTION 87-2-25/R-11 MINUS ITEMS A, G, AND H. THE MOTION PASSED UNANIMOUSLY, (8-0).

The resolutions and ordinances, as adopted, read as follow:

A RESOLUTION APPROVING VARIOUS ORDINANCES AND RESOLUTIONS (87-2-25/R-11)

BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council hereby approves the resolutions and ordinances as submitted by the Town Manager in regard to:

- b. Velma Road Stop Regulation (0-5).
- c. McCauley Street Parking (0-6).
- d. Traffic Regulations for various new streets (0-7).
- e. Transfer of Merritt Mill right-of-way (R-12).
- f. Apple Chill Street Closing and Parking (0-8, R-13).

This the 9th day of March, 1987.

AN ORDINANCE AMENDING CHAPTER 21 OF THE CODE OF ORDINANCES (87-2-25/O-5)

SECTION I

That Section 21-13 of the Town Code of Ordinances, "Right-of-way and stop regulations", is amended by inserting the following in appropriate alphabetical order:

Through Street

Stop Street

Michaux Road

Velma Road

SECTION II

This ordinance shall be effective beginning Wednesday, March 18, 1987.

SECTION III

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 9th day of March, 1987.

AN ORDINANCE AMENDING CHAPTER 21 OF THE CODE OF ORDINANCES (87-2-25/O-6)

BE IT ORDAINED by the Council of the Town of Chapel Hill

SECTION I

That Section 21-27 of the Town Code of Ordinances "No parking as to particular streets," is amended by inserting the following in appropriate alphabetical order:

Street

Side

From

To

McCauley Street

South

The centerline of Pittsboro St.

A point 300 ft. west of the centerline of Pittsboro St.

SECTION II

This ordinance shall be effective beginning Wednesday, March 18, 1987.

SECTION III

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 9th day of March, 1987.

A

AN ORDINANCE AMENDING CHAPTER 21 OF THE CODE OF ORDINANCES (87-2-25/O-7)

BE IT ORDAINED by the Council of the Town of Chapel Hill:

Section I

That Section 21-13 of the Town Code of Ordinances, "Right-of-Way and Stop Regulations."

Through Streets

North Boundary Street  
North Street  
Westbury Drive

Stop Streets

Campbell Lane  
North Boundary Street  
Braswell Place

Section II

That Section 21-11 (B) (2) of the Town Code of Ordinances, "Twenty-five (25) miles per hour on the following streets:" is amended by inserting the following therein in appropriate alphabetical order:

N. Boundary Street  
Braswell Place  
Campbell Lane

Section III

These ordinances shall be effective on March 18, 1987.

Section IV

All Ordinances and portions of Ordinances in conflict herewith are hereby repealed.

This the 9th day of March, 1987.

A RESOLUTION AUTHORIZING THE TRANSFER OF TOWN PROPERTY FOR THE MERRITT MILL ROAD IMPROVEMENT PROJECT (87-2-25/R-12)

BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council hereby authorizes the Mayor to sign deeds transferring the following Town-owned fee-simple right-of-way and/or construction easements to the N. C. Department of Transportation for the Merritt Mill Road Improvement Project in accordance with the provisions of G.S. 160A-274.



| Merritt Mill                           |             |                                  |           |
|--|-------------|----------------------------------|-----------|
| Acquisition                            | Road Plat # | Owner of Record                  | Tax Map # |
| Construction Easement                  | 7           | Atwater Heirs                    | 100-C-19  |
| Right-of-Way and Construction Easement | 12          | Bernard Watson and Henry Atwater | 100-C-17A |
| Right-of-Way and Construction Easement | 23          | Charles Brooks, IV               | 91-H-5    |
| Right-of-Way and Construction Easement | 44          | Cusson Properties                | 91-D-2    |

This the 9th day of March, 1987.

AN ORDINANCE TEMPORARILY REMOVING PARKING FROM PORTIONS OF FRANKLIN AND HENDERSON STREETS (APPLE CHILL '87) (87-2-25/O-8)

BE IT ORDAINED by the Council of the Town of Chapel Hill:

That on the 26th day of April, 1987, between the hours of 12:30 and 8:00 p.m. there shall be no parking on either side of Franklin Street between Columbia Street and the western entrance of Morehead Planetarium parking lot, or on either side of Henderson Street between Franklin and Rosemary Streets between the above hours.

The Police Department of the Town of Chapel Hill is hereby authorized to cover the parking meters on said streets during such hours on said date. The Police Department is further authorized to remove, tow, and impound automobiles and vehicles of any kind which are parked on said streets during such hours in contravention of this Ordinance. In light of the large number of pedestrians expected in the Street Fair area, the Council hereby determines that vehicles in the restricted area would constitute a special hazard requiring prompt removal. The owner shall be responsible for and pay storage and moving costs of any vehicle removed pursuant to the provisions of the Ordinance, and the Police Department shall use reasonable diligence to notify the owner of the removal and storage of such vehicle.

This the 9th day of March, 1987.

A RESOLUTION TEMPORARILY CLOSING PORTIONS OF FRANKLIN STREET AND HENDERSON STREET (APPLE CHILL '87) (87-2-25/R-13)

BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council hereby directs the closing of Franklin Street between Columbia Street and the western entrance of the Morehead Planetarium parking lot, and of Henderson Street between Rosemary and Franklin Streets on Sunday, April 26, 1987 from 11 a.m. to 8 p.m., to allow the holding of the Apple Chill Street Fair and clean-up of the streets following the Fair.

This the 9th day of March, 1987.

Sage Road

Council Member Thorpe said that office buildings needed parking space and with Sage Road there was no other place to park than on the street. He said if the Council had approved the special use permit for Forum One office building with a reduction in the number of parking spaces provided on-site, then he did not think it was fair to take away the additional parking area provided for the site.

Council Member Werner pointed out that the Council had approved the development with the minimum number of required on-site parking spaces. He said it was up to the applicant to request additional parking. He commented that he used Sage Road quite a bit and that parking along the side of the road created traffic hazards.

COUNCIL MEMBER WERNER MOVED, SECONDED BY COUNCIL MEMBER PASQUINI TO ADOPT ORDINANCE 87-2-25/O-4.

Council Member Smith said the Council needed to review the Development Ordinance with regard to minimum parking requirements because he would argue that the requirements were too low.

THE MOTION PASSED UNANIMOUSLY, (8-0).

The ordinance, as adopted, reads as follows:

AN ORDINANCE AMENDING CHAPTER 21 OF THE CODE OF ORDINANCE (87-2-25/O-4)

BE IT ORDAINED by the Council of the Town of Chapel Hill:

Section I

That Section 21-27 of the Town Code of Ordinances, "No Parking as to Particular Streets", is amended by inserting the following in appropriate alphabetical order:

| <u>Street</u> | <u>Side</u> | <u>From</u> | <u>To</u>   |
|---------------|-------------|-------------|-------------|
| Sage Road     | Both        |             | Full Length |

Section II

This ordinance shall be effective beginning Friday, April 10, 1987.

Section III

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 9th day of March, 1987.

Rescheduling Meetings of the Council

Council Member Howes commented that he had scheduling problems with moving two of the Monday Council meetings to Wednesday.

COUNCIL MEMBER HOWES MOVED, SECONDED BY COUNCIL MEMBER SMITH TO DEFER THIS ITEM AND REFER IT BACK TO THE MANAGER. THE MOTION PASSED UNANIMOUSLY, (8-0).

Boards and Commissions

Library Board of Trustees:

Council Member Preston nominated Doris Wilson and Nina Wallace.

For one seat on the Library Board of Trustees, the following vote was taken.

Nina G. Wallace (1): Wallace

Doris Wilson (7): Andresen, Howes, Pasquini, Preston,  
Smith, Thorpe, Werner

Doris Wilson was appointed.

Executive Session

COUNCIL MEMBER PRESTON MOVED, SECONDED BY COUNCIL MEMBER SMITH TO DEFER THE EXECUTIVE SESSION UNTIL AFTER THE END OF THE REGULARLY SCHEDULED MEETING OF MARCH 9TH. THE MOTION PASSED UNANIMOUSLY, (8-0).

A MOTION WAS DULY MADE AND SECONDED TO ADJOURN THE MEETING. THE MOTION PASSED UNANIMOUSLY, (8-0).

The meeting adjourned at 7:15 p.m.

