

MINUTES OF A REGULAR MEETING OF THE MAYOR AND COUNCIL
OF THE TOWN OF CHAPEL HILL, MONDAY, JUNE 26, 1989, 7:30 p.m.

Mayor Pro Tem Pasquini called the meeting to order.

Council Members in attendance were:

Julie Andresen	Nancy Preston
David Godschalk	James C. Wallace
Joe Herzenberg	Arthur Werner
Roosevelt Wilkerson, Jr.	



Mayor Jonathan Howes was absent excused.

Also in attendance were Town Manager David Taylor, Assistant Town Managers Sonna Loewenthal and Florentine Miller, Public Safety Director Cal Horton, Planning Director Roger Waldon and Town Attorney Ralph Karpinos.

Town Manager Taylor introduced Ms. Florentine Miller, formerly Assistant County Administrator in Loudoun County, Virginia, as the Town's new Assistant Town Manager. Mr. Taylor stated that Ms. Miller received a master's degree from UNC and has been involved in local government for seventeen years.

Town Manager Taylor noted that persons might be in the audience to speak on agenda item 7b this evening. Mr. Taylor said this was a report to the Council and there would be no action this evening.

Ceremony

Mayor Pro Tem Pasquini read a resolution of appreciation into the record, noting the efforts of the Planning Board in the drafting of the Town's Comprehensive Plan, adopted by the Council on June 12th.

COUNCIL MEMBER HERZENBERG MOVED, SECONDED BY COUNCIL MEMBER PRESTON TO ADOPT RESOLUTION 1. THE MOTION WAS ADOPTED UNANIMOUSLY (7-0).

A RESOLUTION OF APPRECIATION TO THE TOWN OF CHAPEL HILL PLANNING BOARD (89-6-26/R-1)

WHEREAS, the Town Council requested the Planning Board to prepare a draft revision of the 1977 Comprehensive Plan; and

WHEREAS, the Planning Board worked closely with the staff, held public forums, and consulted other advisory boards and the Town Council in drafting the Comprehensive Plan's Technical Reports: Demographics, Natural Environment, Housing, Transportation, and Community Facilities; and

WHEREAS, the Planning Board wrote a draft Strategic Report, highlighting proposed goals, objectives, and policies for the Town, held more than 25 community meetings and forums, and distributed 15,000 copies of the report in local newspapers; and

WHEREAS, after 2 1/2 years of diligent work on the Comprehensive Plan, the Planning Board completed its work and submitted the proposed revision on March 27 to the Council; and

WHEREAS, on June 12, the Council of the Town of Chapel Hill adopted the revised goals and objectives and the Strategic Report and accepted the Technical Reports as components of the Town's Comprehensive Plan;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council expresses its appreciation to the Town of Chapel Hill Planning Board, under the Chairmanship of Alan Rimer, for its revision of the Town's Comprehensive Plan.

BE IT FURTHER RESOLVED that the Council commends the Board for its dedication and diligence in developing a high-quality Comprehensive Plan that reflects the diverse values of the community.

BE IT FURTHER RESOLVED that the Council pledges to work with the Town of Chapel Hill's Planning Board and other advisory boards in implementing the newly adopted Goals, Objectives, and Policies.

This the 26th day of June, 1989.

Public Hearings

Chapel Hill Gateway

Mayor Pro Tem Pasquini noted that public hearings are not required by standards or ordinances of the Town, but were being conducted as informational forums concerning the design of the proposed Chapel Hill North and Gateway projects. Mayor Pro Tem Pasquini noted that action on these two proposals is scheduled for July 10th.

Planning Director Roger Waldon outlined the master plan process. Mr. Waldon said that master plans grew out of mixed-use zoning districts, with development occurring in integrated packages and build out over several years.

Mr. Waldon showed the proposed land-use plan in the vicinity of 15-501 and I-40.

Dick Hales, representing the Durham City/County Planning Department, said Paul Norby, Planning Director, was unable to attend this evening's meeting due to a meeting of the Durham County Commissioners.

Mr. Hales said Durham County adopted its first comprehensive plan in 1987. Mr. Hales added that a major thoroughfare plan and southwest Durham County Comprehensive Plan were being drafted. Mr. Hales said the Durham County and Chapel Hill Comprehensive Plans are very similar in their treatment of the I-40/15-501 interchange. Mr. Hales said traffic considerations in the area are very important, with 15-501 possibly serving as a freeway in the future.

Mr. Waldon showed a vicinity map and site plan, outlining parking, commercial and office uses on the site. Mr. Waldon said entranceways were very important, since the proposed parking area would be highly visible. Mr. Waldon also indicated that the project would generate an estimated 16,000 to 24,000 cars per day. Mr. Waldon noted that an internal street connection was proposed between Old Durham Road and 15-501.

Mr. Waldon said three preliminary findings would serve as rebuttal presumptions at the time of special use permit consideration. These three findings are:

1. Maintenance of the public health, safety and welfare.
2. Maintenance or enhancement of contiguous property values.
3. Conformity to the Comprehensive Plan.

Planning Board chairperson Alan Rimer said that the Planning Board had voted 10-0 to deny the proposed Chapel Hill Gateway project. Mr. Rimer said that eight of nine criteria relative to master land-use plans had not been met. Mr. Rimer said the Planning Board had two major areas of concern: traffic cut-through and non-integration of the site. Mr. Rimer said these difficulties were addressable through redesign of the project. Mr. Rimer stated that the Planning Board believes that designing should occur at the master plan, rather than special use permit, stage.

Council Member Preston inquired what degree of specificity the Planning Board was seeking. Mr. Rimer said the applicant should show major road plans and integration of the site. Council Member Preston inquired whether the Planning Board wanted to see bubbles and roadways. Mr. Rimer said yes, noting that any shifting of roadways would be a major exercise.

Council Member Werner inquired about which master plan proposal was being considered by the Council this evening. Mr. Waldon said the one distributed with original agenda materials should be considered.

Council Member Herzenberg requested that Mr. Rimer elaborate on his remarks concerning integration of office and commercial uses.

Mr. Rimer said that by moving the major roadway through the site, office uses could be located closer to commercial sites.

Council Member Godschalk stated that the property under consideration is zoned for mixed-use with density and intensity already established. Council Member Godschalk said the Council is trying to determine the best design for the area. Council Member Godschalk said that master plans are implemented in stages over many years. Council Member Godschalk inquired whether the Planning Board was willing to work with the applicant to explore other possible designs. Mr. Rimer said yes, the Planning Board would do this, if the Council so desired.

Council Member Andresen recognized three members of the Durham City Council present at this evening's hearing. Council Member Andresen noted that there had been some discussion by the Planning Board of establishing caps on traffic. Mr. Rimer said this was correct. Council Member Andresen inquired whether the imposition of caps would be appropriate at the master plan stage. Mr. Rimer said this would be somewhat appropriate. Mr. Rimer noted that staff had recently completed work on new design guideline criteria.

Town Manager Taylor stated that Transportation Board had recommended denial of the Chapel Hill Gateway project. Mr. Taylor made his preliminary recommendation that resolution A, approving the project proposal, be adopted.

John Callaway, representing Jamestown Properties of Atlanta, Georgia, said he had worked on this proposal for three years. Mr. Callaway said he was working hard to bring a project before the Council that the Town could be proud of. Mr. Callaway said he would follow direction from the Council, whether it be to cancel or redesign the project. Mr. Callaway said he wanted to show a maximum degree of flexibility.

Mr. Callaway said he had attempted to defeat the Red Roof Inn project, in hopes of acquiring this property. Mr. Callaway said he was negotiating with as many as 150 persons over fifty tracts of land, comprising fifty acres. Mr. Callaway said that some property owners had to extend closing dates due to previous delays. Mr. Callaway said that timing is an inevitable problem. Mr. Callaway said the assemblage could fall apart with the withdrawal of one property owner.

Mr. Callaway said that 60% office is required in the master plan criteria. Mr. Callaway said he had begun talking to Blue Cross/Blue Shield concerning their future potential office space needs.

Mr. Callaway stated that a site plan had been introduced last November. He indicated that discussions had been held with retailers. Mr. Callaway said that three large retail tenants had

been identified, while a fourth was being sought. Mr. Callaway said department stores are essential to drawing traffic to the commercial uses. Mr. Callaway stated that the retail center would generate estimated annual sales of \$58 million and create 500 jobs.

Mr. Callaway stated that two landscaped areas would be included to break up parking areas. Mr. Callaway said that the site would be well-buffered, in responses to concerns of the Planning Board. Mr. Callaway said he was attempting to display his flexibility concerning project design. He requested the guidance of the Council and Planning Board in design of the mixed-use project.

Grainger Barrett, attorney representing Jamestown Properties, said the Gateway project did not involve rezoning. Mr. Barrett stated the applicant's willingness to accept the Manager's conditions of approval. Mr. Barrett said that 1,400,000 square feet were permitted, while only 800,000 square feet would be developed. Mr. Barrett stated that Jamestown Properties would provide necessary right-of-way for future road expansions. Mr. Barrett expressed concern that none of the Gateway applicants were aware of the Transportation Board's recent consideration and ultimate recommendation of denial of the proposal. Mr. Barrett said that Jamestown Properties was willing to accept the Manager's recommended conditions of approval. Mr. Barrett stated a preference for a special meeting of the Planning Board before July 10th.

Mayor Pro Tem Pasquini suggested that those wishing to address the Council should attempt to limit their remarks to two minutes and not repeat the comments of previous speakers.

Linda Convissor, a resident of White Oak Drive, listed off neighborhoods impacted by the Gateway development. Ms. Convissor expressed grave concern that the proposed commercial facilities would directly abut R-1 properties. Ms. Convissor stated that major buffers are normally offered in such instances. Ms. Convissor stated that a 75 foot buffer with no trees had been proposed. Ms. Convissor stated that an office building in Durham had offered a 150 foot buffer recently, while residents of Finley Forest had received a 162 foot buffer from a neighboring park and ride facility.

Ms. Convissor continued her remarks by stating that many homes abutting a Jamestown Properties development in Raleigh were up for sale. She concluded her presentation by expressing the need for sensitivity on the part of the developer.

Diane McArthur, 501 Colony Woods Drive, stated that careful consideration should be given to the Gateway development proposal application. Ms. McArthur said that shopping center development requires flat land. Ms. McArthur said it would be necessary to truck in huge amounts of fill dirt for development to occur. She added the need to determine drainage system improvements prior to

final project approval. Ms. McArthur said that the Gateway site and topography are not suited for shopping center development.

Anne Occor, a resident of University Heights, said that the proposed Gateway master land-use plan eliminates pedestrian orientation within the parking configuration. She stated that most persons would choose to drive, rather than walk, between buildings. Ms. Occor also expressed concern about possible health problems for motorists in the area. She said that Environmental Protection Agency (EPA) officials indicated that effects on driver's health in high traffic areas would be cumulative.

Roger Tombulian stated that the Gateway proposal called for approximately 1120 spaces on eleven acres of parking fields. Mr. Tombulian said he was not aware of a parking garage proposal prior to this evening. He said that such a garage is not a small project. Mr. Tombulian continued his remarks suggesting that a new plan with less parking be brought before the Council.

Mr. Tombulian said that traffic along U.S. 15-501 would be at 130% of capacity at the time of full build-out. Mr. Tombulian estimated that the velocity of this traffic would be seven miles per hour. Mr. Tombulian expressed the need for the planning of transportation corridors in the area.

Jack Gibson, a resident of Colony Lakes, inquired where traffic would exit from the proposed Gateway project. Mr. Gibson said drivers would choose the fastest routes, along Legion Road and Standish Drive. Mr. Gibson stated that these are not major thoroughfares, rather residential streets with play areas for children. Mr. Gibson passed a photographic exhibit to the Council, showing plans for and photographs of earlier Jamestown Properties developments. Mr. Gibson concluded his remarks by saying he did not desire prefabricated strip centers in his neighborhood.

Jack McDonnell said the Gateway development proposal was beautiful.

Kathy Wright, a resident of Willowbrook Apartments, said she enjoyed living at that complex. Ms. Wright expressed concern about the potential impact of traffic from the Chapel Hill Gateway project on East Lakeview Drive.

Scott King expressed concern about possible project impacts. Mr. King said refinements should occur at the master plan stage.

Judith Duval, 79 White Oak Drive, said her residence is located in the middle of the proposed mixed-use project. Ms. Duval said she was in the process of negotiating a contract on 82 White Oak Drive. Ms. Duval said she has lived at her residence for twenty-three years and enjoys living between Durham and Chapel Hill. Ms. Duval said her contract will expire on July 1. She noted that five other parties were in the same situation.

David Morgan, representing four property sellers, directed comments in favor of the Gateway project. Mr. Morgan said the proposal was adapted to the needs of Blue Cross/Blue Shield and the I-40 corridor.

Sylvia Price, Executive Director of the Orange County Economic Development Commission, expressed her support for the Gateway project. Ms. Price said the project is consistent with zoning and the land-use plan. Ms. Price stated that the major goal of economic development is to strengthen the non-residential tax base. Ms. Price said the Town would derive estimated annual tax receipts of \$570,000 from the project. Ms. Price requested that the Council grant preliminary approval of the Gateway project.

Mike McCarney, representing Marshall's Department Stores, said that Jamestown Properties is a responsive developer. Mr. McCarney said that he had seen similar mixed retail/office projects all over the nation. He stated that combination office/retail projects have a high success rate.

R.T. Madden, a resident of Chapel Hill since 1921, said that a lot of stores will go out of business if the Gateway project is constructed.

Chuck Locdole, representing an area property owner, said that Mr. Callaway had undertaken an extraordinary task to assemble the pieces of property. Mr. Locdole stated that Mr. Callaway had worked diligently with planning staff to plan the Gateway project. Mr. Locdole concluded his remarks by urging the Council to work with Mr. Callaway on his proposed project.

Council Member Herzenberg inquired about the possible inclusion of a park and ride lot in the Gateway proposal. Town Manager Taylor said none was proposed for the site.

Council Member Herzenberg inquired why the developer had not been notified of Transportation Board consideration of the Gateway proposal. Town Manager Taylor said he was not aware of what caused this absence of notification.

Council Member Herzenberg asked who would have the burden of proof at the special use permit consideration stage. Mr. Waldon said the burden of proof for four findings would fall on the applicant. Mr. Waldon said that three findings are required at the master plan stage. If these findings are satisfied, rebuttal presumptions are established.

Council Member Werner said one of the key points of the Comprehensive Plan is the provision of park and ride lots. Council Member Werner said he could not support a proposal of this type which did not include a park and ride facility.

Council Member Werner expressed concern about traffic impacts and the need for road improvements, particularly at the separation of Fordham Boulevard and Franklin Street. Council Member Werner inquired what elements would be incorporated in a master plan approval. Mr. Waldon said that master plan approval would serve as a concept plan with a narrative list of conditions attached.

Council Member Werner noted that Jamestown Properties proposes to develop 800,000 square feet, contrasted with 1,400,000 square feet of permissible development. Council Member Werner inquired whether development for the Gateway project would be limited to 800,000 square feet. Mr. Waldon said yes.

Council Member Wilkerson inquired about the requirement for 60% office development in mixed-use developments. Mr. Waldon said that applicants are required to provide bubble diagrams at the special use permit submittal stage.

Council Member Preston said she had a number of severe concerns about the Gateway project proposal. Council Member Preston expressed hope that a creative, thoughtful and integrated design would be presented to the Council in the future. Council Member Preston noted that traffic in the vicinity of the project is very heavy.

Council Member Wilkerson said that information in the Council materials did not refer to the fact that roads would be at 130% of capacity at build-out. Mr. Waldon said that project buildout would stretch current capacities to 130%. Mr. Waldon noted that planned improvements to 15-501 would mean that it would be under capacity at build-out.

Council Member Wilkerson noted that the Council was aware of potential traffic impacts when it zoned the area mixed use. Council Member Wilkerson stated that if the project were approved, it would be at 57.9% of allowable maximum floor space, creating a tremendous traffic impact in the area. Council Member Wilkerson inquired whether the Council wanted to reevaluate the earlier zoning decision or examine the type of projects at entranceways to the Town.

Council Member Andresen expressed concern about possible traffic impacts on Old Durham Road. Council Member Andresen requested that staff evaluate proposed roadway configurations for the Chapel Hill Gateway project. Council Member Andresen noted that traffic at 15-501 and I-40 is already quite problematic.

Council Member Godschalk noted that the Planning Board was not pleased with the proposed on-site arrangements of uses. Council Member Godschalk stated that others had expressed concern about off-site arrangements. Council Member Godschalk inquired what steps the developer could take to address off-site improvement needs. Mr. Waldon said that improvements to 15-501 were

proposed, as were the addition of a turn lane and widening of the principal entrance road. Mr. Waldon added that the project would have intensive landscaping, buffers and berms. Mr. Waldon also noted that the developer would pay for traffic signals on White Oak Drive and contribute to the computerization of signals along 15-501.

Council Member Godschalk inquired about costs of improvements. Mr. Callaway estimated total costs to be approximately \$500,000.

Council Member Godschalk inquired whether it would be possible for the Planning Board to review the Chapel Hill Gateway project in the near future. Mr. Rimer said yes.

Council Member Preston asked the staff to report back to Council on the percentage of the project located in Durham County. Additionally, Council Member Preston requested more complete tax revenue information.

Council Member Wilkerson requested staff comments on possible negative impacts of the project.

COUNCIL MEMBER WERNER MOVED, SECONDED BY COUNCIL MEMBER PRESTON, TO REFER COMMENTS TO THE TOWN MANAGER. THE MOTION WAS ADOPTED UNANIMOUSLY (8-0).

Chapel Hill North

Planning Director Roger Waldon showed a proposed site plan and vicinity map to the Council. Mr. Waldon stated that mixed office and commercial uses are proposed for the Chapel Hill North project. Mr. Waldon noted that 640,000 square feet of development are proposed, 60% of which are office and 40% commercial. Mr. Waldon stated that a one hundred foot buffer would be provided along I-40.

Mr. Waldon reviewed key issues including buffering of entranceways. He said that buffer treatments and clumps of vegetation would be used at entranceways to the site. Mr. Waldon also noted that extensive roadway improvements are suggested for Weaver Dairy Road and NC 86. Proposed improvements include curb and gutter, a median, left-turn lanes, and sidewalks. Mr. Waldon said that some flexibility should be built into these requirements, including provisions for construction of improvements or payment in lieu. Mr. Waldon noted that payment in lieu might be a desirable option.

Alan Rimer stated that the Planning Board had voted 7-1 to approve the site plan. Mr. Rimer said the Planning Board recommended adoption of resolution A to the Council.

Mr. Rimer reviewed concerns of the Planning Board such as no provision for residential uses in the applicant's proposal. Mr.

Rimer suggested that one section could possibly be shifted from office to residential uses. Mr. Rimer also said that the Planning Board concurred that the developer should not be held responsible for all road improvement and signal costs since other projects in the area would contribute traffic. Mr. Rimer stated that the Planning Board proposed phasing of improvements as development occurs.

Town Manager Taylor said his preliminary recommendation to the Council was adoption of resolution B. Mr. Taylor noted that the Transportation Board also recommended adoption of resolution B.

Ken Redfoot said that the master plan should be used as a framework for future development. Mr. Redfoot showed a vicinity map, noting that some slopes in the area, as great as 15% would be difficult to build on. Mr. Redfoot said jogging trails and pedestrian ways could possibly be introduced into the project's master plan. Mr. Redfoot stated that there would be a greenbelt on the north portion of the site. Mr. Redfoot noted that there is a 125 foot Duke Power easement running through the center of the site. Mr. Redfoot reviewed possible means for integration of office and retail uses.

Ron Strom, general partner in the Chapel Hill North project, expressed concern that passage of resolution B would delay certificates of occupancy until a five lane cross-section is in place. Mr. Strom also stated that condition of approval #7 appeared to be a choice of payment in lieu or roadway improvements. Mr. Strom expressed fear that he could be left with a temporary circumstance beyond his control. Mr. Strom said he had submitted a list of possible temporary roadway and signal improvements to the Town staff on February 20th. Mr. Strom said building of up to 400,000 square feet could occur safely under this scenario.

Mr. Strom suggested that language be added to resolution B indicating that staff should make best efforts to work with the applicant in commencing the project prior to NC 86 improvements. Mr. Strom also said that financial consideration should be given to the applicant. Mr. Strom said he was willing to provide all one hundred feet of right-of-way for improvements to NC 86. Mr. Strom requested that the Council work with Chapel Hill North to phase in roadway and signal improvements. Mr. Strom also sought flexibility concerning a thirty foot linear buffering requirement along NC 86.

Kenneth Cheek, 110 Fieldstone Court, said he owned duplexes on Perkins Road, contiguous to the Chapel Hill North site. Mr. Cheek expressed concern that two roads will come out of the project, with one hundred twenty feet of open space provided for these roads. Mr. Cheek requested that the Council consider a buffer between the roads and his property lines on Perkins Road.

Jeff Collins, a resident of Northwoods subdivision, said he was concerned about possible major traffic impacts along NC 86. Mr. Collins also expressed concern about buffering requirements stipulating an average of thirty feet along NC 86, contrasted with one hundred foot buffering requirements along I-40. Mr. Collins suggested that the buffer requirement be widened to seventy five feet along NC 86.

Nancy Ducar expressed concurrence with Mr. Collins' remarks. Ms. Ducar said she drives by the proposed site frequently and would like to see roadway improvements made in advance of site construction.

Sandy McGinnis said it is extremely difficult to exit the Northwoods neighborhood during morning rush hours. Mr. McGinnis said homes in the Northwoods neighborhood are located on one acre lots. He said that commercial sites with minimal buffering would not be desirable.

Council Member Werner said he would be unable to support the project unless a park and ride lot were included in the plans. Council Member Werner requested staff's comments concerning the stringency of road improvement requirements relative to similar projects. Council Member Werner also expressed concern about possible siting of entranceways to Chapel Hill North, since residents of Northwood could possibly be between two entrances. Mr. Waldon said the staff recommended eliminating the southernmost entrance to the site. Mr. Waldon said no traffic signal is located at the "T" intersection of Northwoods Drive. Council Member Werner inquired where the entrance was relative to Timberlyne. Mr. Waldon showed proximities.

Council Member Andresen expressed her concurrence with Council Member Werner's comments concerning parking lots. Council Member Andresen said the Chapel Hill North project could have a major traffic impact in the area. Council Member Andresen noted that a minimal amount of detail concerning amenities was provided in the applicant's plan. Council Member Andresen said she was interested in the use of outparcels, depicted as commercial uses. Council Member Andresen said she liked the proposed treatment of NC 86 and Weaver Dairy Road.

Council Member Andresen inquired about height restrictions. Mr. Waldon said that buildings with a setback of two hundred and sixty feet can not exceed ninety feet in height. Council Member Andresen inquired whether it would be possible to construct a hotel on the site. Mr. Waldon said he would check on this situation.

Council Member Andresen expressed concern that a thirty foot buffer along Weaver Dairy Road would have a minimal effect. Council Member Andresen said more space was needed between the development and NC 86. Council Member Andresen said she was

reluctant to approve commercial development without appropriate improvements. Council Member Wallace said he thought language could be written into the approval to address these concerns.

Council Member Preston said she liked the tone of the applicant's statement and the uniqueness of the development to Chapel Hill. Council Member Preston said she liked the twenty-four hour concept of the development. Council Member Preston said there is a sense of togetherness about the project. Council Member Preston stated that the type of master plan application sought by the Council.

Council Member Andresen inquired what type of area would exist along NC 86. Mr. Waldon said this would be mainly parking. Mr. Waldon noted that these areas will be screened with berming and vegetation.

Mr. Strom expressed concurrence with the conditions of approval if they were modified as he requested earlier in the meeting.

COUNCIL MEMBER WILKERSON MOVED, SECONDED BY COUNCIL MEMBER PRESTON, TO REFER COMMENTS TO THE TOWN MANAGER. THE MOTION WAS ADOPTED UNANIMOUSLY (8-0).

Petitions

Susan Fairchild, representing the Community School for People Under Six, said her organization was in a crisis situation. Ms. Fairchild said the school needed \$2,000 for a fire alarm system. Ms. Fairchild said the school provides services to low and moderate income families. Ms. Fairchild said there had been many efforts to raise necessary funds for the alarm system. Ms. Fairchild stated that the required funds were needed by June 30th for the program to continue operations. Ms. Fairchild petitioned the Council for contingency funds for her program.

Town Manager Taylor suggested that Ms. Fairchild's funding request be referred to the allocations committee for further consideration.

Council Member Wilkerson said the doors to the school would not be closed on June 30th.

COUNCIL MEMBER ANDRESEN MOVED, SECONDED BY COUNCIL MEMBER HERZENBERG, TO REFER MS. FAIRCHILD'S REQUEST TO THE HUMAN SERVICES ADVISORY BOARD ALLOCATIONS COMMITTEE FOR FURTHER CONSIDERATION. THE MOTION WAS ADOPTED UNANIMOUSLY (8-0).

Bob Arnel, 147 Dixie Drive, urged the Council to provide funding for paving a section of Dixie Drive. Mr. Arnel said Dixie Drive has eight hundred and fifty feet of dirty, unpaved road which serves as a major access to NC 86. Mr. Arnel said that drivers along Dixie Drive frequently exceed the speed limit, creating

dust and dirt problems. Mr. Arnel said the opening of I-40 created a shorter route to RDU airport and Burlington. Mr. Arnel said that trucks, buses and cars create clouds of dust along Dixie Drive. Mr. Arnel expressed concern about environmental effects of dust and dirt in the air.

Alan Rimer, Planning Board chairperson, requested that the Council appoint only one member to the Planning Board this evening. Mr. Rimer said that there were no applicants for the extraterritorial jurisdiction at the time of Planning Board consideration. Mr. Rimer said the Planning Board requested that the Council change the composition of the board.

Council Member Preston requested that Council suspend rules pertaining to nomination of applicants, so that persons applying to the Housing Advisory Board could be nominated this evening and appointments made at the July 10th Council meeting.

COUNCIL MEMBER WALLACE MOVED, SECONDED BY COUNCIL MEMBER ANDRESEN, TO SUSPEND THE RULES PERTAINING TO BOARD AND COMMISSION NOMINATIONS. THE MOTION WAS ADOPTED UNANIMOUSLY (8-0).

Council Member Herzenberg requested that item 9b be pulled and considered as a separate item.

Minutes of June 12th

Council Members Preston and Godschalk requested minor modifications to the minutes of June 12th.

COUNCIL MEMBER PRESTON MOVED, SECONDED BY COUNCIL MEMBER HERZENBERG, TO ADOPT THE MINUTES OF JUNE 12TH AS AMENDED. THE MOTION WAS ADOPTED UNANIMOUSLY (8-0).

Southbridge V Subdivision

Planning Director Waldon said the staff recommended adoption of resolution A.

Carol Ann Zinn, applicant, said she concurred with the conditions of approval outlined in resolution A.

Council Member Preston inquired whether the Transportation Board recommendation concerning sidewalks could be followed. Mr. Waldon said that the staff would communicate the Transportation Board's preference to the applicant.

Council Member Wilkerson noted the efforts of the staff and Ms. Zinn in addressing the comments made at the public hearing.

COUNCIL MEMBER WALLACE MOVED, SECONDED BY COUNCIL MEMBER WILKERSON, TO ADOPT RESOLUTION 2A. THE MOTION WAS ADOPTED UNANIMOUSLY (8-0).

A RESOLUTION APPROVING AN APPLICATION FOR A PRELIMINARY PLAT FOR SOUTHBRIDGE V SUBDIVISION (FILE #122-B-15D) (89-6-26/R-2a)

BE IT RESOLVED by the Council of the Town of Chapel Hill that the Southbridge Subdivision, Phase V proposed by Cazwell Development, Inc., identified as Chapel Hill Township Tax Map 122, Block B, Lot 15D, if developed according to the Preliminary Site Plan dated February 1, 1989 and the conditions listed below, would comply with the provisions of the Development Ordinance.

1. That the following improvements be made to Culbreth Road along the site's frontage:
 - a. That an additional 5 feet of right-of-way be dedicated;
 - b. That Culbreth Road be widened to provide one-half of a 41-foot wide, back-to-back street section;
 - c. That a left-turn lane be provided;
 - d. That a sidewalk to Town standards be provided; and
 - e. That a bus pull-off to Town standards be provided adjacent to lot 1.
2. That street "A" and "B" be built to Class 'B' standards.
3. That a paved sidewalk to Town standards be provided along one side of street 'A' and street 'B'.
4. That a street to class 'B' standards be provided between lots 7 and 8 to access the George Tate, Jr. and/or Estelle Atwater property to the west; and that Street D become a cul-de-sac type street.
5. That sight triangle easements and an easement restricting access to Culbreth Road for those lots abutting Culbreth Road be provided on the final plat.
6. That the developers shall be responsible for placement and maintenance of temporary regulatory traffic signs, including a sign or marker placed at the end of a street indicating that this street may be connected at a later date, before issuance of any Certificate of Occupancy until such time that the street system is accepted for maintenance by the Town.
7. That the applicant take appropriate measures to prevent the deposit of wet or dry silt on adjacent paved roadways.
8. If the Town Manager approves a phasing plan, no Certificates of Occupancy shall be issued for a phase until all required public improvements for that phase are complete; no Building

Permits for any phase shall be issued until all public improvements required in previous phases are completed to a point adjacent to the new phase; and that a note to this effect shall be placed on the final plat.

9. That final utility plans, including a street lighting plan, be approved by the Town Manager, OWASA, Duke Power, Southern Bell, Public Service Gas Co., and Carolina Cable before issuance of a Zoning Compliance Permit.
10. That prior to paving streets, utility service laterals be stubbed out to the front property lines of each lot. Sanitary sewer laterals shall be capped off above ground.
11. That easement documents as required by OWASA and the Town Manager be recorded before final plat approval.
12. That names of the development and its streets and house/building numbers, be approved by the Town Manager prior to issuance of a Zoning Compliance Permit.
13. That a soil erosion and sedimentation control plan be approved by the Orange County Erosion Control Officer before issuance of a Zoning Compliance Permit.
14. That the final plat indicate pedestrian and non-motorized vehicle access easement within the Recreation Area.
15. That tree protection fences be installed to protect significant existing trees and their root systems, before issuance of a Zoning Compliance Permit.
16. That a 'C' type buffer is required along Culbreth Road and a detailed landscape plan and landscape maintenance schedule shall be approved by the Town Manager prior to the issuance of a Zoning Compliance Permit, and all plants shall be installed prior to issuance of Certificates of Occupancy for lots 1, 30, 31, 32, 33, and 34.
17. That a fire flow report prepared by a registered professional engineer, showing that flows meet the minimum requirements of the Design Manual, be approved prior to issuance of a Zoning Compliance Permit.
18. That no Certificates of Occupancy be issued until all required public improvements are completed; and that a note to this effect shall be placed on the final plat.
19. That plans for improvements to State-maintained roads be approved by NCDOT prior to issuance of a Zoning Compliance Permit.

20. That a note be placed on the final plat indicating that back-yard pick-up of refuse may not be available for all lots.
21. That a "T" turn-around be provided at the end of street A and street C.
22. That final street plans, street lighting plans approved by Duke Power, grading plans, utility plans, stormwater management plans (with hydrologic calculations), and buffer planting and maintenance plans be approved by the Town Manager before issuance of Zoning Compliance Permit or application for final plat approval, and that such plans conform to plans approved by this application and demonstrate compliance with all applicable conditions and the design standards of the Development Ordinance and the Design Manual.
23. That continued validity and effectiveness of this approval is expressly conditioned on the continued compliance with the plans and conditions listed above.
24. 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 off-site dedication of land for recreation area as proposed by the applicant as set forth under the provisions of Section 17.9.7 and Section 17.9.3 of the Development Ordinance, and that said off-site land of comparable value to the land for which it is substituted, and said land be dedicated and deeded to the Town of Chapel Hill as part of the final plat approval process.

BE IT FURTHER RESOLVED that the Council hereby approves the application for Preliminary Plat approval for Southbridge Subdivision, Phase V in accordance with plans and conditions listed above.

This the 26th day of June, 1989.

Boards and Commissions

The Council made the following appointments:

Housing Advisory Board:

Charles Brooks, IV
 Win Burke
 W.W. Edmonds
 Ottiere Farrington
 Dianne Peerman-Pledger
 Velma Perry
 Runyon Woods

Orange Water and Sewer

Authority (Town Delegates): Thomas McCurdy
 Rosemary Waldorf

Riley Wilson

Planning Board:

James Bullard
Marianna Chambless

The Council also recommended the appointment of Dave Maner to the Orange County Economic Development Commission.

Appearance Commission Report

David Swanson, representing the Appearance Commission, said the commission is striving to address the charges of the Council. Mr. Swanson said the Appearance Commission has reviewed twenty-seven projects during 1988-89, including site plans, elevations and sign plans. Mr. Swanson said the Appearance Commission can offer necessary assistance and advice to the Council on project proposals. Mr. Swanson stated that the production of the entranceway plan document was a very significant achievement. Mr. Swanson said the Appearance Commission is currently reviewing the sign ordinance and neon signage. Mr. Swanson noted that the Appearance Commission is also examining newspaper racks and related design guideline recommendations.

COUNCIL MEMBER PRESTON MOVED, SECONDED BY COUNCIL MEMBER ANDRESEN, TO RECEIVE THE APPEARANCE COMMISSION REPORT AND THANK THE APPEARANCE COMMISSION FOR THEIR WORK. THE MOTION WAS ADOPTED UNANIMOUSLY (8-0).

Historic District Commission Report

Arthur Jackson, staff liaison to the Historic District Commission, said that Dr. Gulick, Historic District Commission chairperson, had been unable to stay to present the commission report. Mr. Jackson said that historical significance reports on the Cameron/McCauley and Northside neighborhoods had been presented to the Council in January and April.

Town Manager Taylor requested that the item be referred to the Town Manager and staff to implement a timeframe on these two reports.

Council Member Godschalk said that residents of the Northside area had indicated a thundering indifference to inclusion in the neighborhood conservation district (NCD). Council Member Godschalk requested that the Town Manager outline implications of NCD inclusion for neighborhood residents.

Council Member Godschalk indicated that Cameron-McCauley residents had been split, with 71 residents favoring NCD inclusion and 41 against.

Town Manager Taylor said the staff would outline a process for possible neighborhood NCD inclusion.

Council Member Preston noted that many residents of the Northside neighborhood appeared to be interested in NCDs. Mr. Jackson said 50% of area residents had responded to the staff survey. Mr. Jackson said the concerns expressed center around planning and land-use control issues. Mr. Jackson said there were some fundamental misunderstandings of what historic districts are.

Council Member Andresen said she looked forward to hearing from neighborhood residents.

Council Member Preston requested that Mr. Jackson pass on the Council's appreciation for the Historic District Commission's fine work.

COUNCIL MEMBER WILKERSON MOVED, SECONDED BY COUNCIL MEMBER WERNER, TO RECEIVE THE HISTORIC DISTRICT COMMISSION REPORT AND REFER COMMENTS TO THE TOWN MANAGER. THE MOTION WAS ADOPTED UNANIMOUSLY (8-0).

Consent Agenda

A RESOLUTION ADOPTING VARIOUS RESOLUTIONS AND ORDINANCES (89-6-26/R-4)

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

- a. Year-end budget amendment. (0-1).
- b. Soil Erosion and Sedimentation Control Ordinance changes. (0-2).
- c. Community Development Project Ordinance. (0-3).
- d. Accepting petition to pave part of Dixie Drive. (R-5).
- e. Inspections assistance to the Town of Carrboro. (R-6).

This the 26th day of June, 1989.

COUNCIL MEMBER WERNER MOVED, SECONDED BY COUNCIL MEMBER WALLACE, TO ADOPT CONSENT AGENDA ITEMS 9A, C, D AND E, NOTING COUNCIL MEMBER HERZENBERG'S EARLIER REQUEST TO CONSIDER ITEM 9B SEPARATELY. THE MOTION WAS ADOPTED UNANIMOUSLY (8-0).

AN ORDINANCE TO AMEND "THE ORDINANCE CONCERNING APPROPRIATIONS AND THE RAISING OF REVENUE FOR THE FISCAL YEAR BEGINNING JULY 1, 1988 (89-6-26/O-1)

BE IT ORDAINED by the Council of the Town of Chapel Hill that the Budget Ordinance entitled "An Ordinance Concerning Appropriations and the Raising of Revenue for the Fiscal Year Beginning July 1,

1988" as duly adopted on May 25, 1988, be and the same is hereby amended as follows:

ARTICLE I

<u>APPROPRIATIONS</u>	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
GENERAL FUND				
Police				
Support Services	638,162	19,323		657,485
Legal	107,605	49,000		156,605
Mayor	59,165	5,500		64,665
Council	97,118	18,666		115,784
Manager	655,026	7,500		662,526
Non-Departmental Contingency	102,796		80,666	22,130
PUBLIC HOUSING FUND	638,415	653,560		1,291,975
HOUSING LOAN TRUST FUND	35,000	96,000		131,000
PARKING FACILITIES FUND				
Transfer to Rosemary Square Project Ordinance	259,614	175,000		434,614

ARTICLE II

<u>REVENUES</u>	<u>Current Budget</u>	<u>Increase</u>	<u>Decrease</u>	<u>Revised Budget</u>
GENERAL FUND				
Fines & Forfeitures	248,000	19,323		267,323
PUBLIC HOUSING FUND	638,415	653,560		1,291,975
HOUSING LOAN TRUST FUND	35,000	96,000		131,000
PARKING FACILITIES FUND				
Appropriated Fund Balance	189	175,000		175,189

This the 26th day of June, 1989.

AN ORDINANCE TO AMEND THE 1988 COMMUNITY DEVELOPMENT ENTITLEMENT GRANT PROJECT ORDINANCE (89-6-26/0-3)

BE IT ORDAINED by the Council of the Town of Chapel Hill that, pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following grant project ordinance is hereby amended:

SECTION I

The projects authorized are the Community Development projects as approved by the Council on May 22, 1988 (89-5-22/R-5): funds are as contained in the Funding Approval and Grant Agreement between the Town and the U. S. Department of Housing and Urban Development (HUD). The projects are known more familiarly as the 1989 Entitlement Community Development Grant. The grant activities include homeownership opportunities, rehabilitation of public housing, shelter for the homeless and capital improvements.

SECTION II

The Manager of the Town of Chapel Hill is hereby directed to proceed with the grant project within the terms of the grant document(s), the rules and regulations of the U. S. Department of Housing and Urban Development, and the budget contained herein.

SECTION III

The following revenues are anticipated to be available to complete this project:

Community Development Grant - 1989	\$291,000
Program Income	<u>\$ 6,000</u>
Total	\$297,000

SECTION IV

The following amounts are appropriated for the project:

Rehabilitation of Public Housing	\$104,000
Shelter for the Homeless	\$125,000
Homeownership Program	\$ 28,000
Capital Projects - Tanyard Branch Piping	\$ 10,000
General Administration	<u>\$ 30,000</u>
Total	\$297,000

SECTION V

The Finance Director is hereby directed to maintain within the Grant Project Fund sufficient specific detailed accounting

records to provide the accounting to HUD as required by the grant agreement(s) and federal and State regulations.

SECTION VI

Funds may be advanced from the General Fund for the purpose of making payments as due. Reimbursement requests should be made to HUD in an orderly and timely manner.

SECTION VII

The Manager is directed to report annually on the financial status of each project in Section IV and on the total grant revenues received.

SECTION VIII

Copies of this grant project ordinance shall be entered into the minutes of Council and copies filed within five days of adoption with the Manager, Finance Director and Clerk.

This the 26th day of June, 1989.

A RESOLUTION RECEIVING A PETITION FOR PAVING A PORTION OF DIXIE DRIVE WEST OF COLLUMS ROAD (89-6-26/R-5)

WHEREAS, the Town has received a petition for the paving of a portion of Dixie Drive west of Collums Road; and

WHEREAS, the petition has been determined to be valid under G.S. 160A-217(a); and

WHEREAS, the Town does not now have funds available for this project;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council receives said petition for paving a portion of Dixie Drive and the petition shall be considered for funding whenever such funds are available.

This the 26th day of June, 1989.

A RESOLUTION AUTHORIZING THE MANAGER TO EXECUTE AN AGREEMENT FOR THE TOWN OF CHAPEL HILL TO PROVIDE ON A TEMPORARY, SHORT-TERM BASIS SUPERVISION FOR THE TOWN OF CARRBORO'S BUILDING INSPECTION DEPARTMENT, PENDING THE HIRING BY CARRBORO OF A NEW CHIEF BUILDING INSPECTOR (89-6-26/R-6)

WHEREAS, the Town of Carrboro has requested the Town of Chapel Hill to provide assistance to Carrboro in the supervision of

Carrboro's Building Inspection Department, pending the hiring by Carrboro of a new chief building inspector; and

WHEREAS, the Town of Chapel Hill agrees to provide such assistance in accordance with the terms of the attached agreement;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council authorizes the Manager to execute an agreement with the Town of Carrboro in substantially the same form as the draft presented on June 26, 1989.

This the 26th day of June, 1989.

Council Member Herzenberg indicated he had recently been contacted by a citizen inquiring why drainage requirements were being improved to County standards. George Small, Town Engineer, said these standards were in line with those of the State of North Carolina. Mr. Small said fines are discretionary up to \$100, with the Town having elected to impose this fine, if necessary.

Council Member Preston expressed concern that some penalties might be dropped. Mr. Small said penalties were at the allowable maximum.

Council Member Werner inquired whether stormwater management programs were being coordinated with the County. Mr. Small said yes.

COUNCIL MEMBER WERNER MOVED, SECONDED BY COUNCIL MEMBER GODSCHALK, TO ADOPT ORDINANCE 2. THE MOTION WAS ADOPTED UNANIMOUSLY (8-0).

AN ORDINANCE ADOPTING SOIL EROSION AND SEDIMENTATION REGULATIONS (89-6-26/O-2)

WHEREAS, the Town Council of Chapel Hill, North Carolina recognizes a great need to control soil erosion and sedimentation and those activities which result in erosion and sedimentation within Chapel Hill and within areas affecting the Town; and

WHEREAS, the North Carolina General Assembly, through Chapter 392 of the Session Laws of North Carolina, 1973, and other laws, has delegated to local governments the power to control such erosion and sedimentation; and

WHEREAS, Town Council desires to exercise such power;

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

SECTION 1 - TITLE

This ordinance may be cited as the Chapel Hill Soil Erosion and Sedimentation Control Ordinance.

SECTION 2 - PURPOSES

This Ordinance is adopted for the purposes of:

- a. Regulating the clearing, grading, excavation, filling and manipulation of the earth and the moving and storing of waters in order to: control and prevent accelerated soil erosion and sedimentation, prevent the pollution of water, prevent damage to public and private property, maintain the balance of nature, prevent the obstruction of natural and artificial drainageways, inhibit flooding and reduce the undermining of roads and other transportation facilities.
- b. Establishing procedures through which these purposes can be fulfilled.

Notwithstanding the provisions of Section V herein, the Town Council hereby declares its intent that all of the departments and agencies of the Town of Chapel Hill, its contractors and subcontractors shall comply with the regulations set forth in this Ordinance.

SECTION 3 - DEFINITIONS

As used in this Ordinance, unless the context clearly indicates otherwise, the following definitions apply:

Accelerated Erosion - any increase over the rate of natural erosion as a result of land-disturbing activities.

Acre - 43,560 square feet.

Act - the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.

Adequate Erosion Control Measure, Structure, or Device - one which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

Agricultural Land - land used primarily for the production of plants and animals and intended for private consumption or sale, including but not limited to forage and sod crops, grain and feed crops, tobacco, cotton and peanuts; dairy animals and dairy products; poultry and poultry products; livestock, including the breeding and grazing of any or all such animals; bees and apiary products; and fur animals.

Borrow - means fill material which is required for on-site construction and is obtained from other locations.

Buffer Zone - the strip of land adjacent to a lake or natural watercourse. The boundaries and purposes of which are as set forth in Section 8(a).

Channel - a natural or artificial watercourse with a definite bed and banks to confine and conduct the flow of water.

Channel Alterations - a change of the water-carrying capacity or flow characteristics of a natural or artificial channel by clearing, excavation, bank stabilization or other means.

Channel Stabilization - erosion prevention and velocity control in a channel using jetties, drops, revetments, vegetation, and other measures.

Commission - the North Carolina Sedimentation Control Commission.

Denuded Area - any area deprived of its protective vegetative cover and left in that exposed condition.

Department - the North Carolina Department of Natural Resources and Community Development.

Development - any man-made change to improved or unimproved real estate, including but not limited to construction of buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.

District - the Orange or Durham County (as applicable) Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.

Diversion - a channel or ridge or combination thereof which is constructed across sloping land either on the contour or at a predetermined grade which purpose is to intercept and divert surface runoff before it gains sufficient volume and velocity to cause erosion and convey the surface runoff to a protected area.

Energy Dissipator - a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

Erosion - the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

Erosion Control Officer - the person designated under Section 16 of this Ordinance.

Ground Cover - any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

Groundwater Recharge - the infiltration of water into the earth, which may increase the total amount of water stored underground or only replenish supplies depleted through pumping or natural discharge.

Impervious Structure - any structure which prevents free seepage of rainwater into the ground, including but not limited to buildings, paved roads, paved parking lots, airport runways, etc.

Intermittent Stream - a stream or portion of a stream that flows only in direct response to precipitation. It receives little or no water from springs and no long-continued supply from melting snow or other sources. It is dry for a large part of the year.

Lake or Natural Watercourse - any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment; or any body of water which is or would be denoted by a solid blue line or solid blue shapes on United States Geological Survey topographic maps.

Land-disturbing Activity - means any use of the land by any person in residential, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

Local Government - any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of this Article.

Natural Erosion - the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

Peak Discharge - the maximum instantaneous flow from a given storm condition at a specific location.

Person - any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

Person Conducting Land-disturbing Activity - any person who may be held responsible for a violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.

Person Responsible for the Violation - as used in this Ordinance means:

- a. the developer or other person who has or holds himself/ herself out as having financial or operational control over the land-disturbing activity; and/or
- b. the landowner or person in possession or control of the land when he/she has directly or indirectly allowed the land-disturbing activity or has benefited from it or he/she has failed to comply with any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act as imposes a duty upon him/her.

Phase of Grading - one of two types of grading, rough or fine.

Plan - erosion and sediment control plan.

Sediment - solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

Sedimentation - the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

Siltation - sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.

Storm Drainage Facilities - the system of inlets, conduits, channels, ditches, and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

Stormwater Runoff - means the direct runoff of water resulting from precipitation in any form.

Stream - a body of water flowing in a natural surface channel. Flow may be continuous or only during wet periods.

Swale - an elongated depression in the land surface that is at least seasonally wet, is usually heavily vegetated, and is normally without flowing water. Swales conduct stormwater into primary drainage channels and provide some groundwater recharge.

Ten Year Storm - means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average once in 10 years, and of a duration which will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.

Tract - means all contiguous land and bodies of water in one ownership, or contiguous land and bodies of water in diverse

ownership being developed as a unit, although not necessarily all at one time.

Uncovered - means the removal of ground cover from, on, or above the soil surface.

Undertaken - means the initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

Velocity - means the average velocity of flow through the cross-section of the main channel at the peak flow of the storm of interest. The cross-section of the main channel shall be that area defined by the geometry of the channel plus the area of the flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not being included for the purpose of computing velocity of flow.

Waste - means surplus materials resulting from on-site construction and disposed of at other locations.

Wetland - areas that are inundated or saturated at a frequency and for a duration sufficient to support a prevalence of vegetative or aquatic life requiring saturated or seasonally saturated soil conditions for growth and reproduction.

Working days - means days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

SECTION 4 - SCOPE EFFECT

It shall be unlawful, within the jurisdiction of this Ordinance, to engage in land-disturbing activity, except as provided herein, without first obtaining a permit as required by this Ordinance and without complying with the conditions of the issuance of said permit.

Conflicts and duplications among portions of this Ordinance shall be resolved in favor of the more stringent regulation.

Whenever conflicts exist between federal, State or local laws, ordinances, or rules, the more restrictive provision shall apply.

SECTION 5 - EXCLUSIONS

This Ordinance shall apply to land-disturbing activities undertaken by any person in the Town of Chapel Hill, with the following exclusions:

- a. Those undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to: forage and sod crops, grains and feed crops, tobacco,

cotton, and peanuts; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules or goats, including the breeding and grazing of any or all such animals; bees and apiary products; fur animals.

- b. Those undertaken on forest land for the production and harvesting of timber and timber products.
- c. Activities undertaken by persons as defined in G.S. 113A-52(8) who are otherwise regulated by the provisions of G.S. 74-46 through G.S. 74-68, the Mining Act of 1971.
- d. Those land-disturbing activities over which the State by statute has exclusive regulatory jurisdiction, which are activities:
 - (1) conducted by the State,
 - (2) conducted by the United States,
 - (3) conducted by persons having the power of eminent domain,
 - (4) conducted by local governments,
 - (5) funded in whole or in part by the State or the United States.

SECTION 6 - GENERAL REQUIREMENTS

- a. Protection of Property - person(s) conducting land-disturbing activities shall take all reasonable measures to protect all public and private property from damage by such activities. This requirement shall apply to any areas to be disturbed, regardless of the size of the area to be uncovered.
- b. Erosion Control Plan Requirements - prior to the commencement of any land-disturbing activity that will result in the uncovering of more than 20,000 square feet of land, the person(s) conducting the land disturbing activity must prepare and submit an Erosion Control Plan for the proposed site. The Plan must be approved and a Grading Permit obtained prior to the start of the disturbance.

SECTION 7 - BASIC CONTROL OBJECTIVES

The basic control objectives which are to be considered in developing and implementing an erosion and sedimentation control plan are to:

- a. Identify Critical Areas - on-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention, and appropriate mitigative measures are to be taken to protect those areas.

- b. Limit Exposed Areas - all land-disturbing activities are to be planned and conducted to minimize the size of the area to be exposed at any one time.
- c. Limit Time of Exposure - all land-disturbing activities are to be planned and conducted to limit exposure to the shortest feasible time.
- d. Control Surface Water - surface water runoff originating upgrate of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
- e. Control Sedimentation - all land-disturbing activities are to be planned and conducted so as to prevent off-site sedimentation damage.
- f. Manage Storm Water Runoff - when the increase in the peak rates and velocity of storm water runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include measures to control the velocity and the rate of release at the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

SECTION 8 - MANDATORY STANDARDS FOR LAND-DISTURBING ACTIVITY

No land-disturbing activity subject to the control of this Ordinance shall be undertaken except in accordance with the following mandatory standards:

- a. Buffer Zone - no land-disturbing activity shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearer the land-disturbing activity, provided that this subsection (a) shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
- b. Graded Slopes and Fills - the angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 30 working days of completion of any phase of grading, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.
- c. Ground Cover - whenever land-disturbing activity is undertaken on a tract comprising more than 20,000 square feet, if more than 20,000 contiguous square feet are uncovered, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices

as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within 30 working days or 120 calendar days following completion, whichever period is shorter.

- d. Design and Performance of Control Measures - erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from accelerated erosion and sedimentation from the calculated maximum peak rates of runoff from the ten-year frequency storm. Runoff rates shall be calculated using the procedures in the USDA Soil Conservation Service's "National Engineering Field Manual for Conservation Practices," or other calculation procedures acceptable to the Erosion Control Officer.
- e. Prior Plan Approval - No person shall initiate any land-disturbing activity if more than 20,000 square feet are to be uncovered unless, thirty or more days prior to initiating the activity, an erosion and sedimentation control plan for such activity is filed with, approved by, and a Grading Permit obtained from the Erosion Control Officer.

SECTION 9 - PERMANENT DOWNSTREAM PROTECTION OF STREAM BANKS AND CHANNELS

Provision shall be made for permanent protection of off-site stream banks and channels from the erosive effects of increased velocity and volume of stormwater runoff resulting from land-disturbing activities.

- a. Control of Velocity - stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from a land-disturbing activity. The land-disturbing activity shall be planned and conducted such that the velocity of stormwater runoff in the receiving watercourse at the point of discharge resulting from a 10-year storm after development shall not exceed the greater of:
- (1) the velocity as determined from the table of permissible velocity for stormwater in d), or
 - (2) the velocity in the receiving watercourse determined for the 10-year storm prior to development.

If conditions (1) and (2) of this paragraph cannot be met, the channel below the discharge point shall be designed and constructed to withstand the expected velocity.

- b. Acceptable Management Measures- measures applied alone or in combination to satisfy the intent of this subchapter are acceptable if there are no objectionable secondary consequences. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives are to:
- (1) avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
 - (2) avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections;
 - (3) provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities at the point of discharge; these may range from simple rip-rapped sections to complex structures;
 - (4) protect watercourses subject to accelerated erosion by improving cross-sections and/or providing erosion-resistant lining.
- c. Exceptions - this rule shall not apply in areas where it can be demonstrated that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.
- d. The following is a table of permissible velocity for stormwater discharges:

<u>Material</u>	<u>Maximum Permissible Velocities f.p.s.</u>	<u>M.P.S.</u>
Fine Sand (noncolloidal)	2.5	.8
Sandy Loam (noncolloidal)	2.5	.8
Silt Loam (noncolloidal)	3.0	.9
Ordinary Firm Loam	3.5	1.1
Fine Gravel	5.0	1.5
Stiff Clay (very colloidal)	5.0	1.5
Graded, Loam to Cobbles (noncolloidal)	5.0	1.5
Graded, Silt to Cobbles (colloidal)	5.5	1.7
Alluvial Silts (noncolloidal)	3.5	1.1
Alluvial Silts (colloidal)	5.0	1.5
Coarse Gravel (noncolloidal)	6.0	1.8
Cobbles and Shingles	5.5	1.7
Shale and Hard Pans	6.0	1.8

Source: Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95

for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

SECTION 10 - BORROW AND WASTE AREAS

When the person conducting the land-disturbing activity is also the person conducting the borrow and waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the Department of Human Resources, Division of Health Services, shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

SECTION 11 - ACCESS AND HAUL ROADS

Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

SECTION 12 - OPERATIONS IN LAKES OR OTHER NATURAL WATERCOURSES

Land-disturbing activity in connection with construction in, on, over or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics except when justification for significant alteration to flow characteristics is provided. Every effort shall be made to maintain buffer zones consisting of existing vegetation between the land-disturbing activity and the watercourse.

SECTION 13 - RESPONSIBILITY FOR INSTALLATION AND MAINTENANCE

During the development of a site, the person engaged in or conducting the land-disturbing activity shall be responsible for installing and maintaining all temporary and permanent erosion and sedimentation control measures and facilities as required by the approved or revised Erosion Control Plan, any provision of the Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act. The responsibility for installing and maintaining permanent erosion and sedimentation control measures and facilities after completion of the site development shall lie with the land owner or person in possession or control of the land except facilities and measures installed within road or street rights-of-way or easements accepted for maintenance by a government agency.

SECTION 13.1 - OFF-SITE FACILITIES

The Erosion Control Officer may allow stormwater runoff that is discharged in volumes or at rates in excess of those otherwise allowed by this Ordinance to be discharged into drainage facilities off the site of development if the off-site facilities and the channels leading to them are designed, constructed, and maintained in accordance with the standards of this Ordinance. Adequate provision must be made for the sharing of the construction and maintenance expenses of the facilities. A request to use off-site drainage facilities and all information related to the proposed off-site facilities should be made part of the developer's erosion and sedimentation control plan.

SECTION 14 - ADDITIONAL MEASURES

Whenever the Erosion Control Officer determines that significant sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protection practices, the person conducting the land-disturbing activity or the person responsible for maintenance will be required to take additional protective action.

SECTION 15 - EXISTING UNCOVERED AREAS

- a. All uncovered areas existing on the effective date of this Ordinance which (1) resulted from land-disturbing activities not excluded under Section 5, and (2) if such areas are outside the University Lake Watershed and exceed 20,000 contiguous square feet, and (3) are subject to continued accelerated erosion, and (4) are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.
- b. The Erosion Control Officer will serve upon the landowner written notice of violation by registered or certified mail, return receipt requested, or other means. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the authority serving notice shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits for compliance.
- c. The Erosion Control Officer reserves the right to require preparation and approval of an erosion control plan in any instance wherein extensive control measures are required.
- d. This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir unless the

disturbance and length of time of the exposure prior to the filling of the reservoir will result in erosion and sedimentation of the downstream channel.

SECTION 16 - EROSION CONTROL OFFICER

The Orange County Erosion Control Officer will be responsible for carrying out the provisions of this Ordinance, unless the Town appoints, employs or contracts with another qualified person(s) to perform such responsibilities.

SECTION 17 - PERMITS

- a. No person shall undertake any land-disturbing activity which would require the uncovering of 20,000 square feet or more of land without first obtaining the required approvals and permits from the Erosion Control Officer. Permit application forms must be signed by the landowner or his authorized agent. The agent signing must have a signed letter of authorization from the owner.

No permit is required for the following activities:

1. For the purpose of fighting fires.
 2. For the stockpiling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage.
 3. For disturbances that do not exceed 20,000 square feet in surface area. In determining the area, contiguous lands under one or diverse ownership being developed as a unit will be aggregated.
- b. Erosion Control Plan Approvals - An Erosion Control Plan must be submitted to the Erosion Control Officer when the proposed land disturbance is greater than 20,000 square feet.
- c. Before starting a land-disturbing activity greater than 20,000 square feet, the owner or his agent shall obtain a Grading Permit from the Erosion Control Officer. Erosion Control Plans must be approved before a Grading Permit will be issued. Grading permits may be obtained when the Plan or Waiver is approved or prior to the start of the land disturbance.
- d. Expiration of Permits - Erosion Control Plan Approvals expire one year after the approval date unless the land disturbance is started as defined below.

A Grading Permit must be obtained before beginning the disturbance and may be obtained at any time as long as the Plan Approval is valid. Grading Permits expire with the expiration of the Plan Approval unless the disturbance is begun. Once the disturbance begins, a Grading Permit is valid for a period of two years starting with the commencement of the disturbance, as defined below. The Grading Permit must be renewed if the disturbance continues more than two years. The renewal fee is one half the original fee and is valid for one year.

The land-disturbing activity is considered to have started when the necessary erosion control practices have been properly installed and the site clearing or grading has begun.

- e. Orange County may establish such fees as considered necessary to defray costs of administering this ordinance on behalf of the Town.
- f. Pursuant to G.S. Section 153A-357, no building permit shall be issued unless an erosion control plan has been approved, where such approval is required, for the site of the activity or a tract including the site of the activity.
- g. Whenever a person conducting a land-disturbing activity is not complying with the provisions of this ordinance, the Grading Permit, the Approved Erosion Control Plan or any amendments to the Plan, the Erosion Control Officer may revoke the Grading Permit for the site. Notice of Revocation shall be sent by registered or certified mail to the person conducting the land-disturbing activity. In the event delivery cannot be accomplished by registered or certified mail, it may be accomplished in any manner provided in Rule 4(j) of the North Carolina Rules of Civil Procedure. Upon receipt of the Revocation Notice, the person responsible must immediately order all land-disturbing activities to cease except those which are specifically directed towards bringing the site into compliance. Once the site has been inspected and remedial work approved by the Erosion Control Officer, the responsible party may reapply for a Grading Permit and pay the appropriate fee. Resumption of land-disturbing activities other than those necessary to bring the site back into compliance before the reissuance of the Grading Permit will constitute a violation of the ordinance. The person conducting the land-disturbing activity may appeal the revocation of a Grading Permit following procedures set out in Section 21(f) of this ordinance.

SECTION 18 - EROSION AND SEDIMENTATION CONTROL PLANS

- a. An Erosion Control Plan shall be prepared for all land-disturbing activities subject to this Ordinance whenever the proposed activity is to be undertaken on a tract

comprising more than 20,000 square feet, if more than 20,000 square feet are to be uncovered. The Plan shall be filed with the Erosion Control Officer and the Orange or Durham County (as applicable) Soil and Water Conservation District, 30 days prior to the commencement of the proposed activity.

- b. The Orange or Durham County Soil and Water Conservation District, within 20 days of receipt of any plan, or within such additional time as may be prescribed by the Chapel Hill Town Council, or such other body or officer designated by the Council, shall review such plan and submit its comments and recommendations to the Erosion Control officer. Failure of the District to submit its comments and recommendations to the Erosion Control Officer within the prescribed time will not delay final action on the plan.
- c. The Erosion Control Officer will review each plan submitted and within 30 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved.

Failure to approve or disapprove a complete erosion and sedimentation control plan within 30 days of receipt of the complete plan shall be deemed approval. Denial of a plan must specifically state in writing the reasons for denial. The County must approve or deny a revised plan within 15 days of receipt, or it is deemed to be approved. If, following commencement of a land-disturbing activity pursuant to an approved plan, the County determines that the plan is inadequate to meet the requirements of this Ordinance, the County may require such revisions as are necessary to comply with this Ordinance.

When the person or firm submitting the plan fails to respond to comments or correspondence from the Erosion Control Division staff with either revised plans or written correspondence within 90 days, the Division will assume that the application will give warning in writing to the person or firm submitting the plan before terminating the review. Plan review fees are not refundable when an application is abandoned.

In order to be considered complete, a plan submitted for approval must contain the proposed erosion control plan, the completed application, the statement of financial responsibility and ownership, and the plan review fee. The 30-day review period begins when all of the components of the complete plan are received.

- d. The plan required by this section shall contain such architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as are needed to

adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this ordinance. The plan shall comply with all applicable State and local regulations for erosion and sediment control. Plan content may vary to meet the needs of specific site requirements.

- e. Application for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the Erosion Control Officer, the land-disturbing activities shall not proceed except in accordance with the erosion control plan as originally approved.

If the Erosion Control Officer, either upon review of the Erosion Control Plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, revisions to the plan will be required. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the Erosion Control Officer.

- f. Erosion Control Plans shall be accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his/her attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents. If not a resident of North Carolina, the applicant must designate a North Carolina agent and include that agent's name and address in the statement for the purpose of receiving notice of compliance or noncompliance with the plan or this Ordinance or rules or orders adopted or issued pursuant to this Ordinance.
- g. A copy of the approved Erosion Control Plan and any amendments and required revisions shall be kept on the job site at all times.

SECTION 18.1 - EROSION CONTROL STANDARDS

- a. Requirements, standards, and specification for erosion control plans and erosion control techniques, measures, and devices are contained in the "Orange County Soil Erosion and Sediment Control Manual." Copies of the Manual are available from the Erosion Control Division of the Orange County Planning Department.
- b. Corrections, revisions, and amendments to the Soil Erosion and Sediment Control Manual shall be made upon

recommendation of the Erosion Control Officer and approval by the Orange County Board of Commissioners.

- c. Nothing in this Section shall be construed to allow approval of a plan which is inconsistent with the mandatory standards set forth in Section 8 of this Ordinance or any other provision of this Ordinance.

SECTION 19 - APPEALS

- a. The disapproval or modification of any proposed erosion control plan by the Erosion Control Officer shall entitle the person submitting the plan to an appeal of the decision to the Chapel Hill Director of Engineering. If the Director of Engineering upholds the decision, the person shall be entitled to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of disapproval or modification.
 - 1. Hearings held pursuant to this section shall be conducted by the Chapel Hill Planning Board within 30 days after receipt of written demand for such hearing is made by the person submitting the plan.
 - 2. The Planning Board shall make recommendations to the Town Council within 30 days after the date of the hearing on such erosion control plan.
 - 3. The Town Council will render its final decision on any erosion control plan upon which a hearing is requested within 30 days of receipt of the recommendations from the agency conducting the hearing.
- b. In the event that the Town Council upholds the disapproval or modification of a proposed erosion control plan following the public hearing, the person submitting the erosion control plan shall be entitled to appeal the local government's action to the North Carolina Sedimentation Control Commission as provided in Section 113A-61(c) of the General Statutes and Title 15 NCAC 4B .0018(b).

SECTION 20 - COMPLIANCE WITH PLAN REQUIREMENTS

Any person engaged in land-disturbing activities who fails to file a plan in accordance with this ordinance, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this ordinance.

SECTION 21 - INSPECTIONS AND INVESTIGATIONS

- a. The Erosion Control Officer will periodically inspect the sites of land-disturbing activities for which permits have been issued to determine whether the activities are being

conducted in accordance with the plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activities.

- b. If, through inspection, it is determined that a person engaged in land-disturbing activity has failed to comply with the approved plan, a notice of violation shall be served upon that person by registered or certified mail, return receipt requested, or other means. The notice shall set forth the measures necessary to achieve compliance with the plan, specify a reasonable time period within which such measures must be completed, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action. If the person engaged in land-disturbing activity fails to comply within the time specified, enforcement action shall be initiated.

In the event service cannot be accomplished by registered or certified mail, it may be accomplished in any manner provided in rule (4)j of the North Carolina Rules of Civil Procedure.

- c. The Erosion Control Officer shall have the power to conduct such investigations as he may reasonably deem necessary to carry out his duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activities. No person shall refuse entry or access to any authorized representative or agent of the Town who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.
- d. The Erosion Control Officer shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activities.
- e. The Erosion Control Officer shall have the power to revoke grading permits issued by the Erosion Control Division as provided for under Section 17(c) of this Ordinance.
- f. Whenever any person is violating this Ordinance or any rule or order adopted or issued pursuant to this Ordinance, or any term, condition, or provisions of any approved erosion control plan, the Erosion Control Officer may, either before or after the institution of any other action or proceeding authorized by this Ordinance, issue a stop work order for the site on which the violation has occurred. Upon issuance

of such an order and the posting of same on the site of the violation, all work on the site of the violation shall cease, except those activities necessary to bring the site into compliance with this Ordinance. Notice of the stop work order shall be in writing, directed to the person conducting the land-disturbing activity and shall state the reasons for the issuance of the order, and the conditions under which work may be resumed. Notice shall be given by registered or certified mail.

In the event service cannot be accomplished by registered or certified mail, it may be accomplished in any manner provided in rule 4(j) of the North Carolina Rules of Civil Procedure.

The person conducting the land-disturbing activity may appeal a stop work order to the Town Council within a period of five days after the order is issued. Notice of appeal shall be given in writing to the Town Council, with a copy to the Erosion Control Officer. The Town Council shall conduct a hearing at their next scheduled meeting at which the appellant and the Erosion Control Officer or inspector shall be permitted to submit relevant evidence, and shall rule on the appeal as expeditiously as possible. Pending the ruling by the Council on an appeal, no further work shall take place in violation of a stop work order.

SECTION 22 - PENALTIES

a. Civil Penalties

- (1) Any person who violates any of the provisions of this Ordinance or rules or orders adopted or issued pursuant to this Ordinance, or who initiates or continues a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a civil penalty of \$100 except that the penalty for failure to submit an erosion control plan shall be as provided in a.(3) of this section. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation by registered or certified mail, return receipt requested or other means reasonably calculated to provide actual notice to the offender. The notice shall describe the violation with reasonable particularity, specify a reasonable time period within which the violation must be corrected, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action. Each day of a continuing violation shall constitute a separate violation under Section 22(a)(1),

- (2) The Town Council shall make written demand for payment upon the person responsible for the violation, and shall set forth in detail a description of the violation for which the penalty has been invoked. If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the matter shall be referred to the town or county attorney for institution of a civil action in the name of the town or county in the appropriate division of the General Courts of Justice for recovery of the penalty.
- (3) Any person who fails to submit an erosion control plan for approval pursuant to this Ordinance shall be subject to a single, noncontinuing civil penalty of one thousand dollars (\$1000). Any person who is subject to a civil penalty under this subdivision may be subject to additional civil penalties for any violation of any other provision of this Ordinance or any rule or order adopted or issued pursuant to this Ordinance by the Town of Chapel Hill.
- (4) Civil penalties collected pursuant to this Ordinance shall be used or disbursed as directed by G.S. 113A-64(a).

b. Criminal Penalties

Any person who knowingly or willingly violates any provision of this Ordinance or rule or order adopted or issued pursuant to this Ordinance, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan shall be guilty of a misdemeanor punishable by imprisonment not to exceed 90 days or by a fine not to exceed \$5,000, or by both, at the discretion of the Court.

SECTION 23 - INJUNCTIVE RELIEF

- a. Whenever the governing body of the Town or County has reasonable cause to believe that any person is violating or threatening to violate this Ordinance or any rule or order adopted or issued pursuant to this Ordinance, or any term, condition, or provision of an approved erosion control plan, it may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in the name of the Town or County for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of Orange County or Durham County, as applicable.

- b. Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

SECTION 24 - SEVERABILITY

If any one or more sections or portions thereof of this Ordinance are held to be invalid or unenforceable, all other sections and portions thereof shall nevertheless continue in full force and effect.

SECTION 25 - EFFECTIVE DATE

This Ordinance will become effective upon adoption by the Town Council of Chapel Hill and the approval of the North Carolina Sedimentation Control Commission.

This the 26th day of June, 1989.

Executive Session

Town Manager Taylor noted that items for Executive Session consideration could be postponed until July 10th.

Adjournment

COUNCIL MEMBER PRESTON MOVED, SECONDED BY COUNCIL MEMBER HERZENBERG, TO ADJOURN THE MEETING. THE MOTION WAS ADOPTED UNANIMOUSLY (8-0).

The meeting stood adjourned at 11:38 p.m.