

MINUTES
TOWN OF PITTSBORO
BOARD OF COMMISSIONERS
REGULAR MEETING
MONDAY, MAY 24, 2010
7:00 PM

Mayor Randy Voller called the meeting to order at 7:00 p.m. and called for a brief moment of silence.

ATTENDANCE

Members present: Mayor Randy Voller, Commissioners Pamela Baldwin, Gene T. Brooks, Clinton E. Bryan, III, Michael Fiocco, and Hugh Harrington.

Staff present: Town Manager Bill Terry, Town Clerk Alice F. Lloyd, Town Attorney Paul S. Messick, Jr., Assistant Planner Paul Horne, Finance Officer Kay Hamrick, Police Chief David Collins, John Poteat, Wastewater Treatment Plant Superintendent Randy Heard, Planning Board Chair Ken Hoyle and Planning Board members Harold Howard, John Clifford and Karl Shaffer.

AGENDA

Motion made by Commissioner Baldwin seconded by Commissioner Bryan to approve the Agenda as submitted.

Vote Aye-5 Nay-0

CONSENT AGENDA

The Consent Agenda contains the following items:

1. Approve minutes of the May 10, 2010 regular meeting.
2. Schedule a public hearing on a rezoning request from Piedmont Biofuels at Lorax Lane for June 14, 2010 at 7:00 p.m.

Motion made by Commissioner Brooks seconded by Commissioner Baldwin to approve the Consent Agenda as submitted.

Vote Aye-5 Nay-0

CEREMONIAL AGENDA

- 1. A Resolution Celebrating the 60th Anniversary of the Pittsboro Kiwanis Club.**

Mayor Voller asked who was present to receive the Resolution.

Attorney Messick said it was Samuel Powell.

Mayor Voller asked Samuel Powell to read the resolution into the record.

Mr. Powell read the following resolution into the public record:

**A RESOLUTION CELEBRATING THE 60TH ANNIVERSARY
OF THE PITTSBORO KIWANIS CLUB**

WHEREAS, Kiwanis International is a world-wide service organization with more than 330,000 members in more than 80 countries; and

WHEREAS, the Carolinas District of Kiwanis is made up of more than 12,000 members and 280 clubs throughout the Carolinas; and

WHEREAS, the Pittsboro Kiwanis Club first met on March 23, 1950 as a result of the efforts of John Bell, Cleaton Lindsey, Baxter Riggsbee, and Lacy Trotter and other public-spirited members of this community; and

WHEREAS, the Pittsboro Kiwanis Club is celebrating its 60th anniversary on June 12, 2010 at its clubhouse on Credle Street from 11:00 o'clock a.m. until 3:00 o'clock p.m.; and

WHEREAS, the Pittsboro Kiwanis Club has worked at the NC State Fair since 1964 to raise significant funds for community causes, including scholarships for Northwood High School seniors; and

WHEREAS, the Pittsboro Kiwanis Club has worked diligently for six decades on behalf of this community and various charitable organizations, including CORA, Chatham Together, the American Red Cross, Victory Junction, United Way, Boy and Girl Scouts; and

WHEREAS, the Pittsboro Kiwanis Club of Pittsboro has initiated and supported many projects in our community including the Kiwanis Playground Park; and

WHEREAS, the members of our Kiwanis Club have given of themselves in community and civic service on a volunteer basis; and

WHEREAS, the Kiwanis Club is specifically dedicated to working with our youth, giving them a sense of belonging, leadership, self-esteem and responsibility by sponsorship of the Northwood High School Key Club;

NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners of the Town of Pittsboro does hereby recognize and commend the members of the Pittsboro Kiwanis Club who have worked so faithfully and given so generously to establish and maintain this civic organization for more than six decades of service to the Pittsboro community; and

RESOLVED FURTHER, that the Board of Commissioners urges the citizens of our community to join in the observance of the 60th Anniversary on June 12, 2010 with appropriate ceremonies and activities; and

Adopted this 24th day of May, 2010.

Mayor Voller stated that the Kiwanis Club relationship with the Town in regards to the Kiwanis Park was a good working relationship.

Motion made by Commissioner Brooks seconded by Commissioner Fiocco to adopt the celebratory resolution.

Vote Aye-5 Nay-0

A RESOLUTION CELEBRATING THE 60TH ANNIVERSARY OF THE PITTSBORO KIWANIS CLUB IS RECORDED IN THE BOOK OF RESOLUTIONS NUMBER ONE, PAGES 35-36

REGULAR MEETING AGENDA

Citizens Matters

Patrick Crutchfield stated he is a Boy Scout with Troop 93 here in Pittsboro. He would like to ask the board for approval to redo/make new Pittsboro Welcome signs for his Eagle project. This is one of the first steps to getting pre-approval for this Eagle project. He has already gotten approval from his Scoutmaster, Mr. Randall Goodman. The next step is to get it approved by the Board of Commissioners, and the Town of Pittsboro. If this project is approved by the board he will take it to the Three Rivers District Eagle Board. If approved by them he will be able to proceed.

Motion made by Commissioner Brooks seconded by Commissioner Bryan to approve the request.

Vote Aye-5 Nay-0

Sonny Keisler – The Rocky River Heritage Foundation – stated the development of the Chatham Parks Investors (CPI) property will have major indirect and cumulative impacts on the lower Rocky River. This will be especially true in the coming decades as global warming continues and most likely brings major destructive changes to the entire planet including Chatham County and Pittsboro. In addition, the development of the CPI property could lead to the inclusion of much of the lower Rocky River watershed into the Pittsboro ETJ. For these reasons, the Rocky River Heritage Foundation respectfully requests the following information.

- **Planning for the CPI Property and Climate Change:** To what extent is either Pittsboro or CPI taking climate change into serious consideration. This is especially important because the maintenance of forest cover worldwide and locally will become increasingly important as a means of (a) sequestering carbon, (b) preserving local hydrologic cycles and (c) moderating local temperature increases.

- Permitting: How soon will CPI apply for various local, state and federal permits?
- Chatham County: Does CPI plan to ask Pittsboro to take within its jurisdiction the 20%+/- of the property located in the Chatham County planning jurisdiction? If so, why?
- Rezoning: Does CPI plan to ask Pittsboro and/or Chatham County to rezone any of the property?
- Water and Sewer: What type of water and wastewater facilities are planned for the CPI property? Where will wastewater be discharged? Is water and wastewater planning taking into consideration the likely severe impacts global warming and resulting climate change will have on local water resources?
- Population: What is the current population projection for the CIP property once development is completed?
- Development Time Table: When will development begin?
- Land Use: What percent of the property will be devoted to various uses...residential, commercial, institutional, recreational, open space, infrastructure etc?
- Impervious Surfaces: What percent of the property will be covered by impervious surfaces?
- Notification: Can citizen groups such as the Rocky River Heritage Foundation be notified of planning and permitting activities?

Mr. Keisler thanked the board for hearing their concerns.

OLD BUSINESS

1. Powell Spring Site Plan Review.

Town Manager Bill Terry introduced consultant Roger Waldon from Clarion Associates to present the Town Manager's report.

Mr. Waldon briefly reviewed the context of this application. This application seeks approval of a site plan for a 48-unit Senior Living Community on 4.4 acres of land in Powell Place. The dwelling units would be built in one L-shaped building fronting on Millbrook Drive, with access off Millbrook Drive. 96 parking spaces would be provided. The proposal is a component of the Powell Place development, and is submitted pursuant to the Powell Place Master Plan for a 148 acre site, approved in 2002.

Issues that have been raised and discussed in the Manager's report include: Relationship to the Powell Place Mixed Use Planned Development; classification of an existing stream; fire/safety/traffic concerns; and compliance with the Pittsboro Zoning Ordinance. Mr. Waldon reported the staff/consultant conclusion that the Powell Spring application is consistent with the approved Powell Place Mixed Use Planned Development and meets zoning ordinance requirements. A series of alternative recommendations was outlined.

Board comments and questions followed, as summarized below:

- Relationship of this application to watershed protection regulations. Staff determination is that the application conforms to those regulations.

- Discussion of the importance of aligning the main driveway entrance to the proposed development with an existing street.
- Comments from the Fire Chief that some of the department's equipment will not be able to use the fronting street if there are cars parked on both sides of the street. (Similar issue throughout Powell Place)
- Comments about access considerations during an emergency event if a piece of fire-fighting equipment blocks part of Millbrook.
- Request to the applicant to provide a longer flat area to the west of the proposed building, at least 20' wide, to allow for placement of emergency equipment.
- Discussion about grading on the western portion of the site.
- Distribution of the memorandum from Hydrostructures Engineering regarding specifications for facilities to be constructed.
- Key issue: Should the building be set back 75 or 100 feet from the stream?
- Key issue: Screening of air conditioning units: Applicant offered a drawing showing how the units would be screened.
- Citizen comment: the stream should be considered perennial, requiring a 100-foot setback.

The Board could enact an ordinance to limit parking on the street. He said that was something the Board might want to consider doing, noting they believed it was reasonable to consider doing that but it was not a part of the application. Mr. Waldon said with respect to traffic congestion, the applicant had supplied some numbers that showed that the proposed development would generate a relatively small amount of traffic and well within the capacity of the road to accommodate it.

Mr. Waldon said the last item was compliance with the Zoning Ordinance, and as they reviewed the proposal the only question was about the 100-foot buffer from the stream. He said it was their recommendation that the development as proposed met the requirements of the zoning and subdivision regulations.

Mr. Waldon said there were 4 resolutions before the Board. He said that Resolution A would approve the proposal as submitted by the applicant, and that Resolution B would approve the proposal as recommended by the Planning Board. He said the Planning Board had expressed concern about the distance between the street and where the building would be, and the Planning Board's recommendation would mean that the Town Board consider setting the building back an additional 10 feet which meant an encroachment into the set back area that had been previously proposed.

Mr. Waldon said Resolution C was the Manager's recommendation, that the building and site features be shifted further to the east to allow for the 100-foot stream buffer. He said it also acknowledged that the Board had been discussing parking requirements with respect to this development and in general and considering possible changes to the Zoning Ordinance to adjust requirements for off-street parking. Mr. Waldon said they were suggesting that if the Board continued that discussion and did amend the ordinance to allow a lesser number of parking spaces that would be required for this development, then if construction had not yet started, that this development be authorized to reduce its number of parking spaces to meet the new

requirements. He said Resolution C also included the paving of parking surfaces, noting there was disagreement about how much parking this development would need and require, and noted also that the development did meet the ordinance with the proposed 96 spaces. Mr. Waldon said it was possible that all of those spaces would not be in use at all times, and Resolution C provided authorization for some alternate surfaces such as paving blocks that were pervious which allowed some water to seep through the surface on the more remote parking sites that were not likely to be used on a regular basis.

Mr. Waldon said Resolution D if adopted would deny the site plan.

Commissioner Brooks said when you talk about the intermittent versus perennial stream; he could not find that stream named on any of the maps he had seen or any indication that it was a source for the Haw River. Mr. Waldon said he was not aware of a name either. Commissioner Brooks asked where the drainage went. Mr. Waldon said it drained in the direction of the Haw River and it was a part of the watershed. He said everything from drainage ditches to full-flowing tributaries flowed in that direction to the Haw. Commissioner Brooks said he understood that concept but was having difficulty understanding how that was a perennial stream. Mr. Waldon responded that had likely been the hottest debated topic with many opinions expressed on both sides of the issue. He said there was language in the ordinance that said to look to the USGS maps, and those maps referred to it as an intermittent stream. He said the State had criteria that said that if certain kinds of things were present such as fish then that indicated that there was water in the stream most of the time and that met the State's definition of a perennial stream. Mr. Waldon said there was a question about which of those two standards to apply.

Commissioner Brooks said he believed Mr. Waldon had said the Planning Board was proposing that the building be moved back 10 feet, so that would then change the 100-foot setback to 90 feet. Mr. Waldon said it would move the retaining wall back and encroach into the area that had previously been shown on the site plan as undisturbed. He said the ordinance allowed the Planning Board if they found it to be appropriate to make that recommendation.

Commissioner Brooks asked if there was anything new in his opinion that the applicant had been asked to do after making their initial application that was included in the current proposal. Mr. Waldon replied yes, noting that after the initial application the language in the ordinance lead the applicant to believe that it was an intermittent stream. He said after questions were raised a field inspection was commissioned, and it was determined that the intermittent stream designation was old and there was reason to believe based on what was on the ground today that the stream was a perennial stream. Mr. Waldon said the Board had choices to make and there were different recommendations proposed, noting the Board would likely want the opinion of its Town Attorney. He said all of the resolutions were reasonable and could be justified, and it was their conclusion based on reviews of all the materials that the reasonable thing to do would be to call for a 100-foot buffer.

Commissioner Fiocco stated that the Town's ordinance stated very clearly how one would make a determination regarding a stream, and that was to reference the USGS map, or conduct a local government study. He said it was his understanding that a local government study was not site specific, in that it was a much broader undertaking of a general area or a watershed.

Commissioner Fiocco asked if that was a correct understanding. Mr. Waldon said he believed that “local government study” was a non-specific term and could be exactly as Commissioner Fiocco had described it, or it could be that the Manager had asked an expert to go out and inspect the area.

Commissioner Fiocco asked had it been the Town’s policy to undertake a site specific study after submittal of a site plan. Mr. Terry responded this was the first instance where that question had come up in his experience. He said in this case questions were raised about the validity of the 29-year-old USGS map, and he had responded by first contacting the County’s stormwater engineer, Fred Royal, and then he had contacted Karen Hall for guidance, and both had referred him to Catherine Deininger who was certified in the art and science of investigating such issues.

Commissioner Baldwin said the Manager did have the leeway to do that in order to get as much information as possible to provide clarity. Mr. Terry said he believed he had that authority.

Mr. Messick said he believed the Manager had the right to commission the study, but the question was if that study should have been prompted by this particular issue. He said the watershed regulations had been in place for the Town since 1994, and he had never heard of a study being done

Commissioner Baldwin asked if Mr. Messick was saying the results of that study were not valid. Mr. Messick said it was not a question of being valid; it was a question of whether or not the results could be applied retroactively. He said the application was filed when the stream had been identified as an intermittent stream. Commissioner Baldwin said then the new study could not be applied retroactively to this application. Mr. Messick said he did not believe it should be used retroactively.

Mr. Terry said his interpretation would be that they could not change the regulations retroactively but if there was an error in fact on a map and that error was discovered, the Town should have every right to use the correct classification of the stream. He said as an analogy he would suggest to the Board that Jordan Lake was in the Town’s ETJ and he could produce 40-year-old USGS maps that showed that land to be dry land. Mr. Terry said his point was they would not allow someone to construct buildings in Jordan Lake.

Commissioner Harrington, speaking to Catherine Deininger, stated it appeared that her classification of that stream as a perennial stream hinged on the fact that she saw fish, and asked what kind of fish. Catherine Deininger stated she did not know what kind. She said that 2 years ago she had been asked by the Town staff as part of the Roberson Creek Watershed Council to support them in conducting stream classifications, so it was not a new thing. Ms. Deininger said there were three ways to classify whether a stream was perennial, and the first was the presence of fish, and second was if it scored over 30. She said that that stream was being impacted by the development occurring nearby, and believed it would have scored differently had there not be so much sediment and other things in the stream. Ms. Deininger said she believed the classification she had placed on the stream was correct.

Commissioner Harrington asked was it true that they were not now channeling more water into that stream. Ms. Deininger responded that she did not know, but said there was some question that the sediment pond was sited lower and might actually be drawing water off the stream.

Commissioner Harrington said there was a setback required on the other side of the stream, so that would be a requirement on the stream when they had not required one before. He said in that respect it would be a change to how they were treating that stream. Commissioner Harrington said he had been very surprised that fish had been seen in that stream especially considering how the stream ran and what it crossed. Ms. Deininger stated there was a lot of water in that stream, but she had not followed it all the way down to Northwood.

Commissioner Harrington said that Mr. Terry had said she was certified to conduct such inspections. Ms. Deininger said she was certified to do stream classifications through the Department of Water Quality since November of 2007.

Commissioner Brooks said he was an outdoorsman and had spent a lot of time around creeks and streams and the woods from an early age. He said when you saw those streams and ponds and then talked to farmers who hated the herons, ducks and geese that swarmed the streams and ponds, it was because they brought duck weed into those waters and that became a problem for the pond owner. Commissioner Brooks said they could even bring fish eggs, and that may be how fish got into a stream such as this one.

Commissioner Harrington said that this development would not be exempt from the noise ordinance, and there would be 22 or 23 air conditioning units by the sidewalk. He said he believed that would violate the noise ordinance at the sidewalk. Mr. Terry said he had not collected any data about that. Commissioner Harrington said it may even violate the noise ordinance standing on someone's porch across the road.

Mayor Voller asked if the development was considered to be high density according to the ordinance. Mr. Messick replied yes.

Patrick Bradshaw, attorney for the applicant, said he would not say that it was in general a high density development. He said if you looked only at the improvements on this lot they would not qualify as high density, but overall it was required to be designed as high density with respect to Powell Place.

Mayor Voller said high density required a sedimentation and erosion control plan which he believed was permitted in 2003 or 2004. Mr. Messick said high density referred to the number of dwelling units in the common use of the term. He said it was being referred to here in regard to watershed protection issues. Mayor Voller said they had to do the impervious surface which was driven by rooftops and asphalt.

Mr. Bradshaw said that Powell Place overall was limited to 70% impervious surface, and this site was at 37%.

Mayor Voller said he believed the pond and the different features were to catch the first inch of rainwater. Mr. Messick said that was correct. Mayor Voller said in the information it said that a 100-foot vegetative buffer was required for all new development activities that utilized the high density development option authorized by Section 5.5.1.0 of the Town Code. He said that referred back to the Section 304 buffer areas on page 13 of the materials which said the same thing, in that a minimum 100-foot vegetative buffer was required for all new development activities that exceeded the low density option, otherwise a minimum 30-foot buffer for development activity was required, and the key word was “otherwise.” Mayor Voller asked why they were even having this discussion since it was stipulated that if you were high density then the requirement was 100 feet. Mr. Messick stated he interpreted that to mean it was 100 feet for a perennial stream.

Mayor Voller asked then what the purpose was of the word “otherwise.” Mr. Messick said the term “otherwise” meant that in a non-high density development option you only had to have a 30 foot buffer. Mayor Voller said but this was a high density option. Mr. Messick said that was correct, but that language addressed both high and low density near perennial streams. Mayor Voller asked if Mr. Bradshaw interpreted the language the same way.

Mr. Bradshaw said that language had been copied from the State’s ordinance which had in turn been copied from the regulations used by the Environmental Management Commission (EMC). He said it was a matter of diagramming the sentence to make it make sense, but if that language was read in the way the Mayor suggested by stopping at the semi-colon, then exactly where was the 100 foot buffer measured from? Mr. Bradshaw said in that part of the sentence it did not tell you what the buffer was buffering, so you had to read the rest of the language to know what you were buffering. He said the only thing that was provided for buffers in that section was perennial waters.

Mayor Voller said if you read the entire section what you were buffering was embedded in that language, which was basically streams. Mr. Bradshaw said without reading that section past the semi-colon, you might assume you were buffering trees or something else. Mayor Voller said he was bringing that up because he had always thought the point turned on that clumsy language. Mr. Bradshaw said the language laid out two different buffers for perennial streams, and no buffers for anything else. He said that a perennial stream was the only thing identified that had a buffer; otherwise you would be saying that any feature would need to be buffered.

Mayor Voller asked Mr. Waldon what his interpretation was of the use of the word “otherwise.” Mr. Waldon said there was no doubt in his mind that the language was to be used, and believed it could be read in a number of different ways which was partly why they had suggested that the Board had some choices to make. He said Resolutions A and B treated the stream as intermittent, and they believed it was reasonable given the uncertainty to consider it to be perennial. Mr. Waldon said there was a different of opinion, and whichever way the Board decided was justifiable. But on balance, he said, they believed it was wise and prudent to consider it to be a perennial stream.

Commissioner Fiocco said he believed the question was if he interpreted that sentence to mean there was a minimal 100-foot buffer from any stream. Mr. Waldon said he would have to look at

that language more closely and also to hear from the Town Attorney on that. He said he believed Mr. Bradshaw was correct that there was no reference to a stream other than a perennial stream, but on the other hand it did say a 100-foot buffer and he agreed with the Mayor that they were talking about buffering for streams.

Mayor Voller said on page 2, item B of the information provided said that if local governments chose the high density option which required engineered stormwater controls, then they assumed ultimate responsibility for operation and maintenance of required controls. He said his question was if the Town was responsible for what was already there, and if so would it be responsible for this. Mr. Messick replied that Section 5.5.1.0 talked about the high density development option, and Section 5.5.1.1 dealt with stormwater control structures. He said there were a number of such structures in Pittsboro and a number in Powell Place, and the Town had never exercised all of the authority invested by that ordinance for any of those.

Mayor Voller said if they choose to operate under the high density option and then granted approval, was the Town then responsible. Mr. Messick said you were responsible that it was constructed to meet the criteria of the ordinance. He said the developer had to provide the operation and maintenance, but the ordinance provided for the Town to do periodic inspection to make sure it was being properly maintained.

Commissioner Fiocco asked if they were receiving sureties. Mr. Messick responded no and never had. Commissioner Fiocco said if the developer failed in its maintenance obligation and defaulted to the Town to fulfill that obligation for the State, would they rely on their own resources to do that. He said in many other jurisdictions developers were required to post a bond to cover expenses should the jurisdiction have to step in.

Mr. Bradshaw said that the ordinance gave the Town the authority to do that, but that was not an issue that was before them tonight. He said his client was prepared to comply with the law with regard to bonding its obligation to maintain the stormwater controls on the same basis as all other owners of such ponds should be required to do. But, he said, the Town had not so far been requiring anyone to do that.

Commissioner Harrington asked what his client thought of approving Resolution C if they were to allow omitting those parking spaces to the east of the driveway to allow for the 100-foot buffer. Mr. Morgan stated it was his understanding that there was not enough room on the site even if those parking spaces were eliminated. Commissioner Harrington said then it would conceivably be 95 feet. Mr. Morgan said more of a concern was the driveway access lining up.

Mr. Bradshaw said he did not believe the driveway to this property was a street that was required to be aligned with Hamilton Road but it was a matter of good design and safety to do that as much as possible. He said that had to be taken into account if they began shifting things to the east because the driveway would not line up with Hamilton Road.

Mr. Terry asked what advantage there was to it lining up, noting he did not understand why anyone from the apartment complex would want to exit onto Hamilton Road to go back out.

Mr. Oldham said it was just not a good practice to have a negative offset on driveways.

Mr. Terry said it would make sense for the driveway to be aligned if it exited onto a street, but in this case it led to an alley.

Commissioner Harrington said it would seem to be easier to look left and right if you were pulling out rather than having to do that in addition to checking to see if someone was coming out of the driveway. Mr. Bradshaw said the concern he had was that the ordinance required that it have 96 parking spaces, and wondered what the authority was for reducing that.

Mayor Voller stated for the record that he believed that all property owners and taxpayers should be treated with fairness, consistency, and with an eye towards the public good. He said unfortunately that did not always happen and Pittsboro was not the only municipality that as time and changes occurred was not as consistent as they would like. Mayor Voller said he had asked the question because it seemed to him that perhaps the inconsistency created the environment where people did not know what the lay answer was and you ended up with mistrust and that was not what they wanted. Mayor Voller said they certainly wanted to be in a more collaborative position with the owners of Powell Place because they were all partners in the future. He said there was a need for this kind of housing in and around Pittsboro, but the question that kept coming back was the site and how the building sat on that site, and that the site may not be the best choice.

Mayor Voller said that there were four options laid out, and he was willing to let any member of the developer's team speak to those as well as hear from staff so that the best decision could be made. He asked if the Board wanted to hear from the others or were they comfortable with the information they had and to move forward.

Commissioner Fiocco said he would like to hear from others, and specifically the Fire Chief. He said there had been some discussion of safety in terms of the ability to fight fires and evacuate the building if necessary. Commissioner Fiocco said a lot of that discussion had hinged on the on-street parking, noting they had recently gotten a complete Master Plan which heretofore had lacked cross sections for the roadways. He said Millbrook was classified as a Type D roadway, and in looking at the Master Plan cross sections the Type D standard, neighborhood roadway, did not allow parking on either side. Commissioner Fiocco said he had presented that information to Chief Griffin this afternoon and asked if that made him feel better about his ability to manage an emergency at that facility. He asked Chief Griffin, for the record, what his thoughts were on that. Fire Chief Daryl Griffin said it would definitely be better if there was no parking on the street on either side. He said if there was a car on either side and they had to set up an aerial truck, it just would not be enough room. Chief Griffin said they had been in that neighborhood a couple of weeks ago checking hydrants, and coming out they had had to move equipment around just to get out. He said in an emergency situation there would be multiple vehicles, and any type of on-street parking would hinder fire operations.

Mayor Voller said he had been there that same day to look at the new park, and had noticed that the fire truck blocked the road. Chief Griffin said not just on Millbrook but anywhere in the area it was very tight when cars were parked on the street. He said anywhere in that development if

there was a car parked on either side they would not have room to bring in an aerial truck. Chief Griffin said in future they needed to consider wider roads everywhere.

Mayor Voller asked if Chief Griffin felt comfortable getting to the site, noting they had all received a copy of his letter as well as the letter from the Fire Marshal and wondered if he had anything to add to that. Chief Griffin responded that with what was planned they could get around in the back parking lot, although the one way in/one way out was a concern for any fire department. He said if there was a fire and it was fully involved, they would not place a truck there because if there was a collapse the truck and personnel could become trapped.

Commissioner Fiocco asked if the building would be sprinkled. Chief Griffin responded yes. Commissioner Fiocco asked where the fire department connection (FDC) was. Chief Griffin said it was on the front, which was the north side, according to the plan he had reviewed today. Commissioner Fiocco asked where they would be pulling in fire equipment. Chief Griffin said from where the driveway was they would have to pass by the FDC to catch the hydrant, so it was a non-issue because it was on the front side.

Mr. Terry said one issue was that if there was fire equipment in the side street going down to the alley that blocked that alley, then the entire development to the west was stuck until the emergency had passed. Chief Griffin said if there was a life saving issue they would go to the extreme.

Commissioner Fiocco said it appeared the Fire Department had vehicular access on all sides but for that west side, and believed there was about a 10-foot shoulder there. He asked was that adequate space. Chief Griffin said he would very much like to have more, noting that was the only access in that area to perform a rescue. He said a fire truck would not be feasible in that location, and that 10 feet would be short ground. Chief Griffin said he was not saying it could not be done, only that it would be more difficult. Commissioner Fiocco asked what he would recommend as far as a width of relatively flat area. Chief Griffin said he would like to have at least 20 to 25 feet.

Commissioner Fiocco asked Mr. Oldham if 20 feet was manageable. Mr. Oldham said they would consider that, noting there was a natural slope there.

Mr. Terry said that was one of the reasons why he had recommended adoption of Resolution C, which moved the entire complex to the east with two entrances to the parking lot that wrapped around an access road. He said he realized that would require that the applicant acquire additional property to the east, but he believed it would make for a much safer complex and would fit the community a lot better.

Commissioner Fiocco asked if the building slab was on grade. Mr. Oldham responded yes. Commissioner Fiocco asked could they drop the grade. Mr. Oldham said they had looked at dropping the grade as much as possible, noting they were at the minimum at present. Commissioner Fiocco said his thinking was to maintain the slope but dropping the grade and having a slight retaining position, noting he believed that would get them the 20 feet. Mr. Oldham said that was a possibility. Commissioner Fiocco said he did not see a letter from

Hydrostructures in the materials, but he knew one existed where they had made some recommendations from an engineering perspective.

Commissioner Harrington said he believed all of the concerns stated were valid, and asked was there an apartment complex in Town where he could go through and say that there was something not optimal. He said for instance, there was one complex where the Fire Department could not get to the back of the complex. Chief Griffin said that was correct. Commissioner Harrington asked if they could access all sides of the senior complex on West Street. Chief Griffin responded yes. Commissioner Harrington asked was it a true statement that with most buildings they could look at them and say there was something less than ideal in regards to access. Chief Griffin replied that would be a true statement, so they should not just be pointing this one out. Commissioner Harrington said that was his point, in that they may be applying a different standard here than they had to others.

Mayor Voller said he believed that Commissioner Harrington had a good point, which was what he was trying to get at when he had talked about fairness and consistency. He said he believed it was very important that they have the full input of the Fire Chief, especially considering extreme events did happen. But, he said, at the same time they needed to work with property owners so that they did not make it onerous for developers to be in Pittsboro.

Mr. Terry said there was a sentence in the Master Plan for the MUPD under “Internal Street Standards” that had a bearing on the parking issue. He said the last sentence in that paragraph said that it was proposed that parking would be allowed on all public streets within Powell Place and details for permissible designs were included. He said the language then recommended option D, which Commissioner Fiocco had pointed out was two travel lanes and no place to park.

Mayor Voller asked if the point was that was the condition that the community was supposed to be operating under.

Commissioner Fiocco said he had looked to those illustrations to see what kind of roadways would be built in which sections, and that particular roadway clearly showed no allowance for parking. So, he said, there were contradictions with that sentence in the Master Plan.

Mr. Bradshaw said he would like to answer questions as they came up, noting they wanted to bring some specificity to those issues. He said that the Planning Board, the Planner, the Manager and the Attorney had all agreed that the application had satisfied all the requirements in order to be approved with the one question raised by the Manager about the required stream buffer. Mr. Bradshaw said he believed that was the only large issue at play, and it was his view that there were two reasons why the Town could not change the classification of that stream in the middle of Evergreen’s application. He said one was that as Mr. Messick had pointed out to the Planning Board that an applicant for a site specific land use plan was entitled to the application of the regulations in effect when they applied. Mr. Bradshaw said he would contend that the classification of the stream was a regulation that existed when they had applied

Mr. Bradshaw said the second aspect of it was that as discussed previously the water supply and watershed regulations came directly from the State regulations, and what the DWQ had told him

was that they were relying on the “local government study” language in the watershed regulations to say that they do a local government study even after a property owner had applied for approval. He said the DWQ unit supervisor for water supply/watershed protection had told him that was absolutely a misapplication of the language because the watershed ordinance had to be approved by the EMC with the State. Mr. Bradshaw said if they conducted a local government study then that study had to be approved by the EMC. He said you could not just go out and study one stream at a time on one person’s property and not do it on others; that the study had to be conducted and submitted to the State for EMC review and approval. Mr. Bradshaw said in the 20-year history of the State’s water supply/watershed regulations, there had been only one local government study that had been approved by the EMC, and that was for the City of Greensboro. So, he said, what the Town was proposing to do was extraordinary if they adopted that 100-foot buffer and it was his belief that that could not be sustained.

Commissioner Harrington said all you had to do was go look at the creek and look at the west side, and you would see that if they required the 100-foot buffer now then they would be changing the standard. He said two wrongs did not make a right, but it would definitely be changing the standard as to how that creek had been treated because there was essentially a zero buffer on the other side.

Mr. Bradshaw said the Jordan Lake rules had been written just last year, and understood that the Town had not yet implemented those rules. He said the EMC had promulgated those regulations that said that streams that were subject to the Jordan Lake rules had to be in one of three categories; they had to either be on the USDA soil map, on the USGS topo map, or they had to be on a map specifically approved by the EMC. Mr. Bradshaw said even under the Jordan Lake rules which were being hailed as a great advance in the protection of water quality it still did not authorize local governments to conduct individual identifications.

Mayor Voller said he wanted to go back to Section 304 on page 13. He said by reading that it had an explanation at the bottom that said a minimum 100-foot vegetative buffer was required for all new development activities that exceeded the low density option. Mayor Voller said they had established that they were exceeding that, and then there was the “otherwise” clause already talked about, but it had a postscript at the bottom where it said that development that used the 10/70 provision was considered high density development and thus a 100-foot vegetative buffer was required. Mayor Voller said he believed that language was very plain. Mr. Bradshaw said the language was not plain because it did not say a buffer from what. He said the language did not tell him what his client was required to buffer in the high density option. Mr. Bradshaw said the only feature that was identified in the regulations to be buffered were perennial streams, so his question was still what had to be buffered. He said in this case some people were convinced that that stream was really a perennial stream, so it was easy for them to convince themselves that therefore it should require a 100-foot buffer. But, he said, if it was indeed an intermittent stream would it be the Mayor’s position that it would require a 100-foot buffer because it was in the high density development option.

Mayor Voller said it would be his position that the intent was to trade off density for buffering. Mr. Bradshaw asked for a perennial stream? Mayor Voller responded for any stream. He said he believed the intent was to get high density in exchange for buffering, because otherwise you

were defeating the purpose of why you would have low versus high density. Mr. Bradshaw said what the Mayor was suggesting was chaos, because again there was no definition of what would be buffered. He said no property owner could anticipate what would be required on his property, again asking a buffer from what. Mr. Bradshaw said the word “stream” did not mean anything unless it was defined in a regulation, because you had to have a definition to know what it meant. He said the only definition they were provided in that ordinance was for a perennial stream, otherwise a local government would be able to require a 100-foot buffer from any natural feature including a mud hole that was here today but gone tomorrow.

Mayor Voller said he would agree that the language was not written very well and that was why he had to ask the question. He said it was written in a way that was not as clear as it could or should be. Mr. Bradshaw agreed that the language was not beautifully written, but the only feature that was mentioned for buffering was perennial streams and nothing else was identified.

Mayor Voller said if you went up to item C it said that areas with concentrated density development shall be located in upland areas in a way to the maximum extent practicable from surface waters and drainage ways, and that did not say perennial. Mr. Bradshaw said that was an entirely different regulation, noting that Section 304 spoke to stream buffering and the section the Mayor was quoting was not about stream buffering but was about where high density development should be allowed. Mayor Voller said it was about clustering but it was also building up a case. Mr. Bradshaw said that section was about where clustering development should be allowed, noting that the decision was made 8 years ago to allow clustering development in Powell Place at 70% impervious surface and this development was at 37%. So, he said, it was irrelevant of the evaluation of the site plan because it had already been determined that Powell Place qualified for high density development.

Mayor Voller said it was utilizing the engineering and stormwater controls for the entire development, and if that was not correct then Mr. Bradshaw needed to state that for the record now. Mr. Bradshaw said it was correct. Mayor Voller said then it was utilizing the overall high density option. He said he believed high density and mixed use development was good and was not arguing about that, but was pointing out that the way the language was written it was not clear and it contributed to the debate. Mr. Bradshaw pointed out that they could have come in on that site and proposed 100% impervious surface under the MUPD plan as long as they were under the 70% for all of Powell Place. So, he said, that site could be paved from border to border, and that brought in the discussion about trading off density for open space. Mr. Bradshaw said they had that trade off in Powell Place as a whole. Mayor Voller said but even if that site had been 100% impervious, they would still be discussing the issue of the buffer. Mr. Bradshaw said that was correct, but they would be talking about whether the buffer was required or not.

Commissioner Harrington said that was where they were now, that the language required a 100-foot buffer. He said a lot of people did not want that site developed because they had been told that there would be plenty of open space and woods left intact on that site. Commissioner Harrington said the Town could not get in the middle of that, and although unfortunate it could not play a part in their consideration. He said the question ultimately for the Board was what standard to apply to the buffer.

Commissioner Harrington said hypothetically, if they approved it and the 22 or 23 air conditioners were found to violate the noise ordinance, was that okay because the Board had approved it, or whose responsibility would it be remedy that. He asked was it grandfathered in since it was approved, and any one person would not be violating the noise ordinance but the building as a whole could be. Commissioner Harrington said he had no sense of the magnitude of the sound, but it seemed that it would be problematic. Mr. Messick said the Board would not have grandfathered anything if it approved the site plan because it had nothing to do with the noise ordinance. Commissioner Harrington said but they would be approving something that clearly included those air conditioning units. Mr. Messick said if there was a loud party in the parking lot the Town would not be responsible for that even though the project was approved. He said if the Police could ascertain a violator, then action could be taken. Commissioner Harrington asked what if no one person was the violator.

Mr. Bradshaw said that was a non-issue because one owner would own the project, so if there was a noise violation it would be attributed to the owner. Commissioner Harrington said that had been his question and he wanted to make sure there was some remedy. Mr. Bradshaw said that Evergreen did not contend that they were exempt from the noise ordinance.

Commissioner Fiocco said that this project had certainly had wetland and stream impacts and when that was done would they have to have a determination made as to the classification of the stream. He asked had that been done and how was the stream classified for those impacts. Mr. Bradshaw there was a wetlands analysis done in 2004 for the impacts on that particular crossing and the stream was determined and signed off on by the Corps of Engineers at that time as an intermittent stream.

Commissioner Fiocco asked was that done by looking at a map or by doing a study of the stream. Mr. Oldham stated it was done by a field study. Commissioner Fiocco asked was it done using the same score card. Mr. Oldham said he would say yes.

Ms. Deininger said the methodology had been changing, noting that the Department of Water Quality was implementing a new methodology in September of this year. She said the methodology she had used was implemented in 2007, so it was becoming stricter.

Mr. Bradshaw asked wasn't it true that under the pre-2007 methodology and under the analysis that Ms. Deininger had performed that this would have been classified as an intermittent stream because there had been no override for an identification of biological species in the stream. He said the numerical score she had come up with had suggested that it was an intermittent stream. Ms. Deininger said the score card she had used was the 2007 methodology in place now. Mr. Bradshaw said but that score had not risen to the level of a perennial stream. Ms. Deininger said yes it had, noting that there were three ways to make that determination as she had explained earlier. Mr. Bradshaw said the point he was trying to make was that there were three methods for determining if a stream was perennial or not, and one of those Ms. Deininger had not evaluated for, one she had determined that there were biological species present, but the other one was the numerical score. He said under that numerical scoring the stream would not qualify as a perennial stream and that was his point.

Commissioner Harrington said then that was the standard based on biology, methodology, and hydrology, and asked was that the standard in place prior to 2007. Ms. Deininger replied no. Commissioner Harrington said then they were applying standards that were not in place at the time that the project was approved. Ms. Deininger said there was a slightly different table in place prior to 2007, and the methodology used by the Corps of Engineers was different than the methodology the State used and that was still true today.

Mr. Bradshaw reiterated that none of that mattered because when Evergreen applied for the approval the stream was classified as an intermittent stream, and that was the regulation it was entitled to in regards to evaluation of the application.

Mr. Terry reiterated that he disagreed with Mr. Bradshaw, noting they were applying the Town's regulations as they were before, after, and during the analysis of the stream. He said the only difference was the finding of fact about its classification. Mr. Bradshaw said he disagreed strongly with that as a legal matter, and believed that the Town Attorney would disagree with that as well.

Commissioner Harrington asked Mr. Messick to clarify his position. Mr. Messick said his position was clear, in that he believed it was an intermittent stream on the USGS Map.

Ms. Deininger asked if this was new development being considered, because if it was there were new regulations that continued to come forward. She said this development did not fall within those rules because of a loophole, and that loophole was that the watershed supply rules and the areas where those were applied stated that the Town had to follow the watershed supply rules until they developed their own new buffer rules. But, Ms. Deininger said, in looking at that it was saying that the Town was applying buffer rules to any new development. So, she said, they had to apply whatever rules the Town had in place whenever there was new development, and could not go back and say otherwise. Ms. Deininger said her point was you could not have it both ways.

Mr. Bradshaw said he had no idea what Ms. Deininger was suggesting by her comment about having it both ways. He said they were exactly saying that they were entitled to the application of the regulations that existed when they applied as the Town Attorney had advised them. Mr. Bradshaw said he understood Ms. Deininger's experience in stream identification and certification that she had obtained from DWQ and her point about the Jordan Lake rules not being applicable because of a loophole. He said the reason the Jordan Lake rules were not applicable was because the Town had not implemented those rules, and if it had then they would be talking about an undistributed buffer of 25 feet. Mr. Bradshaw said they were already voluntarily providing a 25-foot undistributed buffer along the stream.

Mr. Bradshaw said in Resolution B which was the Planning Board's recommendation, there was language about allowing the retaining wall. He said if the Board decided to push the building back 10 feet further from the street, there was language about the retaining wall being allowed in the westernmost portion of the setback, and that should be corrected to read in the easternmost portion of the setback.

Mayor Voller said from his understanding about potential conditions, one debate was about whether the stream was perennial and required a 100-foot buffer. Mr. Bradshaw said that was correct, and they would object to the imposition of a 100-foot buffer. Mayor Voller said another potential condition was widening the access road to better accommodate fire trucks and ensure the parking lot allowed for equipment setup and rescue. He asked was that referring to the increase from 10 feet to 20 feet that Chief Griffin had addressed or was that just widening an area to allow for better access and setup. Mr. Bradshaw said he believed that was referring to the flat shelf along one side of the building that would allow the Fire Department to set up a ladder truck. So, he said, the answer was that it was a trade off. Mr. Bradshaw said if you kept that area flat going out further to the west, then it increased the degree of the slope when you eventually stopped that shelf. He said Mr. Oldham had said when they did the final grade for the project they would look at expanding that flat area, but it would result in a steeper grade.

Commissioner Fiocco said that retaining the condition on the foundation wall would accomplish that goal. Mr. Bradshaw agreed as long as Mr. Oldham agreed that that was doable technically. Commissioner Fiocco said a slope of 2:1 at that location was not a good idea. Mr. Bradshaw said then he would suppose they needed to fashion a condition related to that.

Mayor Voller said that providing a second access road to the parking lot had been mentioned. Mr. Bradshaw said it just was not doable. Mayor Voller said an issue Commissioner Harrington had brought up about noise produced by the 22 air conditioning units could perhaps have a condition put on it, and asked had the Planning Board or staff talked about the landscaping. Mr. Bradshaw said there had been a great deal of discussion about the landscaping and whether those air conditioning units would be screened. He said on Mr. Waldon's suggestion his client had produced an architectural rendering of the face of the building that faced Millbrook Drive, and they had interposed on that the planting that would be installed under the landscape plan as a part of the application. Mr. Bradshaw said all of those plants were specified in detail as to their number and where they were located, and what that rendering demonstrated was that at installation the shrubbery would fully visually screen the air conditioning units from Millbrook Drive. He said as those plantings matured, they would provide an even higher level of screening.

Mayor Voller said then the question became how were those plants to be guaranteed so that if they died they would be replaced in kind. Mr. Bradshaw said his client had agreed that if any of the plants were damaged or destroyed that they would be replaced. He said this project would have unified ownership and was subject to architectural control by the developer of Powell Place so it was in their best interest to do that.

Commissioner Harrington said then in effect they were the homeowners association and had control. Mr. Bradshaw said they had control. Commissioner Harrington said that Resolution B recommended increasing the setback from the road, and asked what the distance from the creek was going to be before that setback. Mr. Bradshaw said they had been consistent on the 75 foot setback. Commissioner Harrington said then if the setback from the road was increased, the 75-foot setback would have to be pushed back. Mr. Bradshaw replied no, that if it was pushed back 10 feet then the retaining wall would have to be in the 75-foot setback. He said he maintained that the retaining wall did not violate the setback but others disagreed, and that was why they had

put the plan together to pull it out so there would be no question. Mr. Bradshaw said but, the Planning Board had the authority to recommend to the Board that they could allow a hard structure in that setback as close as 25 feet. He said they were saying that if the Board wanted the building moved back 10 feet, then they needed to be able to take the retaining wall 20 feet into the setback rather than 10. Mr. Bradshaw said if they moved the retaining wall back, they would move the building back away from the street, but if they had to keep the retaining wall where it was, then the building had to be 17½ feet from the right-of-way instead of 27½ feet. He said that was what they had applied for, but the Planning Board had recommended varying it so that the building could be moved back 10 feet.

Mr. Terry said it was his belief that if the Board approved Resolution C requiring the 100-foot undisturbed buffer that the developer would likely still proceed with the project by acquiring additional land to the east which was available and likely for sale, and the project would still be viable. He asked Mr. Bradshaw if he was right or wrong on that. Mr. Bradshaw replied that the project was not viable with the 100-foot buffer because the building would not fit on the site. He said what Mr. Terry was asking was a way to hold the applicant hostage when there was no regulation that allowed them to require the 100-foot buffer. Mr. Bradshaw said there was no regulation that allowed the Town to require the 100-foot buffer, so the question was should they defy the law and require it anyway even though they had no legal authority to do it and see what happened. He said the options were to figure out a way to do it or to allow a judge to decide what the law was.

Mayor Voller said to be fair the applicant had provided from DWQ the information that even though the model ordinance was not clear it did say for development activities throughout the watershed, buffers were required along all perennial waters with a minimum width of 30 feet for low density development, and a minimum 100 feet for high density development. He said that went on to say that it included use of the 1070, and that the buffer was measured perpendicularly from the stream bank or from the normal elevation of reservoirs and served as a setback for new structures such as houses, barns, and other buildings. Mayor Voller said it was logical that people would have different conclusions because the information was not all consistent, and the only way to know was to go with the laws from the State legislature, and even those were not clear. He said but, it did all hinge on that perennial classification.

Commissioner Harrington asked if the Mayor had a recommendation on the resolutions.

Mayor Voller said that was a good question, noting there were four resolutions before the Board. He said they could approve it as recommended by the Planning Board, they could approve it with conditions, they could table the matter and continue the discussion at a later date, or they could deny it. He said he would allow citizens to speak for no more than 2 minutes, then he would allow a rebuttal before a vote was taken.

Bud Rudesill, 611 Millbrook Drive, said that he had spoken with DWQ and the original permit submitted to the Corps of Engineers expired after 5 years so it was now void. He said the wording in Section 6.1.d said that if the stream was mapped as a perennial stream, then you could use the USGS map as an authority. Mr. Rudesill said if it was not mapped by USGS as a perennial stream, then the only other choice was by local determination. He said that local

determination was part of each and every Planning process, so there was nothing that was precedent setting in this case. Mr. Rudesill said a former Board not enforcing a regulation in past years did not allow the present Board to allow that regulation to be broken again. He said the law indicated it was a perennial stream and that it required a 100-foot buffer, and it was that simple.

Mr. Bradshaw said he believed the Board had one legal option. He requested that if the Board was inclined to approve the site plan that the parking conditions in Resolution C be included in the resolution that was approved. Mr. Bradshaw said those conditions stated that if the Town changed its parking regulations in the future that there could be an administrative change to also reduce the parking for this project because as had been said they did not expect the required parking to be necessary. He said it was not in anyone's best interest to provide a sea of parking that would be underutilized. Mr. Bradshaw said the second condition would allow some of the parking in that area to have alternative surfacing so that it would not all have to be asphalt but could be imperious surface.

Mayor Voller asked Mr. Waldon what he recommended they do as a wise course of action. Mr. Waldon said his recommendation continued to be that the Board adopt Resolution C with the conditions regarding parking and that a buffer be established.

Mr. Terry said he concurred with that, noting he had not changed his position that the project could remain viable with adoption of Resolution C. He said the lion share's of the project was being paid for with federal grants, and he expected the windfall to the developer would be slightly reduced if he had to acquire additional property to the east.

Mr. Bradshaw responded whether the project was profitable or not or if there was a windfall or not was none of the Town's concern. He said his client had applied to the Town for approval of a site plan that met the requirements of the Town's ordinance, and they were entitled to have it approved.

Larry Gress, 615 Millbrook Drive, reminded the Board that they had supplied a petition with over 100 signatures against the project, so obviously the majority of the residents in that area did not want to see this project go forward as proposed.

Mr. Bradshaw said the petition, as signed was based on a premise and was a mischaracterization of what the ordinance said. He said it had been presented to him that what people were really saying was that they were opposed to the project, but the language on the petition was an incorrect interpretation of the Town's ordinance.

Commissioner Bryan, speaking to Commissioner Brooks, said at the inception of Powell Place he had made reference to Roger Perry loading everyone in a bus to view Meadowmont. Commissioner Bryan said they had actually met him there and then had boarded a bus for a tour. Commissioner Bryan asked what the purpose was of that tour. Commissioner Brooks said that Mr. Perry had wanted them to tour Meadowmont and it was his recollection that Mr. Perry had said he wanted to bring something similar in and for Pittsboro but on a smaller scale.

Planning Board Chair Kenneth Hoyle responded he recalled it the same way.

Commissioner Bryan asked if there were structures like this one in Meadowmont. Commissioner Brooks responded he did not know.

Mr. Terry said he could speak to that since he had lived in Meadowmont for 5 years. He said there was low-income housing in Meadowmont that was located directly by and behind the Food Lion and the UNC Health Care Center and not located among the other housing.

Mr. Bradshaw said he believed it was relevant that when the Powell Place MUPD was approved, there was a specific discussion that there would be an apartment development on that site, and in fact the land planner for the project had come back to the Board on March 10, 2003 several months after the MUPD approval just to get a clarification on the record that there would be apartments on that specific track of land developed at up to 20 units per acre. He said that had been passed unanimously by the Board at that time that there could be apartments on that site.

Commissioner Fiocco said that the Town's regulations clearly stated that to define the stream that the first source of information was the USGS map, and that clearly showed it as an intermittent stream. He said the alternative to that was a local government study, and he understood that the local government study was not to be a single site specific delineation and not for the purposes of a site plan. Commissioner Fiocco said they had looked at that stream before and they had allowed development within the 100-foot buffer with residential units. He said it was important for the Board to be able to rely on regulations and constant interpretations of those regulations, and not to apply different standards at different times for any reason. Commissioner Fiocco said for those reasons he had to accept the designation that this was an intermittent stream, and therefore was not required to have a 100-foot buffer.

Commissioner Fiocco moved to approve the site plan, including both parking conditions as recommended by the Planning Board, including a condition that the applicant provide for a 20-foot shelf on the west side of the property for emergency access, and that the applicant post at minimum three No Parking signs along the length of the frontage of the property.

Mr. Bradshaw confirmed that Commissioner Fiocco was not suggesting that the applicant had any enforcement authority or responsibility to prohibit the parking. Commissioner Fiocco said he was not suggesting that.

Commissioner Harrington asked was the motion to adopt Resolution B with the conditions Commissioner Fiocco had added.

Commissioner Fiocco said no, that he was not including the requirement for the 100-foot setback but would leave it to the applicant's discretion, and he would not request it or mandate it.

Mr. Messick said he believed that would be Resolution A with the addition of the two parking requirements and the 20-foot shoulder. He said in regard to the No Parking signs, the Town Board would need to adopt an ordinance prohibiting parking in that area.

Commissioner Fiocco said then he would amend his motion that the applicant would provide at minimum three No Parking signs to the Town and the Town would post them.

Mayor Voller asked that the motion be restated clearly so that everyone would understand.

Mr. Messick stated the motion was for Resolution A with the two parking conditions from Resolution C, that a 20 foot shoulder would be provided on the west side of property, and that a minimum of 3 parking sign would be supplied to the Town to be posted by the Town along the frontage of the property.

Commissioner Harrington seconded the motion for purposes of discussion.

Commissioner Harrington said he was conflicted, noting he had spoken with several people about what would be gained with the setback. He said there was the perception that it was better to have the setback included for noise purposes. Commissioner Harrington asked Mr. Hoyle to remind the Board the reason for the setback from the road recommended by the Planning Board. Mr. Hoyle said it because of the sound of air conditioning units with the hope that the setback would diminish the noise somewhat, and the other was that the more distance you had between the street and the loading areas the better.

Mr. Bradshaw said as a technical point if the resolution did not authorize going into the setback with the retaining wall, then it would be impossible to have a 20-foot separation between the building and retaining wall. He said they could provide the 20-foot shelf for the rest of the distance but not in that one area. Mr. Bradshaw said if they did decide to push the building back 10 feet that would push the retaining wall back 10 feet so it would not be an issue. But, he said, if you left it as it was shown there with the retaining wall outside the setback then there would not be 20 feet of separation between the building and the retaining wall.

Commissioner Baldwin said she would prefer the 100-foot buffer, but if that was not feasible as Mr. Bradshaw had indicated then she may have to concede. She said she was definitely in favor of the conditions as stated by Commissioner Fiocco but not without the retaining wall.

Commissioner Fiocco said to clarify, she would be in favor of moving the retaining wall back 10 feet. Commissioner Baldwin said that was correct.

Commissioner Fiocco said he would be receptive to amending his motion to include the provision of allowing the retaining wall to encroach into the setback for the purposes of achieving the 20-foot shelf.

Commissioner Harrington asked would the amendment include the extra setback from the road, which would essentially be Resolution B. Commissioner Fiocco said he would be receptive to that that as well. Commissioner Harrington said he would accept those amendments as the seconder of the motion, noting it would effectively be pushing the building back an extra 10 feet and allowing the retaining wall to encroach into the buffer, and effectively allowing the 20-foot shelf along the entire west side of the building. He said he believed what they were considering was Resolution B along with the additions as proposed by Commissioner Fiocco.

Mayor Voller said to be fair, Mr. Bradshaw had been allowed to speak again after the motion was made so he would allow an additional public comment. Commissioner Brooks expressed some concern because there was a motion on the floor, but Mayor Voller noted he was trying to be as fair as possible.

Melanie York, 9 Colony Woods Drive, stated that she had a question for Mr. Bradshaw. She said when Mr. Terry had brought up the condition of the 100-foot buffer and the need for additional land, he had said that was not possible. But previously, she said, when it was entertained that they needed to add more space for the larger parking lot, the land was found to accommodate that. Ms. York said if they wanted to go with a 100-foot buffer, why they could not find the land to make that a reality which seemed to be a better compromise. Mr. Bradshaw said the difference was that when the Board previously turned down the application it was because the project did not qualify because of a deficit in parking. He said that was a regulatory hurdle they did not believe they could overcome. Mr. Bradshaw said the difference now was that there was no regulation that required the 100-foot buffer. He said there was property to the east of this site that was not developed, but that was not relevant to this application or to the Town. Mr. Bradshaw said his client had applied to the Town for site plan approval that satisfied all requirements of the ordinance and was entitled to an approval.

Mayor Voller said to be absolutely clear, he wanted the motion on the floor to be restated. Mr. Messick said the motion was for Resolution B with three provisions added. He said the first were the parking conditions included in Resolution C as the last two "Be it resolved" paragraphs, the next was the addition of the 20-foot shelf along the west side of the property, and the last being that the applicant would provide to the Town a minimum of 3 No Parking signs that the Town would post along the frontage of the property.

Commissioner Fiocco said as well, they were adding the stipulation from Attachment 2 regarding that the retaining wall would be allowed to be located 20 feet within the easternmost portion of the setback parallel with the intermittent stream in order for the building structure to be set back 27½ feet from the right-of-way of Millbrook Drive. Mr. Terry commented that language was already in Resolution B.

Commissioner Fiocco and Commissioner Harrington clarified that that was their motion.

Commissioner Brooks said that this had certainly been a dilemma for all involved. He said when he had reviewed the site plan it did not seem to fit the concept that he had hoped and dreamed of. Commissioner Brooks said at the same time at the risk of simplifying things he would not want to go against the law. He said he believed that they had to follow the rules that were in place when the applicant had applied, and he believed that the stipulations that had been expressed by Commissioners Fiocco and Harrington were not contrary to that. Commissioner Brooks said he really did not see that the Board had any other choice.

Commissioner Bryan said he agreed, noting he had ridden through that neighborhood many times and he had tried to put himself in the position of someone who had made an investment out there. He said Mr. Bradshaw had brought up that they were being held hostage, and he actually

believed the Board was also being held hostage through their own ordinances and regulations. Commissioner Bryan said perhaps the homeowners were also, but he saw no way to get around that. He said he wanted to do what was in the best interest of the citizens of Pittsboro, and he was not opposed to the idea of the development or to the apartments, noting they were certainly in need of such housing although he did not believe that was the place for it. Commissioner Bryan said he also did not believe it was fair to the residents out there, so perhaps they were all being held hostage somewhat.

Commissioner Harrington said that Commissioner Baldwin had pointed out to him that perhaps they should consider the trees, noting he did not believe there was anywhere in the approval that required at least the type trees being shown. He asked Mr. Bradshaw if his client would consider a condition to require a landscape plan that at least replicated what was shown as closely as possible. Mr. Bradshaw said that drawing was an artistic rendering of the plants that were detailed on the landscape plan, so the landscape plan specified exactly those plants. He said they had no objection to that being attached to the resolution as a condition.

Commissioner Harrington asked Commissioner Fiocco if he wanted to amend his motion to include the plants as outlined in the landscape plan. Mr. Messick said he would suggest just adding it to the list on sheet C-4.1.

Commissioner Baldwin stated to clarify this was something that was approved in the past, and they could only follow the ordinances and regulations in place at that time. She said the Board had to uphold what had been approved with the conditions as outlined in the motion. But, she said, those ordinances needed to be studied with an eye towards rectifying some of the language so that they would not be in this kind of situation again. Commissioner Baldwin said they certainly needed affordable housing, but understood the points made by the residents as well.

Mr. Terry said that in the Master Plan, the last sentence under Commercial Retail Shops and Offices said “residential land uses will also be permitted in the mixed use area to further diversify the housing types available.” He said that was why this was an appropriate use for the site.

Commissioner Harrington said what had been moved was reasonable and a steady application of the ordinances.

Mayor Voller said that the most important thing was to consider fairness and consistency with an eye to the public good and referring to those you wanted to protect which were the property owners, taxpayers and citizens. He said this was a difficult decision because it did not seem that all of the issues would align and everyone would be happy, in fact many would be unhappy depending on how the vote came out. Mayor Voller said it was not a good position to be backed into, and it was incumbent on the Board to make sure this did not happen again in the future. He said that was exactly what they needed Mr. Waldon to be doing as they went forward so they would not find themselves in this position again.

Commissioner Harrington said the motion was to include the landscape plan. Commissioner Fiocco agreed. Mr. Messick said the landscape plan was sheet C-4.1 and contained a detailed list

of plants, their heights and species, and provided that the plants be viable for at least one year from completion of construction.

Mayor Voller called for the vote.

Vote Aye-5 Nay-0

A RESOLUTION APPROVING AN APPLICATION FOR A SITE PLAN FOR POWELL SPRING SENIOR LIVING COMMUNITY IS RECORDED IN THE BOOK OF RESOLUTIONS NUMBER ONE, PAGES 37-43

RECESS

Motion made by Commissioner Fiocco seconded by Commissioner Baldwin to take a 5 minute recess.

Vote Aye-5 Nay-0

RECONVENE

Motion made by Commissioner Brooks seconded by Commissioner Bryan to return to Open Session.

Vote Aye-5 Nay-0

NEW BUSINESS

1. Wastewater Treatment Plant Wet Weather Flow Improvement Project Budget Amendment

Mayor Voller stated that the Board had been very displeased about the constant changes in the project. He said he did not know how that might be managed, but wanted Mr. Terry to be aware of that, and hoped that in the future when an estimate was provided they would not be off by a factor of 3. Mr. Terry said he had attempted to not bring each issue before the Board as each one came up, and that was why this budget amendment appeared to be so large. He said when the engineering services contract was awarded it had budgeted \$7,000 for soil inspections and concrete inspections, both of which had resulted in issues being identified that had to be resolved, including digging out one section of the equalization basin that had to be deeper than originally planned resulting in additional soil testing, and when they began to replace the concrete the first few samples were rejected for various quality reasons and additional technicians were necessary for quality control.

Mr. Terry said the other change orders included were not a part of the engineering services contract but he had wanted the Board to be aware of them. He said there were changes that had been made to the amount of the grant which he had been authorized to do by the Board when the contract was awarded.

Commissioner Fiocco said in regards to the \$18,000 for engineering design changes related to unanticipated soils testing, was there not an associated change order coming as a result of the testing in that they had to excavate and replace materials. Mr. Terry said not that he was aware, noting that work had been completed. He said they had done some boring and soil testing before the project began so there was some advance knowledge of the issue.

Commissioner Fiocco said there was suppose to be a detailed explanation in the Sterns and Wheler letter, and he had not received a copy of that letter. Mr. Terry said that was an omission on his part and he would get copies to the Board. He said that letter basically repeated the information regarding the need for additional soils testing and the issues surrounding that.

Mayor Voller noted that Town Clerk Alice Lloyd had left the meeting to retrieve the letter.

Motion made by Commissioner Brooks seconded by Commissioner Bryan to approve the Wastewater Treatment Plant Wet Weather Flow Improvement Project budget amendment and resolution.

Vote Aye-5 Nay-0

**AN ORDINANCE AMENDING THE 2009-2010 OPERATING BUDGET IS RECORDED
IN THE BOOK OF ORDINANCES NUMBER ONE, PAGE**

2. Pittsboro ABC Board Quarterly Report for the Quarter Ending March 2010 (Sam Powell, ABC Board Chair)

Sam Powell, Chair of the ABC Board, stated that the information he had provided in the quarterly report was factual and he would not go into any detail unless the Board had questions. He stated that if you added up the profit experienced it came to a little over \$12,000, and the new computer system cost was around \$12,000 so they had committed all of their profits for the first quarter. Mr. Powell said hopefully they would not experience any major expenditures for the remainder of the year.

Mayor Voller asked if the expenses and improvements were salaries to run the operation and capital improvements to the building. Mr. Powell said basically yes. Mayor Voller said he would hope that the expectation would be to comply with the original intent of the ordinance which was that the Town would receive money back, and asked when he believed funds would be returned to the Town that were earmarked for use by the Sheriff, the Police Chief, and the Board. Mr. Powell said decisions were made by the ABC Board, and he believed that would happen this year. He said in the last two years they had spent most of their profits upgrading the store and the facilities around the store, with most spent on capital improvements. Mr. Powell said they still had some things they were looking at that needed to be done but they were not expensive things, and believed they were nearing the end. He said one of the issues was improving the security in the store and the lighting outside the store.

Mayor Voller asked if there would be any follow-up meetings. Mr. Messick said it depended on what the ABC Board decided. Mr. Powell said they were meeting tomorrow night and would be discussing that.

Commissioner Harrington asked about the computer system they were purchasing. Mr. Powell said it was a complete package that was programmed specifically for ABC stores. Commissioner Harrington said that Mayor Voller had pointed out in the past that there were some restrictions on capital expenses related to ABC Boards, but that a computer system may not technically be a capital expense. Mr. Powell said their accountant had said it was a capital expense because it was depreciable.

Mr. Powell said the reports he provided were updates and the Board could determine if there was information that needed to be included. He said appearing before the Board allowed them to ask questions, but he could just submit the report and let it stand.

Mayor Voller said the ABC Board had done a good job to clean up a lot of issues that had been outstanding for a number of years, and hoped that they understood the expectation that when they believed it was reasonable that profits could be dispersed back to the Town. He asked that Mr. Powell talk to his board about when and how that would be done. Mayor Voller said it was his hope that something would come back to the Town and it was not onerous to their operation. Mr. Powell said one of the things they had had to do was feed their savings account. He said they were suppose to have enough cash in reserve to operate the store with virtually no income for 6 months, so they were moving in that direction. Mr. Powell said that was where much of their cash had gone, noting they were at \$23,000 now and were trying to reach a goal of \$30,000 by Christmas.

Motion made by Commissioner Brooks seconded by Commissioner Baldwin to receive the ABC Board Quarterly Report.

Vote Aye-5 Nay-0

BUDGET WORK SESSION

1. Manager's Recommended Budget for Fiscal Year 2010-2011.

Mayor Voller said they had hoped to have some time to discuss this but it was now after 10 p.m. and asked how the Board wanted to proceed. Mr. Terry said he believed they would need about 2 to 3 hours to get through the necessary discussion on the recommended budget, and suggested that they set another time to do that

Commissioner Brooks asked was it possible to not commit any agenda time on June 14th to items that could be put off and devote time just to the recommended budget. Ms. Lloyd reminded the Board that they had already scheduled a public hearing for the next meeting on rezoning issues. Mr. Terry said that the next meeting had actually been scheduled for budget adoption, so they could bump it out to June 28 but that was somewhat risky as the budget needed to be adopted by July 1.

The Board briefly discussed available dates and times to hold a budget work session. After some discussion the Board agreed on Thursday, May 27, at 6:30 p.m.

Mayor Voller asked if they needed to advertise the meeting. Ms. Lloyd responded they could recess the meeting until Thursday night rather than adjourning, eliminating the need for advertisement of the meeting.

Mayor Voller said he would be leaving to visit 5 cities and he would like to bring a resolution from the Town Board that said something like welcome from Pittsboro. He asked could he bring that resolution to that special meeting. Mr. Messick said it could be added to that agenda.

Commissioner Harrington said he understood that Voller Realty had provided the Town with an offer on Springdale, and one of the things in the offer was a guarantee to pay some money in the future. He said he did not know if that was something that needed to be considered for the budget, but would like to request that a condition for us to consider the offer that they provide a copy of all relevant design drawings, construction drawings, or similar documents that had been approved by NCDOT for turning lanes at US 15-501. Commissioner Harrington asked had they been requested to provide those copies to the Board as it came back for consideration by the Board, because he believed the expense of that would play into whether that was a reasonable offer or not. Commissioner Harrington asked that Mr. Terry communicate to Voller Realty that the Board would like to have that offer supplemented by them providing those copies. Mr. Terry said he would do so. Commissioner Harrington said Voller Realty had made the offer and signed it, but did not know if the Board had seen a copy of that yet, and if they did not discuss it during this budget they needed to do so very soon. Mr. Terry said he believed it would fall under the level of a capital project. Commissioner Harrington said it was important to estimate the actual cost of that project, and the design drawings would help them to make an assessment of how close that would come to covering the expenses.

Commissioner Harrington said he would make copies of the offer and distribute it to the Board.

Mayor Voller said that where it was left before Mr. Monroe retired was that the Town would have to sign something if they made this agreement, so he would advise that there was a piece of paper the Town would have to sign in order for that to go forward, because it would become a Town project. He said it would be an encroachment agreement that NCDOT required to be signed and the Town would have to sign that.

Mr. Terry said he had provided a budget working paper on the issue of the adequacy of the salary for the Planning Director as well as the funding for First Sunday events. He asked that the Board look over that information so it could be discussed on Thursday.

RECESS

Motion made by Commissioner Fiocco seconded by Commissioner Bryan to recess the meeting until May 27, 2010 at 6:30 p.m. and the start were we stopped (budget work session).

Vote Aye-5 Nay-0

The Work Session was recessed at 10:15 p.m.

Randolph Voller, Mayor

ATTEST:

Alice F. Lloyd, CMC, Town Clerk