

MINUTES
TOWN OF PITTSBORO
BOARD OF COMMISSIONERS
REGULAR MEETING
MONDAY, MARCH 8, 2010
7:00 PM

Mayor Randy Mayor 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., Planner David Monroe, Assistant Planner Paul Horne, Officer Carroll Edward Swain, Jr., and Officer Troy Devin Roberson.

CEREMONIAL AGENDA

Motion made by Commissioner Brooks seconded by Commissioner Baldwin to add a Ceremonial Agenda to the meeting.

Vote Aye-5 Nay-0

Mayor Voller stated that Officer Carroll Edward Swain had recently completed the Traffic Enforcement and Investigation Certificate Program at the North Carolina Justice Academy, a division of the N. C. Department of Justice. He stated the Certificate recognized that Officer Swain had completed the prescribed specialized hours in traffic enforcement and investigation, and the Certificate was signed by Attorney General Roy Cooper on February 1, 2010.

Town Manager Bill Terry stated that that Certificate had only been achieved by just over 100 officers in the State, and it was quite an honor for Officer Swain and the Town of Pittsboro.

AGENDA

Motion made by Commissioner Harrington seconded by Commissioner Fiocco 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 February 22, 2010 regular meeting.

2. A Resolution Accepting and Endorsing the Solid Waste Management Plan of 2009 for Chatham County. (item removed until next meeting)
3. Major Transportation Corridor (MTC) Zone Text Amendment. Schedule a public hearing for March 22, 2010 at 7:00 p.m.
4. Blair Rezoning Request at Foxfire Trace and US 64 Bypass. Schedule a public hearing for March 22, 2010 at 7:00 p.m.
5. Piedmont Biofuels Rezoning Request at Lorax Lane. Schedule a public hearing for March 22, 2010 at 7:00 p.m.
6. Approve a Resolution Declaring March 23, 2010 to be Diabetes Alert Day within the Town of Pittsboro.

Commissioner Harrington stated he had several questions regarding Item #2, and asked that that item be pulled for discussion at the Board's next meeting. Mr. Terry stated that he would place the item under New Business on the next agenda.

Motion made by Commissioner Harrington seconded by Commissioner Brooks to remove Item #2 to be placed on the agenda for the next Town Board meeting for discussion.

Vote Aye-5 Nay-0

Motion made by Commissioner Bryan seconded by Commissioner Fiocco to approve the Consent Agenda as amended to remove Item #2.

Vote Aye-5 Nay-0

A RESOLUTION DECLARING MARCH 23, 2010 TO BE DIABETES ALERT DAY WITHIN THE TOWN OF PITTSBORO IS RECORDED IN THE BOOK OF RESOLUTIONS NUMBER ONE, PAGE 21

REGULAR MEETING AGENDA

Citizens Matters

Mayor Voller noted that one person had signed up to speak; however, the rules set forth by the Board of Commissioners stipulated that you may not speak during Citizens Matters if you were going to speak on an item already on the agenda. He stated that the person who had signed up to speak would be recognized at that time.

OLD BUSINESS

1. Manager's Update on Capital Projects.

Mr. Terry provided the following update on Capital Projects:

- Disinfection Byproducts Reduction Project – The plans and specification for the ferric sulfate feed system had been completed and submitted to NCDENR for review and approval.
- 3M Reclaimed Water System Project – Due to the long lead time for ordering a prefabricated shelter and due to the difficulty of hoisting a prefabricated shelter over the ongoing work on the new equalization basin, they were obtaining cost estimates for a built-in-place masonry structure. The engineers and general contractors have been asked to expedite that process with a view towards completing all construction work on or before Friday, April 2.
- Short-term Wastewater Treatment Plant Improvement Project – Two of six sections of the concrete floor of the equalization basin have been completed and they expect the third section to be poured in a few days. The project remains about one week ahead of schedule.
- Downtown Area Water System Improvement Project – Hydrostructures continued to work on the USDA grant application. Also related to that project a letter had been sent indicating that the \$200,000 REDLG loan that was approved for the 3M project would no longer be used, and at the encouragement of the USDA they were requesting that those funds be rolled into the Downtown Water System Project. Steps were being taken to see if that was possible.

Mayor Voller asked had the County provided feedback about any potential support involving the Downtown Water System Improvement Project, since it directly affected the County Justice Center, CCC, and other County buildings. He said at the very least the County should pay for water and sewer connection.

Commissioner Brooks said he believed when that project had been approved that it was part of the motion that the County would have to contribute to the improvements for the Judicial Center.

Mayor Voller agreed, noting he was now asking Mr. Terry where they stood on that. Mr. Terry stated that County Manager Horne had always been very supportive when the Town was applying for grants, and believed they would be in support of the USDA grant. He said he had not yet asked Mr. Horne for a letter of support, but when it was finalized they would certainly ask for that letter of support.

Mayor Voller said he believed that the Board might want to authorize the Town Manager to send a letter asking about money and support. He said the County was aware the Town was going to ask for funding support since the project directly affected the County's ability to supply water and sewer to those County buildings.

Commissioner Harrington said to clarify, what might they get from the County now that they did not have but needed.

Mayor Voller said first they needed to get a resolution from the County Board and secondly they should ask what type of financial support they were willing to provide; that is, whether they would pre-pay their connection fees and/or find other funding. He added those improvements directly affected those County buildings.

Commissioner Brooks said when the Town Board had approved the buildings, there were two caveats. He said they had to protect the historical structures, and second they had to pay for any water and sewer in the Chatham Street area that was needed to be committed to those County buildings. Commissioner Brooks said he did not understand why they would need to do that again.

Mayor Voller said they had submitted to Congressman Etheridge's office that exact request, which was the \$1.4 million, and Mr. Terry had submitted the same request a couple of times to try to get funding. He added that AARA had denied that request last year. Mr. Terry said that AARA had approved the wastewater but not the water project, so they were now working with USDA to get a funding package together for the same project. He said he had not yet approached the County regarding taking responsibility for funding a part of that. Mr. Terry said if the Board wanted him to approach the County regarding funding, he would do so.

Mayor Voller said he believed the Board would want the County to participate in funding, noting that if the County offered a letter of support they may be able to get funding. But, he said, if not then he believed the County should participate. Mr. Terry said the County would be paying for all aspects of the CCC and new Justice Facility connections out to the tap-in. Mayor Voller said then they should get some understanding of how much that would be so that the Board would better understand what they were looking at. He said the project needed to move along and he believed they needed to get the County's attention now.

Commissioner Harrington said it was still not clear to him what they were asking for. He wondered if the issue should be brought back as an agenda item at the next meeting so that they would have clarification of exactly what they would be asking of the County.

Mayor Voller said they would be asking for funding and for a letter of support. He said the improvements downtown were specifically related to the County buildings, and the Town needed to know what the County's contribution would be. Mayor Voller said because Mr. Terry was asking USDA for funding, then they would need to know how much the County would contribute because that would affect their ability to get funding through a grant. He said they needed to know that sooner than later.

Commissioner Brooks said then all they were suggesting was that they ask for that information so that they could move ahead.

Mayor Voller said that was correct, noting when he had sent his email he had not received a positive response indicating they were ready to make a contribution. He said he was asking that the Board direct Mr. Terry to contact County Manager Horne to request that he speak to the County Board of Commissioners in regards to a resolution of support as well as what type of financial support they would offer.

Motion made by Commissioner Brooks seconded by Commissioner Bryan to direct the Town Manager to contact County Manager Horne to request that he approach the County Board of

Commissioners in regards to a resolution of support for the USDA grant, as well as what type of financial support the County would offer for the project.

Vote Aye-5 Nay-0

Mr. Terry continued his Capital Projects Update:

- Pedestrian Conveyance System Project – Notice to bidders was published on March 4, a pre-bid conference has been scheduled for March 19, and the bid opening was scheduled for April 14. On tonight's agenda was a grant acceptance and budget amendment item proposing acceptance of an additional \$40,000 in CMAQ grant funds with a \$10,000 local match from the Town.

2. Hobbs Upchurch/Hydrostructures Request for Supplemental Funding for Additional Inspection/Contract Administration on the 3M Reuse Water System Project (Adam Kiker and Jay Johnston).

Mr. Terry stated the Board had heard information regarding this request at its last meeting, and had requested that Mr. Johnston and Mr. Kiker come back with more detailed information regarding the work performed that was outside the scope of the original contract. He said they had now done so, and a draft contract amendment was before the Board for consideration. Mr. Terry stated that both Mr. Johnston and Mr. Kiker were present to respond to questions.

Commissioner Fiocco said he had looked at the numbers and was trying to reconcile the various columns and make them add up to the requested supplemental funding, but he had been unable to do so. Jay Johnston stated that the additional work performed actually was greater than the amount being requested, in that they had projected in September of last year that they would be about \$49,000 over the contract amount, and they had actually been at \$51,000. Mr. Johnston stated he had at that time projected that they would need about \$55,000 to finish the work. He said if you looked at every single time entry line, you would multiply hours by rates and subtract the contract amount, which was very easy to do. But, he said, to make it match an exact figure was very difficult to do. Mr. Johnston said the itemized lists of the costs incurred indicated the reality of the project costs.

Mr. Terry said the itemization that had been provided went beyond what had been requested and indicated the work which had been done. Mr. Johnston said the list indicated that they were currently \$59,000 over the contract amount, but he was drawing the line at the \$55,950 they had requested in the letter.

Mayor Voller said then once this was paid and the project completed, the Town would receive no more invoices. Adam Kiker stated that was their intention, barring any large change in the project.

Mr. Terry stated when the work at the pump station was completed, then they were done and the project would be completed once a final inspection took place. He said he expected that to take place in the next few weeks, so they were essentially at the end of the project.

Mr. Kiker said when the change order was issued today, the total cost of the project including the additional engineering fees being requested tonight would remain within the amount of grant funds available.

Commissioner Bryan said then anything that would have to be paid would be paid with grant funds. Mr. Johnston said that was correct.

Mayor Voller asked once this was operational and if the Town ever got into extended reuse water from there, how much would that be able to happen. Mr. Johnston stated there was a stub out ready to be tied onto the south side of 3M's driveway, and the capacity was limited by the pipe size but there was more capacity in that 8" pipe than what they were using to deliver to 3M. He said there was an amount of additional service possible, but did not know if it would equal what 3M's service was.

Mr. Terry said the amount they had committed to deliver to 3M was over 50% of the total flow, so they really could not take on any big customers until the Town grew and a second plant was put on line. He said they were only producing about 370,000 gallons per day, and the top end of the commitment to 3M was 200,000. Mr. Johnston said in dry weather there would be days when the Town would not make as much wastewater as the commitment to 3M, but there was two days worth of storage so they would still have some flow going.

Mayor Voller said then the pipe was an 8" pipe coming from the standpipe over to 3M. Mr. Johnston said it was an 8" pipe all the way from the plant to the standpipe to 3M.

Mayor Voller asked why a 12" pipe was not used on that one portion. Mr. Johnston said it was designed as a 12" pipe but during the course of the work they had been instructed to change it to 8", and they had done as requested.

Mr. Kiker said the general rule of thumb for an 8" line with capacity was about one-half million gallons per day, and the Town's commitment to 3M was 200,000 gallons. He said he believed 3M was using only between 100,000 and 125,000, even at their highest use.

Mayor Voller said then in theory, they could tie a 12" line onto the 8" or even another 8" and go further. Mr. Johnston responded yes, noting the capacity would be limited by the front end 8" pipe. Mayor Voller said but they were saying the capacity now was one-half million gallons. Mr. Johnston said yes, but it could vary one way or the other based on various factors.

Mr. Kiker said one thing to keep in mind if you wanted to provide consumers with reclaimed water, it would have to be treated at the treatment plant. He said right now they had a variance so that what was being sent to 3M did not actually meet the State's requirements for reclaimed water, but the variance allowed them to do it because of the specific kind of use. Mr. Kiker said once the capital investment at the plant was completed through the AARA funds, it would meet State requirements.

Mr. Johnston said the concept for some time was that the new plant would fill that void and make very good reclaimed water.

Commissioner Harrington asked what Mr. Terry's sense was of the \$24,100 that Hobbs Upchurch was asking for. Mr. Terry said he believed it was fair, noting he had looked at the details provided and the project had experienced a number of twists and turns which had resulted in some additional work. He said one big one that came to mind was the paving of Cornwallis Street. Mr. Terry said he was satisfied that the additional funds being requested were for work that was performed above the original contract.

Motion made by Commissioner Baldwin seconded by Commissioner Harrington to authorize the Town Manager to execute the amendment to the engineering services contract in the amount of \$80,050.

Commissioner Brooks remarked that he would like to hope that in the future they could have a more direct path with less twists and turns and change orders coming forward at the appropriate time as opposed to later in the process. He asked if that could be made a part of the motion.

Commissioner Baldwin amended her motion to include the concern voiced by Commissioner Brooks, which was accepted by Commissioner Harrington, that in the future they could have a more direct path with less twists and turns and change orders coming forward at the appropriate time as opposed to later in the process.

Commissioner Bryan stated he had wanted to voice the exact concern just expressed by Commissioner Brooks, and wanted to echo his disappointment that they were at the end of the project and had what was basically an \$80,000 change order. He said that was substantial, and if the Town had to write that check he would truly struggle with voting in favor of it. Commissioner Bryan said he was not saying that the grant was a way out, but coming with such a large change at the end of the project was not the way to do it.

Mayor Voller said to Mr. Johnston's credit this had been a project that had been with him for the life of the project, which was approximately 11 years, and some of the changes went back to 2003. Mr. Johnston stated they had begun in 2002, and the grant had been dated 1999. Mayor Voller said he concurred with the feelings expressed by the Board, but there were mitigating factors and the project was under budget. He called for the vote.

Vote Aye-5 Nay-0

3. Integrated Water Systems (IWS) Project Proposal

Karl Shaffer, 685 Sanford Road, stated he was not an employee of IWS, but was a member of the Clean Water Collaborative which was who the proposal was offered by. He stated that the proposal had been forwarded to the Board last Friday.

Mayor Voller stated the proposal was received via email on Friday afternoon with hard copies delivered tonight. He said he believed the Board's preference would be to allow them time to digest the proposal and schedule a discussion at the Board's next meeting.

Commissioner Harrington said Mr. Terry was asking for direction regarding the proposal.

Mayor Voller asked if Mr. Terry was asking for direction as to the proposal or direction for the request for information, because at this point he believed the request was in regards to the proposal. Mr. Terry responded he was asking the Board for guidance as to how to proceed. He said when they had discussed this at the last meeting, he had understood that a proposal would be forthcoming and he had not heard anything about Town staff time being devoted to it. Mr. Terry stated the proposal was to create a specific capital improvement project for the Town that would involve Town staff partnership with the contractor to collect data among other tasks. He said he needed some clarification as to whether this was now a Town project that staff time should be devoted to, or was it still a proposal from an engineering firm. Mr. Terry said he needed some guidance on how and what Town resources were to be used.

Commissioner Harrington said those were his questions as well, noting at the last meeting the question was what they did next. He said from his point of view the Board had expressed interest in a general and vague sense because they did not know what it would entail or what it would cost, and there were several options provided. Commissioner Harrington said to him the proposal was very vague and the Town's response was a statement of interest in that they would like to know more through additional information. He said of course they would help with information gathering when they could, but it was certainly not his thought that the Town would devote resources until they had a better idea of what the project might actually be so that they could prioritize it. Commissioner Harrington said he would like to have something by their May meeting that contained some priorities for the Board to consider. He said staff was already very busy, and if there was information that could be easily provided then they should do so. Commissioner Harrington said but, he had not imagined that the request for information would distract staff from those things that were needed to be done.

Commissioner Fiocco said he believed there were short term and long term questions posed, and the short term questions had been answered by the fact that they now had a proposal delivered, so clearly staff time was not required to prepare the proposal. He said he believed the proposal would help them to answer a lot of the questions that the Board had, and agreed that the issue should be tabled until the next meeting so that the Board could become familiar with the proposal. Commissioner Fiocco said at that next meeting the Town could then provide guidance as to how to move forward.

Commissioner Harrington said it was his sense that this was not something staff should be spending time on at this point, unless they identified something near term that the Board believed staff should become involved in based on the priorities laid out. He said that staff had a lot to do and they knew what those things were, and this was probably not something staff should be devoting time to at this point until the Board had better sense of the proposal.

Mayor Voller said in regards to the memo prepared by Mr. Terry, he would like some clarity from staff as to what any citizen in Town could come in and ask for, versus things that would be more of a wish list. He said he had had a conversation regarding what he believed the Town should be providing as a service to citizens and the business community at any time. Mr. Terry said any information held by the Town was available with the exception of personnel records. He said the difference was that if the proposal was a Town project, then they would need to take the steps necessary to allot staff time and other resources to it. Mr. Terry said the difference here was that this was an unsolicited proposal from an independent contractor not retained by the Town, so any information they received they would be charged copying fees and any other expenses incurred by the Town. He said that was why he had asked for clarification as to how staff should proceed.

Motion made by Commissioner Fiocco seconded by Commissioner Baldwin to table the issue until the next Town Board meeting.

Vote Aye-5 Nay-0

After a brief discussion with members of the Citizens Grant Committee, the Board agreed that that Committee would be placed on the next agenda to provide an update to the Board.

NEW BUSINESS

1. Report on “Operation Medicine Drop” (Community Policing Officer Troy Roberson).

Mr. Terry noted that Officer Roberson had been scheduled to attend another public meeting and had not yet arrived. He asked that this report be deferred, or it could be heard later in the meeting if Officer Roberson arrived. There was no objection from the Board.

2. Citizens’ Request to Schedule Public Hearings on the Powell Place MUPD and the Powell Springs Apartments Site Plan Review (David Richter).

Mr. Terry stated this was a request from David Richter who was representing a number of residents of Powell Place, and believed the Board should hear from Mr. Richter at this time.

David Richter, 30 Dunmore Lane, stated the request was that the Board schedule a public hearing and conduct a full Board review of the MUPD for the Powell Place project and the Powell Springs Senior Apartment Complex. He stated there were many reasons for their request, including that the Board who had approved the project was not the Board now sitting with the exception of Commissioner Brooks, and Powell Place was a major undertaking. Mr. Richter said it was important for everyone to understand its affect on the Town and its residents, especially the residents of Powell Place.

Mr. Richter took some time in providing background information and expressing the concerns and issues that had been identified over the 6 years since the original MUPD had been approved for Powell Place, which had been expressed by him and various others at previous Town Board and Planning Board meetings. He reiterated concerns such as the credibility and motive of East West Partners and Evergreen, the lack of communication between East West and Powell Place residents, the lack of disclosure of the plans for Powell Springs to Powell Place residents and future residents, Millbrook traffic and overflow parking, that the backs of the building faced the street, and that the air conditioning units were on street level facing the residences across the street and the noise that would generate.

Mr. Richter stated that the project was poorly conceived, and residents deserved to know how the project would fit into Powell Place and the Town. He said that since the MUPD was approved that times had changed, and it was critical to understand where Powell Place was headed. Mr. Richter said that given the significant impact to all Pittsboro citizens of both Powell Place and Powell Springs, and the issues and concerns shared by a great majority of current Powell Place residents, the requested review and hearings were warranted.

Sara Donaldson, 452 Powell Place, who was the very first Powell Place resident, stated in 2004 when Powell Place was being discussed she had been looking for a community in which to build a home. She said a walking community was attractive to her and it was her desire to remain in Pittsboro, and East West had described Powell Place as a “mini Meadowmont”. She said she had liked what she had seen and so had the Board of Commissioners, who had approved the MUPD. Ms. Donaldson said that Powell Place had been advertised as a front porch community similar to Meadowmont. She said she had requested to be appointed to the Parks and Recreation Board for a two-year term so that she could be involved in shaping the park, which she was proud of and looked forward to using.

Ms. Donaldson said during the planning process the commercial areas and the apartment complex were briefly discussed, but the conversation had been that access would be from the first roundabout. She asked if that supported why Millbrook Drive was so narrow, in that it was not going to be used for additional access. Ms. Donaldson said if you went into the Powell Place sales office now, as she had six years ago, you would not see the apartment building on the plan nor would you see it on the table model. She said in other words, prospective buyers would not see that on any of the marketing material, which meant that building was not being disclosed.

Ms. Donaldson said she had been appointed to the Powell Place Homeowners Association Board in early 2006, and she and another Board member had been asked to meet quarterly with East West to discuss issues regarding the community. But, she said, not one meeting was ever held and there had been no communication from East West and no attempt to work with Powell Place residents.

Ms. Donaldson asked that the Board deny the construction of Powell Springs and schedule a public hearing so that concerns could be discussed by citizens and the Town Board. She provided the Board with a document she had been given the day before she moved into her home in Powell Place, noting that the document stated that retaining and screening walls would be as unobtrusive as possible and built at the minimum height needed to serve its function, and that mechanical equipment would be concealed and rotated as to not have an adverse effect on use of adjacent property. Ms. Donaldson went on to say the document noted the importance of trees, and residents were asked to protect and preserve them. She said under the landscaping and site design section of that document, it said under #5 that buildings and landscape material would be placed on the site so that the maximum number of desirable trees and other natural features were preserved, that the site would be graded to prevent soil erosion on the site or adjacent properties, and that neighbors and the neighborhood would be provided the most aesthetic and quality project possible.

Ms. Donaldson stated for those reasons, review of the MUPD was appropriate before any future development went forward, and she asked that the Town Board consider that.

Mayor Voller invited Mr. Terry and/or Mr. Monroe to comment. Mr. Terry stated there were two separate issues here, one of which was the request for a public hearing on the site plan for Powell Springs and the other was the MUPD for Powell Place.

Mr. Monroe stated it was entirely reasonable for the Board to consider a public hearing on the Powell Springs project. He said he was not certain what additional information that would

extract given the scope of emails contained in the packet for tonight's meeting. Mr. Monroe said he wanted the residents to know that every email that had been sent to him had been copied to the Town Board, so they were equipped with all the information the residents had wanted to offer. He said he believed it would be reasonable to use that information in the Board's deliberations in regards to Powell Springs. Mr. Monroe said with regard to a public hearing on the Powell Place MUPD, he believed that was a matter that would have to be addressed by the Town Attorney, and he would like to defer to Mr. Messick on that issue. Mr. Messick said he was not sure what right the Town Board might have to have a public hearing on that approved MUPD.

Mayor Voller said then his question was if they held a public hearing on the Powell Place MUPD, would there be any implications involved if the hearing was for informational purposes only. Mr. Messick stated that under the MUPD there was no authority to do anything different than what had been approved. He said conditions were in place and the site plan had been approved, and as long as there was compliance with that then that was the deal the Town had made and there was no reason to hold a public hearing because the conditions could not be changed. Mr. Messick said if the Board wanted to have an update on the site plan and what the conditions of approval were, then a report could be prepared to provide that information and on the status of the development. But, he said, that would not be for the purpose of trying to revisit, change, modify, alter, or add to any of those conditions.

Mr. Monroe said it was important to note that under the MUPD, the Master Plan was a narrative, and that the drawings that accompanied that were identified as illustrative to show how the potential range of uses could relate to one another but were not intended to fix a footprint on the ground. He said he believed that was part of the difficulty in dealing with an MUPD, in that unlike a subdivision or a commercial development you did not see that urban footprint until after the Master Plan and that illustrative plan had been approved.

Mayor Voller said then in exchange for granting that vested right, the Town still had the right to approve or deny a plan that came forward. Mr. Monroe responded absolutely, adding that the Town also had the right to make minor changes to the Master Plan and the illustrative plan.

Mr. Messick said the MUPD was a zoning classification that altered that land to that status. He said although it was narrative in form and illustrative in form, there were certain conditions that were attached in terms of maximum density and conditions on the subdivision regulations that were part of the approval of that particular development. Mr. Messick said the quid pro quo part of it was the mixed use, which was a combination of the residential and commercial and the different types of residential development being proposed.

Mayor Voller said then the quid pro quo was the mixed use, and so far they had not seen much mixing. Mr. Messick said so far, under the terms of the arrangements that were approved, they were within the timeframe. Mayor Voller asked was the timeframe forever. Mr. Messick said it was not forever, but it was extended beyond the time to get each phase of the development approved.

Mr. Monroe stated that plans had been approved for a retail and office facility, a larger office building, and a convenience store and a car wash, but they simply had not yet seen them built.

Commissioner Fiocco said Mr. Monroe had commented that the plans were illustrative and did not represent actual building footprints, but there were illustrations that were a part of the text for the Master Plan that did refer to pods of commercial and residential, and some even went so far as to establish what kind of residential uses might be there. Mr. Monroe said that was correct. Commissioner Fiocco said but he was also saying that the Master Plan could not change, in that they could not take a commercial property and put it in a residential zone as shown in the Master Plan. Mr. Monroe stated that was also correct. He said in one commercial area to the south on the Powell Place Lane, there was mention made in the narrative that there would be a mixture of residential with the commercial.

Mayor Voller asked which area that would be. Mr. Monroe replied it was south of Powell Place Lane.

Commissioner Brooks said that the ETJ went all the way out to the interchange, and the County had insisted that the Town take 3 miles in every direction. He said he believed it was an important point that the Town had agreed so that they would have some input and some control over what went there because Center Township was not zoned.

Commissioner Brooks said he had gone on a tour of Meadowmont with developer Roger Perry and although he did not always understand all the various convoluted zoning terminologies and narratives, he did remember that Mr. Perry had made it very clear on that tour that what he wanted to do was to come to Pittsboro and build a smaller version of Meadowmont. He said much of this issue was somewhat confusing for him now, and asked had they somehow lost sight of what Mr. Perry had stated was the intent. Commissioner Brooks said the Town had annexed that area so that they could hopefully get some economic growth in the community. He said they had at first tried to attract some industry but that had not materialized, so they had been eager to accept Mr. Perry's proposal. Commissioner Brooks said the Town Board at that time had been so enthusiastic that they had given Mr. Perry an open end on the sewer allocation provision, and many times since then the Town could have used that sewer allocation. He said he had voted for that and it was a mistake, and he wanted to offer his apologies for doing so. Commissioner Brooks said they had annexed that area because of the Town's hope for economic development, and they were still waiting for a smaller Meadowmont.

Kenneth Hoyle, Chair of the Planning Board, echoed Commissioner Brooks' statements, noting he and the Planning Board had been told exactly the same thing at the same time, they had been given the grandiose idea that they would have a small Meadowmont in Pittsboro.

Mr. Terry said he wanted to summarize the issue so that they could bring the discussion to some conclusion. He said that basically Mr. Richter and Ms. Donaldson had asked the Board to hold a public hearing and the attorney's advice was that it was likely legally inappropriate to go back and try to rewrite the MUPD. Mr. Terry said they had heard from Mr. Monroe and had received a lot of citizen input, but he had not heard anyone say that the Board did not have the authority to hear additional citizen input if that was what they choose to do at a subsequent meeting. He said if the Board decided that they wanted to hear additional citizen input at some future date, then they could make that decision. Or, he said, if the Board believed the packet of information with

citizen emails was sufficient for public input, they could also make that decision tonight and move on.

Mayor Voller said getting input from the citizens and from the developer would be good, but one issue was holding an informational session on the MUPD. He said they could not revisit that but certainly people should be brought up to speed on it. Mr. Terry said it was certainly reasonable to have an information session if the Board felt that it was needed, particularly since most of the Board members were not present when it was approved. He said if that was necessary then something could be scheduled. Mr. Terry said if the Board wanted to hear more public input on the Powell Springs plan and how it fit into that MUPD, then they were within their authority to do so.

Mr. Messick said with respect to Powell Springs, that was a different matter altogether. He said there was no way they could hold another public hearing on that, because it was a site plan that had been submitted through the planning process. Mr. Messick said the only real issue was that if it met the conditions and standards of the Town's ordinance, then they were obligated to allow it to move forward. He said he did not know what issue the public hearing would have with respect to that, because it either met the standards or it did not. Mr. Messick said that Mr. Monroe had indicated in his agenda notes that it did meet the standards, and the Planning Board had apparently approved it as having met the standards. He said he was not sure what further public input or a public hearing would do, because it was not a public hearing issue. Mr. Messick said the Board could subject itself to a hearing, but it would have no standing to offer evidence with respect to the site plan whether it met the conditions or not. He said if it met the conditions it should be approved.

Mayor Voller said in the Subdivision Ordinance, it said under Section 1.3a "to protect and provide for the public health, safety, and general welfare of the Town of Pittsboro." Mr. Messick said this was not a subdivision, so the Zoning Ordinance was the document that applied for site plans. Mayor Voller said it appeared the issues were "slippery" as far as what governed the plans. Mr. Messick said it was his understanding that the property had already been subdivided, so this was an issue of a site plan on an already subdivided lot. He said the issue was not slippery, in that there were very specific conditions in the Zoning Ordinance as to what a site plan should contain. Mayor Voller said many of the comments from the public referred to the Subdivision Ordinance, so shouldn't they have been told that up front. Mr. Messick said he did not know who had told them to rely on the Subdivision Ordinance, but this was not a subdivision and those regulations did not apply. He said only the Zoning Ordinance applied.

Mayor Voller said the same language contained in the Subdivision Ordinance was in the Zoning Ordinance, in regards to providing for the public safety, health, and general welfare of the Town. Mr. Messick said the Town had already determined that the site plan satisfied the need for public safety, health, and welfare. Mayor Voller asked how that could be if they had not voted on it. Mr. Messick said the standards had been implemented, in that they were in the ordinance, and a previous Board had determined that the site plan met those standards, including the public health, safety, and welfare. He reiterated that if the site plan met the standards, it must be approved.

Patrick Bradshaw, attorney for the applicant, stated he wanted to address the two requests that had been brought forward. He said in regard to a request for a public hearing on the MUPD for

Powell Place, if the Board wanted to have a discussion on the MUPD, have Roger Perry and Bryson Powell come and talk to the Board about the MUPD and how the community had developed, what expectations had been met or not been met, where they were today and where they expected to go in the future, then they would be fully willing to come and engage in that meeting. He said he believed Mr. Perry and Mr. Powell should have some opportunity to consult about when such a meeting would be held and the parameters, but it had been stated by both the Town Planner and the Town Attorney that the Town Board had no authority to open the MUPD and change the standards in that zoning approval that was granted over 7 years ago in 2002 and 2003. Mr. Bradshaw said when that zoning approval was granted the particular property in question, Powell Springs, was shown as potentially being for multi-family development.

Mr. Bradshaw said as far as the site plan and how they had arrived at this point tonight, was that an application had been brought forward by a property owner for a site plan review under the Zoning Ordinance. He said on behalf of the applicant for that site plan review, he absolutely objected to any delay in the approval of that site plan for any kind of public hearing, either on the MUPD or on the site plan. Mr. Bradshaw stated that Section 15.4 of the Zoning Ordinance set out the procedures for review and approval of site plans, in that it said that the plan was to be reviewed for completeness under the Ordinance, in compliance with approved plans, first by the Zoning Enforcement Officer, Mr. Monroe, who had said that it complied with all the requirements in the Ordinance.

Mr. Bradshaw said as far as the Planning Board, it had held 3 meetings over a 3 month period and had unanimously voted to recommend approval to the Town Board because it fully complied with all the requirements of the Ordinance. He said this was an administrative review as Mr. Messick had stated, and under the laws of the State in that situation if an application met the requirements of the Ordinance, the applicant was entitled to its approval as a matter of law. Furthermore, he said, the Town Board was required by law to follow the procedures set out in the Town Ordinance, in that there was a specific procedure provision in Section 15.4. Mr. Bradshaw said that same Zoning Ordinance in other sections talked about public hearings and the procedure that had to be used, but in the procedure for reviewing site plans there was not one mention of a public hearing.

Mr. Bradshaw read from case law from 2004 from the State Court of Appeals that was a subdivision case but there was administrative review so the same standards applied that was in this case. He said a committee of the planning board in New Hanover County had recommended approval of a subdivision; a group of concerned citizens had asked the board of commissioners to hold a public hearing so they could offer input; the board had done so over the objections of the applicant; as a result of that public hearing the board had imposed some additional conditions on the approval; the applicant had appealed to Superior Court in New Hanover County; the Superior Court determined that a public hearing should not have been held because it was not provided for in the procedures as stated in their ordinance; and, that the additional conditions that had been imposed were not enforceable. Mr. Bradshaw said that decision had been appealed, and the Court of Appeals opinion included that “as such, under an administrative scheme, an applicant’s compliance with the established procedures and requirements of the plat approval process renders the applicant entitled to a permit as a matter of law.” He said several paragraphs later the Court of Appeals said “it is simply not permissible for a local government body to deploy novel ad hoc procedures not previously authorized in an ordinance.”

Mr. Bradshaw said that was exactly what this Board was being asked to do; that is, to apply novel ad hoc procedures to the site plan review and call a public hearing. He said it was the same thing the Court of Appeals had said was not permissible in that 2004 case in New Hanover County. Mr. Bradshaw said at the urging of Town staff after the application had been filed, the developer of Powell Place and the applicant for this site plan for Powell Springs had called a community meeting to discuss the project, which had taken place. He said there had been 3 Planning Board meetings, and inconsistent with usual Planning Board procedures one of those meetings had included extensive public comment. Mr. Bradshaw said he understood the Town Board had been addressed on at least two occasions at some length by the public regarding this application. He said he did not believe this was a request for additional information, or that anyone expected anything new to be learned because the application had “been beat to death already.” Mr. Bradshaw said so far no one had identified any way that it did not comply with the Town’s Zoning Ordinance.

Mr. Bradshaw said he had a notebook which he would be happy to share of site plans for Powell Place that were initialed by almost all purchasers of lots within the property with the exception of 3 or 4 showing that the very property now under discussion was intended for multi-family development.

Mayor Voller asked Mr. Bradshaw to submit the notebook for Board review, and Mr. Bradshaw said he would be happy to do so but would need to retrieve it once they had had the opportunity to review it. Mr. Bradshaw indicated that the notebook contained an overall site plan, and there was a notation for the lots for which they did not have the initialed site plans. He said as an example, on the site plan many of the lots carried the initials of the purchaser, and that site plan very clearly carried the words “multi-family” on that tract for the proposed project. Mr. Bradshaw said those purchasers had initialed the site plan with that property clearly labeled as potentially being used for multi-family purposes.

Commissioner Baldwin asked did those purchasers clearly understand when they had initialed the site plan that there was a section labeled as multi-family and what that meant. She asked had anyone asked any questions or had they indicated that they clearly understood the site plan. Mr. Bradshaw said he was not present when they had initialed the site plan or when they had signed those contracts. He said his point in bringing it up was to demonstrate to the Board that there had been ample notice. Mr. Bradshaw said first, it was in the Zoning Permit from 2002 that that property was eligible for development for multi-family purposes, and secondly all or most of the people who had purchased the initial lots had initialed the site plan showing that the property was intended to be used for multi-family development. He said his only point was that there was no surprise about that. He said to Commissioner Baldwin’s point, no, there was no site plan for Powell Springs offered for review because it did not exist.

Commissioner Baldwin said she understood that, but what she was trying to clarify was whether the purchasers had been very clear on what was being talked about or planned in reference to multi-family. Mr. Bradshaw responded he did not know, but it was not related to the application that was before the Board tonight.

Commissioner Harrington said that multi-family could mean many things. Mr. Bradshaw said it could mean an apartment building. Commissioner Harrington disagreed, noting it did not necessarily mean that because it could mean multi-family townhouses such as those in Ferrington, which was not what he would call an apartment building. He added that multi-family also did not mean it would be rental, in that it could be condos or townhouses.

Commissioner Baldwin agreed. Mr. Bradshaw said his point was that the site plan had indicated multi-family and almost all of the purchasers had initialed the site plan which clearly showed that multi-family site, so the purchasers had been given notice that the property was available for multi-family development, and all it showed was a lack of surprise. He said the fact remained that the site plan satisfied every requirement of the Town's Ordinance and it was entitled to due process of law and equal protection under the law to the same treatment under the Ordinances and the Town's procedures that everyone else received. Mr. Bradshaw said the Town had not held public hearings on any other site plan, it was not the Town's procedure and it was not in its Ordinance, and it was not something that they had required of anyone else. He said the court case and case law he had cited stood for the proposition that if this application met the requirements of the Town's Ordinance, then the applicant was entitled to have it approved as a matter of law according to the Town's usual procedures that were provided for in its ordinances. Mr. Bradshaw said the Town Board had taken an oath to uphold the laws of the Town and the State and the Nation, and the laws of all three required that if that application satisfied the requirements of the Ordinance then it must be approved.

Motion made by Commissioner Harrington to deny the request for a public hearing and an MUPD review.

Mr. Terry stated before the Board voted he would like to make a few statements.

Commissioner Harrington withdrew his motion.

Mr. Terry stated he wanted to provide some material facts as stated by Mr. Bradshaw. He said Mr. Bradshaw had stated that the Powell Springs site was designated for multi-family development on the plans submitted for the Powell Place Master Plan. He said he had reviewed that Master Plan and he had determined that the area where Powell Springs was to be located was identified as townhomes.

Commissioner Harrington said tonight they were hearing the same thing over and over again, and from his point of view they had heard the concerns. He said other than the legal issues, he was not sure that they would hear anything new that they had not already heard as far as issues or opinions. Commissioner Harrington said that was why he had wanted to deny the request for a public hearing on Powell Springs. He asked if there was anything the Manager could add that would address whether or not they should hold a public hearing. Mr. Terry said not necessarily, but there was reasonable doubt in his mind that the site plan did in fact live up to what Mr. Bradshaw had stated. Commissioner Harrington said that could be addressed during review of the Powell Springs site plan, which was the next item on the agenda. Mr. Terry said that was correct. Commissioner Harrington said once they reviewed the Powell Springs plan, if the Board wanted to hold an informational meeting to review the MUPD he would not be opposed to that.

Motion made by Commissioner Harrington seconded by Commissioner Fiocco to deny both requests from citizens to schedule a public hearing on Powell Springs and to conduct a Board review of the Powell Place MUPD and to leave open the possibility of requesting an informational meeting to review the MUPD for Powell Place.

Vote Aye-5 Nay-0

Mayor Voller asked if Mr. Bradshaw wanted to respond to Mr. Terry's comment regarding the site plan map in the Master Plan. He said they had the illustrative plan and the Master Plan, and the question was how would someone understand what would be townhomes because on the plan it showed multi-family as a separate zone. Mayor Voller said it showed townhomes but actually said multi-family apartments on the map, so how was someone supposed to understand that. Mr. Bradshaw said what people needed to understand was what was in the Master Plan and what use the Master Plan allowed within the MUPD on which property. He said the very first illustrative plan in 2002 showed townhomes in that area, but in 2003 there was a series of revisits to the MUPD and a revised illustrative plan was submitted. Mr. Bradshaw said the Master Plan itself showed residential, and in the usage table it showed that in the residential area, 91 acres, multi-family, townhouses, single-family at 20 dwelling units acre. He said that was the document that controlled what uses were allowed in which portions of the MUPD. Mr. Bradshaw said as a zoning matter, that was the controlling document.

Mr. Bradshaw said as far as how people were suppose to understand what, that revised illustrative plan was submitted to the Town as a part of the review of the MUPD in early 2003, and as you could see from the copy he had supplied that had been initialed by purchasers of the lots which indicated that was also the site plan that they were shown.

Mayor Voller said at this point he would officially say that the Board had now moved on to Item #4.

3. Powell Springs Site Plan Review.

Mayor Voller asked Mr. Bradshaw was he indicating that for those lots not initialed the owners had never seen the site plan. Mr. Bradshaw said no, that it only meant that they were not able to locate them in the files. Mayor Voller said then the owners of lots 57, 63, 66, 68, and 70 had not initialed the site plan.

Steven Mulholland, 599 Millbrook Drive, the owner of lot 62, said that at the time he had purchased his lot he had been led to believe that the multi-family would be located farther down the road from his property and he had not been told that it would be right across the street. He said none of the sales people had mentioned it, and that was why he had purchased that lot.

Mr. Bradshaw said he realized there was some disagreement on that, but his purpose in introducing the initialed site plan was to show that purchasers were given notice and had the opportunity to understand that there was potential multi-family development. He said if no one had been told anything, the use would still be allowed on the land because it was in the Master Plan.

Commissioner Harrington said unfortunately and no matter how awful it may seem, the Town could not be pulled into a dispute with a developer. He said if a developer lied to a property owner and there were documents to prove it, the Town had no authority to say that they could withhold approval because the developer had lied. Commissioner Harrington said he empathized, but the Board had to move forward with the review of the Powell Springs Senior Living Apartments.

Mayor Voller agreed, noting that first they would hear from staff and the developer, and he would then recognize others to speak.

Mr. Monroe provided an overview of concerns that had been raised, beginning with the effects on the wetland channel to the property. He said testimony had been provided that the wetland channel had already been degraded by removal of natural vegetation. Mr. Monroe said another issue was that the plan as presented had a stormwater detention pond and an outfall directed towards the wetland channel. He said during review, the applicant had agreed through his attorney to leave the first 25 feet of the stream bank of that wetland channel undisturbed in order to provide some sedimentation and filtration. Mr. Monroe said that Mr. Shaffer was the soil scientist and a member of the Planning Board, and had testified that having a slope ratio of 3:1 would certainly result in sedimentation being delivered from the disturbed property into the wetland channel, and the Town had a charge to restrict sedimentation into wetland channels. He said that had been a major concern about this project, and the plan had subsequently been revised to reduce that flow from 3:1 to 2.5:1 which was not a significant improvement but was a demonstration by the applicant that they were conscious of the possible sedimentation effect on that wetland channel.

Mr. Monroe said another concern was the possibility of requiring extraordinary measures in the soil erosion sediment control plan in order to retain that sediment from sloughing off into the wetland channel, and it was suggested that requiring a total mat would be an appropriate condition for the Town to consider. He stated that the Planning Board had recommended 6 conditions for consideration by the Town Board if it chose to approve the plan.

Mr. Bradshaw stated that over the last 4 months the Town had reviewed the site plan for a 48-unit senior living community, and during that process there had been 3 Planning Board proceedings. He said as a result of that review, the applicant had agreed to increase the parking on the site from the required 36 spaces to 48 spaces, agreed to a substantial enhancement to the landscaping, agreed to revise the building setback from 17½ feet to 27½ feet from the right-of-way of Millbrook when the required setback was only 10 feet, and had voluntarily agreed to a 25-foot undisturbed buffer along the stream which was not required by any Town ordinance.

Mayor Voller asked what type enterprise was going to be in that building. Mr. Bradshaw said it was a 48-unit rental apartment building for seniors 55 years and older. Mayor Voller asked how it was administrated.

Commissioner Harrington said before they went any further, he would ask that the individuals representing the applicant be introduced so that the Board would know who they were. Mr. Bradshaw stated that Tim Morgan was with Evergreen Construction, and that Robbie Oldham and Leigh Potts were with Withers & Ravenel and were the engineers for the project. Mr.

Bradshaw said how the apartment building was administered had nothing to do with the request that had been made to the Board to approve the plan.

Mayor Voller said he disagreed with that. Mr. Monroe said they had referred to the requirements in the Zoning Ordinance that stipulated that three quarters of a space per unit was required for elderly and handicapped. He said at the time the Ordinance was written it referred to what was now called assisted living facilities. Mr. Monroe said the requirement for general parking was 2 spaces for unit.

Mr. Bradshaw said the way the age limit in the apartments was enforced was with a restrictive covenant on the land that would be recorded in the Register of Deeds office.

Commissioner Fiocco asked exactly how they arrived at the age of 55 as being qualified as elderly.

Commissioner Harrington said the Ordinance said “elderly” and not “senior.” Mr. Monroe said that was correct, that it said elderly and handicapped.

Mr. Bradshaw said that Mr. Morgan had a lot of experience in dealing with elderly living communities so he may be able to add something to that. But, he said, he would remind them again that the Ordinance said “elderly or handicapped” and did not say “elderly and handicapped” and there was no definition of the word elderly in the Ordinance.

Commissioner Harrington said then it may not mean age 55. Mr. Bradshaw responded it could be 45. Commissioner Harrington said then someone could say 30 and over and suddenly they were obligated to have one parking space per unit. Mr. Bradshaw said no one was suggesting that, noting that they were proposing a senior living community that would have a restricted covenant placed on it that said that each unit had to be occupied by a person who was 55 years of age or older. He said that Mr. Morgan knew from his extensive experience that the most likely resident of that building would be a single female who was 67 years old.

Commissioner Baldwin said that was not necessarily true, and Commissioner Harrington agreed. Mr. Morgan said that was the average that they typically saw, adding that the parking would exceed what they typically saw in such communities. He said he had mentioned that during the Planning Board meetings, noting that typically only one-half of the residents had vehicles.

Mayor Voller said he wanted to know exactly how that apartment building would be managed. Mr. Morgan said they were the management company, and they would screen the applicants to assure eligibility and would manage the day-to-day operations such as collecting rent, enforcing rules, and maintaining the building. Mayor Voller asked would they be on site. Mr. Morgan stated that they would not be on site but would hire a site manager. Mayor Voller said for the sake of understanding, would he consider this a commercial enterprise. Mr. Morgan replied no. Mayor Voller said then there was no commerce going on. Mr. Morgan replied it was a residential building.

Mr. Bradshaw asked if the Mayor considered the sale of individual residential lots a commercial enterprise.

Mayor Voller said that was actually a part of the approval of a development. He said he was asking questions that were in the materials and wanted to hear the answers. Mr. Bradshaw said it was not a commercial enterprise, that it was an apartment building. Mayor Voller said then there was no interaction between them and the residents other than collecting money.

Mr. Morgan said they would take maintenance requests and the like.

Mayor Voller said then it was not a Galloway Ridge. Mr. Morgan replied he was not familiar with Galloway Ridge. Mayor Voller replied it was a complex in Chatham County. He said he was sure Mr. Bradshaw knew what it was and why he was asking. Mr. Bradshaw replied he did not believe it was the same thing, referring to Section 15 of the Zoning Ordinance. Mayor Voller said if it was commercial then it was not residential.

Commissioner Harrington said with a covenant of 55 and older the developer would receive some subsidy or benefit from that. Mr. Morgan said they would be eligible for a particular type of loan. Commissioner Harrington asked what would be the result of that subsidy. Mr. Morgan said they would have to repay the loan, they would have to comply with the income guidelines attached to the loan, they would have to screen the applicants, and things of that nature. Commissioner Harrington asked how long they would be obligated to do that. Mr. Morgan replied 30 years.

Mr. Bradshaw objected to the questioning, noting that it had nothing to do with the site plan review. He reminded the Board that under State law it was unlawful to discriminate against an applicant for any land use application because the project included affordable housing.

Commissioner Harrington asked was that true even if it had adverse impacts on adjacent property values. Mr. Bradshaw said that property values had no play under the review of a site plan under Article 13 of the Zoning Ordinance.

Commissioner Harrington said the Master Plan says hotels and high-density residential would be overlooking the lake, and this was a high-density residential. Mr. Monroe said that referred to the original illustrative plan submitted which had been revised. He said the original lake was originally noted as an amenity, and after it had been approved by the Town it had been determined to be wetlands so that lake could not be excavated so everything else had to be moved. Commissioner Harrington said but originally the high-density multi-family was going to be farther away and closer to the commercial. Mr. Monroe said that was what was approved. Commissioner Harrington said then the high density had not originally been planned for that area.

Mr. Bradshaw said the same document that Commissioner Harrington was looking at had been attached to the Master Plan for Powell Place, and not the illustrative plan.

Mr. Bradshaw stated that on the Master Plan for Powell Place, it identified the residential area as being from one hash mark to the north and west, and then the mixed use area. He said that within that residential area, it said multi-family, townhomes, single-family at 20 dwelling units

per acre. Mr. Bradshaw said that meant that anywhere within that residential portion of the MUPD it was allowed to be developed up to 20 dwelling units per acre.

Commissioner Harrington said then he could understand that legally that was an average, but it said that the high density would be placed elsewhere. He said that was a key objection by the residents, in that they were placing a high density development in the residential area when the high density was originally approved to be up closer to the road. Mr. Bradshaw said he understood the point, but land use was controlled by the Master Plan, and the Master Plan stated that anywhere in the residential area of the MUPD they could have up to 20 dwelling units per acre, and they were proposing something like 14.

Commissioner Brooks said that initially there was some talk of a fire substation and concern about ladders and turning radii by the Fire Department. Mr. Monroe said he was not with the Town at that time so had no knowledge of that. Commissioner Brooks said they had to have enough turning radius for a fire truck. Mr. Monroe said the Fire Chief had reviewed the plan, and had asked for a second fire hydrant to be situated behind the building so that the fire hydrant at the front corner of the property could be used to charge a sprinkler system planned for the building. Commissioner Brooks said then he was assuming the idea of a fire substation had been dropped.

Mr. Bradshaw said there had been a provision in the Master Plan for a 10-acre civic site and there was uncertainty about what that would be used for. He said it was mentioned as a school site and a fire substation, and then the idea for a park come forward. Commissioner Brooks said during the tour of Meadowmont with Mr. Perry he had said they had denoted a number of acres to the Chapel Hill-Carrboro School System for a school, and he had asked Mr. Perry if he would consider doing that for Pittsboro and Mr. Perry had responded he would. He said apparently the Chatham County school system had not been interested, and believed that was why the 10 acres had become a park. Mr. Bradshaw said he believed that was correct.

Commissioner Fiocco said regarding the fire hydrants just mentioned, it seemed to be at the end of about a 400-foot water line. He asked how the plan would manage the water quality. Mr. Monroe said it would certainly encourage the growth of TTHMs, noting that the line would not go into the building but would be discharged at the fire hydrant. Commissioner Fiocco said the point was that they would have a 400-foot water line which was not good practice and was not healthy.

Commissioner Harrington said regarding a legal opinion, they could stamp out 3 to 4 acre sites and have federally subsidized low-rent housing on every one of those sites as long as they met the density requirements and as long as they met the Ordinance requirements, so that site could legally be built out completely similar to the plan now being proposed. He said as a matter of fact, if the Board approved the plan that would be the precedent for doing so and he suspected that happened on occasion. Mr. Bradshaw responded that may involve a substantial supposition about what would happen in the future. Commissioner Harrington said he was not asking what might happen he was asking could that legally be done. Mr. Bradshaw said if lots could meet the requirements of the Subdivision regulations then the answer was yes, that lots could be subdivided. He said if they were residential uses and satisfied the density limitations in the MUPD, then the other site planning requirements of the Town's Ordinances would require that

they be approved. Mr. Bradshaw said whether they were federally subsidized or low rent or some other characterization had nothing to do with the Board's consideration and it was in fact an illegal consideration.

Commissioner Harrington said if that was true then he was just now advised of that. He said he was very concerned about property values and believed everyone had a right to be concerned about that. Commissioner Harrington said he could not imagine that this Board could be in a position where they could just put in non-market rate housing for people who had paid market rate. He said that did not protect people's property values. Mr. Bradshaw said that the statute section was G.S. 41A-40.g. Commissioner Harrington said he could not imagine that this Board did not have an obligation to protect property values. Mr. Bradshaw said putting that statute aside, what section of the Town's Ordinance would you operate under to control that. Commissioner Harrington said they had an ordinance that had discretion built within it, which might allow things that you would not normally place in the same zone. He said all of that was wrapped up into an ambiguous thing that was illustrative, but you may not be able to apply the exact ordinance to it. Mr. Bradshaw said that was not what he was saying. He said there were restrictions that applied to this that existed in the Town's ordinances, such as setbacks, density limitations, landscaping guidelines and the like. Mr. Bradshaw said as the Town Board or a Planning Board or a Zoning Enforcement Officer, you could not ever just make up rules and regulations on a case-by-case basis. He said you either had to put it in the Zoning Ordinance or the Subdivision Ordinance.

Commissioner Harrington said he was well aware of that, but he was not sure he knew what discretion the Board had. Bud Rudesill stood up in the audience and stated that the public had rights, and he had the right to question the Town Attorney on legal matters regarding this issue.

Mayor Voller said he was in favor of affordable housing as defined by 25% to 80% of median income, and he was also in favor of inclusionary zoning practices. He said he had heard during a previous meeting that there was not an actual resistance to this type of development in Powell Place, but the resistance was to where it was located and the suitability of the land. Mayor Voller said to him that was the heart of the matter. He said they had a piece of property that just by looking at it seemed somewhat unsuitable, and there were people who lived in the community who were questioning the suitability not on the basis of who would live there by on the actual project itself which the Town Board did have authority over. Mr. Bradshaw said he had heard both concerns, and what the Town Board had authority over was to determine whether the site plan complied with the Town's ordinances.

Mayor Voller said on page 2 of the Master Plan, it said that the illustrative plan had been provided to better illustrate conceptual development intent. He asked how he would define that statement. Mr. Bradshaw said that at that time "conceptual development intent" was the idea for how they would develop the property. Mayor Voller said he was sensitive to market forces and other issues and having to move things around because of unforeseen problems. But, he said, given Commissioner Harrington's concerns about a possible 900 units plus all the rest of the commercial area that was approved in 2003, he believed the Board at that time had believed they would have a tax base from the commercial, but that had not come to pass. Mayor Voller said that on page 2 it specifically directed you to the illustrative plan, so why was he looking at that. Mr. Bradshaw said because it was an illustration of the concept of how the community would be

developed. He said on the illustrative plan it indicated that it was general plans for development, and the Master Plan identified the residential portion of the property as well as the mixed use portion of the property. Mr. Bradshaw said in the residential portion it said multi-family, townhome, single-family at 20 dwelling units per acre in the entire residential area.

Mayor Voller said it indicated that the plan was revised on March 10, 2003. He said the entire purpose of submitting the narrative was so that the Town Board could make a decision to approve the project, otherwise it would never have been submitted. Mr. Bradshaw said if the Mayor believed that what was proposed was a residential use that was not permitted on the site, then that was where they were. But, he said, he would submit to him that it was permitted.

Mayor Voller said he was asking because both were in the narrative, so when the Town Board had made its decision they must have done so with the idea that that was what they were going to get. So, he said, the Town Board now had to have a really good reason as to why they would vary from something given that there were a lot of other things on the plan that had not transpired due to market forces and other issues. Mayor Voller said they did not have a tax base from the commercial, and he would consider that an issue. Mr. Bradshaw said the Master Plan was still in force, and asked was there any question about that. Mayor Voller said he was not questioning that. Mr. Bradshaw said then the land uses were established by the Master Plan and controlled by the MUPD. He stated that one document was a Master Plan that identified the uses and clearly defined other issues, and the other was an illustrative or conceptual plan that was revised a few months after it was originally proposed to change the townhomes to apartments and showing that the land in question was available for multi-family.

Mayor Voller asked if the Planning Board had approved the revisions to the MUPD mentioned by Mr. Bradshaw that changed the school site to a park. Mr. Bradshaw said he did not know the answer to that, but there was no park on the site area that Evergreen had applied for a site plan. Mayor Voller said he was looking at the conceptual map, noting there was an element there that had changed. He said if the revisions had never been approved, then how could the Town Board accept it if elements had changed. Mr. Bradshaw asked was he saying the Master Plan had changed. Mayor Voller said there was no longer a school site there. Mr. Bradshaw said it had been labeled as a civic site as identified in the narrative. He said the Town now owned that land. Mayor Voller said the plan also showed a park near the roundabout, and that was now built on. Mr. Bradshaw said he did not believe there were homes there.

Mayor Voller asked what was there. Mr. Morgan said that was open space with a pond, but there were no homes there. Mayor Voller said that Hydrotube no longer existed. Mr. Bradshaw said Hydrotube did exist and they still owned that site.

Commissioner Brooks said to keep the record straight Pittsboro did not have a school system, that Chatham County had a school system. Mr. Bradshaw said there seemed to have been a concern that the drawing from 2002 had a school site yet there was no school. Commissioner Brooks said he was sure that Mr. Bradshaw knew the law and had correctly cited those laws, but he also believed that Mr. Terry was correct in what he had pointed out. He said he was sure they were quoting the law correctly, but to him the concept behind law was justice and the concept behind justice was fair play. Commissioner Brooks said he did not want to be unfair to developers but at the same time there were people who had joined the community and apparently

had concerns about what was proposed. He said it seemed to him that the Board had some obligation to try to protect those citizens and their investment. Commissioner Brooks said he was not saying that Mr. Bradshaw was wrong or that Mr. Messick was wrong, he was only concerned about justice and fair play for those citizens.

Mr. Bradshaw said the Board's obligation and what it took an oath to do was to apply the law of this Town, the State, and the nation the same to everyone who came before them. He said his client was a property owner in this Town and was under the Town's jurisdiction and had to come before the Board to request approval of the site plan. Mr. Bradshaw said they did not have to come to the Board and ask if what they were proposing was the best thing, they had to come and request approval of a site plan that met the requirements of the Town's ordinances and the Board was legally bound to enforce those ordinances. Mr. Bradshaw said if the plan indeed met the requirements of the ordinances then they were entitled by law to have their site plan approved.

Commissioner Brooks said that might very well be the case, but his oath had been to defend the Constitution of the United States and the State of North Carolina, and his concept of the Constitution was to both prescribe and proscribe the powers of government. He said it seemed to him that they had some obligation under that concept to protect those residents, and the residents obviously felt they needed protection from the proposed plan. Commissioner Brooks said that he was sure Mr. Bradshaw was correct, but he had his own opinion that he had an obligation to help those residents.

Commissioner Fiocco said he had sat through several meetings now and looked at the faces of the residents, and they had on many occasions expressed real concerns. He said they had acknowledged that the type of housing was palatable and they did not disparage seeing it in their neighborhood, but they did have particular site concerns. Commissioner Fiocco said what he had heard over and over was the concern over parking. He said the residents saw that as a real safety hazard because they feared, and rightly so, that there would be parking on both sides of the street making it very difficult for emergency vehicles. Commissioner Fiocco said he was not questioning the designation of housing for the elderly, although it was not as concrete as Mr. Bradshaw had explained. He said he would ask if the applicant would consider providing more parking. Commissioner Fiocco said they had 48 units, some of which were two bedrooms, they had no mass transit running through Town, and they did not have a walkable community for the elderly or handicapped, noting it was a very long way to walk to a grocery store. He said his point was he believed the project would be reliant on vehicles, and he was very concerned that the project would cause congestion if spaces were not provided for the tenants and their guests to park off the street. Commissioner Fiocco said that was why he was asking the applicant to consider including additional parking.

Mr. Terry said he would agree with Commissioner Fiocco, noting that with all due respect to the recommendations of the Planning Board he did not believe that the developer had demonstrated that they were not required by the Town's regulations to have 96 parking spaces. He said this was a facility that would have 55 and over residents, and they could easily be median income families with children in college who visited frequently. Mr. Terry said the idea that they would characterize the entire population as handicapped or unable to drive seemed unreasonable to him. He said he believed the developer should demonstrate why they should not be required to supply 96 parking spaces for the development.

Commissioner Harrington agreed, noting that every person living there could be 55, 56, or 57 years old, and that was not elderly. He asked was there some legal designation that set 55 as elderly. Mr. Morgan stated that federal law defined elderly housing in two ways, at 62 years of age or older for everyone in the household, or at 55 years of age or older of at least one person in the household. Commissioner Harrington said then you could be 55 with a spouse that was 30 or 40 years old and they would be eligible to live there. Mr. Morgan said that was correct. Commissioner Harrington said then this project would not be restricted to elderly housing. Mr. Morgan said he had not arrived at that conclusion, he was just following it. Commissioner Harrington asked was that the definition of elderly housing. Mr. Morgan replied yes, as defined by federal law.

Mr. Terry noted that they had needed that designation in order to apply for the grant to pay for the project, but not in terms of the Town's requirement for parking.

Commissioner Harrington said there were certain uses where you would need less parking, but that law was written for a use where you would need less parking which would be senior, elderly, and handicap people. Mr. Morgan said that Evergreen managed 12 other senior facilities in the State, and on average only half of the residents had vehicles. So, he said, you could not say that they did not have cars because they were handicapped or elderly, they just didn't have cars because they had family or friends to take them places. Mr. Morgan said he could not answer for every individual, but that was the trend they had observed. He said when the Planning Board Chair had said they did not have enough parking spaces, they had asked how much and that was now what they were proposing.

Mr. Monroe said he had found in the statistics that the average age of a resident and the number of vehicles did not translate, noting that was comparing apples to oranges. Mr. Morgan said he could not change his view of that.

Commissioner Harrington said in the "flaw of averages," you planned for the worst case. He said what was proposed might be average, but if not then they would have a real infrastructure problem with parking. Mr. Bradshaw said this would not turn on averages, but would turn on what the word elderly was defined as. He said they had been given two definitions by Mr. Morgan, and they either accepted that or they did not. Mr. Bradshaw said if the Board believed it did not qualify as elderly housing, then there would be another day to have that debate and he was sure he and Mr. Messick would put forth their definitions and someone else would decide.

Commissioner Fiocco said he believed the definitions Mr. Morgan had cited were addressing the Fair Housing Act, to prevent having housing for 55 and older for 80% of the units to be considered discrimination. He said he did not believe it defined it as elderly, but that it defined it as non-discriminatory. Mr. Bradshaw remarked that the Town's ordinance did not define elderly, and where an ordinance was ambiguous it was to be construed in the favor of the free use of land. He said if they wanted to have those kinds of debates they could, but the Town Board's job was to enforce their Ordinance. Mr. Bradshaw said if the Town Board did not like Mr. Morgan's definition of elderly, he wondered what the Town's definition was.

Commissioner Fiocco said he was very, very concerned about the parking issue. He said if they could find a way to provide adequate parking on the site, then that would address his concern.

Mayor Voller said that Mr. Powell was present and he believed Mr. Powell likely knew more about the plan than most. He said there was something in the plan that said parking reduction was permitted in areas where on-street parking was provided within the street rights-of-way, and equal reduction in the required amount of parking on the site would be allowed where opportunities existed for shared parking. Mayor Voller asked what they had intended as it related to the Master Plan. Bryson Powell said that was included in the narrative and was intended to apply wherever there was on-street parking, but they were not requesting a reduction in the parking but were complying and exceeding the parking standard that was in the Ordinance.

Mayor Voller said the Master Plan narrative and illustrative plan referenced different street designs that could vary from what DOT and the Town normally required. He said they were not there, so there was no way to judge if they were sufficient. Mr. Powell said that was an attachment to the Master Plan and he did not know why it was not attached to the copies the Board had received, but it had been approved as a part of the Master Plan. Mayor Voller asked did the Planning Board have it, and if not how could the Planning Board judge whether it was sufficient. Mr. Bradshaw said it had been attached to the Master Plan.

Mr. Powell said the attachment indicated that parking reduction was permitted in areas where there was on-street parking, but no parking reduction had ever been requested and was not being requested now.

Mayor Voller said the issue had to do with the road width and the ability for it to carry the traffic, and that had been an issue of concern from the very beginning, noting that the road design had not been included in the packet of materials. Mr. Powell stated it was a part of and had been approved with the Master Plan.

Mayor Voller asked Mr. Monroe did he have the road design. Mr. Monroe responded the road design was not in his files.

Mr. Bradshaw said there were subdivision plats on file that showed those roadways, and those roadways had already been approved by the Town and they were now Town-owned roads. Mr. Monroe said the question was what were Type A, B, C, and D roads, and he had no documents relating to that. Mr. Bradshaw asked what the relevance was to this site plan application.

Mayor Voller responded because those actually indicated what the plan was for carrying traffic and handling the on-street and off-street parking issues. Mr. Bradshaw said there was no proposal for on-street parking in the site plan, noting that the site plan satisfied the parking requirements. Mayor Voller said then was he saying that if residents had multiple visitors at one time that those visitors would not park on the street. Mr. Bradshaw responded that it was a public street, and he was not saying that they would or would not. Mayor Voller said then this was another case of they did not know whether they would or would not. Mr. Bradshaw said what they knew was that it was a public street that had on-street parking, and the Town could regulate that however it wished to. Mayor Voller said the premise for the Town approving the Master Plan was based on certain things being waived in order to grant density in other things.

He said his question was that there was a road design, and that road was designed by an engineer and submitted to the Town for those certain standards, and what was the intent of that road design. Mayor Voller asked could it carry the load. Mr. Bradshaw said that determination was made long ago when the roads were approved, and they had already been taken over by the Town. Mayor Voller asked then what did the determination say. Mr. Bradshaw said he did not know the answer to that and it did not have anything to do with the site plan, Mayor Voller said it did have something to do with it, noting Mr. Bradshaw had said the Planning Board had said the site plan met the Town Code and the Code had allowed it to occur. He said that was an important part of that approval.

Robbie Oldham stated that Millbrook Drive-Powell Place Phase 1 had contained the design specifications for that road.

Mayor Voller asked what the design specifications were. Mr. Oldham said he could not say off the top of my head. Mayor Voller said then you could not answer that question. He said these were all 27 feet back to back in that section. Mr. Oldham said that was correct. Mayor Voller said that other developments in Town had curb and gutter 27 feet back to back, and they did not actually have these kinds of proposals because they were simple subdivisions. He said the question he had was if those roads were adequately designed. Mr. Oldham said he would say yes, adding that those roads had already been approved by the Town. He said the Town was not being asked to approve the use, they were being asked to approve the site plan.

Commissioner Baldwin said that was true, but what Mr. Terry had said was in reference to the parking. She said he had indicated that in his opinion the applicant had not demonstrated that the site plan did not require 96 spaces rather than the number proposed.

Mr. Bradshaw said they had offered definitions of the word elderly which was the only word that appeared in the Ordinance without a definition, and he had heard no competing definition.

Mayor Voller asked was he referring to the definition of 55 and over. Mr. Bradshaw said he was referring to the definition of elderly offered by Mr. Morgan earlier, which was 62 and over or 55 and over.

Commissioner Brooks said the first development of that type in Pittsboro was Creekside, and he believed that development had to assure that a particular number of units would be offered to the elderly. He said he believed the requirement at that time was considerably older than 55. Mr. Messick said he knew it had been subsidized, but did not know what the age limit was.

Commissioner Harrington said if one person age 55 or over could rent a unit, could a child live there. Mr. Morgan said they did not allow a resident under the age of 18. Commissioner Harrington said then it could be a family with a college student. Mr. Morgan replied yes. Commissioner Harrington said children could visit, but could not reside there. Mr. Morgan replied that was correct.

Mayor Voller said as far as the site plan, there were some elements that appeared to show some encroachment on property owned by East West, and asked had that been worked out. Mr. Bradshaw said there was a proposed condition from the Planning Board that was suggested

initially by the Planner that a written easement be submitted to the Town. He said what he believed Mayor Voller was referring to was some grading that occurred on the adjoining property. Mr. Bradshaw said if the Town required it they would provide an easement to that effect.

Mayor Voller said they cite on one hand the Fair Housing Act which did have some bearing on the issues voiced by Commissioner Brooks and Commissioner Fiocco. He asked what about the federal law as it came up about the Army Corp of Engineers and testimony that had been provided by Elaine Chiosso about encroachment into streams. Mr. Bradshaw responded there were no encroachments into streams, noting there was a 75 foot setback off the intermittent stream in the western portion of the property, which was the only stipulation that the Town Ordinance had. He said that the applicant had voluntarily agreed to leave a 25-foot undisturbed buffer along that stream to try to address those concerns. Mayor Voller said there was reportedly an intermittent stream that fed into where the park playground was shown and it had been buried, so where was the permit filed with the Town. Mr. Bradshaw said it was not an intermittent stream. He said for one thing it was far away from this property and upstream on the stream. Mayor Voller said the whole reason they were being allowed to do that was because they were doing the high density option with less than 70% impervious surface, so it was germane. Mr. Bradshaw said but there was no violation, in that there was no stream that had been piped. He said according to the Army Corp of Engineers there was stream wetland delineation on the site and they found no jurisdiction of waters in that area. But again, he said, that was far away from this property and there was some piping there, but those were not jurisdictional waters and there were no impacts to wetlands.

Mayor Voller asked Mr. Oldham where the drainage from that site went. Mr. Oldham said it flowed north, noting there was an existing stream and it flowed across Ricky Spoon's property and out to US 64. Mayor Voller asked if it eventually went into the Haw River. Mr. Oldham responded yes. Mayor Voller asked how much of the Powell Place site, in a general sense, actually went south. Mr. Oldham said from what he recalled it was just a little bit that flowed south. Mayor Voller asked if the drainage from the commercial area also went to the Haw River. Mr. Oldham responded yes, that it drained via a culvert under US 64.

Commissioner Fiocco said on the site plan there was a stormwater detention pond, and there was a pipe collecting water from upstream. He said that would be picking up water coming from East West's property, and asked had that pond been designed to receive a certain amount from impervious surface from off site. Mr. Oldham replied yes. Commissioner Fiocco asked how one would know in future to limit the development upstream. Mr. Oldham said the engineer would be looking at the plans as the as-built for future development. He said they had designed it based on current regulations.

Commissioner Fiocco said it seemed that a better way would be to place it on a plat where it would be picked up and remembered by all. Mr. Oldham said the storm pond itself would be recorded in the plans as far as the easement and the calculations. Commissioner Fiocco asked how much impervious surface could continue to flow to that pond. Mr. Oldham responded it would be recorded on the plat but did not know at present. Commissioner Fiocco said he believed he had seen PUD's where it was allocated for each lot, and believed that was what would need to be documented.

Mr. Bradshaw asked was Commissioner Fiocco asking for a notation of the capacity of the pond.

Commissioner Fiocco said he was asking for a notation to advise future developers upstream of the pond and what it was designed to accommodate from impervious surface. Mr. Bradshaw stated that stormwater from all of Powell Place was managed as a whole, and the entire development was limited to 70% impervious surface. He asked Mr. Oldham did he see a problem with adding such a notation.

Mr. Oldham said they would certainly provide information that needed to be on the site plan, so the question would be how to record that.

Mr. Bradshaw said it was a fair point, that the subdivision plat was already recorded but not the site plan, so it could be noted on the site plan as a condition if the Board chose to approve it.

Mr. Monroe said there was photo documentation in the packet, and pointed out an area at the edge of Millbrook Drive where the wetland channel crossed under Millbrook and went to the south. He said you could see clearly that there had been excavation that occurred and graded out. Mr. Monroe said that Elaine Chiosso had walked the property and said that there had clearly been sediment impact into the wetland channel. He said while it had been replanted, grass would not provide protection until it was fully and well established, so he believed there was visual demonstration that there had been some impact to the wetland channel.

Commissioner Fiocco asked what the channel would be regulated by. Mr. Monroe said it would come under the State Soil and Erosion Control regulations, adding that there was a regulation that said that wetland channels and intermittent streams shall not be impacted with sediment.

Mr. Bradshaw asked Mr. Monroe was it true that the feature he was just pointing out to the Board was located upstream of the site under review by the Board at this time. Mr. Monroe said it was actually on the site. Mr. Bradshaw said then it was north of Millbrook Drive. Mr. Monroe stated that the property line went down to Millbrook Drive. Mr. Bradshaw asked was it south of Millbrook or north of Millbrook. Mr. Monroe replied it was south. Mr. Bradshaw said that the detention pond on this site would be upstream, so water flowing through that release would not even flow by the area Mr. Monroe was pointing out. Mr. Monroe said it would flow into a wetland channel. Mr. Bradshaw said if there was sedimentation or erosion control issue at that point shouldn't that be taken up at Millbrook as the Town's road, but if there was an issue upstream then wasn't that an issue for the Powell Place development and not for the site plan review for this site. Mr. Monroe said plans should have been submitted to NC DENR and the Town regarding the impact that had been documented by a resident. Mr. Bradshaw said there would be an application made to DENR for a sedimentation and erosion control plan for that site. Mr. Monroe said at some point there would be, but activity had occurred on the property without a plan in place and pending Town approval.

Mr. Oldham remarked that that had been done under the grading permit that was still in place. He stated that the Army Corp had also inspected the wetland channel.

Mayor Voller asked what happened if the Town made a deal with Chatham County to have them take it over for them. Mr. Oldham said there would be assumptions when the project was turned over, but reiterated that a grading permit was in place.

Motion made by Commissioner Harrington seconded by Commissioner Baldwin that given the testimony by the applicant regarding the covenants as described requiring only one person in the household be over 55 years of age, and that the household could include adult children over the age of 18, the use as described was not restricted to elderly and handicapped housing and therefore did not qualify for reduced parking under the Town's Ordinance; and, therefore, based on insufficient parking under the Town's Ordinance the Board denied the application.

Mayor Voller asked was there any Board discussion. Commissioner Brooks called the question, as did Commissioner Bryan.

Vote Aye-5 Nay-0

David Groves, 730 Millbrook Drive, stated he was concerned about the possibility that 500 apartments could possibly be built, and as Commissioner Harrington had mentioned they could all theoretically be built as subsidized housing. He said there was no way the infrastructure of Powell Place in its current state could handle that kind of density. Mr. Groves said it was common sense that that could not be allowed, but the Town had no way to go back and correct that. He said he believed the Board needed to review the MUPD to determine if the infrastructure needed to be fortified.

Bud Rudesill, 611 Millbrook Drive, said he would like to address the legal issue. He said he believed they would all agree that the law was supposed to be applied equally to all, but if you looked at the plan you would see that they had an exception to the accepted ordinances and zoning regulations. Mr. Rudesill said when the Town Board had approved a different set of law for them, that had been a mistake. He said they, the residents, were asking for equal treatment under the law. Mr. Rudesill said if you went back to the laws and regulations that existed for everyone else you would find that this project did not fit because you would have to subtract that 75 foot buffer area and apply the useable area. He said the developer had been allowed an exception to the laws that others were expected to comply with.

Commissioner Brooks asked to be excused from the remainder of the meeting.

Motion made by Commissioner Baldwin seconded by Commissioner Fiocco to excuse Commissioner Brooks from the remainder of the meeting.

Vote Aye-5 Nay-0

4. New Japan Restaurant Commercial Site Plan Review.

Mr. Monroe stated that this property was situated behind the McDonald's site and in front of the Carolina Brewery property. He said the Planning Board had reviewed the application and a few minor issues were raised. Mr. Monroe said there was a transformer pad shown on the east side of the building with no line turning to it, so the engineer had relocated the pad so that it was

adjacent to the underground electric. He said the rim of the invert was identified as being higher than the surrounding pavement, and that had now been corrected. Mr. Monroe said a handicapped parking space had been relocated from the west side of the building so that now on each side of the building there was handicapped access.

Mayor Voller asked had they incorporated all other elements discussed in the past, including pedestrian and bike access. Mr. Monroe said there was no bike access because it was determined that there was no safe place to ride bikes. Mayor Voller said he believed people would ride over from Chatham Forest, noting that Ricky Spoon had been asked to provide bike racks.

Commissioner Fiocco asked if it was possible to move the building back. He said they had a 5 foot sidewalk along the front drive out, and he would be a lot more comfortable if they could get more than 5 feet out of that. Commissioner Fiocco added he believed they had some room regarding the setback. Mark Ashness replied they did, noting it appeared at the back of the building they had about two feet at the back wall, and did not see any reason why they could not push it back 2 feet. Commissioner Fiocco said he believed that would be helpful and safer, and likely beneficial to the front area as well. Mr. Ashness said he would be glad to do that.

Mr. Monroe said another point he should mention was that the water line that was installed at the time that the water line was extended for the McDonald's, the Town had no plan presented for that water line for field inspections. He said that Pete Domas of Hydrostructures had asked that a condition be attached to the plan approval that a particular area be exposed so that corporation stops could be verified. Mr. Ashness stated they had no problem with doing that.

Commissioner Fiocco said he was thinking about how the refuse vehicle was going to get to the dumpster and how it would get back out. He asked would it have to back into the McDonald's driveway. Mr. Ashness said the driveway was a shared access, and the vehicle could come in and front load from the dumpster, back into this site, and then turn out into the intersection and back up and then go out. Commissioner Fiocco said he was wondering if they could rotate the dumpster slightly more to encourage that backing movement into the property rather than into the McDonald's site. He said they had that property stubbed out to the south, and there would likely be more and more vehicles on that road. Mr. Ashness said he did not see any issue with that, noting they could split the difference between it being perpendicular to the parking in front of the building. Commissioner Fiocco said if they could encourage the truck not to back out into traffic, they would be better off. Mr. Ashness said they would be glad to do that.

Commissioner Fiocco asked if the plan met the new landscape standards. Mr. Monroe said that it satisfied the landscape standards.

Mayor Voller asked would there be any objection from the applicant to providing something to encourage pedestrian and/or bike access. Mr. Ashness said they had no problem with doing that.

Motion made by Commissioner Fiocco to approve with Bellemont Station commercial plans with the condition that the building be moved back roughly 2 feet, that the dumpster enclosure be rotated to encourage the trash vehicle to back within the site boundary and not cross the shared access with McDonald's, that the applicant provide a bike rack, and that the corporation stops be exposed for the water line.

Commissioner Harrington asked should the motion include the DENR requirement. Mr. Ashness said that the site was actually .8 acre and part of that was the service drive for McDonald's so they were under the requirements for submission of the plan to the Land Quality Division. He said they did have an erosion control plan in their submittal, but they were below the threshold for review by the State.

Commissioner Harrington added to his motion that the applicant was to design the erosion control measures in accordance with State standards. Commissioner Bryan seconded.

Vote Aye-4 Nay-0

Report on "Operation Medicine Drop" (Community Policing Officer Troy Roberson) (Item #1 under New Business).

Mr. Terry indicated that Officer Troy Roberson was now present and could be recognized if the Board chose to do so.

Officer Troy Roberson said that he had taken over the Community Policing program and wanted to provide the Board with an update of their activities. He said next Friday they would partner with the SBI and the DEA to conduct "Operation Medicine Drop" where they would be stationed at Kerr Drugs and would provide the opportunity for residents of the County to bring their expired or unused prescription drugs to the site to turn them in. He said they would be using their chain of custody and evidence procedures to assure the drugs were handled properly, noting the program was aimed at getting those medications off the street and out of the homes where they were not being used. Officer Roberson indicated that the drugs would be delivered to the SBI and destroyed via an incinerator at the SBI lab. He provided the Board with flyers advertising the event.

Officer Roberson said he had also set up a Police Department Facebook page where all events were listed, and he invited the Board and the public to use it as a tool to keep up with what was happening in the community that the Police Department would be involved in.

5. Pittsboro Comprehensive Transportation Plan Update (Tyler Bray, P.E., NCDOT, Transportation Planning Branch).

Tyler Bray, with the NCDOT Transportation Planning Branch, said that after a meeting with Town staff to discuss options and direction for a Pittsboro Comprehensive Transportation Plan (CTP), he had been ask to prepare some information for the Board to consider. He said he had been tasked with doing a CTP update for Pittsboro on the plan that had been attempted back in 2003 or 2004 but never adopted by Pittsboro. Mr. Bray said at present the resources within NCDOT were limited, so there were two options for the Board to consider to get that update completed.

Mr. Bray said they could look at just the highway portion of the transportation plan, where the NCDOT would work with one of their on-call consultants with the process taking about 6 months. Or, he said, the Town could ask for a full CTP update which would also involve one of

NCDOT's on-call consultants but would take about 18 months with an anticipated additional financial contribution from the Town of between \$50,000 and \$100,000.

Mayor Voller asked what was considered under the full CTP update. Mr. Bray said it would include highway, public transportation and rail, bicycle, and pedestrian. Mayor Voller said they already had the pedestrian portion.

Mr. Monroe stated that was correct. He added that Chatham County was scheduled to have a full CTP underway in the next year to 18 months, which would incorporate the area of Pittsboro.

Commissioner Fiocco asked when the County planned to undertake that.

Mayor Voller stated they were number two on the State list, with Moore County being first, to get a CTP. He said it was just a matter of staff time and other resources at this point.

Commissioner Fiocco remarked then DOT made the decision. Mr. Bray stated a lot of that would depend on when they were able to hire new personnel, noting they had a position posted now. He said they did recognize the need and wanted to help the Town, but hiring the personnel was essential. Mr. Bray said they had identified funds to hire a consultant to get the Town's plan done for a section east and west of 15-501.

Mayor Voller asked why it took 18 months to do the full plan for a small town like Pittsboro. Mr. Bray said from his experience when you began the process and conducted public input sessions as well as the analysis of existing infrastructure and the like, it generally took about 18 months for a simple plan, and longer for more involved plans.

Mr. Terry said the 18 months was for the whole county. Mr. Bray said that was correct. Mr. Terry said if the Town wanted to accelerate that there would be a cost of between \$50,000 and \$100,000. Mr. Bray said if the Town wanted to conduct the full plan the cost of hiring the consultant would be between \$50,000 and \$100,000.

Mr. Terry said they were getting ready to enter into their budget season and that was a big budget item. He said he believed they should think about it for a few weeks and then revisit the issue. Mr. Monroe said the only effect that would have would be how soon the project could be initiated, and his recommendation would be move forward with the CTP Highway element and get that underway.

Philip Culpepper asked what could be done at this time without expense to the Town but would fit in with what the County was doing. He said they could go ahead and address Pittsboro's issues now without getting tied up with the County.

Mr. Terry said he believed what Mr. Monroe was saying was if they were patient on the full plan they could avoid the cost of up to \$100,000 and just wait for the County to complete its plan.

Commissioner Fiocco asked was it true that they could roll the thoroughfare components in if it started before the Comprehensive Plan. Mr. Monroe said in his opinion there were more important decisions to be made in a timely fashion for Pittsboro than there were in Chatham

County. Commissioner Fiocco said his question was would they start down this path and then realize that they would have to start over. Mr. Bray said he did not see that happening, noting that that would be in a short timeframe and if they then completed the remainder of the plan for the County he did not believe it would be a problem.

Mr. Monroe said the Board was being asked to consider the establishment of a committee to oversee the direction of the CTP process.

Mayor Voller said then they should talk about that committee. Mr. Monroe said it was his suggestion that it would be appropriate to have the County's Transportation Planner and a County Commissioner, as well as the Town Manager, a representative of the Planning Board, a Town Commissioner, Paul Black with TJCOG, and NCDOT representatives, likely Tyler Bray and Scott Walston and possibly others. Mr. Monroe said the committee was recommended to be at least 8 members.

Mayor Voller said then there would be no issue with the public attending and providing input throughout the process. Mr. Monroe said that was correct.

Commissioner Fiocco asked him what that committee would do. Mr. Monroe said it would guide the CTP process to make sure that there was active public involvement, that the important issues as identified by the Town were considered, and to give guidance to the NCDOT consultant.

Mr. Terry asked would there be a public hearing at the end of the process to allow public comment on the plan. Mr. Bray said once a draft plan was developed it would come before the Town Board, and NCDOT would hold a public drop-in session at that time to gather public input, after which they would ask the Town Board for adoption of the plan.

Motion made by Commissioner Baldwin seconded by Commissioner Harrington to establish a committee to oversee the direction of the CTP plan as outlined in the memo provided to the Board in regard to the highway portion of the Transportation Plan.

Mayor Voller asked that Mr. Bray provide them with a list of the on-call consultants that might be assigned to the project.

Vote Aye-4 Nay-0

Mayor Voller said that because Commissioner Fiocco with Commissioner Bryan as an alternate had been appointed to serve the same purpose for the County, it may be appropriate to have them serve in the same capacity on this committee.

Motion made by Commissioner Harrington seconded by Commissioner Baldwin to appoint Commissioner Fiocco to serve as the Town's representative to the newly formed CTP committee with Commissioner Bryan serving as an alternate.

Vote Aye-4 Nay-0

6. Acceptance of Additional CMAQ Grant Funds and Proposed Amendment to the Pedestrian Conveyance System Project Budget Ordinance.

Commissioner Fiocco asked was it a part of the pedestrian plan at the traffic circle on NC 87 to consider putting in sleeves for water mains. He asked was it possible they could take money from a part of the pedestrian project and assign it to those sleeves. Mr. Terry replied he believed that would be problematic because the sidewalk work would come out of the General Fund, whereas the sleeves would come from the Enterprise Fund.

Motion made by Commissioner Harrington seconded by Commissioner Baldwin to adopt the resolution accepting the offer of supplemental CMAQ grant funding in the amount of \$40,000, obligating a \$10,000 local match, in support of the sidewalk project along NC 87 and authorizing the Town Manager to sign the contract with NCDOT formalizing the terms of the grant.

Vote Aye-4 Nay-0

A RESOLUTION AUTHORIZING THE TOWN MANAGER TO SIGN THE CONTRACT WITH NCDOT FORMALIZING THE TERMS OF THE CMAQ GRANT IN THE AMOUNT OF \$40,000 WITH A \$10,000 LOCAL MATCH IS RECORDED IN THE BOOK OF RESOLUTIONS NUMBER ONE, PAGE 22

Motion made by Commissioner Harrington seconded by Commissioner Bryan to adopt the budget amendment to amend the Pedestrian Conveyance System Grant by \$50,000, with \$40,000 in grant funding and \$10,000 contributed by the Town as a local match.

Vote Aye-4 Nay-0

AN ORDINANCE AMENDING THE FY 2009-2010 OPERATING BUDGET IS RECORDED IN THE BOOK OF ORDINANCES NUMBER ONE, PAGE 9

Mayor Updates

Mayor Voller provided no updates at this time.

Commissioner Concerns

There were no Commissioner concerns brought forward at this time.

FYI

1. North Carolina Justice Academy letter of February 10, 2010; RE: Officer Carroll E. Swain's completion of the Traffic Enforcement and Investigation Certification Program.
2. North Carolina Department of Justice letter of February 19, 2010; RE: Officer Troy D. Roberson's award of the Law Enforcement Officer's and Criminal Justice Officer's Advanced Certificate.

3. Chatham County EDC letter of February 24, 2010; RE: Notification of the Town of Pittsboro's share of the local government support for EDC operations in fiscal year 2010-2011.
4. Mr. Dan Sundberg's letter of February 6, 2010; RE: Summary of highlights from the 2010 Main Street Conference.
5. North Carolina Department of Commerce Announcement; RE: NC Small Town Main Street Program.

ADJOURN

Motion made by Commissioner Bryan seconded by Commissioner Fiocco to adjourn the meeting at 10:30 p.m.

Vote Aye-4 Nay-0

Randolph Voller, Mayor

ATTEST:

Alice F. Lloyd, CMC, Town Clerk