

*MINUTES*  
**Board of Commissioners Monthly Workshop**  
**Monday, February 25, 2008 – 7:00 p.m.**  
**Town Barn**

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**PRESENT:** Mayor Tom Stevens, Commissioners Evelyn Lloyd, Frances Dancy, Mike Gering, L. Eric Hallman, and Brian Lowen.

**PLANNING BOARD PRESENT:** David Remington, Barrie Wallace, Toby Vandemark, Stephen Whitlow, Dan Barker, Matthew Farrelly, Elizabeth Woodman, and Kate Faherty.

**STAFF:** Assistant Town Manager Nicole Ard, Town Clerk Donna Armbrister, Planning Director Margaret Hauth, Police Chief Clarence Birkhead, Fire Marshal Jerry Wagner, and Town Attorney Bob Hornik.

**1. Open the Workshop**

7:03:07 PM Mayor Stevens called the Workshop and Joint Public Hearing to order.

**2. Agenda Changes & Agenda Approval**

7:03:52 PM Mr. Farrelly asked if when the Planning Board completed its portion of the public hearing, the public hearing could be adjourned. Ms. Hauth stated when the Planning Board completed discussion of Items 3 and 4, then that Board could be excused and then the Town Board Workshop would begin with Item 5.

7:04:43 PM Upon a motion by Commissioner Gering, seconded by Commissioner Lowen, the Board moved to approve the Agenda by a vote of 5-0. The motion was declared passed.

**3. Joint Public Hearing with the Planning Board regarding proposed amendments to the Corbinton Common Special Use Permit to convert to a continuing care retirement community (CCRC) model for 274 units with 47 single-family houses.**

7:05:00 PM Mr. Farrelly opened the Public Hearing.

7:05:38 PM Ms. Hauth, after having been sworn, noted that all speakers would need to be sworn. She stated that the developer had submitted a booklet detailing the requested changes which had been provided to the Board members. She said the request was to convert as an option the approved development that had 69 single-family lots to 47 single-family lots and then

create the CCRC for the remaining lots with 23 cottages, 205 independent living apartments and 53 health care beds. Ms. Hauth said the previously approved community center would convert to a 9,000 square foot Duke Wellness Center available both to the development residents and via membership to the larger community. She noted that the previously approved plan had a 15,000 square foot office and retail building, and that had been replaced by the health care bed facility.

Ms. Hauth called attention to an email from Town Engineer/Utilities Director Kenny Keel regarding the water and sewer capacity for Corbinton Commons.

Ms. Hauth said the two significant waivers being requested was a mixed residential special use district, which had a limitation in the ordinance for 3-story buildings. She said the applicant was requesting a 5-story building on top of parking, so it was essentially a 6-story building. Ms. Hauth said with a special use permit, the Board had the ability to waive any requirement in the ordinance. She said the second waiver involved the number of parking spaces, estimated at 186 both surface and under the building, with no parking currently shown for the 53-bed health care building. Ms. Hauth said that plan was conceptual in nature and was still being studied. She said as they moved forward the parking would need to be discussed and agreed upon as well as where it was to be located.

7:09:27 PM Commissioner Gering disclosed that he had received several emails from residents in the neighborhood outlining some of their issues with this development. He said for the record, those emails would not influence his decision.

Mayor Stevens suggested that each Board member make a similar statement based on what they had or had not received.

Commissioner Dancy stated she had received emails and phone calls and none of those would affect her decision.

Mr. Barker noted he had not received any contact regarding this issue.

Commissioner Hallman stated he had received emails and phone calls and none of those would affect his decision.

Mr. Whitlow noted he had not received any contact regarding this issue, and Ms. Woodman stated she had received emails and none of those would affect her decision.

Mr. Farrelly noted he had not received any contact regarding this issue.

Mayor Stevens stated he had received several emails and none of those would affect his decision.

Commissioner Lowen noted he had not received any contact regarding this issue, as did Commissioner Lloyd, Ms. Vandemark, Mr. Remington, and Ms. Wallace.

Mayor Stevens asked the Town Attorney to explain to the public why the Board had just made those statements.

7:12:03 PM Town Attorney Bob Hornik stated that the decision the Board was being asked to make was a quasi-judicial decision, which meant that both Boards considering it could only make their decision and the Planning Board make its recommendation based on the evidence they heard at a public hearing. He said people who send emails and made phone calls were really jeopardizing the sanctity of any decision to be made, so that was why the Boards were careful to disclose any communications they had received.

7:12:15 PM Mayor Stevens invited the applicant to begin the presentation.

7:12:39 PM Craig Ferri, Vice President for Construction with EYC Companies, after having been sworn, stated the purpose of the proposed special use permit (SUP) changes was to allow for the modifications of the current site plan to reduce the density on the western portion of the site, and allow for a wellness facility to replace the currently approved club house. He said in addition, the change would allow for the option of development of a CCRC on the other side of the site to replace the existing MAHS (multi-unit assisted housing with services) facility.

Mr. Ferri said on February 13 they had held a community meeting at the Daniel Boone complex to present the proposed changes to the neighbors, solicit comments, and answer questions. He said several concerns were identified at that meeting:

- The height of the building as seen from St. Mary's Road and particularly from Lee Gordon's property. To address that the architects have modified the building height, with the western view of the CCRC building limited to 3 stories. They would like to supplement the existing 100-foot buffer with additional trees to thicken the buffer.
- Light levels were objectionable that leaked from the site onto adjoining property. Mr. Hammock with the John R. McAdams Company would provide a lighting plan that limited the amount of lighting to at or below the limits required by the Town.
- The view through the newly-created sanitary sewer easement as seen from the Gastor property. They proposed to plant a buffer across that easement, which may necessitate some changes to screen the view from the Gastor front porch.
- Possible increase in impervious surface and its effect on stormwater. That had been reviewed by the John R. McAdams Company and there was negligible change in the amount of impervious surface, and Mr. Hammock would provide more information on that.
- The impact of the SUP on traffic, which would be explained in more detail later on.
- The cost of the CCRC units, as well as the fee simple units. Mr. Lippard would provide more information on that.
- The material of the walking trail, which they were not proposing to change from the currently approved plan which was a paved asphalt trail.

Mr. Ferri then went through the changes proposed to the existing plan, and displayed a rendering of the currently approved site plan:

- Remove 22 single-family lots; remove the 40 condominiums; remove the club house; remove the office and retail, and remove the 102 apartments. Remaining are the 47 lots originally approved.

- Add to the project 205 independent living units, which was the CCRC building; the 53-bed health care facility where the office/retail used to be; the wellness center where the club house used to be, which was slightly larger than the club house; the 23 single-family lots would replace the old 22 lots and the 40-unit condominium building, which accounted for the decrease in density on the western part of the site.

Mr. Ferri introduced Mr. Hammock, noting he would provide information regarding specific site plan changes and technical issues related to that.

7:20:50 PM Kevin Hammock, a Landscape architect with the John R McAdams Company, after having been sworn, provided the following:

- The project was approved with a 100-foot perimeter buffer which was not proposed to be changed.
- There was a 50-foot buffer along Highway 70 which was not proposed to be changed.
- There was 10% open space which was not proposed to be changed.
- Impervious surface was approved at 31.3%; their proposal was adding approximately 1% to that total at something less than 33%.
- The stormwater retention previously designed would be able to accept that additional 1%.
- Mr. Keel had confirmed that the additional units would not have any significant affect on the water and sewer capacity.
- The original TIA was prepared using the maximum allowable density which was 326 units; the proposal now was 277 units. Although they were proposing to increase the number of units from 211 to 277, that was still well below the original 326 units used for the traffic study. The conclusion was that there would not be any significant change warranting an additional traffic study.
- Regarding any impact of changes on public safety issues, the Police Chief and the Fire Marshal had both indicated that these changes would not pose any significant threat to public safety over what had previously been proposed.
- The proposal meets all the previously agreed upon lighting standards set out in the original SUP approval, and no changes were proposed.
- The walking trail was proposed to be asphalt, with no material or design changes proposed.
- The issue with the Gastor property was that there was a 20-foot sewer easement already cleared which provided a view into the site. If the Town would allow it, they would like to plant across that sewer easement to provide the Gastor property with a screen.

Mr. Hammock stated that they believed the proposed modifications were an enhancement to the currently approved SUP, and was in keeping with the purpose of the mixed residential SUP ordinance.

7:26:58 PM Bob Lippard, Director of Senior Living with Drucker & Falk, after having been sworn, stated his firm would be the lead developer of the CCRC. He provided information on his firm, what their vision was for the CCRC, what a CCRC was, what the development process was, and some general observations about this particular CCRC effort. Mr. Lippard said they felt that having Duke health system sponsorship was invaluable to this community, as this

community was in Duke's primary market area. He said Duke was always circumspect in stating their level of involvement until they were sure that a community would happen, and Duke would not engage with them in any meaningful way unless and until the project received the SUP amendment. He said his comments about Duke tonight were made with that in mind, but it was important to note that Duke had partnered with Drucker & Falk on two significant projects previously and Duke was interested in this one.

Mr. Lippard stated they were excited about this project because to their knowledge, there had never been a CCRC developed anywhere in the State, and very few in the country, in coordination with an age-restricted fee simple property, meaning the 47 cottages. He said Drucker & Falk would be the lead developer, and this project would be a not-for-profit project. Mr. Lippard stated they had identified a not-for-profit sponsor, and that sponsor had agreed that at the time the community became real and was financed, that it would be the 501(c)3 entity that held the community.

Mr. Lippard stated a CCRC was a senior living community that they believed was the most compelling model for senior living existing today. He said a CCRC was a community that had extremely high barriers to entry and was heavily regulated by the NC Department of Insurance and the Division of Facility Services, and every aspect of its development was heavily monitored by the State. Mr. Lippard said a CCRC was the most State-regulated retirement community model, and because of that not many were developed, with only about 45 in the State at this time.

Mr. Lippard stated a CCRC was the only model of senior living available, from a regulatory standpoint, that allowed for someone to move into a community, completely independently, and then as that person aged and developed significant physical challenges they would move directly into a licensed assisted living facility as part of that campus. He said as that person continued to age and became increasingly frail, they would move into a licensed skilled nursing facility as part of that campus. He said there was no other model that offered that, and what was extraordinary and powerful about that was that for most people, they wanted to know what would happen to them as they aged and needed additional care, and this model offered the answer to those important questions.

Mr. Lippard explained the entrance fee and monthly service fees involved with a CCRC, noting the entrance fees were 90% refundable to the estate when someone passed. He said the monthly fees covered all the various services that the CCRC offered, including meals, scheduled transportation, all maintenance and repair activity, a host of amenities in the common spaces, a fitness-wellness center for the residents and on a limited basis the public, and continuing education opportunities to the residents and the community.

Mr. Lippard stated the entrance fee for the smallest unit, of about 800 square feet, up the largest unit, the 1,800 square foot cottages, were projected in 2008 dollars to range between \$250,000 and \$600,000 on a 90% refundable basis. He said those fees were based on all the services and amenities the CCRC would offer.

Mr. Lippard explained further the development process and the elements involved, including the preparation of a site plan, economic modeling, a market assessment, and consumer research to

judge the interest of the surrounding community. He said that work had taken about six months, and in early January they had decided to go forward with their plans. Mr. Lippard said they were now before the Town to get the approvals necessary to make that community possible. He said if they got through those hurdles, in a number of months they would open a sales office in Hillsborough and begin taking \$1,000 fully refundable deposits. Mr. Lippard said the next step would be binding deposits, which was a requirement by the State that a minimum of 50% of independent living units had to be pre-leased with large deposits, typically 10%, as evidence of commitment to live in the community. He said they would have about 230 independent living units, so they would need to pre-lease a minimum of 115 of those in order to begin construction. Mr. Lippard said the lenders required 70% pre-lease, so they would be spending millions of dollars on architects fees, sales and marketing, and other aspects of the development process. He said if the project was approved, they expected to be taking those kinds of deposits by late fall. Mr. Lippard said they had projected that it would take them about 2 years to obtain the pre-sales needed in order to begin construction, and construction was expected to take about 22 months.

Mr. Lippard said with very few exceptions a CCRC developer would not just purchase land because it was too risky. He said a CCRC developer would be entering into an optioning process with the land seller, and that optioning agreement was what they were working on today. Mr. Lippard said because of the money involved, they would not be attempting to move forward unless they believed they would be successful. He said it was important to remember that they would not know in an absolute sense if they would be successful until the sales process took place. Mr. Lippard said that was the only reason it was referred to as an option.

Mr. Lippard said their objective was to bring this community in with as much value as possible, and one way to do that was to minimize the amount of land they bought. He said they believed that if an affordable value proposition was what you were after, then having as dense a site as possible was of major assistance in getting that value. Mr. Lippard stated that because the project was not-for-profit, they would be able to finance it with tax-exempt bonds which always carried a smaller interest rate, and was another way to help bring down the costs.

Mr. Lippard said another component was using the most cost-effective building methods, which they were incorporating here. He said another was to moderate unit sizes, with the average unit sizes in this case at about 1,350 square feet. Mr. Lippard said that allowed them to bring the project in at a smaller cost. He pointed out that the sites they were developing represented leading-edge thinking about what was important to the success of a CCRC.

Mr. Lippard closed by saying when residents moved into the CCRC, which was at the average age of 78, they were less concerned than they would be five years down the line about how quickly and how easily they could get to the common areas. He pointed out that the building that was the common area, where the dining, library, and other services were located, and the fact that it was a "tight" site would be of value because of the ease in which the residents could access those services as they aged.

7:59:43 PM Steve Chomick, Director of Design for the Senior Living Studio with Freeman-White Architects, after having been sworn, said that his firm specialized in health care and senior living projects. He provided the following information:

- The CCRC was in the eastern portion of the site, and the active adult and independent living cottages as well as the wellness center was on the western portion of the site.
- They were maintaining the 100-foot buffer around the property, and a 50-foot buffer on the northern side along US 70 and along the wetland.
- The CCRC was on less than 10 buildable acres.
- Their wetland pond would filter into the existing stream.
- They had created as much open space for the residents as possible.
- They had below-grade parking for the residential units themselves, with services below grade.
- The site itself sloped down towards the wetlands, so they were able to get the health care component at grade.
- At grade level, where you enter into the facility itself, the main road that bisected the independent living and the health care facility brought you into the interior motor court of the independent living area, with auto drop-off and the main concierge/lounge area, the administration area and all the common areas for the residents, all centrally located within the independent living apartment units. There are interior courtyards for residents for exterior dining and other activities.
- The health care facility was three levels on one side and then stepped down to two.

8:05:32 PM Ms. Woodman asked how many units were on the fourth floor. Mr. Chomick replied 23. Ms. Woodman asked about the fifth floor. Mr. Chomick said the fifth floor was the top floor. He explained that they considered the first floor to be the at-grade level.

Mr. Chomick said after the public meeting, they had dropped the entire southeastern and southwestern portion of the site down to three stories. He displayed elevation drawings to show the elevations of the buildings from several directions and the buffer lines from adjacent properties. Mr. Chomick said that if a person was standing at the edge of the property line and looking west across the roof of the buildings, the three-story portion with the underground parking, you would not see the five-story components in the interior courtyard or along the main internal circulation street.

Mr. Chomick said the wellness center was roughly 9,000 square feet with a two-story outreach clinic; it had a pool, sauna, lockers, exercise and weight room available to the residents as well as to the public on a limited basis. He displayed an illustrative drawing of the wellness center, noting they had attempted to capture some of the flavor and materials around Hillsborough, and to be sensitive to the architecture of the historic area as well as the SUP already received.

8:10:54 PM Mayor Stevens asked if a meeting center would be included in the amenities. Mr. Chomick replied they were continuing to work on including that aspect.

8:11:16 PM Mr. Farrelly asked if the topography of the surrounding neighbors was sloping downward. Mr. Chomick responded yes, and described the slopes from various directions.

8:12:03 PM Mr. Farrelly said then this site could look into the neighbor's yards that were nearby, and asked what would be seen. Mr. Chomick said as you looked down the slopes, what

was beyond would be visible. Mr. Farrelly asked was that true for all of the nearby properties. Mr. Chomick said it depended on the depth of their slope, noting in some cases only a “clip” of the roofline would be visible, but for others it would be more. Mr. Farrelly asked what the neighbors would see from the second floor of their homes, particularly the five-story building. Mr. Chomick responded that no one would be able to see the five-story building.

8:14:22 PM Mr. Ferri said they would be looking through several hundred feet of trees, noting the closest houses were several hundred feet away. Mr. Chomick added that the buffer from the road to the edge of the property line was about 600+ feet, so with the 100 foot buffer the closest house was still more than 500 feet away. He noted they would also be adding more foliage, so you likely would not see the closest house at all from their property.

8:15:25 PM Commissioner Lloyd stated the Town would be adding a ladder truck to the local fire department, which would reach three stories. She asked if a medical problem arose, would they be calling the local First Responders. If the answer was yes, she said they had to remember that the First Responders covered a larger area than just this community and may be responding to multiple calls, so there may be some delay. Mr. Lippard responded that was understood, and commented that their community would have medical staff on duty around the clock.

8:17:40 PM Mr. Lippard stated that concluded their presentation, and they would be happy to answer questions.

8:17:50 PM Mr. Farrelly stated the process they would follow would be to allow Planning Board and Town Board members to ask questions first, then allow the public to ask questions.

8:18:07 PM Commissioner Lowen remarked that additional parking would be required for the skilled nursing facility. Mr. Chomick responded that was still being investigated and would be worked out to meet the requirements of the Code.

8:18:47 PM Mr. Remington said regarding the view of people along St. Mary’s Road, it seemed to him that most of the trees in the intervening area were deciduous, and asked if the trees they planned to plant in the buffer area would also be deciduous. Mr. Hammock replied that to augment the deciduous trees, they could add evergreens in that buffer area if that was desired. He said the addition of evergreens would enhance the screening.

8:19:46 PM Mr. Barker asked what the expected height above ground was at the highest point. Mr. Chomick said at the present time, conceptually the five-story building would be at about 61 feet from grade to the eave. He said at the peak it was about 71 feet to the mid-line of the roof.

8:20:57 PM Commissioner Hallman asked staff to follow up on Commissioner Lloyd’s question regarding fire and First Responder responses to the property, and what effect the five-story building might have on their fire insurance rating.

Fire Marshal Jerry Wagner, after having been sworn, responded it would have some effect on the insurance rating when grading was completed, which would not happen for 10 to 15 years. He said in the next few years the Town planned to purchase a three-story ladder truck, so some

buildings could be out of the reach of such trucks. Mr. Wagner added that once you got over a certain height sprinkler systems, standpipe systems and fire alarm systems were required, as well as certain width for hallways. He said that allowed firefighters to move freely with hoses to the higher elevations to attach to the standpipe systems to fight fire on those higher levels. Mr. Wagner said with the addition of the new ladder truck, the height of this building should pose no problems.

8:22:57 PM Commissioner Lloyd commented that the new ladder truck would still not reach the top floors. Mr. Chomick replied that the building would have both a sprinkler system and a standpipe system.

Mr. Lippard said they had experience with an eight-story, nine-story, and a twelve-story CCRC. He said those were beyond the reach of ladder trucks, but with the safeguards built in those buildings were safe.

8:24:20 PM Mr. Wagner said he would be concerned if they were talking about having a large population above the third floor that were non-ambulatory, but with independent living above the third floor those residents would have mobility and would have the built-in protection features mentioned earlier.

8:25:16 PM Mayor Stevens said he understood that the health facility was part of the CCRC and was strictly for the residents, and the wellness center would be available to the residents and a limited part of the community that would also serve as part of the homeowners association. He asked was a homeowners association still planned for the fee-simple houses. Mr. Lippard said that was their intention, although nothing had been finalized.

Mayor Stevens asked in terms of the option being discussed, was that an “all or nothing” option. Mr. Hornik stated that was how he understood it was being proposed. He said they had the existing SUP with all its conditions, and the proposal was that SUP or the option, which would be substituted for the MAHS portion of the SUP.

8:27:47 PM Commissioner Gering said he thought the applicant was asking for an option in the sense that if three years or whatever down the road the CCRC did not happen, that they would still have the option of building the MAHS. He said it would not substitute the plan, but would become an option to the original plan. Mr. Ferri stated what they were looking for was to reduce the density on the western side of the site, remove the condo building, and move all the units over to the other side. He said then they would ultimately end up with 70 single-family units and the health care facility on the western side.

Mr. Ferri said to the extent that the CCRC was successful, they would all know what would happen. He said to the extent if it was not successful, they needed the option to still provide the MAHS facility on the northeastern side, but the density would be greater than the currently approved SUP.

8:29:13 PM Ms. Hawth stated she had understood that it was an “either/or.” She said her understanding was they would either build what they were approved for now, or if there was some change then what was now approved would disappear.

Mr. Hornik stated he did not believe they were “mixing and matching.” Mr. Ferri said if that was the understanding, then that would be the case.

Ms. Hawth said all the conditions that now existed would remain on the site, and could be termed as Option A. She said new conditions would be created for the CCRC, which would be Option B, and they would only go back to Option A when and if Option B proved not to be financially viable. Mr. Ferri stated that was correct.

8:29:56 PM Mayor Stevens said then they were striving to get Option B approved in its complete form; if that did not work they would go back to Option A without borrowing parts from Option B.

8:30:19 PM Ms. Woodman asked about the age range for people living in the single-family homes as well as the cottages. Mr. Lippard said the restricted age in the fee-simple community would be 55 or older, although with a couple one could be 55 and the other younger. He said typically what you would find in terms of actual residents was that they tended to be in their early 60’s and into their early 70’s. Mr. Lippard said in a CCRC, there would be people who came in as young as 70, and lived to be as old as 100.

Ms. Woodman said she had looked at other such communities in the country, and had never found two-story single-family homes. Mr. Lippard replied that Galloway Ridge had two-story homes. He said their plan for the CCRC side was not to have two-story homes because that was what their market survey had indicated.

8:32:10 PM Ms. Hawth commented that the 23 cottages were included in the CCRC but were on the west side of the creek.

8:32:54 PM Mayor Stevens said when looking at the diagram relative to the original drawings, it did appear that the houses filled the lot sizes at a much larger extent, and there had been some changes to the parking as well. Mr. Ferri said the 23 CCRC lots took the space of the 22 previous lots and a 40-unit condo building, so those lots were larger and the homes had a larger footprint. But, he said, there were fewer units than previously proposed.

8:33:59 PM Mr. Whitlow asked was the site currently being graded or had been graded, and said from a timing perspective he wondered about the justification of the change in the total number of units. He said he wondered if they were asking for additional units because of the need to potentially fill up the 53-unit nursing facility, or was it because the developer had changed its mind and what could have been built a year from now was now four years from now, and that was what the extra height was compensating for.

Mr. Lippard said the reason for the CCRC being sized at 230 units was because when you did the math in terms of the economic model that was the size needed to make it a community that worked economically. He said the health care facility was part of that equation.

Mr. Whitlow asked was the construction schedule part of the equation as well. Mr. Lippard replied it did play a part, noting you needed a particular unit count to make it work.

8:36:06 PM Ms. Farrelly said he knew there were more questions, but suggested taking questions from the public at this time.

8:36:43 PM Andrea Shapiro, after having been sworn, said she was a resident of St. Mary's Road south of the western part of this development and just to the east of the creek. She said the idea of CCRC was a good deal, and with some changes that she hoped the Boards would consider it could be a good deal for the Town as well. Ms. Shapiro said she believed a CCRC was a good idea, and was certainly better than the original high-density, ambiguous age-restriction plan, but it was not clear if it was good enough for Hillsborough.

Ms. Shapiro suggested the following changes:

- Reduce the height of the building, noting the height were unreasonable for Hillsborough both aesthetically and from a safety standpoint. She explained how they would be visible from various distances, and suggested the heights be lowered to three stories.
- The Town Board needed to get a written commitment from the developer that even if they acquired the necessary property in the future, that they would not cut a road through to St. Mary's Road. She said St. Mary's should not become a cut-through for people wanting an alternative route to US 70.
- She was not comfortable with providing the requested Option B, which would allow them to revert back to Option A which was the high-density, age-restricted plan.
- The Town deserved a better explanation as to why Drucker & Falk was allowed to experiment with mixing CCRC with fee-simple. She said she was not comfortable with what Mr. Lippard had termed as "the first such experiment."

To summarize, Ms. Shapiro said this was a great deal for the developer, and a CCRC was a good idea for Hillsborough. But, she said, in order to be a good deal for the Town the changes she had described should be made.

8:43:35 PM Lee Gordon, after having been sworn, said when the project was proposed they were greatly concerned; when it was approved they were greatly concerned; when they cut all the trees and cleared 40 acres they were greatly concerned; when they graded the land they were greatly concerns; and, when the dust settled on his and others land they were greatly concerned. Now, he said, they wanted to do what they could to mitigate any problems. Mr. Gordon said he appreciated EYC's willingness to be flexible, but he still had concerns.

Mr. Gordon asked what sort of exterior they planned to have on the buildings. Mr. Chomick replied lap siding, such as Hardiplank. Mr. Gordon said then from a distance it would appear to be wood siding. He said hypothetically if the reduced height that Ms. Shapiro had suggested

could be achieved, that would be preferable, because five-story buildings from a distance would appear massive. Mr. Gordon asked that the exterior structures be changed to something more appropriate for an historic town such as Hillsborough, such as the use of brick rather than lap siding.

Mr. Gordon said another concern was the setting of a precedent by waiving height restrictions, asking what would prevent later on the appearance of other five-story buildings down the length of US 70. He said he also wondered who would monitor the ages of the residents, and asked since he was 55 could he bring in his three teenaged sons. Mr. Lippard said within the CCRC, there was an Admissions Committee who would interview each and every applicant that applied and would also oversee all regulations including the age restrictions.

Mr. Gordon asked what would prevent a 55-year-old from bringing in extended family to reside within the community. Mr. Lippard said you did not tend to find that dynamic within such a community, since a 55-year-old with teenagers would likely not desire to live in an age-restricted community, so it was not much of an issue in the CCRC model.

8:48:28 PM Mr. Ferri stated HOPA (Housing for Older Persons Act) had specific age restrictions, which was 55 and older, and 80% of the residents could be under that age. But, he said, in no circumstances could any resident be under the age of 18.

8:49:25 PM Mr. Gordon asked did the original proposal have any subsidized housing. Mr. Ferri said there may have been mention of that, but there was no plan for that now. Mr. Gordon said then the new plan being proposed tonight had no subsidized housing whatsoever, but there was in the original plan. Mr. Ferri said no, that it had only been mentioned but never included in the original plan.

8:49:54 PM Ms. Hauth said the time had expired on that offer in the original proposal, noting there had been an offer to reserve a portion of the site for HUD 202 housing, but that time limit had expired. She said although the condition still existed, it was null.

Mr. Gordon reiterated that should the five-story building be approved, he asked that some consideration be given to the type of exterior material used.

8:50:45 PM Mary Ann Peter, after having been sworn, said she was a member of the Orange County Advisory Board for Aging, and was Chair of the Orange County Nursing Home Advisory Committee. She said as such, they went into every Orange County nursing home and made unannounced quarterly visits. Ms. Peter said she believed this plan was better than what had previously been approved.

Ms. Peter said the top facility in the County was Carol Woods, and the reason was that the residents controlled the organization. She said the more independent living residents you had in a CCRC the more they would make sure the facility was right for the community, so the fee-simple residences should be a part of the CCRC. Ms. Peter said she understood that had never been done before and there was likely a good reason, so she suggested looking into that.

Ms. Peter said all of the CCRC's in the area were over-subscribed for independent living, so people were waiting to get into the cottages, and secondarily the apartments. She said she hoped that would be looked at seriously, and that more cottages be considered.

Ms. Peter stated in the plans, she did not see a place for a computer nook or office. She said unlike previous generations, this generation would be computer literate and would likely use a computer every day, so that needed to be considered. She added that if any of the living units were two-story, that chair lifts should be added to assure residents access to the second level. Ms. Peter said it was also critical to know who would run the CCRC. She said there were no details provided on health care, and hoped that the assisted living and health care facility had good outdoor access to allow residents to enjoy outside activities as well as the outdoor common areas. She said more details needed to be provided on those points.

Ms. Peter said usually CCRC's required that people be independent when they moved in; however, you had to hire nursing and assistive staff and therefore often times people were admitted into the nursing facility from day one if you were advertising the facility as a CCRC even though you may set the bar high.

Ms. Peter closed by saying she believed they now were moving in the right direction.

8:58:16 PM Bill Crowther, after having been sworn, said he was representing Classical American Homes Preservation Trust who were owners of 265 acres of property about 1,000 feet from this property line. He said their property sat on a knoll about level with this development, and the upper reaches were elevated about 20 to 30 feet above that level. Mr. Crowther said he had two concerns:

- The visibility of the five-story structure from the historic site for visitors who were coming to enjoy the natural and historic beauty. He said a five-story building would be a detriment to the site, and encouraged the Boards not to grant the height waiver.
- This CCRC was non-profit and exempt from property taxes. He said Carol Woods was also non-profit and exempt from property taxes, but had an arrangement with the County to make a payment-in-lieu. He suggested that such a payment-in-lieu be discussed with this organization in order to offset costs to the Town.

9:01:36 PM Mr. Farrelly asked about the service fees that residents would pay, and asked if those fees were taxable. Mr. Hornik said no.

Mr. Lippard said that was correct, noting that the services being provided were such things as meals as well as staff to provide various services, including maintenance and groundskeeping.

Mr. Farrelly said switching from the previous plan that had retail to this plan that had a not-for-profit component would cost the Town in tax revenue, and said that should be addressed.

9:02:56 PM Commissioner Hallman pointed out that Waterstone had agreed to cover some of the tax loss of the CCRC. Mr. Hornik said that was correct. Commissioner Hallman said then that was a precedent.

9:03:16 PM Mayor Stevens asked did they have any idea what the revenue loss would be to switch to the new plan, noting that would be something they would want to know. He asked if that number could be identified.

9:03:46 PM Mr. Farrelly asked the applicant to address that issue. Mr. Ferri said he could not address that at this point, noting that going to the non-profit status and the absence of property taxes would change the revenue outlook for the Town but did not know to what extent or what could be done to offset that. He said if that was something the Town wanted to negotiate, then it could be considered.

9:04:23 PM Mr. Lippard said there were in many CCRC's some sort of arrangement made to offset that revenue loss to the Town, such as offering services to the public in order to give back to the community. He said there were things such as user fees the developer might pay which could play a part in that as well. Mr. Lippard noted that regarding retirement services, Specific Retirements Services was opening an office in Charlotte, so there would now be east coast representation and this would be one of their first projects in the region. He said with every community they were a part of, they had always had an affordable housing element in the market, and there had already been discussion about a specific site, again not part of the CCRC, which might be a place for them to provide that affordable housing component.

9:06:30 PM Mr. Farrelly said to be clear, he believed that part of the consideration was the Town would want it to be revenue-neutral if they moved to Option B. He said the not-for-profit sounded virtuous, but the reality was it would be a loss of revenue for the Town.

9:07:28 PM Commissioner Lloyd asked if garbage service or other services would be provided on-site, since no taxes would be paid. Mr. Lippard said the manager of the community would provide such services on behalf of the residents. Commissioner Lloyd said if no taxes were being paid, it was only fair that the Town get something back in some way.

Mr. Ferri agreed there needed to be some method of determining how to make the project revenue-neutral for the Town. He said they were not proposing to take away anything from the Town.

9:09:01 PM Mr. Barker said the illustration of the site used tonight showed a significant difference in the grass versus structures covered on the western half of the site, and asked had there been a significant change, or was it the illustration that was out of sync. Mr. Ferri said they had changed rendering types from one with large fluffy trees to one that had smaller trees, which was simply the architect's rendering.

Mr. Barker said the actual size and scale of the houses was significantly different, noting the new drawing showed a more significant footprint. He asked was there a significant reason for the difference other than two different people drawing it. Mr. Hammock said two different people had drawn it several years apart. He said the earlier approved plan that he had drawn showed detached garages, whereas the new plan had attached garages.

Mr. Barker asked which was more accurate in terms of land versus structural coverage. Mr. Hammock said the second drawing was the most up-to-date plan and was the most accurate. He said even if there was a slight increase to the furthest west houses, there was actually a decrease in the houses in the other location. Mr. Hammock said the very large 40-unit building had been removed plus the parking lot in the back, resulting in much less impervious surface; that the 40-foot lots were now 28-foot lots; and, that those 28-foot lots now had 20-foot houses on them. He said he could calculate the change in impervious surface and provide that before the next meeting.

9:12:06 PM Mr. Barker asked were there terms in the existing SUP regarding what that impervious surface was allowed to be. Ms. Hauth said only notes that were on the previous plans that would be different numbers, but not specific conditions in the recorded SUP document.

9:12:49 PM Matt Penning, after having been sworn, echoed statements regarding the height of the building, adding that five stories was very tall for Hillsborough. He said the CCRC sounded like a very nice idea for the Town, but the proposed height was a concern.

9:13:49 PM Penny Rand, after having been sworn, said that three stories was more than tall enough.

9:14:20 PM Ms. Wallace said she did not want to close the public hearing, have Planning Board discussion and make a recommendation tonight. She said she could not make a recommendation tonight with the information she had.

Commissioner Gering said they should talk about whether to continue the public hearing.

Ms. Wallace said she would be in favor of continuing it.

Commissioner Lloyd said she wanted to continue it as well.

9:15:02 PM Mr. Remington asked did they need to provide a list of specific questions for follow-up. Ms. Hauth said that would be helpful.

9:15:14 PM Mayor Stevens said one particular issue was the fiscal impact on the Town.

Mr. Farrelly said that could not be done tonight, and that was clearly a major issue.

9:15:39 PM Mr. Whitlow asked for a specific list of what was different from the original plans so that he could compare the two.

9:16:03 PM Mr. Farrelly said another issue based on the public comments was what was visible from different locations. He said he would like to know how visible the project would be from St. Mary's Road and US 70, as well as what might be visible from the Preservation Trust's property. Mr. Farrelly said given the concern about the five-story building, were there other configurations that would lower the building height. He said another concern was if there was a

viable option that had more of the fee-simple appropriated into the CCRC. Mr. Farrelly said they would want the answer to those and other questions prior to the next Planning Board meeting.

Mr. Farrelly said another point was the fitness and wellness and continuing education opportunities offered to the public on a “limited” basis. He said based on their experience, what percentage of the participants were the outside public. In other words, he said, how limited was “limited.”

9:18:06 PM Commissioner Hallman asked would it be reasonable to ask for a balloon test to judge the height of the building. There was general agreement that that was a good idea.

Mr. Hornik commented that there was the possibility of doing a computer-generated simulation of what the five stories would look like.

Commissioner Hallman said he believed a balloon test would allow the same thing from multiple vantage points.

9:18:40 PM Mr. Barker said they needed to get more certain parking counts and the actual counts on impervious percentages.

9:18:57 PM Commissioner Gering said Ms. Peter had brought up a good point about who would run the facility, and that information should be provided.

Ms. Wallace said she wanted a better explanation of changes in the fee simple housing as it related to the CCRC.

9:19:34 PM Mr. Farrelly asked Ms. Hauth about the status of the lot potentially reserved for HUD housing. Ms. Hauth said that time-limited offer had expired, and the MAHS facility that was currently approved converted that land to apartments.

Mr. Barker asked for a response as to whether or not they could place trees or shrubs in the sewer easement mentioned by Mr. Keel, and to have Mr. Keel respond to what would be allowed in that easement in order to provide the appropriate access.

9:20:30 PM Mr. Farrelly said there was also a request to add a condition to not allow the internal road to eventually connect to St. Mary’s Road, so that no cut-through was provided to US 70. He said that needed to be addressed.

9:20:42 PM Mayor Stevens said the developer needed to go on record about what could or could not be done regarding that road extension.

Mayor Stevens said there was a lot of concern about building height and the setting of a precedent. He said that was a serious enough concern to warrant looking at some creative ways to get the density the developer needed but get the building height down to fit into the atmosphere of the Town. Mayor Stevens said that might necessitate additional plans, so they would need to be careful that everyone was looking at the correct plan.

9:22:28 PM Mr. Remington suggested that if there was a balloon test, that it be done by the end of March because trees would be leafing out soon after that and they would not be able to see what would be visible when the trees were not leafed out.

9:23:00 PM Mr. Farrelly said while he understood that Duke did not want to commit until an SUP was approved, he wondered if given what was said was their level of commitment whether or not they would write some kind of letter of intent which stated that if it was approved that they would be involved in the project. He said in terms of continuing the public hearing, the applicant would need to provide that information on the record at the next public hearing, preferably to a date certain.

Ms. Hawth said there was a March 10 regular Town Board meeting, but based on the list of items to be addressed she did not believe that would be enough time. She said the next Planning Board meeting would be March 20, but did not know how full the tentative agenda was. Ms. Hawth said the Town Board had a workshop on March 24, but that schedule was likely full. She said it was also possible to schedule a special hearing night. She said she also believed there was a time constraint from the applicant's standpoint in terms of when they needed a decision, but did not know what that timetable was.

9:25:19 PM Mr. Ferri said two things that would be very helpful to them would be to get a specific list of what needed to be answered and getting that as quickly as possible. He said they had stopped all work on the CCRC part of the site entirely, noting they could not continue until they knew what would happen. So, he said, time was of the essence from that standpoint.

9:26:19 PM Mr. Farrelly asked if March 20 would provide them sufficient time to address the issues raised. Mr. Ferri responded yes.

Ms. Hawth said she could provide the list of issues to Mr. Ferri. Mr. Ferri said he would provide Ms. Hawth with a list of what he believed the questions were, and she could provide feedback. Mr. Ferri stated they would provide answers to the questions well before the March 20 Planning Board meeting as well as supporting materials. Ms. Hawth said they would need that information by March 13.

9:27:08 PM Donna Gastor, after having been sworn, said her property adjoined the southwestern corner of this site. She implored the Board members to come and take a look at that site, noting it had been clear-cut and graded. Ms. Gastor asked for an explanation of the water and sewer, noting they had become aware of a sewer easement about five years ago that they were not previously aware of. She asked that that easement be closed up somewhat. Ms. Gastor said she wanted to make sure that all the roadways were main roadways and not coming through driveways. She encouraged the Boards and the applicant to ask questions of the neighbors as well.

9:29:59 PM Commissioner Lowen said he understood the notion of making it all a CCRC, but they had to look at it in terms of revenue. He said they were talking about the cottage units at

\$600,000 each; if they included all of those units as part of the CCRC they were looking at a very significant loss of tax revenue.

Commissioner Gering agreed, but they had already talked about looking at a formula to make them revenue-neutral.

Commissioner Lowen agreed, but he did not know that all of those units should be a part of the CCRC.

Commissioner Gering said they could consider an agreement similar to what they had negotiated with Waterstone and make it a condition of approval.

9:31:18 PM Mr. Farrelly said it appeared feasible to continue this public hearing to March 20. Ms. Hauth said it would curtail the discussion regarding temporary signage which had been continued from the previous meeting.

Mr. Farrelly said they also needed to consider whether the Town Board wanted them to continue to postpone other issues because they were anxious about moving forward. He said this was one application and they had lots of other work that needed attention, and what appeared to be happening was that new issues tended to bump previous work down the line that had the perception of being pressing.

9:32:38 PM Commissioner Gering asked if they preferred some night other than the March 20 meeting. Mr. Farrelly said no; he was just saying they would need to again postpone other issues to later. He said if this was a priority for the Town Board, then they would move forward with it.

9:33:12 PM Commissioner Gering said his opinion was that this was not something that could be delayed, such as temporary signage or the ordinance rewrite. He said they needed to deal with it in the near term. Mr. Farrelly said that was fine, but he had wanted that to be explicit.

9:33:33 PM Mayor Stevens agreed with Commissioner Gering's assessment, noting this was a pressing issue.

9:33:43 PM Ms. Woodman wondered if it could be added to the list that something be done in the short term to address the disruption to Ms. Gastor's property.

Mr. Farrelly said that Mr. Keel had been contacted about that, but he had not yet received an answer.

9:34:23 PM Upon a motion by Ms. Vandemark, seconded by Mr. Remington, the Planning Board moved to continue the Public Hearing to Thursday, March 20, 2008 at 7:00 p.m. in the Town Barn by a vote of 8-0. The motion was declared passed.

9:34:51 PM Upon a motion by Ms. Vandemark, seconded by Mr. Remington, the Planning Board moved to close the Planning Board meeting by a vote of 8-0. The motion was declared passed.

Mayor Stevens called for a brief recess.

**4. Adjourn Town Board and convene special Planning Board meeting for the purpose of offering a recommendation on the Corbinton Commons Special Use Permit modification request.**

This item was continued to the March 20, 2008 Planning Board meeting.

**5. Discussion and/or acceptance of Waterstone street dedications.**

9:42:39 PM Mayor Stevens reconvened the meeting.

9:42:55 PM Assistant Town Manager Nicole Ard stated they were working with the developer on a final punch list and they had ordered signs for the Waterstone roads. She said they hoped to have that before the Town Board in March so that the streets could be officially opened. She added the school would be opening in the spring.

9:43:27 PM Mayor Stevens said the roads would have to be opened so that the park could open, so he was sure there would be some kind of ribbon-cutting ceremony.

**6. Discussion and request from direction from the Board regarding the sidewalk dining regulations.**

9:43:50 PM Ms. Hauth said this project had involved the Code Enforcement staff, the Police Department and Public Works. She said they had received some concerns from the public regarding sidewalk dining regulations, and had observations from staff about how well compliance was working in general. Ms. Hauth said they were asking for direction from the Board on whether they wanted to see any ordinance amendments brought forward in the near future. She said their primary concern was safety; the ADA did require a four-foot clear passage at ground level, but trees not yet at their mature height with overarching branches was of concern, as well as the fact that most of the tables were not in a fixed location and could migrate as people gathered.

Ms. Hauth said there had been some concern about the issue of alcohol service, noting that alcohol was only to be served if food was ordered. She said they all knew that drinks usually came first and then the food, and asked was that an issue that should be looked at from an enforcement standpoint. She said another issue was who exactly could obtain these permits; the ordinance said food service establishments but the question was what exactly a food service establishment was. Ms. Hauth said they had interpreted it as anyone who was listed as a restaurant in the business license, someone who clearly paid the prepared food and beverage tax.

Ms. Hauth said that sidewalk dining was popular and added to the vitality which was one of the five cores of the Town. She said before they brought something before the Board that was not something they wanted to see, they had wanted to get some feedback as to how to proceed and have the opportunity to hear from businesses that made use of the provisions in the ordinance.

9:46:45 PM Commissioner Hallman said there had been discussion with some of the sidewalk dining establishments, and asked had they been responsive when approached. Ms. Hauth said she had not had those discussions herself.

9:47:31 PM Police Chief Clarence Birkhead stated he shared the concern about safety and the ADA compliance issues, and certainly alcohol service was a piece of that. He said he had not had any substantive conversations with any of the dining establishments about compliance issues.

Ms. Hauth said she was not aware of any resistance from the establishments.

9:48:10 PM Commissioner Dancy asked approximately how many complaints had been received. Ms. Hauth said she knew of only one that they were dealing with now.

Ms. Ard said the specific complaint she knew about concerned the service of alcohol. She said what they had discussed as staff was to get some feedback from the Board to give staff direction so that they could be as fair as possible to the businesses and well as to the general public.

Chief Birkhead said as to the number of complaints, they had had a few informal conversations that raised concerns but no formal complaints were filed.

9:49:11 PM Commissioner Dancy said she frequently walked downtown, and had had no problems getting by people taking advantage of the sidewalk dining.

9:50:06 PM Commissioner Gering said he believed it was overly restrictive to require that food should be served with alcohol. He said he did not perceive that as a problem to remove that restriction. Commissioner Gering said experience suggested to him that they could be a little more lenient.

Commissioner Lowen agreed with Commissioner Gering. Ms. Hauth said staff had agreed that they had written what they thought would work, but when it came to day-to-day compliance, it was difficult to determine if a meal was soon to be served to those drinking alcohol on the street or if chips and the like were considered food service. She said it was difficult if not impossible for police officers to make those determinations.

9:51:31 PM Mayor Stevens said he was hearing that there was a reasonable consensus to remove that restriction, but believed some citizens would have differences when it came to alcohol service. He said what they were really concerned about was behavior of crowds, and if that became an issue they should have some grounds and some method to withdraw a permit. Ms. Hauth said there were provisions to revoke a permit.

Mr. Hornik said when they were drafting the language the reason why they had put the food service requirement in the ordinance was that they were concerned they would have groups congregating and drinking beer outside a bar. So, he said, they had wanted language that would inhibit if not prohibit that happening.

9:53:03 PM Mayor Stevens said their experience now was such that they no longer needed that language, and they had other avenues if that became a problem.

9:53:11 PM Commissioner Hallman said the issue of a clear passage was a different issue, and asked if their sign ordinance would address that separately from the sidewalk dining issue. Ms. Hauth said the temporary signs that were on the sidewalk were not causing the problem, but there were clearance issues related with the seating and how the seating tended to migrate.

Commissioner Hallman said it was his experience that sandwich boards were as much a problem as seating. Ms. Hauth said that would be addressed separately and business owners would have a chance to comment. She said she wanted to make sure that the two issues were separated, noting they were not there to talk about sidewalk signage tonight.

9:53:58 PM Commissioner Gering asked was the passage issue really one that occurred only during events such as Last Fridays or was it more frequent. Ms. Hauth said she believed it occurred anytime the weather was nice.

9:54:24 PM Commissioner Hallman said he would argue that it was not really related to the tables; there were sandwich boards in front of nearly every establishment.

9:54:32 PM Commissioner Lowen said he would disagree to some extent. He said he often used the Bank of America ATM, and he had on several occasions been forced to ask people to move their seats because they were sitting in front of the ATM machine. He said he had also had to curve around people when walking because they were sitting out on the sidewalk, so he believed that was more of an issue than the sandwich boards.

9:55:13 PM Commissioner Dancy agreed.

9:55:16 PM Mayor Stevens said he believed both contributed to the issue, as did some trees.

9:55:35 PM Commissioner Gering said the photos provided were not representative of the issues. Ms. Hauth said they were not intended for that. She called attention to the breaks in the blocks on the sidewalk, noting that in a number of places the chairs extended beyond the break. Ms. Hauth said those blocks were four-feet wide, so when they were encroached upon it violated ADA requirements. She said the way people utilized the sidewalk dining now was not in compliance with the four-foot clearance.

9:56:38 PM Commissioner Gering said he did not like the idea of putting up fences or ropes. Ms. Hauth said if their sidewalks were two feet wider or the trees were removed, and they did away with on-street parking that might be viable. But, she said, none of those things would happen and the real issue was that four-foot clearance and safety. Ms. Hauth said what she wanted from the Board now was some guidance on what the Board might like to see in the form of ordinance amendments, if any, and when they would like it to come back before them.

9:57:25 PM Commissioner Hallman said he believed they should remind the food establishments to work well with the Town and the Town would work well with them, and not try to rewrite the ordinance.

Commissioner Gering agreed, except that he would like to see the requirement that food be served with alcohol removed.

9:57:46 PM Commissioner Lloyd said if the food establishment only served alcohol, that would be a problem. But, she said, as long as they served food it was not a problem for her.

9:58:27 PM Commissioner Gering said he would not go so far as to say that an establishment that served only alcohol would be a problem.

9:59:44 PM Chief Birkhead commented that if they removed the requirement that food be served with alcohol, they should be careful that they did not encourage open consumption and if they did that it be restricted so that people would not drink just anywhere. He said one issue they had observed was that people were standing and getting closer and closer to cars and the street.

10:00:31 PM Commissioner Gering said those were good points, but at the same time they could stop that by revoking a permit. Chief Birkhead agreed, but it would not be his preference to do that on a case-by-case basis. He said once the guidelines were set for all the businesses then they should comply.

10:01:17 PM Commissioner Gering said he was suggesting that if they removed the food requirement, and people drinking on the street became rowdy and moved out to their cars or onto the street, then the Town could revoke the privileges for that establishment. Chief Birkhead said he understood that, but such people would only move to the next establishment which would make that crowd larger. He said he had seen in other jurisdictions that alcohol consumption minus food created a different environment. Chief Birkhead said it no longer became a restaurant, but became a beer garden.

Commissioner Lloyd agreed with Chief Birkhead.

10:01:49 PM Mayor Stevens said in talking with other towns and visiting downtown Wilmington, for example, he had observed that sidewalk dining was a positive development for restaurants but it created issues similar to what Hillsborough was facing. Ms. Ard said they had talked about the clearance, but there was also the issue of storage of tables and chairs. She said some establishment left them out year round, and asked if the Board had any feedback on that issue before staff began enforcing that.

Ms. Hauth said some of the seating had become rather permanent and would be difficult to stow elsewhere.

10:02:56 PM Commissioner Lowen said he had thought about that, and wondered where a restaurant would store that type of seating each night when they closed. He said he knew that was not the Town's problem.

10:03:14 PM Commissioner Dancy replied they could place it in their lobby or somewhere inside their building.

10:03:19 PM Commissioner Gering asked if part of the concern was that people might get rowdy and throw chairs through windows or into traffic, and asked if that was a realistic concern. Ms. Hawth said it was not out of the realm of possibility, but they had not seen that as yet.

Commissioner Gering said if that were the case, then trash cans would present the same concerns. Ms. Hawth remarked that trash cans were much heavier. She said the concern was what happened to the tables and chairs when they were not in use, and would they rather see them removed or piled up in a recessed area or some other location.

10:04:26 PM Mayor Stevens said the issue then was aesthetics as well as safety.

Commissioner Hallman said he would like to have some consistency or minimum standard that could be enforced. which he believed would be a positive.

10:04:41 PM Mayor Stevens said working with the restaurant owners would be important, noting there was several in the audience and it might be helpful to hear from them.

10:05:20 PM Matt Meek, owner of the Wooden Nickel, said it would be nice to have some guidelines particularly on how to police people pushing their chairs back or just hanging out. He said there was no real way for them to figure out where people could stand and where they could not. Mr. Meek said their furniture was fairly permanent and they would not like to have to take it in every night, but they would do whatever they needed to do to comply with the ordinance.

10:06:18 PM Mayor Stevens said that Tupelo's used ropes to separate its area. Ms. Hawth stated that Tupelo's had approached staff about installing something more permanent fixed into the sidewalk that would create a permanent barrier. She said the problem was that it would create a fixed barrier in the public right-of-way.

10:07:12 PM Matthew Strum, owner of the Chocolate Shoppe, stated that using ropes or other more permanent barriers would become more of an eyesore than just the tables and chairs on the sidewalk. He said regarding the chairs in front of the ATM, patrons were moving the chairs and not the business owners.

Commissioner Lowen said that was understood.

10:09:06 PM Mr. Meek said from his perspective as long as there was clarity as to what was acceptable and what was not, that would make it much easier for the business owners to police their own areas.

10:10:04 PM Mayor Stevens said part of the issue was that portions of the ordinance were not being enforced, and perhaps they needed to revisit that and determine the language was put in for a reason and go with that. He said that might create some initial hardships but they would have

clarity. Mayor Stevens asked did it make sense to proceed in that way, or was there some other solution that needed more Board discussion.

10:10:40 PM Commissioner Gering said the call for clarity was important, and the issue of passage and storage of tables and chairs did need some clarity. He said the solution Tupelo's was proposing sounded like a workable solution; that is, some physical barrier that met some basic requirements. Commissioner Gering said in the case of the Wooden Nickel, he did not know if that solution would work for them, or if a different table or chair arrangement was needed that would force clear passage. He said he believed that the storage of tables and chairs was a reasonable requirement and should be enforced.

10:11:45 PM Commissioner Lowen said he wished they did not have to put up a fence. He wondered if some sort of line could be placed on the sidewalk so that people would know not to move beyond that line. Ms. Hauth agreed that a simple painted line on the sidewalk could be enough. She said it would make it easy for a police officer or business owner to identify someone over the line.

10:12:27 PM Commissioner Hallman opposed that idea, noting he believed it would look "tacky" and that they were being "Nazis" about it. He said they should work with the owners to make it work and stop trying to over-legislate it.

10:12:47 PM Mayor Stevens asked if they had some clarity on the alcohol issue. Ms. Hauth said she understood there was consensus to remove the food requirement.

Mayor Stevens stated that was correct. He said he believed there was also consensus that tables and chairs needed to be stowed inside after hours.

Commissioner Lowen said the Wooden Nickel would have a hard time stacking those tables.

Commissioner Gering said there was an issue of security, so that they would not be thrown around. Ms. Hauth said initially they had believed that outside dining would take place during a few months out of the year, but now if was being used almost year round. She said to some extent it begged the question of was there enough reason to asked that they put away and for the Town to enforce that.

10:14:06 PM Commissioner Gering said the only legitimate reason he could think of to have them stowed away was for security. Ms. Hauth said that they could be stowed in an alcove or something similar, and was the Board okay with that. She said most restaurants did not open until 11 a.m. and did they want the chairs piled in an alcove or doorway, or, were they more pleasing placed where you could sit in them.

10:15:05 PM Commissioner Lowen said there were not many places they could be stacked; most businesses would have to place them inside.

10:15:35 PM Mayor Stevens said some of the aesthetic issues could be handled by working with the downtown merchants, and perhaps the Tourism Board could help to identify some guidelines.

10:16:11 PM Commissioner Lowen suggested tabling the issue and having discussions with the business owners.

Mayor Stevens said he believed that would be a first step in addressing the standards they would use, which would be important for the future.

10:16:39 PM Commissioner Gering said another issue was allowing outside seating for non-food establishments, naming a particular business owner. Ms. Hauth said she would need to look at how business licenses were worded, and the business owner in question may need to include other items when he expanded his services.

Commissioner Gering said he was trying to think in broad terms, and wondered was there a reason to restrict outside seating for any particular kind of business downtown.

10:18:07 PM Commissioner Lowen agreed, noting people sat outside the Dual Supply store. He said some people liked to sit outside and read.

10:18:54 PM Mayor Stevens suggested getting a working group together and figuring out what the guidelines should be, noting he did not believe they were prepared to do anything now other than remove the stipulation for food to be served with alcohol. He said that group should involve the Historic District Commission, the Tourism Board and representatives of businesses. Ms. Hauth asked in what timeframe did the Board want to see those reports back, and did they want to see the alcohol/food amendment in March. She said if the Board was satisfied with the status quo, then they could tell the business owners that there would be no radical changes at this time and that would remove some of the urgency.

10:20:10 PM Commissioner Hallman recommended that they do the former and tell the business owners that they would continue with the status quo, and they would make other finer adjustments to bring the ordinance into compliance with the practice. There was no objection from the Board.

## **7. Discussion regarding Town Code Section 12-18: Combustible Landscaping Materials.**

10:23:04 PM Fire Marshal Jerry Wagner stated this ordinance change was promoted by a recent fire in Raleigh where 30 townhomes were destroyed in less than two hours. He said Carrboro had experienced seven apartment fires in the same number of weeks, all due to high winds and cigarettes discarded into pine straw. He added that Raleigh and Chapel Hill had adopted ordinances similar to what was being proposed for Hillsborough.

10:24:14 PM Commissioner Hallman asked how widespread this problem was in Town; how many establishments would be affected. Mr. Wagner responded three apartment complexes and one set of townhomes.

10:24:30 PM Mayor Stevens said there was some data that indicated that pine straw would burn faster than other materials. Mr. Wagner said that was correct.

10:25:50 PM Commissioner Lowen said he really appreciated Mr. Wagner being aggressive and remaining abreast of such issues. He said he had been impressed with Mr. Wagner every since he had come on board, and commented that his performance was a marked improvement over years past. He said the presentation Mr. Wagner had provided regarding sprinklers in parking garages had been quite impressive.

10:26:27 PM Commissioner Hallman said he seconded those remarks, noting he thought about that every time he pulled into a parking garage.

10:26:35 PM Mayor Stevens said this issue would come before the Board soon for action. Mr. Wagner said that was correct.

10:26:47 PM Commissioner Gering asked if there was any material other than pine straw that would be in the same category of more than 24 inches per minute. Mr. Wagner said leaves, but they were not considered to be a landscaping material. He said rubber chips would also be in that category, but they were generally used in playgrounds. Commissioner Gering said his suggestion would be that for people reading the ordinance and trying to figure out if it applied to them, it would be nice to enumerate those materials that should be avoided.

10:27:33 PM Ms. Ard stated that Mr. Wagner had provided two articles on sprinklers just for the Board's information.

#### **8. Award contract for enforcement action at 106 US 70 East.**

10:27:51 PM Ms. Hauth stated the contract was ready if the Board was willing to go forward. She said they had met with the contractor and made sure he understood exactly what the work entailed and that he understood all the rules related to solid waste and recycling. Ms. Hauth said she had spoken to Orange County recycling personnel today who indicated that this contractor had done an excellent job in the past of removing and recycling buildings.

10:28:34 PM Commissioner Hallman said they were "out" this money until the property sold. Ms. Hauth said that was correct, but it was a budgeted line item.

10:28:49 PM Upon a motion by Commissioner Hallman, seconded by Commissioner Gering, the Board moved to award the contract for enforcement action at 106 US 70 East.

10:29:01 PM Commissioner Lowen said they were motioning to approve the move expensive option, and asked why. Ms. Hauth said because it helped them ensure that it was truly and properly recycled, noting the ordinance did not allow people to take materials out of County under the recycling materials ordinance. She said it would allow them to remain in compliance with their own rules.

10:29:42 PM The motion was declared passed by a vote of 5-0.

## **9. Committee Updates and Reports**

10:29:56 PM There were no Updates or Reports offered.

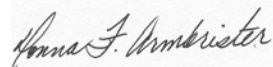
## **10. Closed session**

10:30:01 PM Upon a motion by Commissioner Gering, seconded by Commissioner Lowen, the Board moved to go into Closed Session by a vote of 5-0. The motion was declared passed.

Upon returning to Open Session, and upon a motion by Commissioner Gering, seconded by Commissioner Hallman, the Board advised Mr. Hornik to appeal the decision by a vote of 5-0. The motion was declared passed.

## **11. Adjourn**

Upon a motion by Commissioner Dancy, seconded by Commissioner Gering, the Board moved to adjourn the meeting at 11:12 p.m. by a vote of 5-0. The motion was declared passed.



Respectfully submitted,  
Donna F. Armbrister, MMC  
Town Clerk