



**MINUTES
HILLSBOROUGH TOWN BOARD
July 9, 2007
7:00 PM, Town Barn**

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

STAFF: Town Manager Eric Peterson, Planning Director Margaret Hauth, Town Clerk/Personnel Officer Donna Armbrister, Assistant Utilities Director Will Baker, Police Chief Clarence Birkhead, Utility Inspector Russell Lloyd, Budget & Management Analyst Emily Hovis, Public Works Intern Shawn Purvis, Fire Marshal Jerry Wagner, and Town Attorney Bob Hornik

7:04:22 PM Mayor Stevens called the meeting to order at 7:04 PM.

1. PUBLIC CHARGE

Mayor Stevens did not read the Public Charge, but noted it would be followed.

2. AUDIENCE COMMENTS REGARDING MATTERS NOT ON THE PRINTED AGENDA

7:04:38 PM There were no audience comments received.

3. AGENDA CHANGES & AGENDA APPROVAL

7:04:49 PM Mayor Stevens added a Proclamation to the Consent Agenda to honor Cathleen Turner for her service on the Alliance.

7:05:20 PM Upon a motion by Commissioner Hallman, seconded by Commissioner Dancy, the Board moved to approve the Agenda as amended by a vote of 5-0. The motion was declared passed.

4. COMMITTEE REPORTS (*Critical*)

7:05:50 PM No committee reports were offered by the Board.

5. REPORT FROM THE TOWN MANAGER

7:06:03 PM Town Manager Eric Peterson stated some Board members had asked about the new Code of Ordinances, and noted that with the recent budget approval Municipal Code Corporation had been hired to maintain the Town's Code of Ordinances and would update it quarterly.

Commissioner Gering asked if it would be offered electronically. Mr. Peterson replied yes, noting it would also be posted on the Town's website.

Town Clerk Donna Armbrister stated that in between the quarterly supplements the Board would receive, those ordinances adopted that affected the Code would be posted but not codified. She said those ordinances would then be codified when the quarterly supplement was published.

Mayor Stevens asked would those ordinances be enforceable upon approval. Ms. Armbrister responded yes.

7:08:09 PM Mr. Peterson stated that he and several other staff members would not be available for the next two days during the day, noting they would be undergoing training.

Mr. Peterson said Commissioner Hallman had previously suggested adding some departmental reports to be included on the agenda each month. He said the Police Department had been unable to get its report completed, but it would be available in September, and Administration and Public Works would be added as well.

Mr. Peterson said he had attended the Farmer's Market on Saturday morning and ran into the Canine Officer. He reminded the Board that one of the items he had cut from last year's budget was the dog, but the Board had put it back in. Mr. Peterson said it was good to see that dog out and working.

Mr. Peterson said there had been two incidents recently where the dog had been used, the first to locate an elderly woman who had become lost. The second incident, he said, was to track a person who had committed a break-in. Mr. Peterson said in both cases the dog and his handler had been successful, and thanked the Board for its foresight.

6. DEPARTMENTAL REPORTS

7:11:41 PM Police Chief Clarence Birkhead stated the Department had been busy, and provided highlights of activities. He stated the Department had passed its accreditation and had been recommended for reaccreditation. Chief Birkhead said they would travel to Montreal, Quebec on July 23 to sit before the Commission and respond to questions, and hopefully at that time be presented their Certificate of Reaccreditation for the next three years.

Chief Birkhead said the new Traffic Enforcement Team was up and running through the Governor's Highway Safety Program. He said that had been in effect since May 30, and two officers were currently assigned and doing an outstanding job. Chief Birkhead said one month's statistics were 225 citations, 18 of which were DWI's, 3 resulted in drug charges, and 1 resulted in a weapons charge. He said they were proactive, working all streets, and working with other agencies to do traffic enforcement, traffic, and community education including a DWI awareness program on graduation night at Cedar Ridge High School.

Chief Birkhead said they had a DWI checkpoint on Highway 70 this past weekend, resulting in 39 charges. He said they had worked with Mebane, Orange County, MADD, and the Governor's Highway Safety Program who had sent a representative and the "Booze it and Loose It" bus, to make this a successful program. Chief Birkhead said they had ended up with 2 DWI's, 2 driving without a license, 3 driving while license was revoked, several inspection violations, several expired registrations, some drug charges and drug paraphernalia charges, seat belt violations and one delay and obstruct charge.

Chief Birkhead announced that Officer Manson had recently been certified as a National Crime Prevention Through Environmental Design expert, and was now working with downtown merchants and conducting a survey of the downtown to identify ways to make the downtown safer through lighting, plantings, and other methods.

Chief Birkhead said they had just completed their Youth Basketball Program, and had 54 participants.

7. ITEMS FOR DECISION – CONSENT AGENDA

- A. Consider Approval of the Minutes of the May 29, 2007 Budget Work Session – General Fund; and the May 31, 2007 Budget Work Session – Water Fund
- B. Consider Adopting a Resolution Expressing the Hillsborough Board of Commissioner's Opposition to House Bill 1587, "The Local Government Fair Competition Act."
- C. Consider Adopting an Ordinance to Amend Chapter 6 of the Town Code to reduce the speed limit on W. Tryon Street to 20 MPH
- D. Consider approval of pre-determined line of succession to the Mayor for use during emergency situations
- E. Consideration of an Ordinance Adopting and Enacting a New Code for the Town of Hillsborough
- F. Consider acceptance of water & sewer utilities for Churton Grove Phase 3B and start of 1 year warranty.
- G. Consider acceptance of Cates Creek Outfall and start of 1 year warranty
- H. Consider acceptance of Rainwater Harvesting Ordinance
- I. Consider approval of Sewer Extension Contract for Millstone Sewer Phase 2
- J. Proclamation for Cathleen Turner for her service on the Alliance

7:15:31 PM Upon a motion by Commissioner Gering, seconded by Commissioner Dancy, the Board moved to approve the Consent Agenda by a vote of 5-0. The motion was declared passed.

8. ITEMS FOR DECISION – REGULAR AGENDA

- A. Consider request from George Horton to clarify and amend the Town Code so as to not require sprinkler systems in parking decks**

7:16:24 PM George Horton requested that the mandatory sprinkler requirement for parking decks be reconsidered. He said the Town Code did not specifically address parking decks,

noting the current design for the Orange County Office Complex complied with the N.C. Building Code. Mr. Horton stated their specific request was that the N.C. State Building Code for parking facilities be the governing regulation applicable to their parking deck, and any other parking decks within the Town in the absence of a specific Town Code.

7:18:18 PM Commissioner Gering asked when they had learned about the Town's interpretation of the Fire Code. Mr. Horton responded about 6 weeks ago. Commissioner Gering said he wondered why this issue was not addressed during the design phase and earlier in the process. Mr. Horton said he could not answer that. He said they had designed the deck according to the State Building Code, which required sprinklers only for those buildings that were below grade, less than 50% open, or where a building was sitting on top of them. Mr. Horton said the Fire Marshal had reviewed the plans in the last 6 or 8 weeks, and his interpretation was different from their interpretation.

7:19:40 PM Commissioner Gering said then Mr. Horton's assumption was that the Town's ordinances were no more restrictive than the State Building Code. Mr. Horton said it was not an assumption. He said if you read the Town Code it did not specifically address parking decks, rather it addressed closed structures that housed individuals. Mr. Horton said it was their interpretation that it did not address parking decks.

7:20:20 PM Commissioner Gering asked if the first time they had reviewed this was 6 weeks ago. Mr. Horton replied yes, noting it had come up during a general discussion with the Fire Marshal and the difference in interpretation was discovered. He said that was why they were now asking for clarification.

7:20:47 PM Commissioner Lloyd asked how many stories was the library. Mr. Horton responded two. Commissioner Lloyd asked how many for the building behind it. Mr. Horton replied it was three stories above the grade at Margaret Lane, and four stories above the grade from Nash Street. Commissioner Lloyd asked how much further the parking deck was above the office building. Mr. Horton said it was about the same elevation, adding it had to be within that 40 foot restricted height requirement.

Mr. Horton said they were providing for fire protection, noting the installation of standpipes and access to each standpipe on each level of the parking deck, along with fire extinguishers. He said they had designed the deck according to the State Building Code, and it had not been clear to them that the Town Code required that the deck be sprinklered. Mr. Horton said it was not clear then, and it was not clear now.

7:22:28 PM Mayor Stevens said given the difference in interpretation in the Town Code, he suggested hearing from the Fire Marshal.

7:22:42 PM Fire Marshal Jerry Wagner address several points made by Mr. Horton in his letter dated July 2 to the Town Board, and explained how those related to the Building Code. One point, he said, was that the fire flow in that area was 1900 gallons per minute of available

water, when the parking deck alone required 2000 gallons per minute. Mr. Wagner said fire protection of buildings nearby had to be included in that formula.

Mr. Wagner said another point was that Mr. Horton was correct in that parking decks had not been considered when the Town ordinance was written; however, no other special type of building was considered either. Therefore, he said, the ordinance was applied to all structures. He said adoption of the Sprinkler Ordinance had simplified the Fire Code.

7:25:52 PM Mr. Wagner provided a PowerPoint presentation that included slides of what actual types of fires looked like, such as vehicle fires, and the radiant heat caused by such fires that many times set nearby property on fire.

Keeping those pictures in mind, Mr. Wagner said the deck would hold 409 vehicles on four levels. He said should a vehicle catch on fire, the fire would have a radiant heat factor from what was above it, meaning the concrete above it would force the heat and smoke down and contain it, unless it was located right on the edge of the deck level. Mr. Wagner said that heat and smoke would spread throughout that level, causing other vehicles to be more susceptible to radiant heat and smoke damage and also to catch on fire.

7:28:51 PM Mr. Wagner said that Section 508.5.1 of the State Fire Code required that fire hydrants be located within 400 feet of all portions of the building, or 600 feet if a sprinkler system was available. He said no matter from what direction you entered the deck you could not get within 400 feet of a fire hydrant. Mr. Wagner said a sprinkler system would allow you to get to that 600 foot requirement.

Mr. Wagner said the other issue that came into play was Section 503.1.1 of the State Fire Code that required that the fire apparatus access road extend to within 150 feet of all portions of the exterior of the building, and that was problematic due to the property lines. He said the exception in Section 503.1.1 allowed the distance to increase if the building had a sprinkler system.

Mr. Wagner displayed a slide of a fire that had occurred in a parking deck in Raleigh to demonstrate the effects of such a fire. He said having a sprinkler system was like having a firefighter protecting you 24/7. Mr. Wagner said a sprinkler system would not save a car because the water could not penetrate it, but what it would do was keep the cars around it cool by abating the radiant heat. He said it would also lessen the danger to firefighters and the public, and would allow the Fire Department a greater response time.

7:34:22 PM Mr. Wagner explained how a parking deck with open sides often created a wind tunnel effect which could cause damage to vehicles a good distance away. He provided slides of previous parking deck fires in other towns where that had occurred. He provided additional slides of other types of vehicle fires to demonstrate the damage that could be caused from such fires, as well as the damage such fires posed to firefighters. Mr. Wagner provided some information on the types of County vehicles that would be parked in the deck and the potential for fires from the materials they may be carrying, such as propane tanks or natural gas cylinders.

7:42:28 PM Commissioner Hallman asked how this would impact the Town's Fire Insurance rating. Mr. Wagner said every building built affected that rating, and the parking deck would be looked at just like any other building. He said the rating would be based on the fire flow capacity, the amount of fire equipment, and other factors. Mr. Wagner said if the parking deck were sprinklered it would not be considered in the rating since it would have no effect. He said the rating was affected when large buildings were constructed without sprinklers.

7:44:20 PM Mr. Peterson said that Chapel Hill's ordinance required sprinklers in parking decks. Mr. Wagner said that was correct, noting Chapel Hill's ordinance was different only in that the building had to be over 6000 square feet and Hillsborough's was 3,600. He said this deck would be in excess of 100,000 square feet.

7:45:26 PM Mayor Stevens asked were there other alternatives as far as safety measures that should be considered in lieu of or in addition to, to convince him that parking decks were a lot more dangerous than he had ever imagined. Mr. Wagner replied anything added that aided in knowing more quickly that a fire was present, such as a fire alarm, would be a plus. He said not to require parking decks to be sprinklered was moving in the wrong direction.

Mr. Wagner said one issue with fire alarms in parking decks was the probability of many false alarms due to such things as a poorly maintained vehicle that smoked. He said a heat detector may be more applicable.

7:47:12 PM Mayor Stevens asked Mr. Hornik to speak to any constraints or flexibility the Town might have in light of the ordinance. Town Attorney Bob Hornik said he believed Mr. Wagner's interpretation of the ordinance was correct, noting there was nothing in the Town Code that provided for an appeal of the Fire Marshal's decision. He said there may be some room for a difference of interpretation, but he did not disagree with the Fire Marshal given the definitions in the ordinance.

7:48:01 PM Mr. Peterson asked if the appellate process would be to go to the State Fire Marshal's office. Mr. Wagner said that was correct, noting they would make a ruling as to whether or not the interpretation was the intent of the Town's ordinance. He said as required to make the Town's Fire Code legally enforceable, it had been approved by the Building Code Council in December of 2006.

7:48:40 PM Mr. Hornik said this section of the Town's ordinance had been adopted July 10 of 2006, one year ago.

7:48:56 PM Mayor Stevens asked given the presentation, was there anything Mr. Horton might want to add. Mr. Horton said he would not dispute anything the Fire Marshal had said, but had learned from the presentation that they would make sure that no County vehicles parked in the deck carried propane tanks or natural gas cylinders, regardless of the outcome of their request.

Mr. Horton commented he could only fall back on his experience with the engineers and designers who were in the process of designing and building parking decks, none of which were sprinklered. He said he believed the interpretation was ambiguous and not specific to parking decks, but rather referred in his opinion and in the engineer's opinion to buildings, not open parking decks, and they had designed it according to the State requirements for parking decks.

Mr. Horton said the idea that a fire in a parking deck could escalate should the fire response be delayed due to other fire calls was true for any situation. He said they were providing the required standpipes and had even moved the building an additional two feet to provide a 15-foot distance from the adjacent building. Mr. Horton said they would provide the necessary glazing to protect that wall and give them a one-hour fire rated wall, which was required. Mr. Horton stated he continued to believe the language in the Code was ambiguous.

7:52:04 PM Commissioner Lowen said he had taken his family to see July 4th fireworks in Durham, and had parked on the 4th floor of a parking garage. He said when they were ready to leave it had taken 45 minutes to exit the garage because of the crowd. Commissioner Lowen said he wondered what would have happened had there been a medical or some other type of emergency since the traffic was so bad no one was moving. He said had there been an emergency, no one could have gotten in or out.

Commissioner Lowen said he had checked with Durham, and there were no sprinklers in those parking garages. He said it was not logical to expect someone to leave their vehicle to hook up a hose to a standpipe to put out a car fire. Commissioner Lowen said he understood that sprinklers were a costly item, but in his heart and mind, especially after seeing and hearing the Fire Marshal's presentation, he believed sprinklers were the best option for the parking deck.

Commissioner Lowen said if it were necessary to charge a higher price for parking in the deck to offset some of that expense, then he would advocate for that. Mr. Horton stated that they had eliminated gates at the exits of the deck to facilitate quick movement should an emergency occur. He thanked the Board for taking the time to consider his request.

7:56:51 PM Commissioner Gering agreed with Mr. Horton that the interpretation was ambiguous. He suggested improving the language in the ordinance to make it clearer. Mr. Hornik stated the definitions in the ordinance spelled out quite clearly what a building was, what commercial was, and what new commercial construction was. He said there was also a provision that stated that an automatic fire sprinkler system was required to be installed in all new commercial construction with gross floor space exceeding 3600 square feet. Mr. Hornik said clearly, a parking deck was considered new commercial construction, therefore an automatic fire sprinkler system was required.

Mr. Horton stated he did not think that people historically considered a parking deck a building, rather it was a structure. Mr. Hornik responded that in the Code, the definition of a building was "any structure, either temporary or permanent, designed or built for enclosure of persons, chattels, or property of any kind." He said clearly cars fell into that category.

Mr. Hornik said the Fire Marshal's interpretation was appropriate and fell within the bounds of the language in the Code.

8:00:18 PM Mayor Stevens said clearly it fit the definition in the Code, and believed it was a consensus among the Board to leave the Code as it was. There was general consensus to that statement by the Board.

B. Receive request from Ronnie Webb to provide an additional handicap parking space on N. Churton St.

8:01:08 PM Planning Director Margaret Hauth stated that a Town Code amendment would be necessary if the Board chose to honor this request. She said there was a handicap space near the front of the Graham Building, about 100 feet south of the entrance of the SunTrust Bank. Ms. Hauth said an existing space would be converted to provide the additional handicap parking space, and some cost to the Town would be necessary to install a ramp to the curbing.

8:02:31 PM Commissioner Hallman asked if it were possible to move the handicap space from in front of the Graham Building up to another spot. Ms. Hauth said that had not been considered, but she could do a more in-depth study to identify where the greatest need was.

8:03:14 PM Mayor Stevens said he believed there were three parking spaces on that side of the street. Ms. Hauth said she believed that was correct. Mayor Stevens said that would leave one space at that location for general parking.

8:03:50 PM Mr. Peterson asked if SunTrust provided a handicap space in its parking lot. Ms. Hauth said she was not sure, but if so it would be a greater distance away in its back parking lot. She said one was not provided on the side alley.

8:04:26 PM Mr. Hornik asked if SunTrust owned the parking to next to it. Ms. Hauth responded yes. Mr. Hornik asked had SunTrust been approached about moving its handicap space closer to its front door.

8:04:56 PM Commissioner Lloyd noted SunTrust had two drive-thrus. Ms. Hauth said that was correct.

8:05:27 PM Mr. Peterson said it would appear to be safer for someone to exit a vehicle in the lot rather than on Churton Street.

8:05:36 PM Commissioner Hallman agreed that was a dangerous area because of people turning at that intersection.

8:05:42 PM Commissioner Lloyd she had assumed Mr. Webb was asking for handicap parking closer to the street, and placing it in a parking lot would put it further away. Ms. Hauth said the trade-off for making it safer would mean a steeper walk.

8:06:42 PM Commissioner Gering said this space would benefit a single business, and it seemed that that business had other choices that would not require this additional handicap space. He said if you followed this logic, then every business on Churton Street would deserve its own handicap parking space.

8:07:05 PM Commissioner Lowen added that SunTrust had the luxury of having two locations in Hillsborough, and the other branch had a private parking lot which had multiple handicap parking spaces right in front of its door. He agreed with Commissioner Gering's logic, noting this would be leaving only one parking space for others to use. Commissioner Lowen said from his observations, that handicap space was not used often because people were concerned for their safety.

8:08:12 PM Mayor Stevens said he was sensitive to this issue, but did not believe there were compelling reasons to make a change in the ordinance at this point. The Board agreed by consensus. Ms. Hauth said she would contact SunTrust to see if they would consider making a change in their parking lot in light of Mr. Webb's request. Mayor Stevens said that was worth pursuing, and he would be willing to talk to the management staff of SunTrust as well.

C. Receive request from John Wright and Laverne Pratt-Walker to re-open Cedar Grove Road northwest of Turner Street

8:09:30 PM Ms. Hauth said she had included maps with the packet materials, noting the request was to either re-open Cedar Grove Road, although there were no documents indicating its formal closure, or to allow the owners to reconstruct it and re-open it to allow access to the back of the property in question. She said that property was zoned commercial and touched on the back of Turner Street.

8:11:01 PM Commissioner Hallman said the agenda report indicated that based on Ms. Hauth's research the Board had no say in this matter. Ms. Hauth replied that was correct, unless the Board wanted to say that because there were no formal documents closing the road that there was some difference of opinion regarding the status of the right-of-way and would want to re-open the portion on the properties in question. She said it appeared from the Land Records that at least a portion of the right-of-way was in the Kenion Grove open space, and could not be considered for reopening without their agreement.

8:11:49 PM Mr. Hornik asked if Ms. Hauth had found any evidence on the Deed of Trust or other documents that indicated this was ever actually a Town road. Ms. Hauth she had found only references to it being an old road bed, but not clear reference that it was a Town-maintained street. Mr. Hornik said then we did not know if it was a public road. Ms. Hauth said that was correct, noting that Mr. Wright had owned the property for a number of years going back to the 1960's, and may be able to speak to whether it was ever owned or maintained by the Town. She said she had not been able to find any documents that indicated it had been closed or had ever been a Town street.

8:12:42 PM Mayor Stevens asked if the request was to open the road all the way to Raney, or just to the back of the property. Ms. Hawth said the applicants would need to clarify that.

8:13:06 PM Laverne Pratt-Walker said she was not sure of the history of the road, but it had been closed for a number of years. She said her property butted up against that road area, and she wanted to use that road as access to a day care center she planned to construct on her back property. Ms. Pratt-Walker said that access would prevent having to cross other properties.

Ms. Pratt-Walker said they only wanted to open about 100 feet of roadway, and no further. Ms. Hawth clarified they wanted to open it just to the intersection of Turner Street. Ms. Pratt-Walker responded that was correct.

8:16:29 PM Mayor Stevens stated there were three issues here: did this Board have the power to do anything; if they did, was it a matter of just allowing Ms. Pratt-Walker to build the road; and, would the Town actually build a road. He said his feeling was the third option was not likely, but the first step was to identify what the Board was empowered to do. Mr. Hornik said he would have to see some title documents on the larger piece of property to see if the Town had ever had any interest in the first place, since the Town could not reopen something it never had the power to open or close. He said if the Town had ever quit claimed the property, the only way to get it back would be to take it or buy it. Mr. Hornik said he did not believe there was anything the Town could do at this time that would not entail spending a lot of money.

8:17:53 PM John Wright stated that he had lived here in 1962, and he had kept the road opened by clearing and mowing it, noting the Town had never maintained it. He said a few years ago a large Oak tree had fallen over the road, which continued to block it. Mr. Wright said as a consequence the road had become overgrown with weeds and other growth. He said they would like to get it reopened so that Ms. Pratt-Walker could use the land for her day care center.

8:19:05 PM Mayor Stevens asked if Mr. Wright owned the larger parcel shown on the map. Mr. Wright replied he had owned it in the past, but no longer, adding his house was now on one of the smaller properties nearby.

8:19:33 PM Mayor Stevens stated he believed this was a private matter, and not a Town matter. He said it would be much easier for the parties involved to arrange for a private driveway and acquire an easement of some sort. Mr. Hornik agreed, noting that short of an imminent domain the Town had no interest anymore, if it had ever had any interest.

8:19:54 PM Mayor Stevens suggested that Ms. Pratt-Walker attempt to enter into a private arrangement with the other property owners. Ms. Hawth suggested such a private drive could be reviewed as part of the site plan process for the day care center. She said they would have to look at the property first to make sure the lots were large enough to build on.

8:21:14 PM Commissioner Lowen asked if the lots were indeed zoned commercial. Ms. Hawth responded yes.

8:21:24 PM Ms. Pratt-Walker asked if she was understanding that she should pursue a private drive with the other parties.

8:21:41 PM Mayor Stevens stated she needed to get consent from the other neighbors via an easement, and then she would need to contact the Planning Department regarding how to proceed with the day care center. He reiterated that this was a private matter and there were no steps the Town could take.

D. Consider requests from Waste Industries to 1) authorize a 1.25% rate increase for commercial customers due to an increase in the Orange County landfill fees for FY08; and 2) pass on penalties from Orange County to violators who dispose of banned substances and are positively identified

8:22:56 PM Bill Davidson, Waste Industries General Manager, asked that the Board authorize the rate increase for commercial customers, necessary due to the increase in Orange County's fees for the new budget year, and that Waste Industries be given authority to pass fines onto specific businesses that attempt to dispose of banned materials. He stated that Orange County had increased their landfill tipping fees from \$46 to \$47 per ton, a 2.2% increase. Mr. Davidson stated they were requesting a 1.25% increase be added to each person's bill.

8:23:49 PM Commissioner Gering said the 1.25% calculated was pro-rated based on the amount of the fess to the total operating expense. Mr. Davidson said that was correct.

8:24:26 PM Mr. Peterson stated this had not been placed on the Consent Agenda due to the second request, which was to pass on penalties from Orange County to the violators.

8:24:40 PM Mr. Davidson said that Orange County had a regulated recycling ordinance, which banned corrugated cardboard, clean wood, or scrap metal in quantities described as an armload. He stated that if several people placed even a small amount of a banned material in the trash and it was picked up by their truck, then they would receive a fine for the entire load. Mr. Davidson said their trucks were 10-ton trucks, so the penalties could be as high as \$700 for the load. He said during the month of May, they had received a penalty almost every day with over \$3,300 in assessed fines.

Mr. Davidson said they wanted to better educate their commercial customers regarding the banned materials, and had recently sent out letters to reiterate the information and directing them to a website where further information could be gained. He said they had put stickers on containers to alert customers that no corrugated cardboard, clean wood, or scrap metal should be placed in the containers. Mr. Davidson said what they were now requesting was if they received a penalty and could identify which customer placed the materials in the container using an Orange County inspector and their driver that they be allowed to place the payment of that penalty onto that commercial customer.

Mr. Davidson stated that penalties from Hillsborough in one month of \$3,300 meant no profit for his company for the next four or five months. He said that the penalties in May were more than

all penalties received in 2005 or 2006. Mr. Davidson said that Orange County was serious about its recycling ordinance, and had offered to visit customers who were found in violation to educate them about the ordinance. He said the County had the authority to write tickets to those who would not comply.

Mr. Davidson said since 2003 they had paid the fines as operational costs, but the fines were becoming too frequent and very expensive.

8:31:47 PM Mayor Stevens asked if increased enforcement was the answer. Mr. Davidson said Orange County had gone from a somewhat tolerate policy to a zero tolerance policy, and they needed to respond to that.

8:32:15 PM Commissioner Hallman asked if Mr. Davidson was saying that Orange County would identify the perpetrators and fine the perpetrators directly, and Mr. Davidson was asking for a recovery of cost. Mr. Davidson said that Orange County had offered only to assist them in identifying those commercial customers that were in violation of the ordinance. He said it would be difficult to identify a violator, noting it would entail digging through the trash when it reached the landfill to attempt to find identifying features.

8:32:22 PM Mr. Hornik said then the final arbiter was Orange County. Mr. Davidson said he would have to receive something for the County's Solid Waste Administrator or the Landfill Manager in order to say that. Mr. Hornik said the quandary was that the ordinance stated the haulers who were found to be in violation would suffer the civil penalty at two times the tipping fee. He said if Waste Industries picked up the contents of a dumpster, hauled it to the Landfill and then received a penalty, under the County ordinance Waste Industries was liable for that fine.

Mr. Hornik said what Waste Industries was asking for was, assuming they could beyond a doubt identify a customer that was in violation of the County ordinance that they be allowed to pass that fine onto that customer. He said another quandary was that under the Town's agreement with Waste Industries, they had a fixed rate that they were allowed to charge, with nothing in that agreement that spoke to this problem.

Mr. Hornik said this request would mean the Town Board would have to decide if they were willing to look at its ordinance and the agreement with Waste Industries to determine if a modification was warranted to address this situation that was sufficiently foolproof. He said they would also have to determine if such a change would create controversy elsewhere.

8:34:06 PM Commissioner Hallman said that was a concern, especially when you had shared dumpsters. Mr. Hornik agreed, noting it made the issue more complicated.

8:34:44 PM Mayor Stevens said he had real issues about trying to manage such a system, but on the other hand it made sense that such penalties be paid by the actual violators.

8:35:03 PM Commissioner Dancy said Orange County was very clear about what could or could not be disposed of at the landfill, with warning stickers and other educational materials placed on dumpsters. She said even if dumpsters were not shared, anyone could come after business hours and dump materials without the customers' knowledge or permission. Commissioner Dancy said the attitude may be that since a customer was paying a fee for the dumpster service that the hauler had to accept any consequences, particularly with shared dumpsters. Mr. Davidson stated that he had been told by the Town's former Assistant Town Manager that individual residences had received fines for cardboard and wood placed in individual containers.

8:36:29 PM Mr. Peterson said when the Town did the commercial pickup they had experienced the same problem. He said the customers that were doing it were doing it intentionally and were not motivated to comply. Mr. Peterson said they had begun checking the dumpsters before they were emptied and if they found any banned materials, they had notified the customer that they would not be servicing the dumpster until the banned materials were removed. He said that had been sufficient motivation after a few times to motivate customers to no longer put the banned materials in the dumpsters.

Mr. Peterson said their new waste disposal trucks had cameras that allowed the operators to see what was being emptied from a dumpster, making it less time-consuming and more manageable. He suggested that Waste Industries could be more proactive in checking dumpsters before servicing.

Mr. Peterson said they would welcome a request from Waste Industries to amend the Franchise Agreement, and when that was done and the details worked out, he would bring it back to the Town Board for consideration.

8:38:05 PM Commissioner Gering said he believed that would be the best approach. He wondered what other municipalities in Orange County were doing about this problem. Mr. Davidson said they were receiving fines as well. Commissioner Gering said they might all benefit from researching how others were handling this problem.

8:38:34 PM Mayor Stevens asked if any other municipalities in the County were being asked to consider this request. Mr. Davidson said not that he was aware of.

8:38:54 PM Commissioner Lowen said he had served on the Solid Waste Advisory Committee, and the issue of the disposal of solid waste was a quandary for the whole county. He said if a citizen had no vehicle to take them to a recycling drop-off site, then how would they dispose of that banned material? He wondered how apartment complexes dealt with the problem, asking if special dumpsters were provided. Commissioner Lowen asked if something was left for pick-up, like a metal bed frame for instance, would Waste Industries pick that up and accept the fine. Mr. Davidson said they offered an 8-yard commercial dumpster for items such as cardboard, and also supplied industrial containers that items such as wood, mattresses and the like could be placed in. He said they then took those items to the approved County facility that separated the items for disposal.

8:41:45 PM Upon a motion by Commissioner Hallman, seconded by Commissioner Lloyd, the Board moved to approve the rate increase, and that Mr. Hornik work to identify methods to address the issue of the penalties.

8:42:17 PM Mayor Stevens commented that incentives could be considered, suggesting that perhaps 50% of a fine could be charged back to a customer. He said that would keep Waste Industries motivated to identify violators and would encourage the violators to become compliant with the ordinance.

8:43:08 PM The vote was 5-0. The motion was declared passed.

8:43:17 PM Commissioner Lloyd asked if letters had been sent to customers alerting them to the ordinance. Mr. Davidson said one had been sent in 2003, and another recently, a copy of which had been supplied to the Board in their packet of materials.

8:43:36 PM Commissioner Lloyd said she had not received one, and asked had it been included with the monthly bill. Mr. Davidson replied it had not, but had been mailed separately.

E. Consideration of resolution endorsing the Cornelius Street/US 70 Corridor Plan

8:44:35 PM Commissioner Lowen moved to approve the resolution endorsing the Cornelius Street/US 70 Corridor Plan.

8:44:52 PM Ms. Hauth said the County Commissioners had voted to approve the plan, noting it had been recommended by both Planning Boards.

8:45:15 PM Commissioner Gering seconded the motion.

8:45:28 PM Commissioner Hallman recognized the role played by the EDC and others in creating the Corridor Plan. He thanked the County for working with the Town on this project.

8:45:43 PM Commissioner Lowen specifically thanked several citizens who had provided valuable input.

8:45:56 PM The vote was 5-0. The motion was declared passed.

F. Discussion and approval of Letter of Credit value for Cates Creek Extension in Waterstone

8:46:08 PM Ms. Hauth stated that Mr. Ciao was present and asked that he provide any additional information that the Board might find useful. She said the applicant was attempting to abide by the conditions in the Special Use Permit that spoke to the construction of Cates Creek Parkway and the Letters of Credit.

8:46:56 PM Jim Ciao said there was a time requirement to put up 125% of the cost of the Cates Creek Extension, and unfortunately they had made a mistake in that the TIA contained no requirement for a traffic signal. He said that mistake amounted to between \$150,000 and \$175,000, which resulted in that amount in the Letter of Credit never being drawn on. Mr. Ciao said they were asking the Board to remove that line item from the Letter of Credit total.

8:48:07 PM Commissioner Lowen asked the Town Attorney for his opinion. Mr. Hornik asked Ms. Hauth for more information. Ms. Hauth said they had received a letter today from Chuck Edwards which confirmed that a traffic signal was not required, even at full build-out. She said one was not warranted at this intersection at peak hour, which was the measurement used by the TIA.

Ms. Hauth said a signal may be warranted in the future, but not necessarily tied to the build-out of this project. She said if the Board felt strongly about it, they could ask Stratford to run the full analysis on the signal after construction, which could allow other warrants to come into play. Or, she said, the Board could ask them to put some funding aside so that if a signal were required within "x" number of years then a portion of the funding would be available. Ms. Hauth said those were options that the Board might want to consider but were not necessarily recommended by staff.

8:49:36 PM Mr. Hornik said in Mr. Edwards' July 6 letter to the John R. McAdams Company regarding this intersection, NCDOT was apparently going to require the developer to conduct a signal warrant analysis immediately following full build-out or sooner as determined by NCDOT. He said they would also require that the developer install a new traffic signal if the analysis indicated that a traffic signal was found to be warranted.

8:50:15 PM Ms. Hauth said that did not require that the money be put up now and have it sit for some undetermined length of time. She said it was an academic difference as to whether the money was there now or provided when the analysis was conducted to determine if a signal was warranted.

8:50:36 PM Commissioner Gering said this reminded him of Gateway, where the study did not show that a traffic signal was warranted but the Board had required that the money be set aside until a study was conducted. Ms. Hauth said that was correct, noting that the DOT letter was requiring the applicant to conduct a warrant analysis, which was what the Town had required of Gateway at the time they reached full build-out. She said DOT was requiring that analysis, and it did not necessarily have to be provided for in this Letter of Credit.

8:51:22 PM Mr. Hornik said they would still be holding a Letter of Credit at \$1.4 million, which the Board would be asked to reduce from time to time. He said when the point was reached that only a small amount remained, such as \$100,000, then the Board could hold those funds as leverage to assure that the warrant analysis was completed in a timely fashion.

8:52:05 PM Commissioner Gering asked who would be responsible for paying for the signalization with this warrant. Mr. Hornik said according to NCDOT, the developer.

Ms. Hauth said if it were required within the time of the signal analysis, then Mr. Hornik was correct that the developer would be responsible. She said if the signal analysis did not indicate that a signal was warranted at that time, then it would fall into the regular process for such signals.

8:52:26 PM Commissioner Gering commented that at full build-out, that did not mean that all the houses were occupied and all the businesses were opened, which meant that the full effect of traffic may not be felt. He said it was not entirely fair to believe that the full impact of traffic would be felt at build-out. Commissioner Gering suggested that there may be some adjustment that would give the Town a longer horizon to require the signalization.

Mr. Hornik said he believed that was correct, noting he questioned whether that had to be dealt with now. He said as the project moved forward, the Letter of Credit would be steadily reduced and the Board would have more opportunities to tie in improvements to the site, even those off-site. Mr. Hornik said the Board had authority through the SUP process to address any off-site effects the project might have.

Ms. Hauth said the Town would also be asked to accept the roads within the Town's network, which provided another opportunity to place conditions on the project.

8:54:24 PM Commissioner Gering said he would be okay with granting the request since it appeared that other avenues were available to protect the Town's interests.

8:54:33 PM Mayor Stevens said the developers had been cooperative, but they still needed to make sure that the Town had those opportunities. He said the request seemed reasonable to him.

Mr. Hornik stated that they would likely have this discussion each time the developer came forward to reduce the Letter of Credit. He said the Town needed to make sure that the signal analysis was kept in mind when those reductions were made.

Mayor Stevens remarked they would have better information at that time, as well.

8:55:36 PM Upon a motion by Commissioner Gering, seconded by Commissioner Lloyd, the Board moved to approve a Letter of Credit value for Cates Creek Extension in Waterstone by a vote of 5-0. The motion was declared passed.

G. Receive information about playground inspections and staff recommendations

8:56:09 PM Ms. Hauth said this was to prepare the Board for an agenda item coming in September to amend the budget to provide for routine inspections of play equipment. She said they were moving forward with efforts to arrange a contract with a certified playground inspector to assure that these areas and equipment were safe and met current standards.

Ms. Hauth said if someone were to be hurt on one of the Town's playgrounds, it was not a matter of whether the person would win, but of how much they would win. She said documentation of routine inspections and proactive maintenance would limit that liability.

8:57:46 PM Mayor Stevens said he believed they all wanted to move forward and do the right thing to make the playgrounds and equipment as safe as possible.

8:57:56 PM Commissioner Lowen asked if they would see cost estimates in September. Ms. Hauth said that was their plan. She said the good news was that the current playground equipment would not have to be removed, but that fall zones, proper signage, and tree limb trimming would be necessary at all sites.

8:58:37 PM Commissioner Lowen asked if the maintenance would be provided by the Town's ground maintenance division. Ms. Hauth said it was better to have that provided by an outside source since they could provide professional services, rather than risk having the Town's forces do it incorrectly.

8:59:20 PM Commissioner Lowen said in the long term, the Town needed to look at all the parks and how much it was costing for outsourcing, as opposed to having a professional on staff to provide those services. Ms. Hauth said when they were approaching that kind of cost, they would come back to the Board with recommendations.

H. Amend Section 6A-20 of the Town Code to allow Orange County to create two handicap parking spaces on East Margaret Lane for the duration of the Justice Facility construction project

9:00:12 PM Mayor Stevens commented that this item was on the agenda as Item I, with Item H being the request from Judge Buckner. He stated they would follow the agenda.

Ms. Hauth stated that Orange County was requesting permission to create 2 handicap parking spaces on East Margaret Lane for the duration of construction of the Justice Facility. She said since this work was within the public right-of-way and handicap parking spaces were designated by Town Code, Town Board authorization was required. Ms. Hauth said once the Justice Facility was completed, Orange County would return the right-of-way to its original condition, which would require that this amendment be removed from the Code at that time.

Commissioner Lowen commented that the County was paying for the work taking place there, which would benefit the entire County. He said he did not believe this request was too much to ask, particularly since the County would construct the spaces and then remove them at the appropriate time.

9:02:23 PM Upon a motion by Commissioner Lowen, seconded by Commissioner Lloyd, the Board moved to amend Section 6A-20 of the Town Code to allow Orange County to create two

handicap parking spaces on East Margaret Lane for the duration of the Justice Facility construction project by a vote of 5-0. The motion was declared passed.

I. Discuss and consider action regarding Judge Buckner's proposal to revise the structured sentencing grid

9:03:30 PM Commissioner Hallman stated that doing this in conjunction with others' voices would give it more impact, and believed it was the right thing to do.

9:04:14 PM Commissioner Dancy stated she was personally in favor of it. Commissioner Lloyd stated she was as well.

9:04:20 PM Commissioner Gering asked what specific action the Board should take. Mr. Hornik said a letter from this Board stating its support would be appropriate.

9:05:06 PM Mayor Stevens said they had all heard stories of people getting out of jail only hours after being charged with a crime. He said he was in favor of anything that would help. He suggested sending a letter to the Town's State Representatives.

9:05:13 PM Commissioner Dancy said the letter should be sent to the N.C. State Sentencing and Policy Advisory Commission.

9:05:41 PM Upon a motion by Commissioner Dancy, seconded by Commissioner Lloyd, the Board moved to accept Judge Buckner's proposal to revise the structured sentencing grid and that the Mayor send a letter of support to Erwin Spainhour, Chair of the NC Sentencing and Policy Advisory Commission, and to Senator Eleanor Kinnaird, with a copy to Judge Buckner, by a vote of 5-0. The motion was declared passed.

J. Discussion of July Workshop "Hot Topics"

9:06:55 PM Commissioner Gering said that the staff recommendation was to reserve that time to discuss the Boone/Collins development.

9:07:21 PM Commissioner Lowen said the joint public hearing schedule was packed, and believed they should use the July workshop time to discuss whatever came up, including Boone/Collins. Mr. Peterson said some additional information would likely be available for discussion from American Asset Corporation.

9:08:15 PM Commissioner Hallman agreed that was a good plan. He asked was there anything now scheduled for September that could be placed on the July schedule. Mr. Peterson said he would check with staff. He noted that there was a potential appointment to the Parks and Recreation Board that could be dealt with, as well as the purchase of the new leaf truck.

9:09:18 PM Mayor Stevens said he believed they were in agreement, noting that July meeting time would be valuable.

9. CLOSED SESSION

A. Closed Session as authorized by North Carolina General Statute Section 143-318.11 (3) to meet with Town Attorney regarding current litigation Robbins v. Town of Hillsborough (Asphalt Plant)

9:09:32 PM Upon a motion by Commissioner Lowen, seconded by Commissioner Lloyd, the Board moved to enter into Closed Session to discuss current litigation by a vote of 5-0. The motion was declared passed.

10. ADJOURN

Upon returning to Open Session, and upon a motion by Commissioner Lowen, seconded by Commissioner Dancy, the Board moved to adjourn at approximately 9:35 PM by a vote of 5-0. The motion was declared passed.



Respectfully submitted,
Donna F. Armbrister, MMC
Town Clerk