



# Morrisville Board of Commissioners

## Business Session

### August 27, 2007

#### 1. Call to order

Mayor Faulkner called the meeting of the Board of Commissioners to order at 6:30 p.m. Also present for the meeting were Mayor Pro-Tem Martin and Commissioners Murry, Lyons, Carrow, Johnson, and Snyder. Present staff included Frank Gray/Town Attorney, John Whitson/Town Manager, Diana Davis/Town Clerk, Tim Gauss/Senior Director of Resource Management, Ben Hitchings/Planning Director, Rodney Wadkins/Senior Planner, Alycia Kempf/Planner, Tony Chiotakis/Senior Director of Community Services, Todd Wright/Fire Chief, Ira Jones/Police Chief, Blake Mills/Town Engineer and Julia Ketchum/Senior Director of Resource Management.

#### 2. Invocation by Commissioner Hill Carrow

*Commissioner Carrow* gave the invocation.

#### 3. Pledge of Allegiance - Please Stand

Everyone stood in participation of the Pledge of Allegiance.

#### 4. Adoption of Agenda

*Mayor Faulkner* stated that Tab A would be moved from the consent agenda to the action items section.

*Commissioner Murry* stated that the second bullet of Tab P regarding a letter of reprimand should be removed as it was covered at the August 13<sup>th</sup> meeting.

*Commissioner Snyder* stated that it should be deleted and deferred for further discussion.

*Commissioner Lyons* concurred.

**ACTION:** *Commissioner Snyder* made a motion to approve the agenda with the noted changes and an added closed session. *Commissioner Carrow* seconded the motion, which passed unanimously.

#### 5. Adoption of Minutes

- July 9, 2007

*Commissioner Snyder* stated that on page 10 a clerks note was added after Mayor Faulkner's comment about her nay vote that indicated that this comment was may prior to the for good of the order section near the end of the meeting.

**ACTION:** *Mayor Pro-Tem Martin* made a motion to adopt the minutes as amended. *Commissioner Murry* seconded the motion, which passed unanimously.

- July 19, 2007

*Commissioner Carrow* stated that on page 3 the word Carry should be changed to Carrow.

*Commissioner Snyder* stated that on page 3 he stated that a street sweeper could be utilized with stormwater funds. After that, the Town Manager indicated that was planned for.

**ACTION:** *Commissioner Snyder* made a motion to approve the minutes as amended. *Commissioner Johnson* seconded the motion, which passed unanimously.

- July 23, 2007

*Commissioner Snyder* stated that on page 9 the motion for the consent agenda had Commissioner Snyder making and seconding the motion.

*Diana Davis, Town Clerk* stated that Commissioner Carrow seconded the motion.

*Commissioner Murry* stated that on page 8 during discussion of the Weston Estate townhomes Mayor Pro-Tem Martin stated that he did not see how there could be more townhomes. That may not have been the intent.

*Mayor Pro-Tem Martin* stated that the comment should state that he was surprised at the price point of the townhomes.

**ACTION:** *Commissioner Carrow* made a motion to adopt the minutes as amended. *Commissioner Lyons* seconded the motion, which passed unanimously.

## 6. Presentations

- Stan Wright – Receptionist, Public Works Department (New Position)

*Larrisha McGill, Administrative Services Manager* stated that Stan Wright would be the new Public Works Receptionist and the additional support was welcomed. He had a Bachelor's Degree in business from Winston Salem State University.

- Crystal Majors – Accreditation Manager, Police Department (Filling Vacancy)

*Ira Jones, Police Chief* stated that Crystal Majors was the new Accreditation Manager. She attended the University of North Carolina at Charlotte where she obtained a Bachelors Degree in English with a concentration in professional writing. She worked for Glaxo Smith Kline in 2003 prior to this and was currently attending NC State to work on obtaining a Masters Degree in Public Administration.

- Julie Waller – Risk Manager, DCS (New Position)

*Tony Chiotakis, Senior Director of Community Services* stated that Julie Waller was the new Safety and Risk Manager. She had 8 years of experience in occupational safety in the private and public safety. She was currently finishing her Bachelors Degree in Occupational Health Safety.

- Lee Asadoorian - Part Time Support Engineer (New Position)

*Bo Singleton, Information Technology Director* stated that Lee was had been in the Unites State Marine Core 23 years as a support engineer. He also worked for Housing Authority of Georgia: 3 years as a Maintenance Director East Point and 5 years as a PC Supports Specialist in Dekalb.

- Wake County EMS - Recognition for upgrading EMS level of care to EMT-B
  - Chief Kirk Wood, Wake County EMS
  - Dr. Brent Myers, Wake County Medical Director
  - Joseph Zalkin, Wake County EMS Assist Chief of Professional Development
  - Lee Van Vleet, Wake County EMS Training Chief

*Todd Wright, Fire Chief* called Battalion Captain Cliff Cates, Captain Ron Pendergrass and Fire Engineer, Starr Blackley to come forward as they helped make this program possible.

*Dr. Brent Myers, Wake County Medical Director* stated the first responders in Wake County were singularly responsible for the cardiac arrest save rate, which was 3 to 5 time the national average. That commitment from the Fire Department was why that possible. A Fire Department voluntarily taking on additional medical training was unheard of and that was what was happening here and was a great level of accomplishment. This provided for fire fighters that were better trained to handle sever allergic reactions, trauma, asthmatic emergencies and other issues.

## 7. Public Hearings

Tab I [2007-117](#) Adopt Resolution Pertaining to the 103 Page Street Flexible Design Option Request (FDO) to Reduce the Minimum Lot Size and Building Setbacks

*Mayor Faulkner* opened the public hearing at 6:49 pm.

*There were no comments.*

**ACTION:** *Commissioner Murry* made a motion to close the public hearing. Mayor Pro-Tem Martin seconded the motion, which passed unanimously.

*Mayor Faulkner* closed the public hearing at 6:49 pm.

Tab S [2007-109](#) Act on Resolution 2007-109 pertaining to the Consistency Statement, and Ordinance 2007-109 approving the Perimeter Park PUD rezoning request to GB-CU with a PUD Overlay (REZ 07-05)

*Rodney Wadkins, Senior Planner* stated that this item was properly advertised and noticed. Staff recommended approval with conditions as follows:

- All parameters of the existing PUD shall apply to the subject parcels (which include the conditions of Ordinance No. 03-06 and the March 2003 Perimeter Park Phase II Planned Unit Development (PUD) document).
- Prior to the issuance of the second Certificate of Occupancy (CO) for either the Medical Office Building, or the Hotel, or for one of the Retail Buildings planned in the next phase of the Perimeter Park Planned Unit Development, Duke Realty shall install a fully functional traffic signal at the intersection of NC 54 (Chapel Hill Road) and Carrington Mill Boulevard. Duke Realty shall be responsible for the full cost of signaling the intersection including all right-of-way and easements.

The applicant supported the condition with one change. They wanted it to be prior to the issuance of the second certificate of occupancy (CO). They were not confident that the light would be fully functional at that time. Staff agreed that this change would be appropriate.

*Mayor Faulkner* opened the public hearing at 6:51 pm.

*Jim Tully, Duke Realty, 1800 Perimeter Park Drive* stated that Brian King was here with him as well. The mast arms took a while to get ordered. They did not want to delay businesses from using their buildings because the traffic light was not working.

**ACTION:** *Mayor Pro-Tem Martin* made a motion to close the public hearing. *Commissioner Johnson* seconded the motion, which passed unanimously.

*Mayor Faulkner* closed the public hearing at 6:52 pm.

## 1. Public Comments

*Michael Schlink, 416 Willingham Road* stated that he applauded the recent meeting with the Cary Town Council and the effort to work together on important boundary issues, road congestion, greenways, helping to raise town standards and quality of life expectations for town residents. Continuation of critical thinking, staff discussion and exchanging of thoughts and plans should be continued especially projects like discussion of Chapel Hill Road. With no intentions of disrespect the Town Manager's actions needed to be addressed. This highlighted an ongoing issue that has been raised for years of poor town oversight, accountability and disclosure issues. In this case, the Town Manager was setting and enforcing his own policies which reflected compromised judgment and self serving interests while betraying the public and Board's trust. The Wake County district attorney should be brought in to investigate the facts of the case for the good of all parties involved and to provide the needed checks and balances in an open and transparent manner. Treat Mr. Whitson as any other employee. He has rights but could not continue to investigate himself. He was honorable and should welcome the official scrutiny that would clear up the contradictory situation which started years ago. Under Section 1 of his contract, powers and duties, it stated that the town manager would recommend to the Town Board adopting a paying compensation philosophy and policy, which would guide his administration on a compensation system. In Section 7 called for the health and dental insurance plan as the town provided for all employees. A policy which never allowed for a town funded flexible spending account. In April of 2003 he directed a member of his staff to set up a flexible spending account that town funded in violation of his contract and a town policy. It was compounded by the fact that he set it up for himself and no other employee. The town officials were stewards of the public trust not of their own personal or public interests. An outside investigation was warranted to look out for the public's best interest and to provide for the administration in this matter. It would clear up inconsistencies that permitted this situation to occur for years.

*Michael Roberts, 111 Leacroft Way* stated that he would like to take his role on the Planning and Zoning Board to the next level. He recognized that he was a candidate election this fall. This should not be a part of the consideration unless the outcome was already known. Regarding the State Transportation Improvement Policy (STIP) should be considered. The Board should remove any association with a tax increase. The wording created a negative perception of what may be critical infrastructure improvements in the future. Mr. Whitson should be commended for permitting this personnel issue to be resolved in such a public forum. The Board should consider moving the discussion of a letter of reprimand to a closed session where this type of discussion truly belonged.

## 9. Action Items

Tab A     [2007-106](#) Adopt Resolution 2007-106 to enter into a Municipal Agreement with NCDOT for sidewalks on Airport Boulevard (NCDOT TIP U-3344-A)

*Michele Hane, Transportation Planner* stated that she had two updates. The Board voted earlier this year to enter into an agreement to add sidewalks along Airport from McCrimmon to NC 54 as part of a Department of Transportation (DOT) project already underway. That was for \$103,000. Staff applied for a grant with the Capital Area Metro Planning Organization (CAMPO) to assist

with funding. The town was awarded \$20,000. That project would now cost \$83,000. Assistance with advocating should be given to Raleigh. The next item was a Public Works related item. Airtech Drive was north of NC 54 on Airport Boulevard. The roadway deteriorated badly since the time the project was first looked at between the 2 years worth of delays. The main drive could no longer be connected to Airtech Drive without improvements to Airtech Drive. DOT contacted the town to include that improvement to the project. Staff was proposing to use Powell Bill money to complete the last 300 ft. It was to the town's benefit to complete this now while the project was underway.

*Commissioner Carrow* asked for the final cost.

*Ms. Hane* stated that it would cost \$83,100 for the sidewalk and \$42,488.36 for Airtech Drive. This was costing \$22,000 more overall but would provide a lot more for the amount. Powell Bill funds would be covering some of the costs.

**MOTION:** *Commissioner Snyder* made a motion to approve. *Commissioner Murry* seconded the motion, which carried unanimously.

*Ben Hitchings, Planning Director* stated that *Ms. Hane* did excellent work in obtaining the additional funding from CAMPO.

*Commissioner Carrow* asked about resistance to the request.

*Ms. Hane* stated that if it was requested when the project was originally scoped by NCDOT they would have provided an 80% match. It ended up costing less for the town because in that situation the town would have to pay 100% of the right-of-way (ROW) costs. There ended up being \$20,000 left after the top 3 projects were funded, which was awarded to the town.

*Commissioner Carrow* asked about this being addressed while NCDOT was scoping the project.

*Ms. Hane* stated that there was 1 staff person and there was not the staff time to do what was necessary.

*Commissioner Carrow* asked if this could be handled now.

*Ms. Hane* stated it was.

Tab C [2007-112](#) Adopt Resolution Pertaining to the Amendment of the Wexford Subdivision to Remove a Sidewalk

*Ben Hitchings, Planning Director* stated that there were no updates.

**ACTION:** *Mayor Pro-Tem Martin* made a motion to approve. *Commissioner Murry* seconded the motion, which carried unanimously.

Tab E [2007-005](#) Adopt Resolution 2007-005 Pertaining to the Davis Drive Eatery Site Plan

*Ben Hitchings, Planning Director* stated that there were no updates.

**ACTION:** *Commissioner Carrow* made a motion to approve. *Commissioner Snyder* seconded the motion. The motion passed with six yeas (Mayor Faulkner, Mayor Pro-Tem Martin and Commissioners Murry, Lyons, Carrow and Snyder) and one nay (Commissioner Johnson).

Tab F [2007-119](#) Appoint Planning and Zoning Board and Board of Adjustment Members

*Diana Davis, Town Clerk* handed out ballots. She stated that the first ballot would be for the regular Board of Adjustment (BOA) member. If an alternate was chosen to fill this position someone would have to be appointed to fill the remainder of that alternate's term.

*The ballots were collected and the results tallied:*

***Preston Edmonson (5)***

*Mayor Faulkner*

*Mayor Pro-Tem Martin*

*Commissioner Lyons*

*Commissioner Murry*

*Commissioner Carrow*

***Gerard Falzon (1)***

*Commissioner Johnson*

***Stephanie Reed (1)***

*Commissioner Snyder*

*Ms. Davis* announced Preston Edmonson as receiving the majority vote and being reappointed to the BOA as a regular member. She then handed out ballots for the alternate BOA member.

*Ballots were collected and the results tallied:*

***Gerard Falzon (3)***

*Mayor Faulkner*

*Commissioner Murry*

*Commissioner Johnson*

***Stephanie Reed (1)***

*Commissioner Snyder*

***Valrie Horton (3)***

*Mayor Pro-Tem Martin*

*Commissioner Carrow*

*Commissioner Lyons*

*Ms. Davis* stated that there was a tie between Valrie Horton and Gerard Falzon with. She handed out the ballots to break the tie and told the Board to decide between those two applicants.

*Commissioner Snyder* asked if either of these individuals were present.

*Neither was present.*

*Ms. Davis* handed out the ballots again.

*Ballots were collected and the results tallied:*

***Valrie Horton (3)***

*Commissioner Carrow*

*Mayor Pro-Tem Martin*  
*Commissioner Lyons*

***Gerard Falzon***  
*Mayor Faulkner*  
*Commissioner Murry*  
*Commissioner Snyder*  
*Commissioner Johnson*

*Ms. Davis* stated that Gerard Falzon was the new Board of Adjustment alternate member.

*Mayor Faulkner* announced that the next vote would be for the regular Planning and Zoning Board Member.

*Ms. Davis* handed out ballots.

*Ballots were collected and the results tallied:*

***Vinnie Goel (3)***  
*Commissioner Lyons*  
*Commissioner Carrow*  
*Mayor Pro-Tem Martin*

***Catherine Willis (2)***  
*Mayor Faulkner*  
*Commissioner Johnson*

***Michael Roberts (2)***  
*Commissioner Snyder*  
*Commissioner Murry*

*Ms. Davis* announced that Vinnie Goel would be the new regular Planning and Zoning Board Member.

[Clerks Note: This vote was continued at the September 10<sup>th</sup> Briefing Session as it required a majority vote (4 in this case) to make appointments as an action.]

*Ms. Davis* handed out ballots and stated that this vote would be for an alternate Planning and Zoning Board member.

*Ballots were collected and the results tallied:*

***Catherine Willis (6)***  
*Mayor Faulkner*  
*Mayor Pro-Tem Martin*  
*Commissioner Snyder*  
*Commissioner Lyons*  
*Commissioner Johnson*  
*Commissioner Murry*

***Kris Gardner (1)***  
*Commissioner Carrow*

*Ms. Davis* announced Catherine Willis as being reappointed as the alternate member to the Board

of Adjustment. She stated that all appointments made tonight would have terms ending August 31<sup>st</sup>, 2010.

Tab P [2007-097](#) Amend Town Manager's Contract to Clarify Health Care Benefit

*Julie Ketchum, Senior Director of Resource Management* stated that as head of finance, she would like to make a statement in regards to the content of Briefing item 2007-097. As finance professionals, they were obligated and dedicated to the highest ideals of honor and integrity in all public and personal relationships to merit the respect, trust, and confidence of governing officials, other public officials, employees and of the public. When discrepancies were identified it was the responsibility of finance professionals to make as transparent as feasible all elements leading up to the initial disclosure as well as all corrective measures taken. As this issue was disclosed, great care and time was dedicated to the research, compilation and documentation of all the facts and figures. After lengthy review by selected staff a determination of corrective measures necessary to resolve this matter was prepared. To test the validity of the plan of action the opinions of both the Town's Independent Auditors and the Internal Revenue Service were sought. Both parties concurred with the resolution put before the Board tonight. Staff felt that they provided the Board and the public with the most comprehensive, ethical and transparent solution. She respectfully requested that in the best interest of conducting the public's business this matter be closed based on the facts presented.

*Ms. Ketchum* stated that the spreadsheet and resolution were updated and changes were noted. There would be an increase in the flexible spending account on the Town Manager's part of \$484.40 effective from the end of August through December 31<sup>st</sup> to fulfill the obligation with the flexible spending plan of \$5000. This would permit the employee to continue the flexible spending account up to but not to exceed the \$5000 allotted maximum per year. The flexible spending account would also show the \$2685 that was contributed by the town from January 7<sup>th</sup> through August 17<sup>th</sup> of 2007. This would be moved out of the plan and reimbursed to the town. This action would be a clear break between the employee and employer contributions for 2007. This would have a balance owed of \$8,280.63 to be paid over 75 payrolls at \$110.41 per payroll.

**MOTION:** *Commissioner Johnson* made a motion to approve the resolution as presented. *Commissioner Snyder* seconded the motion.

*Commissioner Carrow* asked about cessation of the contract while these funds were being paid.

*Ms. Ketchum* stated that it would be paid in full at that time.

*Commissioner Johnson* asked about the funds that the employee would pay into the flexible spending account.

*Ms. Ketchum* stated that the same amount initially agreed upon would have to be put into the plan.

*Mayor Pro-Tem Martin* asked if interest was included.

*Ms. Ketchum* stated that it was not.

*Commissioner Murry* stated that there was some discussion about amending the resolution for any additional investigation the Board felt was necessary. It may not be necessary based on staff's internal audit and reaching out to the auditors and the Internal Revenue Service (IRS).

*Mayor Pro-Tem Martin* asked if *Ms. Ketchum* took the responsibility of contacting the agencies for review of this situation.

*Ms. Ketchum* stated that she took the responsibility of contacting the auditors. This was done during the field work of the audit. As further developments and public comment took place it was determined that an outside agency should review and conclude what was determined to be the resolution to the problem. The independent auditors took the issue to the next level by taking this issue to the IRS. The entire plan was review. The concern was that this was pre-tax dollars. Both parties concluded that the resolution was correct.

*Mayor Pro-Tem Martin* asked if the only thing reviewed was the dollar figures.

*Ms. Ketchum* stated that the entire situation was reviewed. It was not just about dollar figures it was to ensure that the W2 reporting, quarterly reports and administration of the flex spending accounts was correct.

*Commissioner Snyder* asked if everything was done correct administratively.

*Ms. Ketchum* stated that it was checked to ensure that the processes in place were correct not just to review this one situation, which was also done.

*Commissioner Snyder* asked if these parties submitted comments of whether there were any improprieties ethical or otherwise.

*Ms. Ketchum* stated that these issues were reviewed during the audit.

*Commissioner Murry* asked if after review by these two parties if the situation could repeat itself.

*Ms. Ketchum* stated that it could not.

*Mayor Pro-Tem Martin* asked about either party suggesting including interest.

*Ms. Ketchum* stated that this was not suggested.

*Commissioner Lyons* stated that she preferred to include Commissioner Murry's proposed change in the resolution.

*Commissioner Murry* stated that he appreciated the external review of the situation, which staff already did. The IRS would not gloss over the situation and it was the same situation with the auditors. This was the kind of leadership needed in town staff.

*Commissioner Snyder* asked if there were other comments made by either party that was not included in the briefing sheet that the Board needed to be aware of.

*Ms. Ketchum* stated that there were not.

*Commissioner Snyder* asked for the name of the auditors.

*Ms. Ketchum* stated that it was Joyce and Company and the primary contact was Keith Joyce.

*Mayor Pro-Tem Martin* stated that he applauded staff's efforts but was still not totally comfortable. *Ms. Ketchum* was an employee of the town and Mr. Whitson was her boss. There would be more comfortable if there was an outside person.

**VOTE:** The motion to approve the resolution was approved with 5 yeas (Mayor Faulkner and Commissioners Murry, Carrow, Johnson and Snyder) and 2 nays (Mayor Pro-Tem Martin and Commissioner Lyons).

Tab Y [2007-100](#) Adopt a Resolution setting the town's policy concerning town funding of STIP projects

*John Whitson, Town Manager* stated that there was a change to the resolution that was emailed to the Commissioners. Commissioner Snyder had asked that language that indicated that the tax rate would be returned once the DOT reimbursement was received be added. This was added as number 7. It was clear in the briefing, but needed to be included in the resolution.

[Clerks Note: Steps for Staff included in Resolution 2007-100 as follows:

1. The Town of Morrisville will provide financial assistance to the NCDOT promoting STIP projects within the town to an earlier than STIP published start date as part of an agreement for reimbursement by the NCDOT of related town project expenditures; and
2. Projects nominated by the town to the Capital Area Metropolitan Planning Organization (CAMPO) will be posted to the LRFP and coded administratively to not be included in the plan's financial performance thus placing the projects in a "standby mode"; and
3. As projects are published in the approved State TIP the town staff shall present to the BOC a revised draft LRFP incorporating the candidate TIP project(s) for financial projection and the associated impact on the property tax rate; and
4. The Board of Commissioners shall review the draft LRFP and consider a briefing item introducing the actions necessary to place a General Obligation Bond referendum before the voters; and
5. The voters would need to approve a bond referendum having knowledge of an associated property tax increase necessary to meet the expenses of the project without jeopardizing other town needs as identified in the LRFP; and
6. The Board of Commissioners shall review for approval an interlocal agreement with the NCDOT to provide project review and approval and reimbursement by the NCDOT for town expenditures related to the project;
7. Upon receipt of the NCDOT reimbursement the LRFP will be updated and the appropriate tax rate reduction will be included in the following annual budget submitted to the Board of Commissioners.]

**MOTION:** *Commissioner Johnson* made a motion to approve. *Commissioner Murry* seconded the motion.

*Mayor Pro-Tem Martin* asked if money could be spent on DOT with this policy in place.

*Mr. Whitson* stated that was not correct. This policy covered larger projects. There were smaller project such as Morrisville Carpenter in front of Progress Energy that could be widened. The town was receiving \$250,000 from DOT in Small Urban Funds to work on this smaller project that was outside the scope of this policy. This policy was for projects that would ultimately be listed on the STIP.

*Mayor Pro-Tem Martin* asked if this resolution was not passed if funds could be spent on DOT roads.

*Mr. Whitson* said that there could be funds spent on DOT roads if the Board desired.

*Mayor Pro-Tem Martin* asked what the point of the resolution was.

*Mr. Whitson* stated that the resolution, in summary, indicated that the Board was willing to do projects listed as funded on the STIP with the voters' support of a tax increase so that other services would not have to be sacrificed to complete these projects.

*Mayor Pro-Tem Martin* asked about putting this item on the bond referendum without this resolution approved.

*Commissioner Snyder* stated that there should be some intention of the Board in writing because there was currently nothing in place.

*Mr. Whitson* stated that when a project was identified as funded on the STIP the staff would automatically come to the Board with the proper resolution and an amended Long Range Financial Plan (LRFP) to show the impact to take this to the public in a bond referendum. The fact that a tax increase would be necessary and how much would be included. The intersection at Morrisville Carpenter, the Public Safety Building and the ball park were all being completed without a tax increase, which utilized the current capacity. There was no capacity for another big project without a tax increase. The Board could decide not to do this when the issue came up.

*Mayor Pro-Tem Martin* stated that the policy indicated that the tax would be reduced when the reimbursement was received.

*Mr. Whitson* stated that the Board was a political body that could make the decision they want. This resolution was the current plan. If this policy was not amended that would be what the staff would do. Each project would probably be an 8 year process. Once the money was in the town's hands the next budget would include the associated tax cut associated with the tax increase due to that project. The DOT funds would be utilized to pay the remaining debt service.

**VOTE:** The motion passed with six yeas (Mayor Faulkner, Mayor Pro-Tem Martin and Commissioners Murry, Johnson, Carrow and Snyder and one nay (Commissioner Lyons).

Tab HH [2007-116](#) Adopt Resolution to approve the Shiloh Sanitary Sewer Construction Contract

*Blake Mills, Town Engineer* stated that the resolution was updated. The way it was written was to approve a bid plus a 10% contingency for the total contract amount. Usually a contract was set up for the bid amount and there was a budget for the contingency which the Town Manager would have authority over.

*Mayor Faulkner* asked if that contingency fund would be for 10% of the bid award amount.

*Mr. Mills* stated that was correct and the Town Manager would have the authority to issue changes up the amount within the contingency fund.

**MOTION:** *Commissioner Carrow* made a motion to approve. *Commissioner Murry* seconded the motion.

*Commissioner Lyons* stated that after consulting with the Town Attorney, she was excusing herself from voting on this matter due to a possible conflict of interest involving her financial interest under GS 160A-75.

**VOTE:** The motion carried unanimously.

Tab V [2007-055](#) Adopt Resolution Adopting Close Out Agreement for Breckenridge Subdivision,

including a Site Plan Amendment

*Tim Gauss, Senior Director of Development Services* stated there were 5 different items recommended to the Board from the Planning and Zoning Board. The desire was to establish an end point where Pulte was responsible for the agreements with the HOA's and then the town would assume maintenance and operation of the roads. The resolution included italicized text that made specific reference to an August 16<sup>th</sup> Memorandum that detailed the remaining items.

[Clerks Note: Memo Referenced

#### MEMORANDUM

Date: August 21, 2007  
To: Mayor and Board of Commissioners  
From: Tim Gauss, Senior Director  
Re: Agenda Item 2007-055 (Breckenridge Close-Out Agreement and Site Plan Amendment) - Planning and Zoning Board Action June 14, 2007

At its June 14 meeting, the Planning and Zoning Board recommended **Approval** of the Breckenridge Closeout Agreement with Pulte, Inc. and site plan amendment with the following provisions:

1. The road conditions (punchlist items) are to be completed to the Town's satisfaction);
2. The Town shall ensure that grading around the lake in the Lakes 1 and 2 area meets Town standards;
3. The agreements between Pulte and the homeowners associations (HOA's) regarding improvements to be made by Pulte in-lieu of constructing a private walking trail are to move forward to the mutual satisfaction of Pulte and the HOA's;
4. "Protective screening" shall be placed around the lake (to prevent people from falling into the lake);
5. No walkway around the lake is recommended.

Staff has had the opportunity to evaluate these conditions of approval over the past two months, and offers these comments in support of the Board of Commissioners' deliberations.

1. Completion of the punchlist items is a requirement (#5) contained in the agreement with the Town. Attached is a memo prepared by Town of Morrisville Engineering staff to Pulte identifying the remaining improvements to be completed by Pulte prior to Town assumption of maintenance and operation responsibilities. Staff will bring to the Board in the future a formal request to accept the roads as part of its public street system.
2. The Planning and Zoning Board's comment regarding grading was generated out of a concern for public safety for those walking around the lake. **Standards:** In considering possible implementation of this condition to adhere to current slope standards, staff notes that there were no "Town standards" in place at the time of adoption of the site plan; City of Raleigh standards adopted previously by reference were limited to water and sewer utilities. While the *proposed* Engineering Standards currently under review by the Planning and Zoning Board does contain slope provisions (Section 4.3 of the new draft *Design and Construction Ordinance* specifies maximum "Cut and Fill" slopes), there is no legal basis for now requiring other newer or "to be adopted" standards. These standards may also be difficult to apply around the edge of a lake, which is not the normal situation to which such standards are typically applied). Finally, CD's for the site do not show enforceable slopes or elevations. **Safety:** With regard to the safety concerns, staff notes that areas around the lake with steeper slopes (eastern shore) also are heavily vegetated; the trees and thick vegetation would to an extent mitigate the danger of falling due to steep slopes. In addition, there was no condition regarding the slope around the larger lake

within the Breckenridge subdivision (to the east). **Other:** Grading near the water's edge could in some areas require the removal of substantial amounts of trees and other vegetation and alter the appearance of the area. In investigating the shoreline in response to the Planning and Zoning Board's motion, Pulte has identified some erosion problems which they intend to correct.

3. The agreements between Pulte and the homeowners associations are between those parties and outside the scope of the Town's agreement with Pulte (see part #4 of the Agreement).
4. The protective screening was also recommended out of a concern for public safety for those walking around the lake. **Status of issue:** Staff notes that protective screening or some type of barrier was not raised as an issue at any meeting over the last two years with the HOA's, citizens, applicant, or staff. As mentioned above regarding the slope around the lake, the vegetation around much of the shoreline would appear to prevent persons from falling into the water. **Design:** The nature or design of such a barrier would presumably be based upon the advice of the applicant's engineer, with input from the HOA's and residents. A barrier might substantially alter the appearance of the shoreline. **Other:** As noted above, there were no conditions regarding a barrier around the larger lake in Breckenridge. No other lake in the town has such a barrier. If there is a safety concern, might warning signs be posted instead? Finally, if the walking trail is not constructed (as recommended by the HOA's), pedestrian traffic would likely be light and the barrier may not be necessary.
5. This option is included as item #4 of the agreement.

Staff will be available to discuss any issues or comments you may have.

\*\*\*\*\* END\*\*\*\*\*

*Commissioner Snyder* asked about a dollar figure put on specific items that were not completed by Pulte.

*Mr. Gauss* stated that Pulte negotiated the value of two greenways and a traffic light that were not constructed. The amount negotiated for the traffic light was paid directly to the town. The amount negotiated for the walking trails or greenway was being handled directly through the Breckenridge Homeowners Association (HOA).

*Commissioner Snyder* stated that answered his question about what happened to the money since it was decided not to do the walkway or the protective screening.

*Mr. Gauss* stated that the Planning and Zoning Board recommended the grading and protective screening be done in addition to the agreement between Pulte and the HOA.

*Mayor Pro-Tem Martin* asked if the resolution and the recommendation by the Planning and Zoning Board were different.

*Mr. Gauss* stated that the Planning and Zoning Board recommended the items included in the letter mentioned earlier with 2 additional items and this was what staff was trying to bring to the Board's attention.

*Mayor Pro-Tem Martin* asked about guidance by staff to the Planning and Zoning Board regarding these items.

*Mr. Gauss* stated that these were deliberations made by the Planning and Zoning Board that had not come up in other discussions. There were concerns about public safety that the 2 additional recommendations addressed.

*Commissioner Murry* stated that the resolution did not provide for a walking trail around the lakes.

*Mr. Gauss* stated that was correct.

**ACTION:** *Commissioner Snyder* made a motion to approve the resolution as presented. *Commissioner Murry* seconded the motion, which passed unanimously.

Tab B [2007-111](#) Adopt Resolution 2007-111 Pertaining to the Grave removal request for the Carlton-Markham Cemetery

**MOTION:** *Commissioner Murry* made a motion to approve. *Commissioner Lyons* seconded the motion.

*Commissioner Snyder* stated that there was some concern about displacing this cemetery and asked if it was being moved for any reason other than the land owners' request.

*Alycia Kempf* stated that the cemetery was requested to be moved for development and the cemetery was not being maintained. The new location would be in a new area with proper care and maintenance.

*Commissioner Snyder* stated that he understood that there would probably be no objection from anyone that had someone buried there, but he wanted to check.

**VOTE:** The motion passed unanimously.

## 10. Consent Agenda Items

**ACTION:** *Commissioner Murry* made a motion to approve the consent agenda as presented. *Mayor Pro-Tem Martin* seconded the motion, which passed unanimously.

Tab L [2007-122](#) Adopt Resolution 2007-122 to approve the Morrisville-Carpenter Road Construction Contract

## 11. For the Good of the Order

- Administrative Matters
  - NCLM League Conference - October 14-16, 2007 – Fayetteville

*Mr. Whitson* stated that he sent an outlook invitation to the Board for the pre-conferences and the event. This could be accepted or declined. It was important to move quickly to ensure the best location for hotel reservations.

- Planning Conference – September 26<sup>th</sup> – 28<sup>th</sup> Friday Center, Chapel Hill
  - On the 28<sup>th</sup> at the luncheon, the Town of Morrisville will receive the North Carolina Marvin Collins Award for the Town Center Plan on behalf of the NCAPA

*Ben Hitchings, Planning Director* stated that it would be great to have as many attendees possible for the luncheon. .

- MCA 2008 students – Todd Wright and Blake Mills

*Mr. Whitson* stated that Todd Wright and Blake Mills were selected to attend this year's Municipal Administration Course (MAC). There were 8 staff members that were alumni of this course.

- Commissioner Comments

*Commissioner Murry* asked about the speed trailer on Parkside Valley Drive and stated that he was grateful it was there.

*Ira Jones, Police Chief* stated that it was set to be on at specific times.

*Commissioner Lyons* asked about the town trying to get hotel tax funds.

*Mr. Whitson* stated that there was no invitation, which would come from the County when and if they identified additional funds available.

*Commissioner Carrow* stated that County Commissioners agreed that the funds identified for the Cary Aquatics project could still be utilized by Cary if they came up with another qualifying project, which had not happened yet. The next round of major appropriations would be in several years when enough funds collected. It was some members' opinion that Morrisville would be first in line for funds allocated in that next process because Morrisville was the second largest generator of those funds and had not received any yet. The town should position themselves by identifying a project that may qualify under the given criteria and invite the decision makers to have a meeting, take a tour and be shown the financial position of the town.

*Commissioner Lyons* asked why each town did not have their own revenue.

*Commissioner Carrow* stated that it was a process that had to be agreed on by local folks and put in place by the legislature. To undo that, other leaders and the legislature would need to be coordinated.

*Commissioner Murry* stated that the Community Appearance Committee was doing a great job. The location and efforts of the Yard of the Month Program were noticeable and appreciated.

*Ben Hitchings, Planning Director* stated that Dawn Raab the Planning Technician was doing a good job with that program and Committee.

*Mayor Faulkner* stated that Commissioner Murry passed the bar and congratulated him. Staff was taking the bond trip and was hoping to increase the rating and get better interest rates. The results should be forthcoming a few weeks afterwards.

*Commissioner Carrow* stated that for the Interlocal funds discussion regarding the hotel tax, there was a smaller process in between major projects where funds up to a million dollars could be dispersed. When this occurred there was not much time to submit so it was best to be prepared.

*Mayor Faulkner* stated this could be added to the next work session and an update of the meetings could be sent out to the Board.

## 12. Closed Session

**ACTION:** *Commissioner Murry* made a motion to consider land acquisition pursuant to N.C. General Statutes § 143-318.11 (a) (5). *Mayor Pro-Tem Martin* seconded the motion, which passed unanimously.

The Board, Frank Gray/Town Attorney, John Whitson/Town Manager, Diana Davis/Town Clerk and Tony Chiotakis/Senior Director of Community Services went into closed session at 8:09 pm.

**ACTION:** *Commissioner Murry* made a motion to adjourn the closed session. *Commissioner Snyder* seconded the motion, which passed unanimously.

*Mayor Faulkner* adjourned the closed session.

### **13. Adjournment**

**ACTION:** *Commissioner Murry* made a motion to adjourn the business session meeting. *Commissioner Snyder* seconded the motion, which passed unanimously.

*Mayor Faulkner* adjourned the business session meeting at 8:57 pm.

Adopted by the Morrisville Town Board this the 24<sup>th</sup> day of September, 2007.

---

Jan Faulkner, Mayor

<SEAL>

---

Diana R. Davis, Town Clerk