

VILLAGE OF WESLEY CHAPEL
COUNCIL MEETING MINUTES
June 8, 2009 – 7:00 P. M.

The Council of the Village of Wesley Chapel, North Carolina, met in the Fellowship Hall of the Wesley Chapel United Methodist Church at 120 Potter Road South, Wesley Chapel, North Carolina.

Present: Mayor Clinton, Mayor Pro-tem Croffut, Council Members Bradford, Horvath, Pierce

Others Present:

Village Clerk/Finance Officer: Cheryl Bennett
Planning/Zoning Administrator: Joshua Langen
Village Attorney: George Sistrunk

Concerned citizens: Carol & Jimmy Mullis, Doug Byrum, Butch & Becky Plyler, Jason Galloway, Mark DiBiasio, Robert Nichols, Jerry Davis, Mary Martin, Scott Garner, Terry Byrum, Dr. Michael & Maria Land, Marshall Surface, Susan & Stephen Keeney, Tim Barbee, Gayla & Chuck Adams, Julie Brown, John R. Urban, Jason Surface, Kara Walker, Dan Ashworth, Hannah Maxson, Carolyn Richards, Regina Hilbert, John Rogers, Anthony Burman, Ron Salimao, Kevin Hanson, David M. Broome, Steve Fellmeth

Meeting was called to order at 7:00 PM and a quorum was present.

1. PLEDGE OF ALLEGIANCE / INVOCATION

Mayor Clinton led the Pledge of Allegiance and Mayor Pro-Tem Croffut gave the invocation.

2. PUBLIC HEARING ON 2009/2010 BUDGET

Mayor Clinton opened the public hearing on the budget.

Julie Brown spoke; she has been active in WCWAA and the Union County Athletic Council. She is a Park and Rec Committee member and was a Master Plan Committee member. She commended Council for budgeting funds for Parks and Rec. She noted the 641 Master Plan surveys showed support for parks and rec although less willingness to pay for services, and said she is not a proponent to raise taxes. She said the Committee is taking what the citizens said in the survey and working to make things happen.

The Public Hearing was closed.

3. CONTINUATION OF RECESSED PUBLIC HEARING ON CUP B2-09-01, PARALLEL RE-ZONING AND CUP REQUEST BY MARSHALL SURFACE DBA HILLBILLY PRODUCE FOR 6114 WILL PLYLER ROAD
John Urban, architect for the applicant, said since the last meeting the engineer reviewed and approved the stormwater plan with her June 2, 2009 letter. He also got a water allocation letter dated March 19, 2009 to Mr. Ashworth at Lash Engineering. Tim Barbee was present to answer questions about the Septi-Tech system. Jason Surface got ten copies of petitions from neighbors in support of the project. Mr. Urban noted the Sunday Observer had an article that was a testimonial to farmers markets; also regarding Julie Brown's comments, this could lead to a passive or pocket park which the survey showed support for.

The clerk swore in Tim Barbee. He said he hasn't gotten a full soil report yet, but the system could be as simple as a septic tank or a pre-treat or engineered system. There are seventeen in the State, and he represents two of them. This system is Septi-Tech; it takes effluent from a standard septic tank, circulates it underground through a media of polystyrene beads, every cubic foot has 231 square feet of surface where good bacteria live; introducing oxygen the good bacteria destroy the bad bacteria. Levels of bacteria and suspended solids are reduced by 98% and nitrogen by 40%. If the site requires, they can also use sub-surface drip irrigation tubing as a way of spreading out the effluent over a larger area. An EPA study shows the media lasts at least two hundred years. He noted there are several systems in operation, and he would be glad to show them to Council.

Bradford asked whether the drip irrigation releases liquids on the surface; Barbee said the drip tubing is buried six inches below the surface. The most it can put out is .6 gallon per hour per square foot, but they generally dose at a pint of effluent per square foot per day, six inches below the surface. The area will be grassed over and the roots help to keep it dry. Horvath asked about the existing systems; there are not yet any commercial applications in Union County, but there are some Wendy's restaurants and Hannaford food stores elsewhere. Pierce asked if Barbee was providing the equipment, and what capacity the bid would be based on; Barbee said it depended on what Lash Engineering but maybe 100 – 150 gallons per day. He said each bedroom is rated on 120 gallons per day, so that equates to a one or two bedroom house. Traditionally the septic tank is pre-cast concrete; their pre-treat tank is delivered in a one piece poly tank with a fifty year warranty. The septic tank is a two piece with a mid seam joint sealed on site; the county would require a leak test on site. If there is an initial problem it is usually where the riser is attached; he estimated less than one per cent has a problem, and they can be fixed with hydraulic cement. Croffut asked about odor; Barbee said the M4 is the smallest model, and it does up to 500 gallons per day. The tanks are buried below ground, the only connection point is a threaded sealed riser at ground level, the passive air intake snorkel pulls air in; the snorkel also has a foam filter to absorb when the unit is not working. It is a three inch PVC that is two feet tall, it can be mounted on a tree or post just below grade level within one hundred feet of the unit. Barbee noted there is a control panel with an audio and visual alarm; it tracks usage for up to 90 days; they are generally notified within

two days before any leakage. The system is self monitoring, and lets them know if a float or pump goes out.

Mayor Clinton asked Langen to submit the letter from Bonnie Fisher for the record. Langen summarized the June 2, 2009 letter from Bonnie Fisher at US Infrastructure to himself; they reviewed the conceptual stormwater management plan and approved them as submitted; a final design and review would be required when final construction documents are submitted. She noted that a note should be added to the conditional zoning plan acknowledging the owners responsibility for operation and maintenance of the detention facility and disclosure of that obligation to future owners. The Mayor asked the applicant if they objected to that; they did not.

The public comments portion of the public hearing was closed.

4. INFORMAL PUBLIC COMMENTS

Mary Martin spoke in favor of Council voting on the fire department CUP and avoiding a delay. She felt the need and the funding are now; she also challenged council to let known any reservations.

Julie Brown spoke; she said with the current economy conditions and a lot of people out of work, it is a time to leverage what's going on now and put local people to work for parks and recreation if we get our plan in place. She also noted they got 150 surveys from the youth at the high school to get their input.

5. ADDITIONS, DELETIONS, AND / OR ADOPTION OF AGENDA
Item 8 became 8A; Item 8B. "GENERAL COMMENTS ON FIRE SERVICE" was added; and Item 10 became 10A; Item 10B. was added "POST OFFICE RESPONSE". Pierce made a motion to approve the agenda with the above changes; Horvath seconded the motion.

The motion passed unanimously.

6. APPROVE MINUTES FOR:
Council Meeting May 11, 2009
Advance May 1 and 2, 2009

Croffut made a motion to approve the minutes for the Council Meeting May 11, 2009, and the Advance May 1 and 2, 2009. Bradford seconded the motion.

The motion passed unanimously.

7. STAFF REPORTS

a. Review and approve the Village Financial Reports dated May 31, 2009, submitted by Cheryl Bennett, Finance Officer

Bennett reported she transferred \$50 from dues to tax collection fee; \$900 from security to engineering consulting. At this point all accounts look like they should come in below budget. The report from Union County on tax collection through the end of April shows 97.19% of taxes collected. We received our alcoholic beverage tax higher than expected at \$27,135. Bradford made a motion to approve the May 31, 2009 financial statements; Pierce seconded the motion.

The motion passed unanimously.

Budget Report				
	May 09	Jul '08 - May 09	Budget	% of Budget
General Fund				
Revenues				
Fees and Licenses				
Cable Franchise (from Time Warn	3,129.00	10,109.00	12,000.00	84.24%
Engineering Fees Reimbursement	1,120.00	6,990.13	8,000.00	87.38%
Zoning Permit	420.00	5,565.00	8,000.00	69.56%
Privilege Licenses	185.00	18,404.54	21,000.00	87.64%
Annexation Exp Reimbursed	0.00	30.00	300.00	10.0%
Misc. Fees	49.20	2,079.28	200.00	1,039.64%
Total Fees and Licenses	4,903.20	43,177.95	49,500.00	87.23%
Interest Earned	161.46	19,786.63	24,000.00	82.44%
Property Tax Income				
Current Year Property Tax	2,038.02	145,518.86	113,193.00	128.56%
Delinquent Taxes	0.00	854.15	600.00	142.36%
Interest/Ad Fee on Taxes	29.86	371.53	200.00	185.77%
Utility Ad Valorem	0.00	0.00	600.00	0.0%
Vehicle Registration	653.19	7,794.64	7,983.00	97.64%
Total Property Tax Income	2,721.07	154,539.18	122,576.00	126.08%
Revenue Sharing				
Alcoholic Beverage Tax	27,135.12	27,135.12	19,000.00	142.82%
Cable (from State)	0.00	43,340.90	40,000.00	108.35%
Excise Tax (Piped Natural Gas)	0.00	6,726.00	10,500.00	64.06%
Franchise Tax (Electric Power)	0.00	88,034.00	120,000.00	73.36%
Sales & Use Taxes	2,476.54	21,860.11	40,000.00	54.65%
Telecommunications Tax	0.00	8,342.61	12,000.00	69.52%
Total Revenue Sharing	29,611.66	195,438.74	241,500.00	80.93%
Total Revenues	37,397.39	412,942.50	437,576.00	94.37%
Expense				
Operating Expenditures				
Tax Collection Fee	16.36	2,167.38	2,200.00	98.52%
Contingency	0.00	0.00	20,800.00	0.0%

Advertising - Clerk	0.00	0.00	800.00	0.0%
Annexation Expense	0.00	49.00	4,000.00	1.23%
Annual Retreat	1,228.34	1,228.34	2,000.00	61.42%
Books & Literature	0.00	0.00	600.00	0.0%
Dues and Subscriptions	0.00	9,803.94	12,350.00	79.38%
Election Expense	0.00	1,168.25	10,500.00	11.13%
Insurance - Liability	0.00	7,775.63	9,600.00	81.0%
Insurance - Workmen's Comp	0.00	470.00	800.00	58.75%
Land Maintenance	0.00	0.00	3,000.00	0.0%
Master Plan (incl. survey)	0.00	0.00	5,000.00	0.0%
Town office Maint.	0.00	439.45	1,800.00	24.41%
Misc town office	0.00	203.15	1,975.00	10.29%
Newsletter	0.00	3,956.60	6,500.00	60.87%
Office Expense				
Office Equipment Repairs	0.00	180.00	1,000.00	18.0%
Office Equipment	0.00	380.41	2,000.00	19.02%
Awards	0.00	0.00	500.00	0.0%
Electronic Commun (Tele/RR)	219.76	2,849.60	4,800.00	59.37%
Office Supplies	10.99	1,073.85	3,000.00	35.8%
Total Office Expense	230.75	4,483.86	11,300.00	39.68%
Postage and Delivery	86.34	336.51	700.00	48.07%
Rent	1,300.00	14,330.00	20,000.00	71.65%
Seminars	0.00	425.00	2,000.00	21.25%
Travel & Entertainment	207.15	2,026.69	3,000.00	67.56%
Utilities- Temp. Town Hall	113.20	1,760.63	4,000.00	44.02%
Welcome Committee	0.00	0.00	1,000.00	0.0%
Total Operating Expenditures	3,182.14	50,624.43	123,925.00	40.85%
Gen. Govt. Salaries				
Admin. Assistant	262.50	3,168.75	3,520.00	90.02%
Allowance for Salary Adjustment	0.00	0.00	43,435.00	0.0%
Mayor	0.00	3,600.00	4,800.00	75.0%
Mayor Protem	0.00	2,250.00	3,000.00	75.0%
Council Salary	0.00	5,400.00	7,200.00	75.0%
Clerk Salary	2,598.75	22,532.50	31,200.00	72.22%
Finance Officer Salary	710.76	8,351.43	9,240.00	90.38%
Payroll Taxes	567.49	7,016.39	9,900.00	70.87%
Payroll exp - Unemployment	0.00	0.00	120.00	0.0%
Fringe Benefits - Insurance	545.00	5,354.77	12,000.00	44.62%
Fringe Benefits - Retirement	0.00	5,011.81	5,780.00	86.71%
Total Gen. Govt. Salaries	4,684.50	62,685.65	130,195.00	48.15%

Planning & Zoning				
ETJ costs	0.00	13.93	1,000.00	1.39%
Administration (COG)	0.00	0.00	8,000.00	0.0%
P/Z Admin. Salary	3,846.16	44,230.84	50,000.00	88.46%
Planning & Zoning Board Salary	0.00	2,184.00	4,540.00	48.11%
Advertising	69.96	585.18	1,800.00	32.51%
P/Z Office Expense	0.00	148.95	1,200.00	12.41%
Planning/Zoning Expense	<u>129.25</u>	<u>534.55</u>	<u>800.00</u>	<u>66.82%</u>
Total Planning & Zoning	4,045.37	47,697.45	67,340.00	70.83%
Professional Fees				
Accounting	0.00	3,000.00	3,400.00	88.24%
Engr. Consulting	1,425.35	7,598.65	9,900.00	76.75%
Legal Fees	2,552.02	30,037.98	48,000.00	62.58%
Security	<u>0.00</u>	<u>200.00</u>	<u>216.00</u>	<u>92.59%</u>
Total Professional Fees	3,977.37	40,836.63	61,516.00	66.38%
Parks & Recreation	0.00	4,426.15	5,000.00	88.52%
Public Safety	0.00	0.00	4,000.00	0.0%
Transportation Study	117.50	24,935.50	38,000.00	65.62%
Capital Outlay				
Computer Equip.	0.00	0.00	3,600.00	0.0%
Furniture & Equipment	0.00	0.00	2,000.00	0.0%
Software	<u>0.00</u>	<u>0.00</u>	<u>2,000.00</u>	<u>0.0%</u>
Total Capital Outlay	0.00	0.00	7,600.00	0.0%
Total Expense	<u>16,006.88</u>	<u>231,205.81</u>	<u>437,576.00</u>	<u>52.84%</u>
Excess of Rev. over Exp.	<u>21,390.51</u>	<u>181,736.69</u>	<u>0.00</u>	<u>100.0%</u>

**Balance Sheet
May 31, 2009**

ASSETS

Checking/Savings

Fifth Third Bank Checking	57,956.28
Fifth Third Bank Money Market	373,790.77
CD Ded land 5th3rd 11.30.09.	79,027.17
CD Ded land 5th3rd 11.02.09 4%.	79,290.02
CD 4.45% 9.6.09/8.6.10	111,184.99
CD 5th3rd 4%,11.30.09 .530	92,011.17
CD 5th3rd,4%, 11.30.09 4%.514	92,011.17
Citizens South CD Bldg 11.09.09	233,843.28
BB&T CD 01.23.10-3.84%	300,000.00
BB&T CD 10.21.09. .568	500,000.00

Petty Cash Fund	50.00
Total Checking/Savings	<u>1,919,164.85</u>
Accounts Receivable	
Misc. Fees Receivable	2,089.44
Total Accounts Receivable	<u>2,089.44</u>
Other Current Assets	
Prepaid Exp.	850.00
Property Tax Rec.	3,828.00
Allowance for Doubtful Accounts	-960.00
Total Sales Taxes to be Received	<u>556.93</u>
Total Other Current Assets	<u>4,274.93</u>
Total Current Assets	<u>1,925,529.22</u>
Fixed Assets	
Land	55,757.91
Office Equipment	13,569.26
Accumulated Deprec.	<u>-10,952.36</u>
Total Fixed Assets	<u>58,374.81</u>
TOTAL ASSETS	<u><u>1,983,904.03</u></u>
LIABILITIES & FUND BALANCE	
Other Current Liabilities	
Escrow from Developers	45,076.00
Prepaid Privilege Licenses	25.00
Deferred Revenue	2,868.20
Payroll Liabilities	<u>429.34</u>
Total Other Current Liabilities	<u>48,398.54</u>
Total Current Liabilities	<u>48,398.54</u>
Fund Balance	
Fund Bal. inv. in Fixed Assets	58,374.81
Fund Balance	1,304,525.62
Reserved for Parks & Recreation	157,025.09
Unres., Designated for Town Hall	233,843.28
Excess of Rev. over Exp.	<u>181,736.69</u>
Total Fund Balance	<u>1,935,505.49</u>
TOTAL LIABILITIES & FUND BALANCE	<u><u>1,983,904.03</u></u>

b. Presentation of Planning and Zoning Report by Joshua Langen

Langen reported there were 13 permits. Regarding amendments; Planning Board has looked at changes to the Rules of Procedure; and to the Table of Uses for

Outdoor recreation uses; zoning has to be assigned for annexed parcels; the mobile vendor amendment should be done in June. The Planning Board has changes regarding HOAs are in process and sign and CUP changes are also coming up. Langen will to continue to monitor the bonds. Stephen Keeney said Planning Board is still considering the outdoor recreation recommendation, and he didn't know that had been passed to Council. Langen said he needed to amend that; initially Planning Board voted to approve the change; at the last meeting they voted to rescind that change and also a motion to recommend denial.

Mayor Clinton noted that is on the agenda for next week's public hearing.

Pierce asked about updates on Bank of America or Chick Fil A. Langen said the status on Chick Fil A looked good, they were working with the engineer; Bank of American had some landscaping issues, they had to shorten parking spaces from 19 feet to 17 feet because a water utility pipe was in the way. Regarding McDonald's they have only gotten a letter regarding the zoning. Mayor Clinton asked about the berm; Langen said he left them a message today about it. Becky Plyler said the Planning Board got false information. Mayor Clinton said the Planning Board makes recommendations, and the written information needs to come from Planning Board at the Public Hearing about what you were told first and what was wrong and why you changed your mind.

The Coffee Table application has been processed. Mayor Clinton said their latest newsletter said they would open August 2, but not unless other tenants were ready to open (you can sign up for their newsletter at wesleychapelcoffee.com). Becky Plyler asked about the berm; Langen said they claimed he told them to put up a berm, but he didn't; landscaping or a wall is required, and he didn't know where the berm came from.

8A. DISCUSSION AND POSSIBLE VOTE ON CUP 09-01, CONSTRUCTION OF FIRE STATION AT 315 WAXHAW-INDIAN TRAIL ROAD, WAXHAW, NC 28173

Mayor Clinton reported that at the last meeting we closed the public comments portion of the public hearing, although the hearing itself was open so that Council could ask questions if needed of any of the witnesses. Discussion by the Council began. Bradford had a question on map C010, where there is a 19.2 foot buffer with a fence, regarding how long the fence went down the right and left sides; Jason Galloway said he was not sure of the length, it is where the X's are, but it extends until the buffer becomes twenty five feet wide. Bradford read from the definition of a rear yard and inquired of Langen as to where the rear yard would be in this situation, since this is not a typical rectangular lot. Langen said you don't generally have a rear yard connecting to the front yard. So if you have a front yard, you almost have to have two side yards. On the right, Langen considered the entire right side to be the side yard. Langen said the definitions really don't tell you; on a corner lot you have two fronts and two side yards. Langen said you really have to look at it, and make a determination yourself. He said the definitions actually determine the area between the building and the line in order to determine what the yard, not the yard line, but the yard is. Langen said

his interpretation of the rear yard is, take the rear lot line which he determined is lots one through four of Plyler Ridge and move that line parallel until you bump into a building. Once you've done that, you've just defined the rear yard. The side yard works the same way but it's worded backwards, it says draw a line from the nearest point perpendicular to the nearest side lot line and then figure out the side yard. He said you really have to determine the yard line yourself; it helped him determine the yard, not the yard line. Bradford asked about the rear setback. Langen said you could interpret it to be a number of yard lines, Bradford said in this situation, a good portion of the area fronting lots 10, 9, 8 and part of 7 could also be considered part of the rear setback because they are facing the rear of the building, if this were in a rectangular format, those lots would be part of the rear setback. Langen said if you were to do that, you would have to take the entire line. Bradford asked if you would have to take the whole line, or just from the back of the building. Langen said he's never seen a situation where you cut the line in half, but since it has a jog in the line, you might make the interpretation that it has two rear yards, and the side yard is facing lot six. Langen said he didn't have any case law or examples to tell you if that is possible. Langen also said lots are generally deeper than they are wide, and thus his interpretation was the longer lines are the sides, and the shorter lines are the front and rear. Langen said you may well be able to cut a line in half, he had just not seen that. Bradford said the impact to the neighbors in lots 8, 9 and 10 seem to be at least as great if not greater than the lots 4, 3 and 2 in Plyler Ridge, if the purpose of a setback is to reduce impact on neighboring properties, then that makes sense.

Pierce asked, then you consider the entire right property line, fifty per cent of the rear of lot 10, 9, 8, 7 and 6, all side yard? Langen said yes he did. Pierce asked if that would yield no rear yard. Langen said lots 1, 2, 3 and 4 would be the border of the rear yard. Pierce said you would think the side of the building would relate to the side yard and 10, 9 and 8 don't relate to that at all. Langen said it is a difficult lot, and subject to interpretation, and he didn't have the case history in his mind to tell if it is possible to have two rear yards.

Architect Scott Garner said they had talked to Justin, and Langen made the same interpretation. Pierce asked if he would agree that there is more than one interpretation, and he said no.

Mayor Clinton said if she is standing in lot 8 and facing the back of the fire station, you will see a six foot wall at the property line, and when you go 19.2 feet across the property line you will see a retaining wall, and between the property line and the top of the retaining wall is how many feet? Galloway said six feet. Mayor Clinton said the elevation change is at the back of lot 8. The wall is six feet high, and the elevation change is six feet high, so right on the other side of the retaining wall is the driveway where the fire trucks will pull in and then you've got the building. So basically, with the elevation change, the six foot high wall provides me no buffer, basically I am going to look over that wall and see the wheels of the fire truck. Galloway said there are a lot of trees. Mayor Clinton said but the trees are on the property owners' side. Garner said there will be shrubs and trees in the buffer per the ordinance. Mayor Clinton said they won't provide much buffer for a long while.

Mayor Clinton said her problem with the plan is this right hand setback with the height, intensity and traffic of the use, she didn't feel enough of a buffer to the property owners was provided. This is their backyard, they will have children playing there and there is not enough buffer. She said she did have a stormwater concern previously, but that had been addressed.

Garner said we met all the buffer requirements in the ordinance. The applicant's attorney said none of the adjacent property owners have offered any evidence against this plan. Garner said the adjacent Homeowners Association was in favor of the plan. Mayor Clinton said we don't have any evidence that the person who spoke had the permission of the property owners to speak on their behalf.

Bradford asked if the lighting plan had been reviewed. Langen said it was submitted, reviewed and found adequate.

Horvath asked a question of the attorney, in the book submitted as evidence he compared other facilities to this one, did he know how much the others cost.

Broome said he did not know how much they cost. Horvath said to have a reasonable comparison, there needed to be a complete comparison, since this is about public welfare, etc. He also said the applicant has the burden of proof.

Steve Fellmeth the HOA President at Wesley Glen started to speak. Mayor Clinton said this is Council deliberations, public comments are over, so please do not speak unless there you've been given permission. Fellmeth said there are people here from the Glen at Wesley Oaks Homeowners Association that live adjacent to that area if you want to ask them questions and there was a meeting with the Fire department and he could give more information on that meeting. Kevin Hanson, vice president of the HOA was present, and he said he did live in a nearby lot, but not lot 6, 7, 8, 9 or 10.

Mayor Clinton asked Langen for a clarification on Ordinance Section 4.2 Screening and Landscaping, item 1, when screening is in the form of natural vegetation, a buffer strip at least ten (10) feet wide shall be planted. Langen agreed. Mayor Clinton said that's what I see on the plan. She asked on item 2, where there is a table of how big the buffer strip needs to be, buffer requirements include a given minimum distance separation from the property line and required planting trees and shrubs within the buffer. She asked if the ten foot planting strip could be within that 19.2 feet, or is that 19.2 feet the required minimum distance between the property line and the planting strip. Langen said he thinks the buffer strip is part of the buffer width, so yes it can be part of the strip. Bradford said so the ten feet is included in the twenty four or twenty six feet in this scenario, Langen replied yes.

Mayor Clinton said we need an understanding of the proposed changes our engineer came up with regarding stormwater. Josh had a new letter dated May 27, 2009 saying the proposed stormwater plan is recommended for approval and it provides for detention from a 50 year and 100 year storm. Mayor Clinton said she was looking at a plan dated April 6, and the size of the pond hadn't changed any. Pierce said she would like to clarify James Kubach's comments and asked Chief Byrum the size of the fire districts, including stations 26 and 31. Chief Byrum said it is thirty-eight (38) square miles. She asked roughly how many homes it contained. He said that changes regularly. She asked if it was roughly 18,000

residents. Byrum said according to the survey they fill out for their insurance coverage, they estimate it at roughly 25-28 thousand. Pierce said the fire stations would approximately equally distribute the responsibility for the homes. Pierce asked if there was any kind of planning document to look at the number of homes that would grow. The chief said if you look a map, there is so much open land. Pierce asked if there was any hard data on how many permits were out there. The chief said with all the open land, his guess was 15-20 thousand more homes out there. Pierce asked if they had a capital plan. Chief Byrum said there was a twenty year plan on trucks and for buildings, according to it this building should be up and going. It was made about four to five years ago. Pierce asked if they were aligned with the plan or ahead or behind, the reason being five years ago she never imagined growth would be like it is now. The Chief said the call volume was going up, and continues to go up. Pierce asked if they keep their reporting with the state current. Chief Byrum said yes they do. Pierce said she had gotten some info off a website and it shows all the fire departments in Union County and all their calls, it only identifies one call that they had reported. Chief Byrum said all the departments (except Bakers which send their info directly to the state) send their info to the County who is responsible to report to the State. He also said the Wesley Chapel VFD reports to Weddington and Marvin monthly. Pierce said it only showed one call for Wesley Chapel, and it was a false alarm. The Chief said he could assure her they had more calls than that; they send their information in on time every month, the county may be behind sending it to the State. Pierce said this relates to public necessity. Pierce asked if they do any of the voluntary accreditation with the Commission on Fire Accreditation. Byrum, said on what? Pierce said the Center for Public Safety Commission on Fire Accreditation? Chief Byrum said we normally do not. Pierce asked if the information was sent to the County Fire Marshall. Byrum said the Fire Service. Pierce said it is NC GS 58.79.45 which requires the information; the Chief said yes it is a requirement. Pierce had a question for Butch Plyler, that you definitely do not qualify for a stimulus funding grant? Plyler said they do not, but they might possibly qualify for another grant for a building.

Croffut asked regarding the changes in the square footage, is the final figure still the same? Garner said it is still 24,754 square feet. They started with a larger building and tried to reduce the size of the building. Bradford asked was it a change in calculations or a change in the size of the building. Garner said the size of the building was reduced from a year ago, but in the last few months the only changes were in calculations of porches, etc.

Mayor Clinton read the definition of a CUP from the Zoning Ordinance Section 2, and from Section 6.4 the Village Council decision, and that additional reasonable and appropriate special conditions may be imposed. Voting is done in quasi-judicial conditions, and no more than a majority vote is needed. Each finding of fact is voted on individually, and if you can't vote affirmatively without an additional condition, it should be brought up at that time. Attorney Sistrunk agreed.

The findings of fact were now voted on.

- a) The use will not materially endanger the public healthy or safety if located where proposed and developed according to the submitted plan.

Council approved this finding of fact unanimously, 4-0.

- b) The use meets all required conditions and specifications.

Bradford said she had a concern for the impact to lots 10, 9, 8 and part of 7 on the Wesley Oaks side, since they are facing the rear of the building, they will have similar impacts, and she suggested a condition that the buffer on that side be increased to forty (40) feet. Mayor Clinton asked if the applicant would consider that condition. Jason Galloway said if you take out the driveway its fourteen to fifteen feet, it still doesn't get you to forty feet. Horvath asked if we could discuss this. Sistrunk said yes. Croffut asked what the maximum we can expand it to is. Horvath asked if buffering and landscaping could be improved, would an alternate of more mature trees be acceptable. Pierce said she concurred, but for a different reason, because this concurred to her definition of side and rear. Bradford asked if fifteen feet and nineteen feet is as far as it can go. Galloway said yes. Bradford said she didn't know what the alternatives were but this is not enough; what are the options. Horvath said depending on the types of screening, they could do a better job. The current trees are eight feet tall and the shrubs two feet tall. Horvath asked if evergreens work better, and require no more maintenance. Bradford said she thought it was a space issue more than a growth issue; there wasn't enough room for evergreens. Mayor Clinton asked if there was an opportunity to drop the elevation of the whole site. Galloway said no. Pierce said her interpretation of the rear yard is from the two rear corners of the building straight back. Bradford agreed. Pierce asked if there was a possibility of raising the height of the fence. Mayor Clinton said the maximum height in residential is eight feet. Langen said if you put the eight foot fence on the retaining wall, it would give you about fifteen feet of visual barrier. Plyler asked what the difference between Leyland Cypress and a wall is. Pierce said a wall won't die. Plyler asked if the concern is regarding lots 6-10, what they will see. Pierce said she wouldn't put it like that, but the concern is screening them, yes. Pierce read from the ordinance, "shall materially screen the subject use from view of the adjoining properties". Garner said they could increase the height of the fence to eight feet, but to move the fence to the top of the masonry wall would be technically very difficult and expensive. Mayor Clinton said, you understand the concern though, the change in elevation from the top of the retaining wall, where the driveway is and where vehicles will come in an out, and also the base of the building, your building elevation is basically starting at the top of the retaining wall, you go down five or six feet at the place where the elevation changes the greatest to the property line and then you put up your six foot fence there; if I'm standing on the back deck of one of these houses, and I'm looking that way, that wall doesn't give me any buffer because the elevation change is the same height as the wall. Garner said it tapers, the ground is not level, it tapers from zero to six feet, the more effective way to buffer it would be to increase the number of trees

or the size of the trees between the retaining wall and the fence. Bradford said she had a concern, if you look at the definition of buffer, in addition to screening, she read from the ordinance, "A strip of land with natural or planted vegetation located between a structure and a side or rear property line intended to separate and partially obstruct the view of two adjacent land uses or properties..."; but getting to the land uses portion of that, if you look at lot 9, they are nineteen feet or less from a parking lot, that's not a great distance at all. And you've got the traffic of the trucks coming through, going into the bay on the right, and for maintenance work, I'm not sure of the frequency of the traffic, but that's right up against somebody's backyard. Plyler said you could put certain kind of trees, what I hear is a concern for what they see from their backyard, so you could put in something tighter like Leland cypress; the view right now is pitiful. Whatever we build will be an improvement over what's there now. What would be most cost efficient would be to put more shrubbery or a type of tree that would hide and be more screening. Bradford said you are talking about what you see now, is the current fire station. Plyler said yes. Bradford said it's not as close to their property line. Plyler agreed, it is not as close but if you use the proper screening with the nineteen feet with evergreens, you will not see it year round. Chief Byrum said you could throw a rock between the Wesley Oaks homes and the shopping center; Mayor Clinton said but you can't stand there and look right at a store, they have a large berm there and a fence on top of the berm that buffers them. Plyler said what if the fence was heightened, but we can only go up to eight feet; he suggested Leyland cypress; Bradford said Leyland cypress do tend to disease, if you look on Pineville-Matthews Road there tons of them that are brown, and it is not attractive. Plyler said over at Station 31 we haven't lost a one. Horvath suggested we could propose maintenance too, so if they die, they would be replaced. Plyler said they would agree with that. Pierce asked if they could add back the percentage of trees that they reduced it by when the fence was added. Garner said you can't do that, that ordinance says you can put the fence up and get a reduction, you are changing the rules. Pierce said Council makes the final decision. Plyler said the ordinance says 25% evergreens, we could increase the percentage and go to an eight foot tree, and in a couple of years you wouldn't be able to see the fire department. Pierce said the ordinance (section 4.4.2(b)) already says an eight foot tree. Pierce asked if they were proposing 100% evergreens; Plyler said I don't know if you'd want that. Pierce said you could have a variety of evergreens, not all Leyland cypress; shrubs for a variation of density from bottom to top. All shrubs should be evergreen, at least three feet tall, average of six feet in three to four years. Plyler said they could do three foot shrubs and eight foot trees, but questioned whether they would want 100% evergreens. Bradford said the issue is this is a very large structure, the lot is narrow there, and there is not a lot of room, and not much buffer. Pierce said the driveway where all the trucks return is right up against the buffer; the trucks are diesel and noisy and have a big impact. Garner said the trucks do not return and go around the back; they designed the driveway so the trucks can back in. The maintenance bay can be entered from the front or back, and it is not an everyday use. The side driveway is for secondary vehicles responding to an emergency;

they are facing the rear, and it is for rear exit. A fire captain said there are three trucks in the front, and three in the rear, and they would only be used after the primary trucks go out, and it would not be very often. Mayor Clinton asked if they wanted to vote on this finding of fact, either the use meets all required conditions and specifications or it doesn't. Some of the things being discussed might be a condition on (c), (d), or (e).

Council voted 2-2 on this finding of fact; Horvath and Croffut voting yea, and Bradford and Pierce voting nay.

Bradford said lots 10, 9 and 8 at a minimum should be part of the rear setback and it does not meet the requirements of the rear setback. Plyler asked if it should not meet side setbacks. Because it faces the rear of the building, Bradford said it should meet the rear setback, and be adequately buffered. Plyler asked if she was saying it did not meet the requirements of the rear setback. Bradford repeated she felt lots 10, 9 and 8 should also meet the minimums of rear setbacks. Pierce agreed with Bradford.

The Mayor voted to agree with Bradford and Pierce that it did not meet the setbacks. This finding of fact failed, 2 yeas, 3 nays.

(c) Use will not substantially injure the value of adjoining or abutting property, or the use is a public necessity.

Vote was 1-3; Croffut voted yes, Bradford, Horvath and Pierce voted no.

Mayor Clinton asked for documentation for the no vote. Bradford said she felt the impact on the adjoining properties as submitted will affect their resale values. Pierce said her no goes to public necessity, and a lot of factors were considered; in the current economic climate she was unwilling to burden the taxpayers with the expenditure at this time, yes we need a fire station, she is thrilled it is close to her home, a fire station is a public necessity; it's a timing issue for her, and Mr. Plyler said he didn't think he had any alternative funding, all of the other state and local entities are not expanding, we're struggling to keep up with basic day to day needs, so she does not think this exact project is a public necessity today; that doesn't mean it shouldn't be done in the future, a different scale that doesn't burden the taxpayers accordingly, but she didn't think this exact project today is a public necessity. Mayor Clinton re-read the finding of fact. Pierce said her no is the project is not a public necessity. Mayor Clinton said this is an "or" question, if you don't think it will substantially injure, you should vote yes. Pierce said there is a fire station there already there, so the use won't substantially injure. Mayor Clinton said this finding of fact says if it is a public necessity, then it is okay to harm the adjacent properties. Bradford asked if it is the use or the proposed project, because she felt this particular plan was a problem with the lack of space and buffering was injurious, but a smaller or differently configured fire station would be fine. Attorney Sistrunk said this is a CUP, so you are voting on this particular project. Pierce asked Clerk Bennett to clarify the "or", she deferred to Attorney Sistrunk. He said it is Council's job to interpret the ordinance, but regarding the "or" his legal interpretation was to agree with Mayor Clinton's.

The vote was re-taken; it was 3-1. Croffut, Horvath and Pierce voted yea. Bradford voted nay.

- c) The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and will be in general conformity with this Ordinance and the Village of Wesley Chapel Land Development Plan.

Croffut recommended increasing the density of the trees from 40% to 50% large mature trees, and size of the shrubs (shrubs should be three feet high and six feet in two years) and require that they be maintained and replaced if they die. Bradford commented that while the proposal is an aesthetic improvement over the current fire station, she believes the footprint on this property is very large and the way it is configured now it is just very difficult to screen. It is a large and tall facility, and there is not much land there. Croffut's condition was clarified that dead plants should be replaced at the next available planting time with shrubs and trees of the original planting size. Bradford asked if we should require replacement of trees at their current size; Mayor Clinton said there comes a time when you can't replace with their current size. The density of trees in the ordinance is five per hundred feet, and 20 shrubs per hundred feet. It was clarified that this doesn't increase the density of trees; it just requires that 50% instead of 40% will be large mature trees. Mayor Clinton suggested to council that we are probably not experts on trees, should we appoint someone from Ag services or the Planning Board or someone can come back with a plan that the fire department can agree to and we can agree with. Sistrunk suggested they could have someone suggest types of trees, but Council needs to make a decision. They went back to Croffut's condition. Density was discussed; five trees per hundred feet is twenty feet per tree. Eight per hundred feet would be one every 12.5 feet, this would be only a six foot spread, and they wouldn't have room to grow. The percentage of evergreens was increased from 25% to 50%. This condition is just for the right hand side of the lot. The condition was: along the right property line, 50% of the trees in the buffer be large mature trees versus the 40% in the ordinance, that the percentage of evergreens be increased from the 25% in the ordinance to 50%, that the landscaping be maintained with dead trees or shrubs being replaced during the next planting period with size as originally planted.

The applicant agreed to the condition. Council voted on the finding of fact: Bradford, Croffut and Horvath voted yea; Bradford voted nay. Bradford said she didn't think the size of the land and the size of the project is appropriate.

- d) Additional review criteria, as stated in the Ordinance, shall also be considered and addressed where required.

Croffut took over the gavel so Mayor Clinton could enter discussion on items previously brought up. She said we had talked about NC DOT approval on the driveway entrances as well as site line issue on the hill. She said Terry Byrum had stated that NC DOT had approved funding to cut down that hill. She proposed a condition that we get confirmation and approval from NC DOT that

that work will be done as well as written approval from them on where the driveway entrances will be located before we issue a zoning permit; that we get a water and sewer confirmation letter from Union County Public Works before we issue the zoning permit, a condition from what was stated in our engineer's stormwater letter that basically said the stormwater management in this project shall detain post development peak runoff rates for the fifty year and hundred year storms to pre-development runoff rates with a minimum of .5 feet freeboard above the high water elevation; and the last condition being that Wesley Chapel Volunteer Fire Department get approval from the Union County Board of County Commissioners for project funding and projected change in the future tax rate for building this project. Mayor Clinton asked if the Fire Department agreed to these conditions. Attorney Broome asked Mayor Clinton to repeat the funding condition. Plyler said he thought it unreasonable, because they don't have to go to the County to get approval. Mayor Clinton asked what they would do if the County doesn't give the necessary tax increase to pay for this building. Plyler said all the county does is give them a blessing to get a low interest government loan. Mayor Clinton asked if the County had to approve the tax rate. Plyler said the County approves the tax rate, the Fire Department will plug into the budget maybe \$300,000 or \$500,000 towards this building, then it will go to the County to see how much they will tax the people, it might be .2 cent or half a cent. Plyler said as far as getting County approval to build the building, they don't have to do that; they get low interest rate loans to keep the fire tax low. Mayor Clinton said if you don't get their approval, and you build the building and you come to the Board of County Commissioners and say you have a mortgage of X dollars per month, and the County says they won't approve it, it is too much, then what are we left with. Plyler said we have a thirteen member Board of Directors, nine of them are sitting in this room; we are not going to go out and do something we can't pay for. Mayor Clinton asked where they get their funding. Plyler said a lot of it comes from the barbecue and the tax, on the fire tax fee itself, not the county Commission, but the fire district in Wesley Chapel. Mayor Clinton said if I look at the budget you submitted to the County you have 1.317 million projected next year to come in from the fire tax, that is set by the County Commissioners; your total projected income is \$1.348 million, so basically \$31,000 out of \$1.3 million is coming from something other than the Board of County Commissioners' fire tax rate that they will set; so it seems to me that they should have the right to work with you to decide whether this is the best use of citizens' tax dollars; so why is this an issue to make this a condition. Plyler said why should this be a condition. Attorney Broome said you are going vastly outside the ordinance, you don't have to look out for the County Commission, if the money is not there, they will tell us. It has nothing to do with whether this property can be used for this purpose or not; that's all we are talking about here. Mayor Clinton said it does go the general harmony of the area in that if you guys go out and decide to build your fire station and you get 70% of the way through construction and something happens where you no longer are receiving the amount of money or the Commissioners will not increase the amount of money they are giving you for the fire tax, then we are basically left with a monstrous vacant building that now is completely not

in harmony with the area; so I think there's some logic in this condition. Plyler replied there's no logic in that, that won't happen, we won't set the bill to build a fire station that we can't pay for. Mayor Clinton said basically what you are telling me in that statement is that you're going to have the agreement of the County Commissioners that you're going to be able to support this in your budget with the proposed tax rate that they are going to agree to give you so there is no harm in this condition. Plyler said our Board of Directors will have the decision to make if the county says we can't; we'll meet and decide whether or not we can do this with what we have on hand, in the bank, and what our income is. We can't project, the building may increase in the next five years, it may stay longer, but I can tell you we won't do anything we can't pay for at least ten years out, you know that, we won't do that. Attorney Broome said if we go to the County Commission with a budget that we don't even have a CUP for we're going to be like a tennis ball... Mayor Clinton said I'm not saying we wouldn't approve the CUP without this approval being done, I'm not saying that the CUP may not get approved with this condition, but the zoning permit to start the work would not get approved until that approval comes. Attorney Broome said it doesn't work like that, we won't accept that condition. Mayor Clinton said okay, that condition comes off, are the other conditions okay – stormwater, water and sewer commitment, and the DOT sightline improvement as well as approval on driveway locations. Applicant said yes. The Mayor asked Council if there were any other conditions under additional review criteria. There were none.

A vote was taken on finding of fact (d), Additional review criteria, as stated in the Ordinance, shall also be considered and addressed where required; with the conditions being confirmation from DOT that the sightline improvement on Waxhaw-Indian Trail Road will be done, approval by NC DOT on the new driveway locations, letter on water and sewer commitment, and stormwater detention to meet the fifty and hundred year storms to pre-development discharge rates with the minimum of .5 feet of freeboard above the high water elevation.

Council approved this finding of fact unanimously, 4-0.

- f) Any deviation from the terms of this Ordinance will result in a project that is at least equal to or better than what would be accomplished under the strict application of this ordinance.

Mayor Clinton said some of you felt that there was a deviation in that the rear setback was not met, so you would only vote yes on this if you agree this results in a better project than having the rear setback. The vote on this finding was 2 yeas (Croffut and Horvath) and 2 nays (Bradford and Pierce). The Mayor broke the tie and voted nay. Finding failed 2-3.

- g) Any deviation from the terms of this Ordinance will not adversely affect the right of other abutting or nearby property owners in any material manner.

The vote on this finding was 2 yeas (Croffut and Horvath) and 2 nays (Bradford and Pierce). The Mayor broke the tie and voted nay. Finding failed 2-3.

The Mayor asked if there were any comments regarding finding (f) and (g), she said in her mind it goes along with the rear setback issue and not enough buffering on the right property line.

For the voting on the overall CUP, the Mayor said if any finding of fact failed, the CUP could not be approved; Attorney Sistrunk agreed. A vote was taken on the overall CUP 09-01 to construct the fire station, Croffut and Horvath voted yea; Bradford and Pierce voted nay. The Mayor voted to break the tie, she voted nay. The CUP failed with a vote of 2 yeas and 3 nays.

8B. GENERAL COMMENTS ON FIRE SERVICE

Mayor Clinton said she understood the fire department was a private non-profit organization, but probably 95% of their funding comes from the taxpayers of Union County. The Board of County Commissioners make contracts with the fire departments and sets the tax rates, the local towns also have contracts with the fire departments to provide fire services. Mayor Clinton said she believes the council's job is to protect the health and safety of the citizens. For us not to be concerned with the long term viability of our fire service would be remiss to our citizens. She acknowledged there is a bad relationship here. A while back we tried to make inroads, tried to attend meetings; and we were told you must be in the wrong place. Council member Pierce was told in the parking lot by a fire department board member that she must be lost.

Mayor Clinton said in looking at the financials for the last few years; in tax year 2006 the fire department collected \$491,000 in tax. It went up to \$607,000 in 2007 and in 2008 to \$985,000; the proposed 2009 budget has them collecting \$1,300,000 in tax. Butch Plyler said the County commission has decided to raise it so they can take the money and give it to people in the other end of the County. Mayor Clinton said in looking at your projected income and expenses for next year she didn't see a line item to transfer money, she only sees expenses that equal income. Plyler said the expenses is based on what they did this year, but the county wants to pay \$180,000 to fire departments all over the county; we were at 1.91 cents but they have gone up to 2.4 cents supposedly as budgets have not been approved yet; they are going to take back the money they were paying, and give it to other fire departments. Mayor Clinton asked if the proposed budget was not done by Mr. Plyler. Butch Plyler said if it has Wesley Chapel on it, it was done by them and asked if there was any increase in there where they raised the tax. Mayor Clinton said yes she saw the total income at \$1.348 million. Plyler asked if there were any decreases; and Mayor Clinton said yes a few items had decreases. Mayor Clinton said your expenses are still the same as your projected income, so if you are saying that they are going to take a chunk of that and give it somewhere else, then why isn't that a line item in here. Mr. Plyler said it is going to happen. Mayor Clinton asked if they submitted the budget with the proposed tax increase; Plyler said that's what they worked them out to because of them taking back some of the funding they would ordinarily have gotten. Plyler asked if she knew what it took to run a fire department for a year. Mayor Clinton said she did not, but she would be very happy to understand that and be happy to be an

advocate for the fire department. Mr. Plyler said all you have to do is come and ask, no one called; if a board member said that, it was a bad statement, but there have been a lot of bad statements made about people in the fire department. Plyler said he would have appreciated a phone call after that meeting that you didn't appreciate so and so saying that to me. Pierce said she mentioned earlier that Chief Byrum worked with her in a very positive way for the festival, she lives close to the fire department, her husband is in the fire protection industry; she didn't have any problem with the fire department, she is just a squeaky fiscal conservative. Bradford said her only problem is this particular project; I'd love to approve a new fire station for you, I just don't think this is the right one. Mayor Clinton said she thinks there needs to be some change in the accountability, in the openness of the financial investment of the fire department; with a \$1.37 million projected taxes going to the fire department, that as a non-profit contracting with the community, the County and the municipalities that the information should be open for discussion and review just as our budgets and the County's are. She said at WCWAA our books are open. Plyler asked if the books were open, would it make a difference how you felt. Mayor Clinton said yes I think it would help me to understand that you are making the right decisions for the citizens. Plyler asked if she didn't think the thirteen people on the Board of Directors were capable of making those decisions. Mayor Clinton said she didn't say they weren't capable, she would like it to be more open and see a better sense of cooperation between the County, fire departments and municipalities. Plyler said we never had a problem with the County until this year. Mayor Clinton said they are asking good questions and for justification of expenditures. Plyler said the people on this board have been asked to stop or slow down our building, that has been said, I don't know whether that is so or not, is it? Pierce said absolutely not, she has not talked to a single county commissioner, she didn't have time. Plyler said if you were sitting on the board you wouldn't feel that way. Mayor Clinton said that is a good idea for the municipalities to appoint someone to the board. Horvath said we get tax money just like you do, and we get questioned on our expenditures, but when a question goes to the fire department we rarely get a straight answer, we get asked to do go something else. Horvath said I was trying to help you two weeks ago when I asked questions and the burden of proof is on the applicant so you need to help me understand, I am not an expert, the thirteen board members are. Plyler asked why you were so concerned about the 1.9 cents or are you concerned about something else. Mayor Clinton said she was concerned about the ever escalating tax rate with the money going to the fire department doubling over the past three years. Plyler said there is a reason, they are going from all volunteers to partial paid staff now, that's why it doubled. Mayor Clinton said no one disagrees you need a new building there on Waxhaw Indian Trail, but... Plyler asked why you turned it down then. Mayor Clinton said it didn't meet the ordinances, it didn't meet the setbacks. Scott Farb asked what the height of the fire station is; Pierce said forty five feet eight inches. Farb said as a casual observer at the last meeting, Ms. Pierce said she would like the height lower, around thirty five feet, and to him that seemed like a ridiculous request after she had the plans so long.

Mayor Clinton explained the way the conditional use process works, is that all this has to be done here, it can not be done behind the scenes. Pierce said applicant goes to the planner first, then the Planning Board, and then it goes to the Council, it didn't matter how long our planner had the plans. Concerns can't be expressed by Council until it comes to the meeting. Plyler said if lowering the height a foot would do it, he would. She asked Mr. Plyler if the fire department board would consider a joint meeting with the municipalities and the Board of County Commissioners. Plyler said he didn't think the board would be opposed to that, but the County needs to realize they don't own the fire protection, if they wanted to take over Wesley Chapel VFD they couldn't. Mayor Clinton said we have a mutual situation where we all need other, and communications need to be more open. She would like to get to the place where we could be advocates for you, and she is willing to take a step. Plyler said they have elected board members, and he is willing to sit down with the Mayor and he will answer questions as best he can. Mayor Clinton asked if the board would give them a cold shoulder, Plyler said right now you probably would get a cold shoulder, but he is willing to sit down any time. Carol Mullis said you had a roomful of citizens, and all spoke in favor of the fire department, but you didn't listen.

A short recess was held.
Attorney Sistrunk went outside.

9. DISCUSSION AND POSSIBLE VOTE ON CUP B2-09-01, PARALLEL RE-ZONING AND CUP REQUEST BY MARSHALL SURFACE DBA HILLBILLY PRODUCE FOR 6114 WILL PLYLER ROAD

Mayor Clinton noted we have two processes going on here in that this is a re-zoning and a CUP. The legislative decision on the re-zoning is done first. She read from the book Introduction to Zoning Law by David Owens. With the re-zoning to B-2 the only use allowed would be what is approved with the subsequent CUP. If you approved the zoning and not the CUP, nothing would be allowed on it. She noted one consideration is spot zoning, and she read from the book on that. Spot zoning (treating one parcel differently from the surrounding property) is allowable only when it is reasonable. Factors involved include size and nature of the tract; the larger is more reasonable; (Attorney Sistrunk re-entered the room); compatibility with existing plans; impact of the zoning decision on neighbors and land owner; relationships between existing uses and newly approved uses.

Horvath said the re-zoning to B-2 is not consistent with the land use plan, master plan survey showed the citizens did not want more retail, and there may be other uses for the property.

Bradford said facilities like churches, schools and others are allowed and she agreed with Horvath; she felt the re-zoning would be counter to what we've been telling our citizens.

Pierce said she agreed because spot zoning sets a precedent and leads to more.

Croffut said the master plan survey feedback was that we have enough retail.

Horvath made a motion that the re-zoning request by Marshall Surface dba Hillbilly Produce for 6114 Will Plyler Road be denied. Pierce seconded the motion. The motion passed 4-0.

John Urban asked if the petition for the CUP was not heard, then the timeline would not apply. Sistrunk said he was not sure, but that might be a reasonable interpretation. Urban then said he recommended his applicant wanted to withdraw their petition.

Stephen Keeney asked if the Council considered the Planning Boards suggestions; they had a unanimous vote, and your vote is also unanimous and is the exact opposite. Mayor Clinton asked due to the lateness of the hour, that we put this on the next agenda; or that they put her on the Planning Board agenda. Keeney said it would only take a few minutes, just as you have invested in and used ETJ, you have an implication and desire to affect borders outside your authority. That piece of property has influences, the sub-station for one, and prior to that the farm garage, which establishes that intersection as a fairly commercial corner. Mayor Clinton said the farm garage is a non-conforming use that will not continue.

Bradford said the substation is not in Wesley Chapel. Keeney said you spent a lot of money on the master plan and 85% were in agreement with agricultural preservation and a rural flavor. Keeney said the project represents an agricultural, rural environment. To object to this kind of business, he felt, was smothering any kind of growth in the area. Mayor Clinton said she would love it in their commercial area. Keeney said you have to encourage development where you can and work with the environment and to the benefit of the people. Pierce said the transportation study was trying to channel traffic through Highway 84 and minimize the impact on New Town Road, also it is not a quaint project, in driving to Myrtle Beach she saw numerous quaint general stores, abandoned. She said she loved the aesthetics, and appreciated the Planning Board's work. Keeney said we should consider the big picture. Pierce said that was exactly what her thought process was. Keeney said you did influence the big picture. Horvath said he didn't understand how you could have influenced it, he didn't see where the expansion would end. Keeney felt you should participate and influence the cookie-cutter development, not the fact that it is there. Pierce noted previous Councils and previous Planning Boards had approved the developments.

10. CONSIDER APPROVAL OF AUDIT CONTRACT FOR 2008/09 WITH ROBERT M. BURNS, CPA

Bennett said the audit contract is for \$3,100 which is an increase of just \$100. Croffut made a motion to approve the audit contract with Robert M. Burns, CPA for 2008-09. Pierce seconded the motion.

The motion passed unanimously.

10B. POST OFFICE RESPONSE

Horvath said the Post Office rejected our request for the zip code boundary review that there are no administrative solutions. They also said we have

established zip codes as they are, so people who live there but not in Wesley Chapel would be affected, or if you just changed Wesley Chapel you would have people across the street from each other with different zip codes. His response was what you set up does not work. If we don't respond, they want to put a ten year freeze on future requests. He will send Bennett the letter to respond and request a two year review time. Informally they have suggested they can't afford to do any changes right now.

11. OTHER BUSINESS

The LARTP meeting is Thursday at 7 pm in Weddington.

12. COUNCIL COMMENTS

Pierce expressed appreciation for everyone's commitment to what they campaigned on.

13. MOTION TO CALL FOR CLOSED SESSION PER NC GS 143-318.11(a)

(3) Attorney Client Privilege re: The Village of Wesley Chapel v. Michael Land

Pierce made a motion to go into closed session per NC GS 143-318.11(a) (3) Attorney Client Privilege re: The Village of Wesley Chapel v. Michael Land. Bradford seconded the motion.

The motion passed unanimously.

The lawsuit was discussed.

The rest of this page left blank for closed minutes.

This page left blank for closed minutes.

Bradford made a motion to leave closed session. Pierce seconded the motion.
The motion passed unanimously.

14. ADJOURNMENT

Bradford made a motion to adjourn; Horvath seconded the motion.

The motion was approved unanimously.

The meeting was adjourned at approximately 10:50 pm.

Respectfully submitted,

Cheryl Bennett, Clerk

Mayor Tracey Clinton