

Minutes 2009.05.19
Approved July 13, 2009

**VILLAGE OF WESLEY CHAPEL
COUNCIL MEETING MINUTES
May 19, 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, with Mayor Tracey Clinton presiding.

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

Absent: Council member Pierce

Others Present:

Village Clerk/Finance Officer: Cheryl Bennett

Planning/Zoning Administrator: Joshua Langen

Village Attorney: George Sistrunk

Concerned citizens: Carol Mullis, Ray Davis, Jason Galloway, Ralph Price, Gary & Gayle Libberton, Gary Blazek, Butch & Becky Plyler, Mary Martin, William H Reule, Doug Byrum, Doug Horne, Charles Rohland, James Mullis, Rick Morris, R. Paiano, John R. Urban, Dan Ashworth, Lesa Urquhart, Robert Mitchell, Bonnie Fisher, Scott Gardner, David M. Broome, Sydell Coniglio, Donna Krehl, Cheryl Chapman, Gayla Adams, Jeff Mohr, Steve Fellmeth, Mark DiBiasio, Daryl Matthews, Carolyn Richards, Mildred Gwinn, Mia Hanson, Steve McLendon, Hannah Maxson, Michael Sullivan, Charles B. B(spelling?), Jason Surface, Marshall Surface, Joe Coniglio, Jake Gibson, Robert Nichols, Gary Brosius, Kevin Hanson, Scott Farb, Lisa McNally, Lisa Garera, Guy Garera, James Kubach, Terry Dickinson, John Rogers, Terry Byrum, Jeff Dickerson, James Kubach, Astrid Weddle, Craig Winslow.

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 Croffut gave the invocation.

**2. CONTINUATION OF RECESSED PUBLIC HEARING ON CUP 09-01,
CONSTRUCTION OF FIRE STATION AT 315 WAXHAW-INDIAN TRAIL
ROAD, WAXHAW, NC 28173.**

The Mayor encouraged citizens to keep their comments to factual information, and to try to not repeat comments, but refer to a previous comment in the interest of time. The Clerk swore in the first group of five citizens: William Reule, Sr., Ralph Price, Gary Libbertan, Mary Martin and Gary Blazek.

William Reule spoke in support of the fire department; he said he lives two blocks from the new Cuthbertson schools; when he went to the bridge closing hearing,

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the fire chiefs of Waxhaw and Wesley Chapel assured everyone they could handle everything, but with the number of bus trips, and the number of kids in the schools, we need the new fire station up and running. He said his biggest concern is we need the facility, and stated we got the traffic light due to Chief Byrum requesting it of Barry Moose.

Ralph Price spoke in favor of the CUP because the old fire house is too small to house the equipment; the area has grown so quickly, the new one should handle needs for the next forty years. The Fire Department is supported by the efforts of the community, fundraisers, and also a small tax that he thought was less than what we pay Wesley Chapel. He noted they do more than handle calls, they teach the children; through their efforts a few years ago we got lower insurance rates; and he felt the lower rate may have offset the tax increase. He said you are voting on the CUP, not how they run their department; the Village provides no financial support to the fire department; if this meets codes it's a matter of voting yes, not a political agenda. He said he didn't see the need for more studies and please don't delay the vote.

Gary Libertan said he lives in the Wesley Chapel fire district, he said if you had a crisis and had to call the fire department you would be very pleased, they have a lot of experience, a high call volume, their efficiency is monitored and the insurance rates were lowered. He looked at it from two directions, how bad the current situation is and how well will the new station meet everyone's needs. The community will gain a more efficient, productive fire station; it will create a more desirable work environment, and prepare them for the eventual transition to a full time paid fire station. The community will gain a resource for things such as a polling location, and also provide a law enforcement presence since there will be a substation there. The current station has significant hazards, when you return after a fire call, they have to pull into the center of the road, and back into the station, and when you come over the hill from the shopping center heading towards Waxhaw you may not see the truck. The current station is outdated, too small and inefficient, the trucks must be shoehorned in and there is no public space. There is one room that sits ten people, and that is all the public space. There is a small kitchen, but there is no training room. It has a gravel parking lot, and must be re-graded; the front apron is asphalt and deteriorating. It is heated by propane, and has a well, and an old septic system. There is an eight by ten foot computer/office room where they must sit to stay cool in summer and warm in winter since there is no air conditioning or heat. There are no creature comforts, eye wash out stations, or showers, so when they return from a fire call they can't clean up. There is one washing machine, but no dryer. There is no storage; there is a loft overhead, so to store something you must climb the ladder with one arm. The air compressor is in the loft to refill tires, so you must climb up and down. There is no room for meetings or training, and it doesn't meet the needs of the disabled.

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Mary Martin of 6502 Carriage Lane said she has been here twenty years, and seen tremendous growth. The fire department is a vital part of the community, she noted on February 8th at 1 am when her husband had a medical crisis they helped not only him, but also assisted her with information and advice. The growth in our community warrants at least some full time staff, and there has been little change in our fire facilities in twenty years. She supports the new facility on this site, and noted Wesley Chapel offers no financial support for the fire department. If the fire department is moved due to redistricting, it will cost the homeowners more in insurance. She said Ms. Clinton is concerned over a half cent increase in tax, which equates to \$150 on a \$300,000 home before the offset for insurance. With the new shopping areas, and the greater hanging out, and looking at other shopping centers like the Arboretum, a greater sheriff's presence will be needed. Also at the last meeting when the two men from the fire department assured Council that all ordinances had been met, Ms. Clinton stated Council could change them, this may be a legal prerogative, but she questioned if it was a moral one. She asked council to do due diligence, but then do the right thing.

Gary Blazek spoke in favor of the fire station; he is a resident of Champion Forest, he learned about emergency response times with the bridge closing and realized how important it is. His was the first house in Champion Forest, and now with three new schools opening, we need a top notch facility to work from. With the increased traffic and more incidents, he thinks it beneficial that there be a sheriff's station. He spoke to neighbors and thinks they also will be pleased with both facilities.

The next five speakers, Charles Rohland, Robert Mitchell, Scott Garner, David Broome and Steve Fellmeth were sworn in by the Clerk. Sydell Coniglio, Cheryl Chapman, and Donna Krehl had signed the speakers sheet, but declined to speak and did not need to be sworn in.

Charles Rohland said he is a resident and secretary to the Board of Directors of the fire department. He said if the building is not approved, you will be costing tax dollars by causing a delay because construction prices are significantly reduced; we will probably save twenty (20) per cent of the cost by building now rather than waiting. He stated Wesley Chapel is only twenty-five (25) per cent of the fire district. He did not think the residents of the other towns would appreciate having to wait and paying higher taxes if we delay this whole thing. He noted his fortune cookie tonight from his Chinese dinner said "Many a false step is caused by standing still".

Robert Mitchell said the other speakers have echoed his sentiments in support of the fire station; he stated the volunteers spend a lot of time in support of our community, and we should support them too.

Scott Garner said he is the architect for the project; he noted the Wesley Chapel Fire Department is in a mode of transition, and over the life of the building they

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will become a full time department, so long term this is a great investment in this facility. He hoped we would move forward tonight, there is already a fire station on the site, so this is not a change of use.

David Broome, noted he is not a resident of Wesley Chapel but as an attorney represents the fire department ; he has a presentation prepared and can entertain questions.

Steve Fellmeth said he lives in Wesley Oaks in close proximity to the old fire station. He said it is one of the larger communities, there are bigger homes, a couple of people referenced the new Cuthbertson schools, there is a large shopping area being built, and he wondered why we would second guess this project that will support all that is currently happening. He said he was strongly in favor of the fire station; he thought the project was very well planned and a lot of time was taken to plan it for the future; when the economy gets better, growth will resume. He said where he grew up in New York the fire department was a big part of life, and it should be a big part of this community as well. He felt the proximity to Wesley Oaks was fantastic, and that the Village should approve it tonight. He said the town and the fire department should move together in the future, and thought the sheriff's office there would be great too.

Marshall Surface and Thomas Nesbitt had signed the speakers' sheet, but declined to be sworn in. Butch Plyler had signed up, but asked that Terry Byrum, who has good news, be sworn in in his place. Mayor Clinton asked if anyone else wanted to speak, there was no response. Jeff Dickerson, Terry Byrum, Kevin Hanson, and Lisa Garera were sworn in by the Clerk.

Jeff Dickerson grew up nearby, and said the building was built in 1975, these guys do the best job of any volunteer fire department in the state, and they deserve a new facility. He added it's a forty year plan; he spoke with their engineer regarding the stormwater runoff, its something the community needs, and we should say yes tonight.

Chief Terry Byrum said he has been with the fire department thirty-two years; we need to break ground as soon as possible. The architect had originally estimated this would come in at up to \$200 a square foot, but the last one they bid came in at \$146 per square feet; if you see what that means, why would you want to wait. He said they ran preliminary figures and a half a cent on the tax rate would more than make the payments on this building. He said the fire department would be working with the state highway on cutting down the hill on Billy Howie Road so it would be safer for everyone, the fire department would be asked to contribute \$50,000; he challenged the town to pay that.

Mayor Clinton asked what the total cost to cut down the hill would be; Chief Byrum said \$200,000 to \$250,000; at first they said they couldn't do it and didn't have the money, but Chief Byrum said he wouldn't accept what they said and they came back and said they found the money. Mayor Clinton asked if that was

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Barry Moose. Chief Byrum said no, they appealed to Raleigh, and they said it would be done.

Kevin Hanson, said he has lived for two years in the Glen at Wesley Oaks, the community immediately adjacent to the fire station. He at first had concerns about the fire department, but they proved to him they do an incredible job. He said the design of it addresses our needs today and looks to the future, the aesthetics are pleasing to the eye, and he thinks it will increase curb appeal to the community. After meeting with the fire department last night, he felt they were concerned about their needs, and he is thrilled with it. The training facilities will enable them to better serve the community, keeping the community and volunteers safe, and it seems like a total win, win to him.

Lisa Garera said she is a resident of Stonegate, and she supports the CUP.

Mayor Clinton asked if there was anyone else who wished to speak; there was not, and she closed the public comments section of the hearing.

Mr. Broome said he would like to speak. He said he had talked with Butch, Scott, and Sheriff Cathey and from what they can tell the fire department has put on plenty of evidence from architects and engineers about setbacks and drainage, and it is common sense that this is definitely a public necessity. You can't have a community with the growth and growth potential that Wesley Chapel has without services that can keep up with that and what we have now is simply not adequate. He said when he was here last week he heard one gentleman express concern about property values going toward down; but when you are dealing with a public necessity as long as we are not destroying people's homes to the point we are taking property, you as a Council are not bound to account for every single cent that someone thinks may be affecting his property good or bad. He noted in 1999 Randolph County had a case regarding a radio tower, the County denied it, the judge overturned it and it went up to NC Supreme Court which said the court can not substitute their discretion for that of the council's. He said his presence was in no way intended to be threatening, but we have tons of competent evidence and he has not heard any evidence that it does not meet the conditions that have been set in 6.4.2. In looking at the Table of Uses, a public safety facility is a conditional use across the board, these things go in where they are needed and it is needed at the proposed site where they already own land. He said it was definitely a public necessity, and from what we heard from Sheriff Cathey we need it for both fire and law enforcement presence. He continued that regarding harmony, seeing the types of houses we are seeing, the proposed building flows much better with Wesley Chapel now. He said he asked Butch what houses were built in 1975, and Butch said mine was, but I can't think of any other; the old building was built when there were very few houses being built contemporaneously. Denial of the CUP accentuates disharmony we already have, Broome stated. He said I know there is a lot of concern about budget matters and how we are going to pay for this, from what he can see, the CUP will expire in

two years, tax concerns will have to be taken up at the County level, re-districting will have to be taken up at the State level. If the town approves the use, it does not mean that ground will be broken, if it is not feasible for this building to be useful for the fire district, it will not be built. He felt some of the members may be carrying too much of a burden on spending tax dollars wisely; while he agrees, and the fire members are advocates of responsible spending in government, that is something that is not the burden of the Village Council. The County Commission will scrutinize and budget. If there is a denial of this CUP, we will never know what the best use of this property is, what is the best place for a fire department, what is the best way to potentially change districts. He said if there needs to be more conditions, that is the prerogative of Council; denial will just take away one option for how best to serve western Union County with fire protection. He said if it is approved tonight, it won't start tomorrow, there will be much more oversight. He again cited the case in Randolph County, and said if the petitioner has offered competent evidence to support all the conditions in the ordinance, which he submitted Wesley Chapel has, and there is not evidence to the contrary, then the Village Council really doesn't have an option.

The Clerk swore in Bonnie Fisher and Joshua Langen.

Mayor Clinton asked Butch Plyler if he had any problem with the engineering documents from Bonnie Fisher being submitted as evidence; he replied no. Bonnie Fisher said she was here specifically to speak about the stormwater management of the site; she had a map (**Exhibit 1**) of the site showing the existing conditions, the red shows the existing fire station and the blue shows the proposed detention pond that is required by the ordinance. The outlet of the pipe is shown here, the green lines represent contours, changes in elevation that are at the site, If you follow the contours, it represents the downhill slope from the fire station. The contour lines represent drainage, to an existing drainage swale, that is in the woods downstream from the fire station. She continued, this is the Glen, this is Conaway Court, these are existing homes that are downstream from the fire station. The ordinance requires detention from the two year and ten year storm, and that the proposed pond must safely pass the fifty year storm. All the proposed development will be piped to the pond, and will be discharged back into this natural drainage area. What she recommended for the Council to consider is increasing that safety factor from the fifty year storm to the one hundred year storm because of the downstream proximity to the homes. Ms. Fisher had photos (**Exhibits 2-7**), the first one was behind the houses, and she walked up through the woods and there is another box in the woods, it is open on all four sides, and it collects water; it was right after a storm and you can see water draining into that box. Then she said, she turned around and walked toward the back of the house, and you can see that the yards are actually higher in elevation than the box, so that means there is a berm in the backyard, and the water is coming against the berm and falling into the system. So with all the paving, the water will be collected and come out at one spot and come toward this system. We are recommending increasing the design to the hundred year storm, and also during that storm when

the pond is functioning, that there be at least one foot freeboard from the base of the houses to the surface of the water.

Mayor Clinton said we talked in a previous meeting about strengthening our stormwater ordinances, when you say it meets our ordinances, are you saying it meets our commercial ordinance or what we have for residential right now. Ms. Fisher replied it is the commercial in the CUP.

Mayor Clinton asked if map C-002 showed current grading; she said when she looks at their proposed plan it seems that the fire department site will be built up, and it seems the grading will be much higher across the whole site, and then a drop off at Wesley Glen? Jason Galloway said yes, it will be a twenty-five per cent slope, and it will be controlling the one hundred year flood. Mayor Clinton said the water won't be running down the hill, because it will all be piped to an outlet at that one location, correct? Galloway agreed.

Croffut asked about the recommendation to tie into the existing system; Galloway said we looked at that, but all the inlets are blocked with sediment so we can't see what size the pipes are. Garner said it always drained across the site, its always been very marshy at various times of the year; we will slow it down because we are detaining on our site; we complied with the ordinance requirements for the two year and ten year, and now we have met the fifty year requirement, and now you want hundred year, and we can do that. Fisher said we are not saying retain the hundred year, we are saying safely pass; it would be your choice to retain it. Mayor Clinton confirmed Ms. Fisher's recommendation; it is to increase the requirement that the proposed pond safely pass the one hundred year storm event with a half a foot freeboard at the dam and also show that the downstream homes would not be flooded, that there would be at least one foot of freeboard at the lowest elevation of the homes. Mayor Clinton asked if the storms over the past year, where we have seen flooding at different locations, were hundred year storms or more or less? Fisher said she didn't know herself; Mecklenburg County has an engineer that keeps track of that data. Mayor Clinton asked Butch Plyler is he was okay with the photos being evidence. He said he would like a copy for the engineer and architect.

Chief Terry Byrum asked if what they submitted met all the criteria right now. Fisher said the intent of the design was to meet the fifty year plan, there are a few little things that need to be worked out; Byrum said then the answer is yes, and she agreed.

Bradford said she had a question for Mary Martin; at the end of her statement she said something about Council changing requirements and she wondered what statement she was referring to. Ms. Martin said at the last meeting after about an hour and a half of questions, Ms. Clinton said the ordinances could be changed. Mayor Clinton replied that the reason we have certain uses identified as conditional uses in specific zoning areas is because of the intensity of that use sometimes requires us to put conditions on that proposal that are above and beyond what the ordinance says to make it fit in with the surrounding area, and that was my comment that I think you are referring to. Ms Martin said actually the comment that was made was very much like a power play, the context was you may think you have met the ordinance, but we can change it if we choose to.

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Mayor Clinton said whatever I said is on tape, so you can go back and look at it if you want to, but my intent was to talk about what a conditional use means and that the intensity of the use and the district it is located in means we have to pay attention to the use and that we might have to make special conditions to make it fit in.

Horvath said you talked about planning for forty years, and there are twelve sleeping spaces, is that based on a statistical study? Chief Byrum said it comes from insurance; there is a four man crew for each truck and that will get three crews out which is probably the maximum needed to keep the best fire rate for Wesley Chapel and the surrounding communities. Horvath asked if the insurance rating was already the lowest we can get. Byrum said we have a straight six rating, the best you can get for homeowners; you can go better, but normally that's the maximum you can get; when we did our upgrade three years ago, everybody said you would never get it, it took us two years for paperwork, we got that and we were shooting for a five, but we had a couple of knock-offs; and we feel with this and some equipment we can get down to a four which will help us tremendously with commercial and a little with residential. Byrum continued: we were at a six slash nine, which everybody around us was, I had a call from a lady in our fire district the other day and her insurance agent said hers had been changed from a six to a nine because she is on the boundary and there was a computer glitch, and we sent her a letter and her agent contacted her and she saved \$389 in an older house in Fox Run.

Mayor Clinton asked what improvements this fire station would give us to get us from a six to a four. Chief Byrum replied it was lots of things; manpower, equipment, sleeping facilities so we can stay up there, right now we have 24 hour protection, we have paid staff ten hours per day, we have volunteer staff two shifts after that, I know they have been talking about changing district lines, but insurance lines can only be changed by the Department of Insurance.

Mayor Clinton asked what the fire tax rate was last year; Chief Byrum said it was 1.71 cents until the County Commissioners decided they had to subsidize the other fire departments some, and they took half of the sales tax away, and so that jumped it up to 1.91 cents and if you go on our website now, even with our increase this year recommended by the County manager, it will go up to 2.0035 cents, still the lowest in Union County.

Mayor Clinton asked Mr. Garner how many fire stations he had designed; he said twenty- five, and that this one is not 26,000 square feet, it is 24,754 square feet. Mayor Clinton asked if we had the most current copy because it shows 26,340. Mr. Garner said to look at Appendix B which is part of the cover sheet on the architectural drawings; there was some confusion on who had this sheet; Mayor Clinton asked again why it was different on her plans. Bradford said on one drawing it shows 25,954, and on other drawings it shows 26,340. Garner said they had four or five firms working on that, but he checked it today, and it is measured by computer but it will be submitted to the Department of Insurance and he felt certain it was 24,754. Bradford asked if all the drawings were representative of 24,754, and he said yes, if two different people do the computing

you will get a different number, it depends how you do it. Pierce asked if that was the footprint; Garner said no that's the entire building including the second floor, and the mezzanine (which is about 964 square feet) included; so 24,754 is an accurate figure. Bradford asked if these plans demonstrate that, and Garner said yes they do. Bradford said so the building size has not changed, it is just how you calculate it; Garner agreed.

Langen said the one you gave me is dated May 18, has there been any significant changes since then? Garner replied no. Mayor Clinton said that the ones Council has are dated April 6; Bradford added, "and January 9". Mayor Clinton asked Langen what the difference was between the set of plans Council had and the plans he had. Langen said they are multiple copies. Chief Byrum asked if the footprint of the building had anything to do with the conditional use permit, whether it was 24 or 25 or 26 thousand square feet. Mayor Clinton said no but it does matter that we are looking at the plans that we are supposed to be approving. Mayor Clinton said one of the main issues is the side setback being fifteen feet instead of the fifty feet required by churches, schools, governments, libraries etc.; and what can we do to widen the buffers given that we back up to residential, given the height of the building, and the intensity of the use. Scott Garner said he met with the former planner two or three times, and he said the side setback was fifteen feet, and we designed based on that; we can't build there with a fifty foot setback. When Joshua came on board, I also talked to him about it, and sent him copies of this in November of last year, and he said you would honor the information given by the previous planner. The letter from the previous planner, Justin Krieg, was submitted as evidence (**Exhibit 8**).

A five minute recess was held.

Mayor Clinton commented that both planners gave consideration to the applicant that the side setback was fifteen feet, if you look at the strict wording of the ordinance in R-40 districts, churches, schools, governmental facilities, and libraries have a fifty foot setback. Fire department is not listed in there, they are not truly a governmental facility, while they receive tax dollars; and we have an "all other uses" fifteen feet; so it is up to council's discretion whether the fifty foot setback needs to be met. Personally the Mayor felt the use was very intensive to be that close to a backyard; she had grave concerns and on the impact on the people who would live next to it.

Langen said at the last meeting it was thought they were planning a wood fence, but they are required to do a brick or masonry fence. Mayor Clinton said that was another question; the buffer space was allowed to be reduced by 20% if you had a six foot wall and the ordinance states that the wall needs to be brick. Garner said we will do that. The Mayor asked what masonry would be; Plyler said we could do architectural block, masonry or brick, whichever one would work out best. Chief Byrum said we would like to work with the homeowners that back up against us, we had that discussion last night at the HOA, and we want to be good neighbors.

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Mayor Clinton said as you get towards the property line, you've got a brick or masonry fence right on the property line, and then you have a berm back from that because you are sloping off pretty quickly... Galloway said shrubs, a landscaped buffer. The Mayor said you have a six foot fence, but the elevation of the property line to the elevation of where the building is being built, how big is the change in elevation; with the six foot fence are you really going to be looking at the driveway because by the time you go up your slope you're at the driveway. Galloway said its different everywhere. Mayor Clinton said the back of these four lots that are going to run right where the building and that side driveway are. Galloway said probably five feet. Garner said it slopes from zero to five feet, it will vary over the length; they will work with the natural grade to minimize the amount of fill. Mayor Clinton said you see what my concern is, if you build a six foot fence but then your driveway and building is five feet above where the elevation is at the property line the fence isn't really going to do much because it's going to block a foot. Galloway said there is also twenty feet of trees.

Mayor Clinton asked if there was a letter we could get from DOT to submit as part of the evidence that gives approval for the new entrances on Waxhaw Indian Trail Road as well as verification of the cut down of the hill? Garner said they won't issue a letter until we get our conditional use; they do have a driveway permit now.

Mayor Clinton asked if they have guaranteed allocation for water and sewer from the County – a letter that states that? The Chief said he personally called public works and they said all municipalities, and y'all should know this, the way the process works is that once the CUP gets approved and passed on to the County, then they issue the water and sewer taps. We are already tapped on to County water, I know you got a sewer permit, you know you have a sewer permit, the Council knows we don't issue this until you got a CUP. He asked if we had a copy of the letter (we did not) and Chief Byrum said he wished we had a copy of this tonight so you'd know we weren't making this up. Mayor Clinton said in the paper today there was the Autumn Care facility in Waxhaw that is stuck because it doesn't have water and sewer allocations because the town approved it without having approval from the county for the water and sewer. Chief Byrum said we bought the two lots back there on Plyler Ridge; that's the way we purchased those two sewer taps, that's 720 gallons of flow per day; we got the water taps, the County called me several months ago, and wanted to know if we wanted to keep our sewer taps, were we going to keep our water taps, and were we going to ask the County to waive the tap on fee, and he answered in the affirmative to all three. Pierce said the reason they make those phone calls, being in residential home construction, there's a boatload of "will serve" letters out there that people are just sitting on, so they have to call every single person that has a "will serve" letter and ask them the same questions they asked you.

Mayor Clinton said my question was I know you have available taps, but have they seen the change, you are going from a fire station that probably has one bathroom to a full facility; you are now going to be on sewer so I assume when

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you are washing your vehicles and everything else, all that water will flow into the sewer system. Chief said no, it will go into the rocks. The Mayor said you will have live in facilities that will require a whole lot more water and sewer than what you use today. Chief Byrum said what we have today is a one inch tap, we will have a two inch tap for water and a six inch tap for the sprinkler system of the building, which is a one time charge per year to charge the system; the County knows what we are doing, unless they've been under a rock the last two years, they have to know what we're doing.

Mayor Clinton asked if DOT had said anything about a requirement of a traffic study, is that how this whole cutting down the hill came into play? Chief Byrum said there will not have to be a traffic study done in terms of volume, the only thing they were concerned about was sight distance from Billy Howie Road to the fire station, that's the reason they said we were going to have to spend \$250,000 to build a slow down lane, they didn't understand the question, and then when we went to Raleigh they decided they're going to cut the hill down, its been a problem for years; there's no traffic studies that need to be done. Mayor Clinton noted there is quite a bit of land you cover north of our town center, are you concerned forty years into the future the bottlenecks that intersection will cause as far as response time in getting to places north of the intersection. Chief Byrum said not more than what we've already got. Plyler added it wouldn't be worse than what is in Charlotte now, look at Seventh Street. Byrum said something should have been done long ago, but it's not up to the fire department to change all these patterns; we'll get through the intersection safely, we just need to get this building started.

Pierce said in relation to public necessity, fire stations are a necessity, but just the scale;, how many firefighters can you currently house in station 26 in a typical shift. Chief Byrum said we can house them all if they stand up, or sit around the conference table until the call comes in or we go home; there's no facilities, no showers, the bathrooms half work. Pierce asked how many firefighters are on call during a shift; Byrum said all are on call, we have people who sign up for each shift, but we all have pagers, and are all on call, there are 58 volunteers. Pierce asked how many households or homes the fire department serves. Byrum said he couldn't answer that truthfully tonight; they cover about thirty square miles. An Assistant Chief said on the County GIS it is 39 square miles. Pierce made a comparison with the City of Monroe, they serve 29.6 square miles; forty years from now we will likely still be mostly residential and a municipal building, a fair amount of commercial, and lots of schools and churches, in comparing it to another fire district to justify the scale; and that was the public necessity part of it she was concerned about.

The clerk swore in James Kubach who lives at 701 Ennis Road. He said according to the county GIS system, of all the fire departments in Union County the average covered area is 23 square miles; we cover roughly 39 square miles, which puts us at about 19.5 square miles per station. There are departments that

cover up to 48 square miles with one station; the largest covers 80 square miles with four stations. The only full time paid department in Union County is the City of Monroe, the rest are combination departments. Our district is very long east to west, and not very tall north to south. We cover from New Town Road at the South Carolina line to Highway 84 at Willoughby Road. There is about an equal distance from the South Carolina line to station 31 and about double that distance to station 26 and about the same distance to the end of our district at Highway 84 and Willoughby Road. So the building has to stay pretty much where it is because you have to be within five road miles to maintain our insurance rating or you go to class ten which is unprotected.

Pierce had a question for Scott Garner about the height of the tower: you said it could be lowered; when we made the change in our height ordinance, my personal comment was to house equipment; the tower you said was unoccupied space and is not used to house equipment; you said that could be lowered? Garner replied that the height of the tower is forty five feet eight inches; the ordinance says you can be forty five feet, if you take the average we're below that. The ridge is forty five feet eight inches; so we are in compliance; we could lower it maybe eight inches. It's done that way so there won't be a drainage problem on the backside of the tower; the roof area is broken up. Pierce said it is a design element, but also serving a function, would lowering it eight inches compromise the function? Garner said it was designed in the best way, but it could be lowered eight inches; the ordinance says the average height can be forty five feet; our average height is forty two feet. Pierce said she would like to see the average be closer to thirty five feet since it is unoccupied space. Garner said they could lower it eight inches or so; both Pierce and Garner agreed that was insignificant. Pierce noted "may" does not mean "shall" in regards to the maximum height. Plyler said when you start redesigning two to three feet, that brings in another picture of the roofline and aesthetics of the building. Garner said it concentrates the water on the backside of the building. Pierce said the intent of the change in the ordinance to forty five feet was to accommodate the taller equipment. Chief Byrum asked how tall the dome of the shopping center was. Mayor Clinton said the top of the dome is fifty seven feet six inches high; the top of the parapet at the shops is thirty two feet high as you go towards Harris Teeter, the height of the shops range from twenty three to twenty six feet. The top of the gable at Harris Teeter is thirty nine feet eight inches. Mayor Clinton continued, getting back to the concerns that I had about the design of this station, when I look at the homes that back up to this on Conaway Court or the Glen at Wesley Oaks, they are sitting right around 630 feet in elevation, the base of your station will be at 646 feet elevation, so that's already sixteen feet above where their homes are, and then you're going to put a forty five foot building up at the tallest point, so now we're talking about basically the top of your building will be sixty feet above their property, and I don't know what that looks like, and I know there are trees there but it seems to be pretty overshadowing against those adjacent property owners, especially since your building is not so far off their back property line. And one of the things we have to determine with the CUP is does it fit in and be in harmony with the

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surrounding land, I question that based on just the enormity of the station; I haven't seen one built this big in the County, I don't have a whole lot to compare it to. Relating it to what do we see and how high is it, and we know how high the shopping center is and we relate it to how that looks and basically it's going to be higher than the top of the Harris Teeter which is pretty big.

Steve Fellmeth said we had the fire department at our homeowners association last night, and these houses that you speak of, these homeowners adjacent to this property, we discussed many of these issues (Mayor Clinton asked if they are here, Fellmeth said they are here) they did speak in favor of this project tonight, and we did discuss many of these issues as well as the wall and the height of the building and the lighting and the Chief gave us all the information that we required and those homeowners are here and they spoke in favor of this project. Fellmeth asked if there would be a vote on this CUP tonight. Mayor Clinton replied she did not know, and we still have another hearing to get to so we are trying to wrap up our questions. Fellmeth said this is the second hearing on this. The Mayor said government doesn't move fast, it moves slow for a reason and the fire department has a very important function to perform in the community and we admire the people who do it and we are not here to prevent anything we are just trying to make sure that we do our job which is to make sure that the zoning and the building fits in with ... Fellmeth said it does. The Mayor said that's our decision to make. Fellmeth said do you think that will be tonight. Mayor Clinton said I don't know, I haven't queried the Council on that yet.

Bradford asked how Kubach how large the Stallings district is. Kubach said I have it out in my truck, but a guess would be fifteen to twenty square miles; Wesley Chapel Fire District is the seventh largest in land mass in the County out of nineteen departments. Plyler asked what the size of our district has to do with our CUP. Bradford replied you were talking about service area, square mileage, how many fire departments we have and I think that's relevant to the service that you are able to perform. If you have two stations and a certain number of square miles versus other districts, I just want to understand if you have one extremely large fire station versus a more modest one and an additional one located elsewhere whether we might have improved service coverage. Someone said that would cost more money. Bradford said but would we have improved service coverage especially given the County looking at re-aligning districts and that sort of thing. Chief Byrum said we have a five mile district, you can go six miles, we've got a five mile district with two stations, that's the reason we need to stay in this area to make this work; it works perfect where it is. Some districts run six miles but they have a nine rating, there are some areas that have ten miles and they don't have any homeowners insurance. Assistant Chief James Kubach said anything between five and six miles has to be a nine rating; there is no way to get it lower. Anything under five road miles in the distance to the station with the rating at what the N.C. Department of Insurance rates your fire department at, a six rating is basically as low as it goes in residential, it can go all the way to a one, but normally a five to a one only affects commercial properties. The City of

Charlotte is a class three; there's only one class one in the State of North Carolina, and there's only about thirty in the United States.

Pierce said this goes to public necessity and the scale of the project and the tax rate, have you looked into other alternative funding, like the stimulus funding that could help offset some of the costs. Plyler said we have, but people in our fire district live in too big a homes, and incomes are too high so that we could not get a grant, per Sue Myrick's office. Pierce said based on less than five thousand and being rural and being volunteer, it was having nothing to do with income level; the Chief said we passed that five thousand level long ago, he thought it was eighteen to twenty thousand people we serve. Kubach asked how many square miles the Village of Wesley Chapel was. Pierce said it is 8.4 square miles, and the NC Office of Budget Management gave us a population of 4,793. Kubach said the Wesley Chapel Fire District covers 90-95% of the town of Wesley Chapel so 7.5 to 8 miles are included in the department so we've got at least another 31 square miles in other municipalities or unincorporated areas, so that is what percentage Wesley Chapel makes up of the fire district, eight out of thirty nine square miles.

Pierce brought up funding sources, besides what they will ask the County for. Byrum said the town coffers would fit right in with that. Plyler said we feel like there may be a grant out there and continue to look; the per capita income in the area is too great to get a government grant. Marvin recently gave the fire department some money. Pierce said she was talking with Wayne Herron the manager of Monroe and they are deferring the upgrade of their fire station five which is on Old Charlotte Highway in a temporary modular home with two little garages for their trucks. Kubach said that is four, five is over on Concord Avenue. Pierce said they are deferring additional trucks and equipment two to three years, the new station at the airport a year due to lack of revenue; she was trying to understand if we green light a big project in comparison to other towns.

Mr. Broome said once again what the Council is doing is not necessarily green lighting to break the ground, all its doing is approving a conditional use which if the project can not be started, of course the conditional use will expire after two years. So I can assure you the fire department will continue to look for any alternate funding that is available throughout not just this building phase but throughout the life of the fire department, of course a very high value would be placed upon finding alternate funding sources which would ease the burden on those taxpayers within the district. That's not a question that the fire department is going to siphon any unnecessary money off the County but what it comes back to is no matter what happens here tonight does not guarantee this building ever will be built it merely accrues the conditional use that if the money is there, if the stars align so to speak, then one step in that project has gone forward but we will certainly keep all options open for alternate funding.

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Pierce said we don't know at this point if there is any additional funding and the ones that don't live in Wesley Chapel are not represented tonight. Plyler asked if it would make any difference if fifteen people from the Marvin area came and spoke. Pierce said I can't say because I don't know what their testimony would be.

Mayor Clinton asked if there were any further questions, there being none, she closed the public comment portion of the public hearing; during deliberations we can still ask questions of the people who spoke, so the public hearing itself will not be closed until after we vote. Given the timing and that the next public hearing would probably go awhile, she asked Council if they wanted to push through and go to deliberation, or given all the testimony do you want to go back and look at your notes and prepare for the deliberation. Pierce asked if the stormwater documentation is ready and nothing needs to be addressed from what you heard from their engineer tonight. Bonnie Fisher said we can work together on calculations she just needs guidance from Council on the standards of the fifty year or hundred year storm. Mayor Clinton said that would be put in as a condition of the CUP that whatever standards we put that Bonnie would make sure they are met. Attorney Sistrunk agreed.

Plyler asked if Langen was comfortable with the fifty or hundred year standards. Langen said he deferred to the engineer on the technical specifications; he does a quick common sense fact check and hands it off to the engineer for specifics. Plyler asked if Langen had given a recommendation to the council. Langen said yes, he recommended approval. Plyler suggested Council deliberate now while it's fresh on your mind, while everyone is here to answer questions and go ahead and make your decision on it. Mayor Clinton said it is on our agenda to go through the next public hearing first. Chief Byrum said last week you said the same thing, you passed the one that was before us, and you need to vote on this tonight. Mayor Clinton said she was asking the question of Council, and it was up to Council to do what they want. Horvath said since he was the cause of the last time's adjournment, first off he would like to defend that, because it was on the agenda to be voted on potentially, however because we had to adjourn the meeting we elected to move that forward. That does not mean we cannot do that tonight, and that is what the Mayor is asking. He continued, I apologized to everybody profusely last week and I'll do it again today. It was not my intent to cause everybody to have to come back and go through this, because we have to go through it as well. So that means I will defer to my colleagues, because I caused the problem, I am ready to stay here as late as possible, but I am being self-centered because I caused the problem. Plyler said he thought it would be in the best interest of the Council, you've got everyone here that has spoken for this project tonight, the architect, the lawyer, the engineer and if you have any questions, get it over with and ask those questions tonight and make a decision on it. If we come back it's the third time.

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Mayor Clinton reminded that we have closed the public comments portion of the hearing, so the discussion is up to Council.

Bradford asked how many people were signed up for the next CUP; the Clerk counted nine. Mayor Clinton confirmed eight of the nine wanted to speak on the CUP with three or four being the applicant or his representatives. Pierce did not think we could get through that hearing and all this decision in a reasonable amount of time; Bradford said she wanted to honor everyone's time, but she wanted to be able to digest and deliberate on the information we received from the folks tonight. Mayor Clinton said with the CUP we have specific findings of fact, and we have to give evidence for each of those findings of fact whether we approve it or deny it, that's not something that just rolls off your tongue, and also any potential conditions that have to be placed on the CUP have to be written out and documented and agreed upon with the applicant and so its not something that is going to happen very quickly.

Plyler said if any member of Council has a condition that they wish to present they should have done that a long time ago. You've had those set of plans for three weeks, I hand delivered them to each of you. Mayor Clinton said we are not allowed to make those contacts until we get into this hearing. Plyler said if you can read a set of plans, and you have Joshua your planner saying he approved it, if you have a doubt, someone should have sent Joshua a question, there's nothing wrong with asking the planner about the CUP. Mayor Clinton said the instructions we've gotten on a CUP is the evidence our planner gives us is given as testimony, we're not allowed to have those discussions before the hearing, so that everybody is on the same page with all the evidence received, all the discussions that are had, all the issues that come up, so that's the way we run our hearings, we don't have ex parte communication even with our planner. That's why this process is slow, and it's slow for a reason because it's very open and you see all the good parts, you see all the bad parts. Chief Byrum asked why you approved the project last week. Mayor Clinton said the public hearing is closed, and she asked council to make a decision. Pierce noted we will have to go through the same process for the next public hearing which is why, if we rush through this, we still have to do that, and I have to proctor EOG's tomorrow and I'm not going to be here until midnight. Mayor Clinton said we need a motion, the choice is to either table item 4 on the agenda, move it up to be done immediately, leave it as item 4 and make the decision tonight.

Bradford made a motion to table Item 4 until the June 8, 2009 Council meeting here at the church. Bradford also would like to see the binders Mr. Broome had, they were passed out as **Exhibit 9**; Mr. Broome said it was the pertinent evidence that they believe to be relevant to the Conditional Use. Pierce seconded the motion.

The motion passed 3-1, with Horvath voting nay.

A short recess was held.

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

Mayor Clinton said she just found out this project had not been reviewed by our engineer, so we will not be able to go through the whole thing; so she asked the applicant if they preferred to hold off and do the whole thing next time or go ahead and start knowing that there might be some revisions based on the comments from the engineer. The applicant wished to go ahead.

Mayor Clinton said this item is a conditional use re-zoning and also a CUP so it's a little different from the last CUP's we have done, in that we will make a legislative decision on the zoning itself to conditional use B-2 and then we will do the CUP for the actual use. (Attorney Sistrunk had left the room.) The attorney had suggested we do two different hearings, a hearing on the actual re-zoning which is legislative in nature, meaning that we can take comments from the public that are not factual based, testimony based, and then when we get into the CUP itself which would be the project and the plans, that is quasi-judicial and requires people to be sworn in.

The public hearing for the legislative decision which is the re-zoning to conditional use district B-2 was opened.

Robert Mitchell spoke against the re-zoning, he said it doesn't fit the land use plan, and sets a precedent.

Sydell Coniglio, who lives in Stonegate, spoke in opposition to the re-zoning; she felt it would go against the master plan and land use plan, (Attorney Sistrunk returned to the room), that it would set a precedent, that she could not see how it would flourish being off the beaten path and thereby force owners to sell to some other commercial property.

Lisa Garera said she also lives in Stonegate and agreed with what Ms. Coniglio said; she has worked in real estate and didn't feel it would be an attribute for the neighborhood to be located across from a produce stand, it would increase traffic, the area is unprepared, there was an accident diagonally from the site over the weekend and the surrounding area is residential.

Mary Martin spoke; she said she remembered the ETJ proposal and people were reassured that all commercial would be at Waxhaw Indian Trail Road and Highway 84 and that there was one other commercial parcel at New Town Road and Waxhaw Indian Trail Road. She felt it would not be beneficial to the area; she was not against Hillbilly Produce, but against the zoning and where the market would come in. Currently there are some individual people in the area who do produce and that is the lifeblood of the community; if you go out on

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Independence Boulevard and look at Hillbilly Produce Market she didn't think that was what we want here on the corner; this would also set a precedent.

Procedures were discussed with Attorney Sistrunk, specifics regarding the use will be discussed later, but general issues can be addressed at this time regarding the re-zoning.

Architect John R. Urban, representing the applicant said the Surfaces have talked to the adjacent landowners and some of the neighbors in Stonegate and it is ironic because who the road is named after, Plyler, and a few of the other people are very supportive of this project, and they live on large parcels adjacent to the area and they were against the subdivision. If I took the sign off our project and people drove by, they would say what a quaint looking farmhouse. What other use would be appropriate for this land; you couldn't build houses there if you wanted to because of the lack of services available, so you can't put houses on there except for one, and I don't think any one individual, unless he was extremely wealthy would want to buy 7.75 acres in Wesley Chapel and build one house. So that land can't be used today for what it was intended for, that may change ten or twenty years down the road, but not today. The CUP process will allow you to look at specifically what it can be used for, it's not a gas station. If someone bought this property from Mr. Surface some years from now they would be back at this table, applying for a conditional use, and I extremely doubt that you would approve a gas station. A conditional use plan is a set of conditions for what this property can be used for. This is an extremely low use project. There is no more than eighteen to twenty thousand square feet of impervious area, that includes the building, parking and drive access. The property is 7.75 acres in size and 280,000 square feet of pervious area, even a residential area would have far more impervious area than this. You might first think to put this project in the town center, but that doesn't make any sense. How does an agricultural based use deal with the higher land values of the retail area, where would he get the four or five acres to garden on? At the same time you don't want a retail facility, we are talking a six thousand square foot facility with porch and all the trappings of a farmhouse vernacular. Urban said he understood the master plan was R-40, but if there were houses there, would anyone buy a house across from the substation. Here you have a use that will be an excellent buffer between single family homes and the sub-station; and across the street is a garage, it looks like it's been there thirty years, the boards are rusting.

Marshall Surface said he thought it would be an improvement from what's there now, coming down instead of seeing the substation you would see nice flowers, our produce, our garden in the back. He talked to the neighbors right around, and all were in favor of it, and he should have followed up- three out of four said they would come to the meeting, and the fourth said he was not opposed to it whatsoever. He said he knows whatever goes there won't suit everyone, but it would please a high majority.

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Astrid Weddle asked to speak, she said in the off season when you sell pine straw and hay, what would they be in? Marshall Surface replied they use trailers for the pine straw and wheat straw. Ms. Weddle referenced locations in Charlotte that forbid using trailers because they do not like the looks of it, and she felt that she and her neighbors in Stonegate were opposed to trailers. Mr. Surface said they could bring them in and unload them, but the cost would go up, they sell pine needles year round cheaper than anyone else in Charlotte. He noted its not just the flowers, they would have pumpkins, Christmas trees, pansies and with the acreage they have, they would have a spot in the back, plant some trees around it and you would have to look hard to see the trailer. Dan Ashworth, engineer, noted the ordinance requires pretty significant buffers; you would have shrubs, magnolia trees, so it wouldn't be in an open field. Weddle said commercial is one issue, aesthetics is another.

Someone asked what the differences between R-40 and B-2 are. Mayor Clinton read from the definitions of the zoning districts in the ordinance.

R-40, Single-Family and Agricultural. The R-40 district is established to accommodate agricultural uses and low-density single-family residential development at low densities consistent with suitability of the land and the rural character of the Village. The minimum lot size is 40,000 square feet.

B-2 Local Shopping Center District. This district is established to provide for the controlled development of more intense retail and service uses designed to serve the immediate Village of Wesley Chapel area. This district is designed to provide an orderly arrangement of convenience and comparison-shopping outlets, along with adequate off-street parking and other amenities. The shopping center district shall be located adjacent to major thoroughfares. A shopping center as defined in this Ordinance will only be permitted on a conditional use basis. Certain uses will be permitted only on an individual basis. Any permitted individual use locating in the B-2 zoning district shall have a maximum gross floor area of 2,000 square feet. Individual uses exceeding a gross floor area of 2,000 square feet will be permitted on a conditional use basis.

Mayor Clinton noted they are not asking for a straight B-2 re-zoning; if they were to do a straight re-zoning from R-40 to B-2 anything in the Table of Uses with an X under B-2 would be allowed as a use. They are asking for a specific use of only what they have in their application. The citizen asked if they put up one building today, and wanted to put up another building in five years, would they be allowed to do so, Mayor Clinton replied no, they would have to apply to do so. Mr. Urban stated this is an unusual case, the closest produce stand is six miles away; usually B-2 involves a lot of square footage, and this is only six thousand square feet; the Surfaces are looking for the best use of the property.

The Mayor asked if there were any other speakers, there were none.

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Mayor Clinton asked why the decision was made to go for a re-zoning to B-2 and not B-1. Langen replied that they went through the Table of Uses, and it was hard to categorize, he felt a couple of uses would be B-2 uses. His main concerns were a big box store and home improvement store; they met the definitions but did not meet the square footage for these, so Langen erred on the side of caution.

There being no other questions, the quasi-judicial part of the hearing on the CUP itself began. Mayor Clinton stated the hearing on this matter is judicial in nature and will be conducted in accordance with special due process safeguards. All people who wish to testify in this case should have signed up and will be sworn in by the Clerk to give your affirmation. Everyone who wished to speak was sworn in by the Clerk.

The Mayor then asked members of Council to reveal any conflicts or to withdraw if necessary. There were no conflicts. The Mayor asked if anyone on Council had any information or special knowledge about the case that may not come out at the hearing tonight to describe that information for the knowledge. The response was negative.

Langen said the project is a produce market that sells everything from some kinds of groceries to nursery type items, hardware items and some pallets. He read from the Planning Board meeting minutes of March 23, 2009:

Adams asked how long it would take to build; John Urban said about five to seven months for the building and a short time for site preparation. Marshall Surface said there are two wells on site, also city water, and septic. He said they have a business on Independence, but the highway will take their land eventually and this will be their second location until that time, when this will become their one location. On three acres they plan to offer community gardens, and raise produce to sell at the store. There is also an area by the oak trees for a farmers market if so wanted. John Urban had a database of farmers markets which showed the closest was six miles in Waxhaw, and the next one eleven miles away in Matthews, and one in Monroe. Grexa asked about parking; there are 30 spaces based on 6,000 square feet; if there were a farmers market, customers could park on the grass. John Urban said they were trying to minimize impervious surface. Adams asked regarding access. Urban said there is a one way out to the right. The primary entrance is in and out. The road width is twelve feet on the right. Dan Ashworth said the main driveway is 24 feet wide; fire trucks can get in, and the rest is twelve feet wide. There is a fire hydrant down New Town Road about two hundred feet.

They were asked about septic; John Surface said they can do a pre-treatment system, and based on tests feel it will perc well enough for that. Dan Ashworth said there is a detention pond; he said Wesley Chapel pretty much adopted Charlotte's ordinance with the exception of Chapter 2. It allows up to 20,000 square feet of impervious surface without a detention pond because the run-off is not significant.

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Langen added at this point that our ordinance does not have that exception of 20,000 square feet.

Langen continued to read from the minutes:

It was noted there is a gully between this land and Danny Boatright next door. Dan Ashworth said there will be trees similar to the power plant's landscaping; magnolias, and shrubs. There will not be berms. Adams asked if Stonegate knew about this project. Langen said he was told they do, but he couldn't verify that. Keeney asked about the community gardens' irrigation – it would be fed with water from the detention area, and the well water could also be used. Urban said they also looked at using gray water reclamation. Any runoff would be collected in a cistern. Dan Ashworth said they are having less than 24% of the surface impervious; so it should meet stormwater quality rules without things like a rain garden Marshall Surface said they would have runoff only with heavy rains, and it would do what it does now. Dan Ashworth said there won't be water standing for more than 48 hours. Water would eventually cross New Town Road on the culvert at the southwest corner, and will go toward Stonegate. The detention area will keep the rate of flow from going up. Grexa asked how large the pipe is at Underwood; Langen said fourteen inches; so the pipe here is larger. Dan Ashworth said the cisterns are not a definite; it won't be much of a pond, nothing like the pond at the substation. The area will be grassed and not fenced. John Urban said it will be about forty feet wide and 80-100 feet long. Adams asked if they would be open year round, and Marshall Surface replied yes.

Langen noted the minutes now get into the findings of fact and include his staff comments as well as the Planning Board findings. His staff comments were read from the Planning Board minutes:

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

The proposed use is a home improvement/grocery/garden supply/retail/office store. Access would be gained through two access points on Will Plyler Rd., with adequate site distance for both entrances. However, the unpaved entrance does not comply with the zoning ordinance and could be considered a safety issue as a gravel road could become unsafe after extensive use by commercial traffic. The proposed use WOULD be considered capable of materially endangering the public health or safety if constructed as submitted.

Langen added at this point that after subsequent discussions the road will be paved.

The Board went through the findings of fact.

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

Langen noted the supplemental sheet said it will be paved, so there will not be a safety issue.

Langen said we received the supplemental sheet showing it will be paved at the Planning Board meeting after he wrote his report.

Langen continued to read from the Planning Board minutes:

There will be excess traffic. He e-mailed COG regarding traffic counts, and there will be more traffic than that generated by five, one acre lots, but he didn't think it would be near capacity. We don't require a traffic study. Adams noted in subdivisions we require a 26 foot road; it was changed last year. Dan Ashworth said the twenty four foot width came from DOT. Marshall Surface said they can do the twenty six foot width. Adams asked if they need more pull off space on the road, to get off the road before you turn in. Langen asked if he meant a deceleration lane. Marshall Surface said he didn't see the need for it, there are hardly any cars on Will Plyler; Adams said that's today. Langen said generally you require deceleration lanes for traffic a developer generates, not for others' traffic. Jason Surface said on Independence there are three lanes and no turn lanes. Langen said curb cuts can vary; the curb turning radius needs to be to commercial standards. Dan Ashworth said it is thirty feet, and based on NC DOT standards. Since the road is not maintained by the Village, DOT inspections would be done. Dan Ashworth said now you have a five foot offset, but you could push for a seven foot offset and make it a longer taper, but you are at the mercy of DOT. Adams said that would be good. Langen said our ordinance just says it has to be adequate to accommodate two way traffic. The existing twelve foot driveway will be paved. Fairman made a motion to approve this finding, and specify all driveways and parking be paved. Adams seconded the motion.

The motion passed unanimously.

Mayor Clinton asked Langen not to read the minutes word for word.

The next finding of fact is (b) **The use meets all required conditions and specifications.**

Langen's staff memo stated:

The proposed uses would be allowed, as-of - right in a B2 commercial zoning district, with the exception of the Garden Supply use. This would require a conditional use permit. Therefore, the application for a parallel conditional use along with B2 zoning would allow for the proposed uses. A formal land use/buffer plan has not been provided, although a landscape plan will be provided for the Planning Board meeting. An unpaved entrance is also proposed. The use DOES NOT appear to meet all required conditions and specifications.

Langen said he went over the conditional use checklist with the applicant multiple times and he felt confident with the exception of the market study item, the application was complete. There was some discussion whether a market study was even possible with this type of business, and that will be up to Council to decide. Langen said there was some discussion of a buffer plan, and what are they going to buffer; we have some provisions for when you have a large parcel, to buffer the use and not the entire perimeters of the parcel. There was discussion of the driveway and paving it, and the landscape plan which we do have now. The minutes note Adams said if there was a motion that they approve it with a statement that the exit driveway is listed on the plans to be paved and the landscape of the street sides has been included on the plans. Hours of operation would be 8 am – 6 pm January – March, starting in late April they stay open 8 am

– 8 pm until Christmas tree time when they stay open 8 am to 10 pm. Regarding lighting at Christmas tree time they have lights and trees lit up, the rest of the year they are closed before dark. John Urban said they will follow the ordinance regarding all lighting requirements, and they have submitted a plan for that. There were some questions on what a CUP is. Fairman made a motion, based on the updated plans, and that the driveway must be paved, stormwater and lighting guidelines must be met, to approve the plan Adams seconded the motion. The motion passed unanimously. Langen said there was more discussion on public hearings, that it is combined. Langen said there was also talk about the market study.

Langen then went on to finding of fact (c) **The Use will not substantially injure the value of adjoining or abutting property, or the use is a public necessity.**

Zoning Administrator Langen read from his staff memo on CUP-B2-09-01:

The adjoining lots consist of residential properties. Buffers are proposed along side and rear of building and parking, although a formal plan not submitted. The proposed development project would generate commercial traffic and would not be in keeping with this residential district. Adequate commercial development is located at the Town Center, although a market study will be provided for the Planning Board meeting. The proposed rezoning could be considered “spot” zoning as it is surrounded by residential property and is not located at the intersection of major thoroughfares. The proposed use could also encourage additional commercial re-zonings in the future. The proposed use IS anticipated to injure the value of the adjoining or abutting properties and IS NOT considered to be a public necessity.

Langen said the Planning Board response included asking if that meant we are setting a precedent; Langen replied since this is a small parcel among a large zoning district, it could be considered spot zoning, and is more easily challenged in court. It could then injure values of adjacent properties. If it leads to more rezonings, it can create more traffic. There was some talk about the power plant. Adams and Bush said this would not fit at the town center. Keeney said this would enhance the Village and fit a need. There was a question about what spot zoning is, it is a professional term, and a legal term; it probably could be subject to legal interpretation. Keeney felt the precedence was already set since the substation was in ETJ area. There were some more procedural questions. There was talk about water and sewer; once again John Urban said this is a plan for a 6,000 square foot building out of 280,000 square feet; so this is a precedent for a low impact scale. Urban said since you could only get one house on the property, you don't see people spending a lot of money for homes looking at a substation. Keeney said the Master Plan showed 85% preferred for Wesley Chapel to continue in an agricultural attitude. Adams made a motion to re-write this section as follows: “The adjoining lots consist of residential properties. Buffers are proposed, along the side and rear of building and parking areas. The proposed development may add to the value of adjacent properties. Further, it would enhance the rural nature of Wesley Chapel although not a public necessity; the proposed farm market will be a benefit to the community.” Fairman seconded the

motion. Langen said this motion was their opinion submitted in the form of a motion. Mayor Clinton asked if they voted on this finding of fact. Langen said yes they did vote, Mayor Clinton said they voted on the motion, not on the finding of fact. Langen said the minutes state that Adams made a motion to re-write this section as follows; I think they thought they were voting on the finding. Langen said when he began the presentation to Planning Board he gave them his opinion on each finding of fact and told them they could accept his opinion verbatim, alter his opinion, or write their own and so through some of these they may have adopted part of Langen's opinion but I think they thought they were voting on the finding of fact. Langen said it was hard to give a one hundred percent answer based on these minutes; I can only tell you what I remember from the meeting.

Langen continued with finding of fact (d) **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.**

Langen read from his staff memo on CUP-B2-09-01:

The proposed use is a home improvement/grocery/garden supply/retail/office store. As the property is located in a Low-Density Residential Land Use District, it DOES NOT comply with the Land Use Plan. In addition, this area is residential in character and would not be suited to commercial traffic and development. Therefore, the proposed use IS NOT considered to be in harmony with the area NOR to be in general conformity with the Zoning Ordinance.

Langen said the Planning Board minutes show there was some talk about classification and whether it was a home improvement store; the ordinance does require 15,000 square feet and Grexa noted this application is a 6,000 square foot project. Langen felt home improvement was the most intense use proposed, for example large trucks carrying pallets of stone might occur, and this was only allowable in B-2. Adams asked if it should be classified as a garden center and seed store. We read the definition of a farmers market. We talked about "agricultural flavor" and whether they should replace Langen's language, or just add to it. Adams felt it was in harmony with the area, and he felt most people think of a home improvement store as a Lowes/Home Depot; not what you see here. Langen said he was looking for the best fit and that was his opinion. They talked about the office, and it turned out they are not putting in an office use, it is just their bookkeeping office. Langen read from the Planning Board minutes: *Adams made a motion: "That the majority of the population, when considering the Master Plan, wanted Wesley Chapel to stay agricultural and rural in flavor. The proposed property, although commercial, is a facility that sells as well as produces agricultural products and will conserve the natural flavor and is in harmony with our community, and based on that, finding (d) is met. Keeney seconded the motion. The motion passed unanimously.*

Langen went on to finding (e) **Additional review criteria, as stated in the Ordinance, shall also be considered and addressed where required.**

Langen read from his staff memo: *Landscaping, buffering and paving are criteria required to be reviewed. Stormwater is being reviewed for exempt status due to low impervious surface ratio.*

Langen said at that time we had not gotten to the bottom of whether to accept or not and we were comparing the ordinances. We discussed the alternatives; a) consider the application incomplete, b) accept that their statements on their plan are adequate, or (c) make a conditional decision based on their successful review before signing their zoning permit. Langen said he also told them that we require a market study. Adams asked why. Langen said I explained it was necessary to show supporting demographics, and that we couldn't waive it, but there was talk about whether the Village Commons study would be considered adequate. There was some discussion of stormwater, they talked about dumping into a pond. There was discussion of the 24 inch pipe, and that the stormwater administrator must approve, and that that is out of the Planning Board's hands; the Board does not have technical ability to approve it. Dan Ashworth said any project changes can change the stormwater plan; and that's why they do a preliminary plan. It is expensive to produce a study, when the re-zoning could be turned down. A lighting plan and market study is also needed. Finally Fairman made a motion to approve (e), (f), and (g); that this does not materially adversely affect adjacent and abutting properties, that the market study from JDH and Aston Properties is adequate, that we need a preliminary stormwater report, that the landscaping and buffering plan has been approved and that lighting comply with the ordinance. Keeney seconded the motion. The motion was passed unanimously.

Langen went on to finding of fact **f) Any deviation from the terms of the Zoning 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.** The Planner report stated: *"Landscaping, buffering and paving criteria are anticipated to be deviated from. The paving criteria deviation WOULD NOT be considered equal to or better than what would be accomplished under the strict application of the Zoning Ordinance. Landscaping and buffering deviations cannot be assessed until submittal of plan."*

Finding of fact (g) **Any deviation from the terms of the Ordinance will not adversely affect the right of other abutting or nearby property owners in any material manner.** Planner response was *"The anticipated deviations from the terms of the Zoning Ordinance WOULD affect the right of other abutting or nearby property owners to remain located in a residential district. As the proposed use and submitted plan cannot be considered to meet the above criteria, staff recommends DENIAL of the conditional use request."*

Langen reported on the discussion of the Planning Board, they asked why he was recommending disapproval. Langen said first of all this doesn't agree with the land use plan. Keeney said you are dismissing our whole Master Plan. Langen explained the difference between the Comprehensive Plan, the Master

Plan and the Land Use Plan. Langen said the districts in the Master Plan do not match up with our land use plan and it was a proposed Master Plan and not an adopted Land Use Plan that we legally have to follow. At the Planning Board meeting Grexa said his biggest concern is that it sets a precedent; he thinks it is a great plan and fits in the Master Plan; Fairman said everything sets precedent; Fairman made a motion that based on the new information, we approve CUP B2-09-01. Keeney seconded the motion and the Planning Board motion passed unanimously.

John R. Urban, from the Urban Architectural Group then spoke. He showed the 7.75 acre site plan, bounded by New Town Road, Will Plyler Road and the sub-station. The proposed 6,000 square foot building has a covered walkway and a porch. Mr. Boatright's property is in the back he has a garden and he is utilizing some of Mr. Surface's property to grow as well. The building is behind the front setback by ten feet so it is eighty feet from the front; it is more than one hundred fourteen feet from the closest property line bordering residential; and you have the buffer along Will Plyler Road as well. This is very low impact, there is the minimum parking required, there is an existing gravel path, Urban said Planning Board asked us to resurface it and that is fine although from a design standpoint of sustainability we would like to leave it pervious. It will be paved with asphalt. Urban said the large row of trees we would like to dedicate as a produce stand or farmers market for the community. At the end of the day Mr. Surface can buy back those items that didn't sell and sell them in the store. Like in Matthews or Waxhaw, people can get up early on Saturday and come out, and it becomes a community center for people who are into environmental things. There is a community garden and activity area in the back, not only does it give you a growing area, but also an educational area for kids to visit a small working farm. Urban noted if houses were built the stand of trees wouldn't stay; the trees would be on the setback, and by the time you get infrastructure in, the road, houses, drive-way, cul-de-sac, back and front yards you would lose them; he felt they were a precious commodity on this site. Regarding landscaping, the buffer all along New Town Road and Will Plyler from the back, we talked with Joshua that we didn't want to buffer the entire site and lose that rural character, so we interpreted the code to buffer the building and structure itself. Mr. Urban had architectural elevations, he described the building as very simple, a southern farm vernacular architecture, a rectangular building with a wrap-around porch; Hardie siding, stone features and fireplaces, and metal roof. There are two fireplaces where you can sit down with a cup of cider on a cool day; there is a small office, a stockroom and restrooms. Like in many produce or farmers markets, you can roll up the door and walk in and see the produce on display. He said you might drive by and think it was a homestead and old farm place. The majority of functions will all exist behind the building, buffered by the landscape and by the building itself so it is visually pleasing from the front. Urban said he appreciated the time and effort the Planning Board took, and in their mind we met all the conditions. He mentioned the narrative provided, and felt it addressed the issues talked about earlier this evening; we can't get water and sewer to build residential on this

property. Urban said marketing studies require several things such as comps and examples and case studies; he talked to the people who did the study for the shopping center and they felt without the preponderance of evidence how could you do a marketing study, other than Mr. Surface testifying and giving evidence on his experience in the business. Mr. Surface said they have been on Independence since 1984, and have been in business since 1975.

Dan Ashworth, their engineer, spoke next. He noted Union County sewer is at capacity, and from what you read in the papers, water is suspect as well. Ashworth said they have a letter from Mike Garbark at Public Works confirming they do have water allocation, and have since confirmed by phone that we still have that capacity. As far as the on-site disposal, there is not a significant amount of wastewater. They looked at the soils, and feel traditional septic could work or pre-treatment if needed, which is very common and very simple. In terms of stormwater, you adopted Charlotte's stormwater manual, with the exception of Chapter 2 where you went a little more conservative so that any added impervious area requires analysis whereas in Charlotte up to 20,000 square feet does not require detention. He noted there was more than enough land to meet our stormwater requirements; the analysis he did is overly conservative, and there is enough room to go twice that size on the detention pond. The analysis does not take account of the detention on site, and they will collect water off the roof in cisterns and use it to irrigate, and it adds to the conservatism. Ashworth said you won't see any added flow downhill to Stonegate.

Urban said there was a question tonight that the stormwater was not reviewed by the engineer yet, but regardless with what the engineer comes up with, it will not impact the size of the building it would only impact the size of the detention pond, maybe up, maybe down. Urban said the hours of operation rarely run into nighttime. He said the Planning Board did recognize the Master Plan is a living document, and subject to change and when it came down to it we presented there are other uses for the property but residential isn't one of them; therefore we submitted this project that meets the intent of the plan as well.

Mayor Clinton asked about the sewage disposal. Ashworth replied it could be a traditional septic system; they haven't had the County come out and analyze the soils yet, but we looked at the soils ourselves, and they are pretty good, and if not a traditional system, they could go with an advanced system. Pierce asked about the area on the plan designated wastewater treatment. Ashworth responded that septic is a form of wastewater treatment, the reason why we worded it that way is it might be traditional or it might be a little more sophisticated, these are all over the county and state, they are not new; it won't be spraying or irrigating anything. At the worst condition it would be a surface disposal covered by mulch. It would either be an additional septic tank or a septic with pre-treatment, with a traditional small disposal field. They moved the disposal field to the corner of the property because it's a different watershed.

Urban noted one of the findings of fact addresses if there were five houses there, there would be five traditional septic systems and have a more intensive impact on the environment. Since it is a commercial use, the flow rates and usage will be much lower. Pierce asked about anticipated volume. Urban replied there would be three uses per day for employees per the standards, and Surface estimated four employees per day though it varies a lot by seasons. Even with the public restrooms, Ashworth estimated it would use less than a four bedroom house. Urban said there are 2,400 gallons per day effluent for residential versus 700 potential gallons per day for this use, so it is 3.25 times more for residential use than for this use.

Horvath asked about the landscape plan; on the larger plan it shows magnolias, and on the books it shows red maples. Ashworth said it was updated on the landscape plan, there will be magnolias similar to at the power plant. Horvath asked about the gravel parking lot. Urban said it was a gravel drive but the Planning Board requested it be asphalt, and the parking lot will of course be asphalt.

Pierce had a question for Langen; where in our ordinance do we allow wastewater treatment that's not septic; it's defined in essential services even if privately owned. Ashworth noted it is permitted through the county health department. Langen said he was under the impression that it was a traditional septic tank or a pre-treated septic system. Ashworth agreed, depending on the depth of the soil it will be a traditional septic system or with a pre-treatment component. The perc test has not been done yet. Ashworth said there is septic on the property, near the well. Pierce noted that is a violation. Ashworth said traditional septic is on the way out, this is much better, one reason they are looking at the soil depth is you need room for the soil to treat, once it disperses through the line it will trickle down and the soil will treat it. If for some reason you do not have adequate depth, we pre-treat it so we don't need as much depth than if it weren't pre-treated. Ashworth explained it uses two tanks, below ground, with a bead bag which allows for digestion of the solids and then it trickles over to the disposal field and is treated with UV lights to the level where it could be put directly in the creek.

Mayor Clinton asked about curb and gutter; Urban said there is curb and gutter in the parking lot and along the sidewalk to the building, but not around the whole lot. Ashworth said the sidewalk will be to ADA standards.

Pierce asked about the community gardening area irrigation. Mr. Surface said they will use a cistern system to pump it from the cistern to the garden. Pierce asked if it will be sufficient. Surface said it depends on the rain. Pierce asked if the produce will be limited to what they grow; Surface said we buy what we can locally, but also buy from Florida and California. Pierce said you won't be a true farmers market if you don't sell only what is locally grown. Marshall said the area for farmers to come sell their produce will be all locally grown. Pierce said you will be a grocery store then, for the most part. Mr. Surface said we are

not really a grocery store, we go to the Columbia Farmers Market and we buy as it's available. It's a little fresher and a lot of times a lot more local. Pierce asked about what type of truck they use; they use a box truck for the produce, but do sell pine needles in an eighteen wheeler. Pierce asked about an area for the truck, and if it was to be landscaped. Ashworth said if the use is agricultural under residential, they could use it to farm, and are farmers not allowed to park an eighteen wheeler or large equipment. Langen said parking must be on a paved surface. Pierce asked if that should be on the plan and a driveway to access it. Surface said they also get in decorative stone in wire cages in an eighteen wheeler; they deliver it in the box truck. They currently sell a good bit; and deliver one day a week on Tuesdays, the maximum times they load the truck is twice a day.

Pierce asked about the height of the building. Urban said it is the height of a two story house, about twenty six feet high and eighty feet in length. It looks the same front and back.

Mayor Clinton asked about the size of the area where plants are sold. Mr. Surface said currently they have an area about as big as this room; the flowers are in the front on the New Town Road side. Pierce asked besides the pine needle storage and the stone, what else would you store outside? Surface said pumpkins in the fall and Christmas trees.

Bradford asked if there would be gray water irrigation. Urban said it makes sense to use water from the roof and from the parking lot runoff. They could hold several thousand gallons in reserve in an underground tank to prevent sediment, and it doesn't tax the water system at all.

Mayor Clinton asked about the square footage, as stated at 3.2. Urban said the stated no more than 6,000 square feet of office space relates to the building size itself. Mayor Clinton asked about the building envelope, 2.2 on the plan which states "...the exact location, size and number of buildings within the specific envelope is subject to change." Ashworth said they did that in case the location of the building had to shift. Mayor Clinton said under 6.8 on the plan it states, "The petitioner is requesting a variance to the required curb and gutter with sidewalk along New Town Road and Will Plyler Road." Ashworth said the ordinance is written as if they were developing the whole site, and they consider it a hardship to do sidewalk and curb and gutter along the entire site considering the small amount of development. Mayor Clinton asked Langen if they didn't have to come to us ahead of time to request a variance. Attorney Sistrunk said they could amend their submittal to include that request; he wasn't familiar enough with the ordinance to understand the request. Mayor Clinton said the ordinance requires curb and gutter around the whole perimeter. Urban said this may have come up in the Planning Board meeting as well, and there's a disconnect, there's nothing to connect to. He thought there was an assumption that it would all turn commercial someday, and sidewalks would be in place, but one of the conversation points was

how would you preserve that rural character, putting it in there would have an associated cost, but what would it be connecting to. Mayor Clinton said her question was more in line with there's a variance there you are asking to be granted and is that evaluated as part of the CUP; if somebody is doing a residential subdivision and they want a variance they come to us ahead of time and get that variance, and then go back and do the subdivision plan. So should the variance be part of the CUP or something done separately. Langen, said since it's not a use by right, so it would be hard to get a variance before they have a CUP. If they can't get the variance, they have to follow the ordinance; Langen said he thought he made that clear to them. Mayor Clinton said is the answer that we consider the variance as part of the CUP? Langen said no, you approve this, and let them know they have to follow the ordinance and if they can't get a variance they have to follow the rules. Mayor Clinton said the variance goes to the Board of Adjustment, not us, correct? Langen said he was not sure.

Mayor Clinton asked the applicant if they would have a storage building for tools if they are farming a big portion of the land. Marshall Surface said he hadn't planned on that, he has a property in Indian Trail and they could keep things there, and bring it back.

Langen said whenever you have a zoning issue and someone says I can't do anything else with my property, that's rarely true, there are a number of uses that you can do in R-40; secondly its common practice to consolidate parcels and whereas this parcel may not be large enough to put in a traditional subdivision a large enough tract could be assembled to do a number of uses; third, we live in a free market economy so the price will come down eventually until it is appropriate for the use.

Urban said but the water and sewer are such a major issue in the county; you could build one house, but not five, what do you do with the remaining five or six acres. He said the Planning Board was looking at the long term, thinking sustainability, environmental impact, and less growth, cars, impact as opposed to another bunch of houses. Urban said his client was not looking to eke every dollar out of his property, but to just make a reasonable living in a community and it's a win win situation.

Mayor Clinton asked if anyone else wanted to speak.

Robert Mitchell said he was against the CUP; it is not the responsibility of the town to make up for due diligence on the part of the buyer. He didn't think a 6,000 square feet commercial building, a thirty car parking lot and pallets look like a quaint farmhouse. He said down the street is a sign advertising commercial property, so why would someone buy residential property assuming they could get a CUP and put up a commercial building. He also suggested they inspect the grove of trees, because one of them came down.

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Craig Winslow of 6121 Lostgate Lane spoke; he had concerns that greenhouses would be built. Also he said getting out in the morning takes ten to twelve minutes; Saturday is one of the few days they can get out in less than five minutes. This would add more traffic. He would support the concept in another location, and felt their neighborhood had enough problems with the substation and the gun range.

Mary Martin said she heard it would not be open in the evening, and then she heard rarely in the evening. Marshall Surface said in Christmas tree season, the latest they are open is ten pm. From January to March they close at six pm. In April they are open eight to eight. Sundays is always ten to six, except during Christmas trees.

Mary Martin asked about the parking on Saturday mornings during farmers markets. Mr. Surface said they have seven acres; they can adjust and use more of the garden area for parking, and park on the grass like in Matthews.

Pierce asked when Christmas trees sales start: the applicant said it is three weeks, starting at Thanksgiving.

The Clerk swore in Chuck Adams, Vice Chairman of the Planning Board. He said it thought it was important long term, that if Hillbilly does not come in that the property across from the B-1 property might have something come in that we would not want to see.

Mayor Clinton asked to clarify that the property across the street, the garage, is not zoned B-1, it is a non-conforming use so when it stops being used it becomes residential.

Mayor Clinton said she finds it interesting that we went through a CUP on this same property for the substation, and heard from lots of people that it would not affect the residential use of the surrounding property, yet here we are with a potential re-zoning of a piece of property next to the substation with people saying it can't be residential, because nobody wants to live next to the substation.

Mary Martin spoke of the house down the road near Twelve Mile Creek where there was flooding, and high tension wires, and they turned it into an attractive home place.

Mayor Clinton told Langen he needs to get the stormwater to Bonnie to review and have her attend the June meeting; she would also like to see the water allocation letter from the County. They will fax it to Langen tomorrow. She would also like to see something from the County re the septic. Ashworth said they come out and perc test, about 6-8 weeks later they have the results and tell where the field should be. They have taken some soil samples themselves with a hand auger.

Council would either like to see proof of the septic approval, or could make it a condition of approval.

Marshall Surface asked if he should have neighbors come to the next meeting and express their approval of the project. Mayor Clinton said their decision is based on the findings of fact, and unless they had some factual information it was unnecessary.

Bradford made a motion to recess the public hearing until Monday, June 8, 2009 at 7 pm, at Wesley Chapel United Methodist church. Croffut seconded the motion.

The motion passed unanimously.

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

Tabled to June 8, see motion in Item 2 above.

5. 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

Croffut made a motion to table this item until June 8, 2009. Horvath seconded the motion.

The motion passed unanimously.

6. CONSIDER SCATTERED SITES HOUSING GRANTS

Two years ago we had decided not to participate. Monroe administers the program whereby \$400,000 is allocated for home improvements in the County for homeowners who make less than 50% of the median income in Union County. Pierce made a motion to not participate in the program. Bradford seconded the motion.

The motion passed unanimously.

7. CONSIDER APPROVAL OF LEASE AGREEMENT EXTENSION

Bennett said the lease had run out on January 1, 2009 and this was an amendment to extend the term to January 1, 2010. The lease can be terminated by 30 days notice from either party. Pierce made a motion to extend the lease; Croffut seconded the motion.

The motion passed unanimously.

8. DISCUSSION AND CONSIDER APPEAL OF POST OFFICE ZIP CODE BOUNDARY REVIEW LETTER

The Post Office turned down our request; Horvath spoke with them and it is primarily due to budget. Horvath will prepare a letter of appeal.

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9. APPOINT ADA COORDINATOR

Bennett reported she attended a helpful ADA meeting in April and they suggested we have a notice on our website, and we need an ADA Coordinator appointed. Pierce made a motion to appoint Cheryl Bennett the Village ADA Coordinator. Horvath seconded the motion.

The motion passed unanimously.

10. APPOINT MEMBERS TO DOWNTOWN AND PARKS AND REC COMMITTEES, AND ALTERNATE TO BOARD OF ADJUSTMENT

Mayor Clinton moved Mike Jensen from the Safety Committee and appointed him to the Downtown Committee; she appointed Elaine Rosoff and Greg Miller to the Parks and Rec Committee.

11. CALL FOR PUBLIC HEARING ON: STORMWATER ORDINANCE AMENDMENTS; ADDITION OF ARTICLE 15 (PLANNING BOARD RULES OF PROCEDURE) TO ZONING ORDINANCE; AMENDMENT TO ZONING ORDINANCE TABLE OF USES TO ALLOW "RECREATION FACILITIES, OUTDOOR (PARKS, PLAYGROUND) AS A CONDITIONAL USE IN B-1, B-2 AND L-I DISTRICTS.

Mayor Clinton asked if we were just moving portions of the Planning Board Rules of Procedure to the Ordinance; staff prepared it to move the entire section. It will be looked at later on. Pierce made a motion to call for a public hearing on Stormwater Ordinance Amendments; Addition Of Article 15 (Planning Board Rules Of Procedure) To Zoning Ordinance; Amendment To Zoning Ordinance Table Of Uses To Allow "Recreation Facilities, Outdoor (Parks, Playground) As A Conditional Use In B-1, B-2 And L-I Districts for Tuesday, June 16, 2009 at 7 pm at Wesley Chapel United Methodist Church. Bradford seconded the motion.

The motion passed unanimously.

12. RECEIVE PROPOSED 2009-2010 BUDGET FROM FINANCE OFFICER AND CALL FOR PUBLIC HEARING ON 2009-2010 BUDGET

The budget had been discussed at the Advance, changes made since then are a decrease for the Downtown and Safety Committees; excess funds were put into Parks and Rec and two line items (operating expense and capital outlay) were created there. The budget is based on the same tax rate as 2008/09 with a collection rate of 96% for real and personal property and 91% for motor vehicles. Our taxable value went up to \$822 million for real and personal and \$53.7 million for motor vehicles. The proposed budget will be put on the website. Horvath made a motion to hold a public hearing on the proposed budget on Monday June 8, 2009 at 7 pm at Wesley Chapel United Methodist Church. Bradford seconded the motion.

The motion passed unanimously.

13. DISCUSSION OF LAND DONATION; CONSIDER APPROVAL AND PATH FORWARD

Bradford reported that the Keels family is proposing to donate to the Village between nine and twelve acres, including the pond, that is across from the Price Mill subdivision. There are some legal and environmental reviews to be done, and we want to ensure that they are committed to the donation before we spend taxpayer money on the reviews. Pierce made a motion to direct staff and the attorney to draft a contract for the land donation and potential additional land purchase from Mrs. Keels so when the contract is signed we can pursue engineering studies and site evaluations of the property. Bradford seconded the motion.

The motion passed unanimously.

14. OTHER BUSINESS

Bradford had a thank you letter to the Keels for Council members to sign. Horvath said MUMPO is meeting tomorrow night at 6pm; Secretary Conti will be there and they will be looking at funding allocations. Thursday night at 6:30 pm is the Mayor Commissioners meeting at Unionville; discussion will include long range plan for law enforcement services to municipalities, economic development survey report by Union County Partnership for Progress, and update on the fire study.

15. COUNCIL COMMENTS

Croffut thanked everyone for persevering and visitors for staying.

16. ADJOURNMENT

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

The motion was approved unanimously.

The meeting was adjourned at 12:07 am.

Respectfully submitted,

Cheryl Bennett, Clerk

Mayor Tracey Clinton