

A regular meeting of the Carrboro Board of Aldermen was held on Tuesday, August 8, 1995 at 7:30 p.m. in the Town Hall Board Room.

Present and presiding:

Mayor	Eleanor Kinnaird
Aldermen	Michael Nelson
	Randy Marshall
	Hank Anderson
	Frances Shetley
	Jacquelyn Gist
Town Manager	Robert W. Morgan
Town Clerk	Sarah C. Williamson
Town Attorney	Michael B. Brough

Absent:

Alderman Jay Bryan

APPROVAL OF MINUTES OF PREVIOUS MEETING

MOTION WAS MADE BY RANDY MARSHALL AND SECONDED BY FRANCES SHETLEY TO APPROVE THE MINUTES OF JUNE 27, 1995. VOTE: AFFIRMATIVE ALL

RESOLUTION COMMENDING THE 1995 PONY LEAGUE ALLSTARS

The following resolution was introduced by Alderman Jacquelyn Gist and duly seconded by Alderman Hank Anderson.

A RESOLUTION COMMENDING THE 1995 PONY LEAGUE ALL STARS AS THE 1995 ALL DISTRICT CHAMPIONS Resolution No. 3/95-96

WHEREAS, the 1995 Pony League All Stars won four out of five games beating the undefeated-for-3-years Cary team and Raleigh teams; and

WHEREAS, these fine young people are to be commended for their hours of hard work, their commitment to excellence, their sportsmanship, and teamwork; and

WHEREAS, the coaches are to be commended for donating their time, for serving as positive role models, and for caring for the boys; and

WHEREAS, the success of this Pony League team, with a dedicated coaching staff and extensive parental support, sets a fine example of what teamwork, dedication and pride and believing in oneself can achieve.

NOW, THEREFORE, THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO RESOLVES:

Section 1. The Board extends its appreciation to this Pony League team for representing the Town of Carrboro and acknowledges its great achievement, making this the first Pony League All Star baseball team ever to win the District Championship.

Section 2. A copy of this resolution shall be entered into the official town record and a copy shall be made available to the Pony League coaches.

The foregoing resolution having been submitted to a vote, received the following vote and was duly adopted this 8th day of August, 1995:

Ayes: Michael Nelson, Randy Marshall, Hank Anderson, Eleanor Kinnaird, Frances Shetley, Jacquelyn Gist

Noes: None

Absent or Excused: Jay Bryan

REQUEST FOR REZONING/UNITED CHURCH OF CHAPEL HILL

Richard Edens with United Church of Chapel Hill asked for Board's assistance in bringing low-income elderly housing to the community. Rev. Edens stated that the United Church of Chapel Hill, New Covenant Christian Church, and the United Church Retirement Homes are proposing to construct 40 units of Section 202 housing at the intersection of Smith Level Road and Culbreth Road. Rev. Edens asked for Board's assistance by rezoning this property to R-3.

It was the consensus of the Board to refer this matter to the town staff and Agenda Planning Committee to schedule.

PRESENTATION OF AWARD

Doris Murrell, Chair of the Parks and Recreation Commission, presented an award from the N.C. Recreation and Parks Society to the Carrboro Recreation and Parks Commission for outstanding contributions and accomplishments in the promotion of recreation of parks.

STRATFORD ROAD EXTENSION

Don Zeffenfield, 104 Stratford Drive, representing Wexford, stated that he feels the extension of Stratford Drive will adversely affect the health welfare and safety of the residents of Cates Farm and Wexford. Feels Wyndham Drive serves as a connector between Cates Farm and Wexford Drive, suggested that a park be created at the end of Stratford Drive with the ability to have emergency traffic and bicycles. Mr. Zeffenfield asked that Board reconsider this matter.

Bill Callahan, representing Cates Farm, stated that he also feels that the extension of Stratford Drive will adversely affect the lives of the residents of Cates Farm and Wexford. Mr. Callahan suggested that Wexford and Cates Farm be connected via a community park and that access be limited between the subdivisions via the community park to EMS, police, fire, pedestrian and bike traffic.

It was the consensus of the Board to refer this matter to the town staff and Agenda Planning Committee to schedule this item and inform affected residents of when it is scheduled, including Cobblestone residents. In addition, the Board requested that the town staff report include traffic slowing devices, and that town staff investigate the impact of narrower streets on the speed of traffic

REQUEST TO SET PUBLIC HEARING/CONDITIONAL USE PERMIT REQUEST/ALTA SEASONS APARTMENTS

The Board of Aldermen was requested to set a public hearing for August 22, 1995 on a conditional use permit request submitted by Paces Development Corp. to construct 236 apartment units on 16.37 acres located at 222 Old Fayetteville Road.

MOTION WAS MADE BY RANDY MARSHALL AND SECONDED BY HANK ANDERSON TO SET THE PUBLIC HEARING FOR AUGUST 22, 1995 VOTE: AFFIRMATIVE SIX, NEGATIVE ONE (GIST)

REQUEST TO SET PUBLIC HEARING/CONDITIONAL USE PERMIT REQUEST/CONDITIONAL USE PERMIT REQUEST/CRABTREE SUBDIVISION

The Board of Aldermen was requested to set a public hearing for August 22, 1995 on a conditional use permit request submitted by Robbie Crabtree which would allow subdivision of an existing 12.94-acre tract located at 103 Old Fayetteville Road into a 10.49 acre lot (which will include an existing house) and a 2.45-acre lot which will be used for future construction of one single-family home.

MOTION WAS MADE BY RANDY MARSHALL AND SECONDED BY HANK ANDERSON TO SET A PUBLIC HEARING FOR AUGUST 22, 1995. VOTE: AFFIRMATIVE ALL

REQUEST TO SET PUBLIC HEARING/AMENDMENT TO LAND USE ORDINANCE TO PROVIDE FOR THE EXTENSION OF PERFORMANCE GUARANTIES UNDER LIMITED CIRCUMSTANCES

The purpose of this item was to request that the Board of Aldermen set a public hearing for August 22, 1995 to consider an amendment to the Land Use Ordinance which provides for an extension of a performance guarantee beyond the 10-month deadline under limited circumstances.

MOTION WAS MADE BY RANDY MARSHALL AND SECONDED BY JACQUELYN GIST TO SET A PUBLIC HEARING FOR AUGUST 22, 1995. VOTE: AFFIRMATIVE ALL

CONTINUATION OF PUBLIC HEARING/MERGER OF CVI WITH TIME WARNER

CVI submitted to the Town of Carrboro Form 394 dated April 24, 1995. The town has to review the transfer of ownership of CVI to Time Warner. The purpose of this item was to accept public comments on the transfer of ownership, review the consultant's report and to consider adoption of the resolution approving the transfer. This public hearing was continued from the Board's June 13th meeting.

Bob Sepe, the town's cable t.v. consultant, stated that he had reviewed all documents concerning this matter and feels this merger is in the best interest of the town. Mr. Sepe reviewed his recommendations on this matter.

Mayor Kinnaird read a complaint from Chris Pepper.

The following resolution was introduced by Alderman Randy Marshall and duly seconded by Alderman Hank Anderson.

**A RESOLUTION GRANTING THE CONSENT OF THE TOWN OF CARRBORO
TO THE TRANSFER OF CONTROL OF ALERT CABLE TV
OF NORTH CAROLINA, INC. AND ITS CABLE TELEVISION SYSTEM
FROM CABLEVISION INDUSTRIES CORPORATION TO TIME WARNER INC.**

Resolution No. 1/95-96

WHEREAS, Alert Cable TV of North Carolina, Inc. ("Alert") has the right to install, construct, own, operate and maintain a cable television system ("the System") within the Town of Carrboro ("the Town") pursuant to a cable television franchise issued by the Town ("the Franchise"); and

WHEREAS, Alert is currently controlled by Cablevision Industries Corporation ("CIC") and CIC's principal shareholder, Mr. Alan Gerry, an individual residing in Liberty, New York ("Principal Shareholder"); and

WHEREAS, Time Warner Inc. ("TWI") and CIC and the Principal Shareholder have entered into an Agreement and Plan of Merger in which a wholly owned subsidiary of TWI will merge with and into CIC and, upon completion of the transaction, CIC will become a subsidiary of TWI, and TWI will then control Alert and the System (the "Transfer"); all as set forth in the Agreement and the Supplemental Agreement, each dated February 6, 1995; and

WHEREAS, TWI, CIC and Alert have jointly submitted to the Town an application on Federal Communications Commission Form 394 for consent to the Transfer and have submitted such other information concerning the Transfer as required by the Franchise and the applicable law and as reasonably requested by the Town (collectively the "Transfer Application"); and

WHEREAS, the Town has reviewed the Transfer Application, and the report from its Cable TV Consultant and has examined the legal, financial and technical qualifications of TWI, and the Town is aware of the debt load already incurred by TWI and the impact additional debt from this transfer may have on Alert's ability to provide service under the existing Franchise, and

WHEREAS, recognizing that TWI already controls other franchises in Orange County and if the Transfer is consummated TWI will be the only substantial cable television operator in the County and the region and therefore this Transfer may eliminate or reduce competition in the delivery of cable service in the Town; and

WHEREAS, TWI has publicly stated that it intends to cluster its franchises in regional concentrations in order to provide multimedia and switched business and residential telephone/telecommunications services more efficiently and more effectively; and

WHEREAS, TWI has filed an application with the Utilities Commission to provide local exchange and exchange access as well as intra-LATA, interexchange telecommunications services in North Carolina; and

WHEREAS, the Town recognizes that it may need to purchase additional telecommunication services for municipal purposes and that Alert may desire to provide such services; and

WHEREAS, Alert has recently filed, and the Town has approved a cost of service rate increase which was based in part upon certain intangible assets. Therefore, Alert represents that this transfer shall not increase the value of Alert's intangible assets for basic rate calculation purposes, and the future increases shall comply with FCC rate calculation rules; and

WHEREAS, TWI and Alert represent that, notwithstanding this transfer of control, Alert shall be bound by the performance of Alert and CIC under the franchise prior to the transfer.

NOW, THEREFORE, BE IT RESOLVED by the Board of Alderman that the Town of Carrboro hereby approves the transfer application and consents to the transfer to TWI, as described in the transfer application subject to the following conditions which shall become effective if the Transfer is consummated:

1. TWI and Alert: a) agree to cause Alert to be bound by the Cable Television Franchise Ordinance and perform all duties and obligations of the grantee thereunder; b) represent and warrant that Alert is able to provide, and shall agree to provide to the Town and its subscribers all services required under said franchise subject to changes or modifications as permitted under the franchise and applicable law; c) acknowledge and agree that they were, and shall be subject to the regulatory authority of the Town as set forth by the Federal Communication Commission; d) agree to cooperate fully with the Town and to obtain from any governmental agency all licenses, permits and other authority necessary for lawful operation and maintenance of the cable television system; and e) agree to cause Alert to provide basic cable service to all public schools and other government facilities passed by cable to the extent consistent with existing franchise requirements; and

2. TWI and Alert agree, subject to availability on an interconnecting signal transportation network controlled by TWI and subject to available channel capacity, to interconnect the Town system with other adjacent TWI systems to distribute regional programs [e.g.; LO and PEG access]; subject to the terms and conditions of item #3 below; and

3. TWI, Alert and the Town also agree, within six months following the closing of this transfer, to establish a plan for refranchising that will include a technology plan for upgrading the system, so that, to the extent feasible, the systems controlled by TWI in this region shall have substantially the same mix, quality and level of services and a time frame for completion of refranchising by June 30, 1997.

BE IT FURTHER RESOLVED that this resolution shall become effective and continue and remain in effect immediately upon its passage, approval and adoption by the Board of Aldermen and consent by TWI and Alert. In the event TWI and Alert do not consent to this resolution prior to November 1, 1995, then the Town denies consent to the transfer.

BE IT FURTHER RESOLVED that this action be entered into the Minutes of the Board of Aldermen and that the Town Manager is hereby authorized to notify TWI, CIC and Alert of this action in writing by furnishing these companies with an executed copy of this resolution.

The foregoing resolution having been submitted to a vote, received the following vote and was duly adopted this 8th day of August, 1995:

Ayes: Michael Nelson, Randy Marshall, Hank Anderson, Eleanor Kinnaird, Frances Shetley

Noes: Jacquelyn Gist

Absent or Excused: Jay Bryan

PUBLIC HEARING/ RATE INCREASES

On May 16, 1995 CVI submitted Form 1210 to the Town of Carrboro. The town has to review CVI's "updated" rates for basic cable. The purpose of this item is to accept public comments on these rates, review the rate study and adopt the order which states the town's findings on these rates.

Bob Sepe, the town's cable television consultant, explained the proposed rate increase. Mr. Sepe stated that the proposed increase is very modest.

Mayor Kinnaird read a complaint from Chris Pepper.

Tony Jordan, site manager in Carrboro, stated that CVI had recently added four channels.

MOTION WAS MADE BY RANDY MARSHALL AND SECONDED BY HANK ANDERSON TO APPROVE THE RATE ORDER. VOTE: AFFIRMATIVE FIVE, NEGATIVE ONE (GIST)

PUBLIC HEARING/CLOSING OF FOREST COURT ALLEY

A 60-foot alley exists between 310 and 400 Bolin Creek Drive. The property owners of 310 and 400 Bolin Creek Drive (Christianna Parham and Karl Ken Kanoy and Lori J. Riley Graves and Lee M. Graves) have requested that this alley be permanently closed and to vest all right, title and interest in the alley's right-of-way to them. The Board of Aldermen adopted a resolution on June 27, 1995 declaring its intent to close this alley. This is a public hearing to receive public comment on the proposed closing.

Chris Peterson, Public Works Director, explained the proposal and stated that the town staff recommended that that the Board of Aldermen not take any action at this time on this matter and give the two adjoining property owners (the Kanoy and the Graves families) and the Bolin Forest Homeowners Association a period of 60 days to concur on a solution to this matter. If a resolution is not reached, the administration recommends that the Board of Aldermen revoke the offer of acceptance dated June 27, 1995.

Alderman Gist requested to be excused from voting on this matter because she owns property in Bolin Forest.

MOTION WAS MADE BY FRANCES SHETLEY AND SECONDED BY HANK ANDERSON TO EXCUSE ALDERMAN GIST FROM VOTING ON THIS MATTER BECAUSE OF CONFLICT OF INTEREST. VOTE: AFFIRMATIVE ALL

Laurie Riley Graves explained that the reasons for the closure of the alley is because of the abuse of the alleyway and violation of their property and privacy rights, the inadequate buffer and control of property lines causing increased foot and bicycle traffic through this area, and the financial commitment to the maintenance of this property. Ms. Graves requested that the alley be kept as it currently exists with the exception of strengthening of the buffer between the phase I development and Quaterpath Trace to discourage foot traffic and bicycles and provide a clear cut property line. Ms. Graves stated that they have no intention of building beyond their current property line. Ms. Graves stated that they are in Phase I of Bolin Forest and they notified all surrounding residents. No residents of Phase I had any objections to the alley closing.

John Goode, representing he and his wife, residents of 306 Bolin Creek Drive, stated that he supports the closure of the alley. Mr. Goode stated that the petition that was circulated was misleading.

Jill Cheek, a resident of Bolin Forest Phase 3, stated that the entire Bolin Forest development is a small development. Ms. Cheek stated that she did not feel the Board has all the information it needs to make a decision on this matter tonight.

Jeanne Duggan, representing Bolin Forest, Phase I, which consists of 35 houses, stated that the Phase I Homeowners Association met and decided that it wanted to keep the land open. Ms. Duggan stated that she would like to see the affected property owners get together to resolve this matter.

Dave Otto, Vice-President of Phase 3 and 4 Bolin Forest, stated that there is no open space in Phase 3 and 4. This alleyway is the only open space area for children to play and would be interested in resolving this matter.

Kent Kanoy stated that this field was not mowed for 2 1/2 years. The Homeowners Association has mowed it in recent times. Mr. Kanoy stated that he and the Graves have made a commitment to invest to improve this area.

David Smith, past president of Bolin Forest Property Owners Association, stated that the letter received from the Bolin Forest Property Owners consists of Phase I Bolin Forest. Mr. Smith stated that the Homeowners Association should not speak for the association without asking the association. Mr. Smith stated that he did not see the point of dispute resolution in this matter.

Andy Logan, 308 Bolin Creek Drive, stated that he sees children riding bicycles through this open area. Mr. Logan stated that this area has never been used as a playground. Mr. Logan stated that he was in favor of this alley closing.

Lee Graves stated that just last night a bicyclist rode down their driveway. Mr. Graves stated that he has not problem with children playing in this area. Mr. Graves stated he does not feel dispute resolution would solve their privacy problems.

MOTION WAS MADE BY FRANCES SHETLEY AND SECONDED BY RANDY MARSHALL THAT THE PROPERTY OWNERS BE GIVEN 60 DAYS TO RESOLVE THIS MATTER. VOTE: AFFIRMATIVE ALL, ONE ABSTENTION (GIST)

It was the consensus of the board to encourage the property owners to use the mediation to resolve this matter.

PUBLIC HEARING/CONDITIONAL USE PERMIT MINOR MODIFICATION/SPRING VALLEY SUBDIVISION

The Spring Valley Homeowners' Association has requested a minor modification on behalf of Sue Millager, owner of 406 Waterside Drive, to the conditional use permit issued by the Board of Aldermen on February 28, 1984 for the Spring Valley Subdivision. The modification would allow for the re-allocation of one previously approved, but unbuilt, basement apartment from another lot in the subdivision to her lot.

Keith Lankford, Zoning Administrator, made the presentation and stated that the administration recommended approval of the request.

Greg Shepard, representing Sue Millager, stated that there are nine existing houses that are designated for basements that do not have basements. Mr. Shepard stated that the Millager's driveway

Diane Kippy, a resident of 405 Waterside Drive, stated her concern about increasing the density of this development. Ms. Kippy stated that she does not feel the Millager's drive will hold four cars. Ms. Kippy stated that most of the property owners do not know about this request.

Jim Midley, 411 Waterside Drive, stated that he will probably apply in the future to request a basement apartment in his house. Mr. Midley also expressed his concern about adding additional density to this area.

Dexter Beals, representing the Board of Directors of Spring Valley, stated that the covenants contain nothing preventing them from giving Sue Millager the right to have a basement.

MOTION WAS MADE BY RANDY MARSHALL AND SECONDED BY FRANCES SHETLEY TO APPROVE THE REQUEST. VOTE: AFFIRMATIVE FOUR, NEGATIVE TWO (GIST, ANDERSON)

PUBLIC HEARING/LAND USE ORDINANCE TEXT AMENDMENT TO ALLOW DEVIATION IN MINIMUM RIGHT-OF-WAY STANDARDS FOR RESIDENTIAL STREETS

The Board of Aldermen will receive public comments on an amendment to the Land Use Ordinance which would allow reduced right-of-way requirements for minor, local and subcollector roads.

Lisa Bloom Pruitt, the town's senior planner, made the presentation and stated that the administration recommended approval of the proposed change.

Alex Zaffron, Chair of the TAB, stated that the TAB was unable to review this amendment at its last meeting.

MOTION WAS MADE BY JACQUELYN GIST AND SECONDED BY MICHAEL NELSON TO ADOPT THE ORDINANCE ENTITLED, "AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO REDUCE THE MINIMUM RIGHT-OF-WAY FOR TOWN STREETS." AFFIRMATIVE ALL

REPORT ON TOWN COMMONS PROJECT

Construction of the market structures on the Town Commons has been delayed to deal with two problems. The purpose of this abstract is to provide a status report on this project.

James Harris, Community and Economic Development Officer, requested that the Town Commons Committee be authorized to approve any change orders to complete Phase One of the Town Commons project within the current construction budget.

It was the consensus of the Board to authorize Alderman Shetley to sit on the Town Commons Committee to review the change order request in Alderman Bryan's absence.

MOTION WAS MADE BY RANDY MARSHALL AND SECONDED BY HANK ANDERSON TO AUTHORIZE THE TOWN COMMONS COMMITTEE TO APPROVE THE CHANGE ORDER AND THAT THE ORDINANCE ENTITLED, "AN ORDINANCE AMENDING PROJECT ORDINANCE FOR THE TOWN COMMONS CONSTRUCTION PROJECT," BE APPROVED. VOTE: AFFIRMATIVE ALL

SALE OF SELF-CONTAINED BREATHING APPARATUS

The Carrboro Fire Department will be purchasing five (5) new self-contained breathing apparatus (SCBA) as authorized in the 1995-96 budget. These new SCBA will replace five existing units. The Timberlake Fire Department has expressed its interest in purchasing the used SCBA from the town. The sale of this equipment will allow the town to recoup a portion of the cost of the new units. The administration requested that the Board of Aldermen adopt a resolution authorizing the conditional sale by negotiated price of the five self-contained breathing apparatus to the Timberlake Fire Department.

The following resolution was introduced by Alderman Jacquelyn Gist and duly seconded by Alderman Randy Marshall.

A RESOLUTION AUTHORIZING THE CONDITIONAL SALE
BY NEGOTIATED PRICE OF TOWN PROPERTY
TO THE TIMBERLAKE FIRE DEPARTMENT, TIMBERLAKE, N.C.
RESOLUTION No. 2/95-96

WHEREAS, Article 12 of the General Statutes, Chapter 160A, authorizes the Town, upon such terms and conditions as it deems wise, to sell to any other governmental unit any interest in real or personal property that it may own; and -

WHEREAS, the Town desires to dispose of certain items of surplus personal property; and

WHEREAS, the Town desires to replace certain items of limited use personal property with newer and more versatile personal property; and

WHEREAS, utilizing the proceeds of the sale of surplus and limited use personal property to purchase replacement equipment would provide the Town with newer and more versatile equipment with no additional expenditure of public funds;

NOW, THEREFORE, THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO HEREBY RESOLVES:

Section 1. The Town Manager shall be and is hereby authorized to sell to the Timberlake Fire Department five (5) Self Contained Breathing Apparatus at a negotiated price of Three Hundred Fifty Dollars (\$350.00) per unit for a total price of One Thousand Seven Hundred and Fifty Dollars (\$1,750.00).

Section 2. Proceeds of the negotiated sale are to be used for the purchase of replacement Self Contained Breathing Apparatus.

Section 3. All items shall be sold on an "as is" and "where is" basis and the Town makes no guarantee of merchantability or other implied or express warrantee and assumes no responsibility for any item.

Section 4. This resolution shall become effective upon adoption.

The foregoing resolution having been submitted to a vote, received the following vote and was duly adopted this 8th day of August, 1995:

Ayes: Michael Nelson, Randy Marshall, Hank Anderson, Eleanor Kinnaird, Frances Shetley, Jacquelyn Gist

Noes: None

Absent or Excused: Jay Bryan

DISCUSSION OF GUN CONTROL PUBLIC HEARING

The Board discussed whether to proceed with August 15, 1995 to receive citizens' comments on the Gun Control Committee's recommendations in light of the General Assembly's recent action which prohibits towns from enacting ordinances concerning legally carrying a concealed handgun.

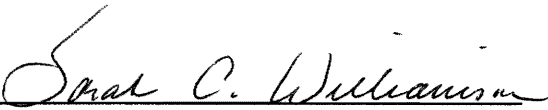
It was the consensus of the Board to proceed with the public hearing and that the Gun Control Study Committee's recommendations listed showing the vote on each item.

APPOINTMENT TO APPEARANCE COMMISSION

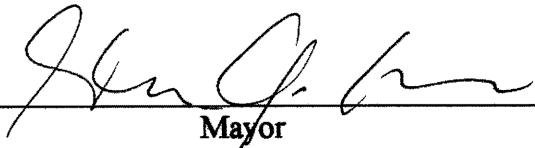
The Chair of the Appearance Commission recommended that Alison Weiner be appointed to the Appearance Commission.

MOTION WAS MADE BY MICHAEL NELSON AND SECONDED BY JACQUELYN GIST TO APPOINT ALLISON WEINER TO THE APPEARANCE COMMISSION. VOTE: AFFIRMATIVE ALL

MOTION WAS MADE BY RANDY MARSHALL AND SECONDED BY JACQUELYN GIST TO ADJOURN TO CLOSED SESSION TO DISCUSS LAND ACQUISITION. VOTE: AFFIRMATIVE ALL



Town Clerk



Mayor