A regular meeting of the Carrboro Board of Aldermen was held on Tuesday, August 22, 2000 at 7:30 p.m. in the Town Hall Board Room.

Present and presiding:

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Mayor	Michael Nelson
Aldermen	Mark Dorosin
	Jacquelyn Gist
	Diana McDuffee
	Allen Spalt
	Alex Zaffron
Town Manager	Robert W. Morgan
Town Clerk	Sarah C. Williamson
Town Attorney	Michael B. Brough
Absent:	
Alderman	Joal Hall Broun

# **REQUESTS FROM CITIZEN**

Jane Hamborsky asked that lights be replaced under the farmers' market shelter. In addition, Ms. Hamborsky expressed concern about traffic backing up at the Weaver/Greensboro Street intersection and the amount of cut through traffic from Weaver to Greensboro via Center Street. Ms. Hamborsky also expressed concern about trucks unloading at Weaver Street market. Ms. Hamborsky suggested that Center Street be made one-way because of its narrow width. In addition, Ms. Hamborsky suggested that "no through trucks" signs be installed.

It was the consensus of the Board to refer this matter to the town staff and Transportation Advisory Board.

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## **APPROVAL OF MINUTES OF PREVIOUS MEETING**

# MOTION WAS MADE BY JACQUELYN GIST AND SECONDED BY ALLEN SPALT TO APPROVE THE AUGUST 15, 2000 MINUTES, AS AMENDED. VOTE: AFFIRMATIVE SIX, ABSENT ONE (BROUN)

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## MID-JULY TO MID-AUGUST ACTIVE PROJECTS REPORT

The Zoning Division is responsible for preparing a monthly report outlining the construction activities of various projects of interest within the Town of Carrboro's jurisdiction. The report for the period of July 16 - August 15, 2000 was presented for the Board's review.

Chris Murphy, the town's Development Administrator, answered the Board's questions.

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# <u>A MINOR MODIFICATION TO THE KENT WOODLANDS CONDITIONAL USE PERMIT TO ADD</u> <u>A FENCE AROUND A PORTION OF THE SITE</u>

Vincent Donnely, representing the Kent Woodlands Homeowners Association, has applied for a minor modification to the Kent Woodlands conditional use permit that was issued on June 3, 1997. The proposed minor modification request seeks to gain official approval for an existing fence. The fence, which runs along

the open space area adjacent to Smith Level Road and continues along the southwestern property line to the end of the open space, was erected without formal approval. Per Section 15-64 of the Land Use Ordinance, minor modifications to previously approved plans must be reviewed by the permit issuing authority. The administration requested that the Board of Aldermen review the request and make a decision regarding the minor modification.

Chris Murphy, the town's Zoning Administrator, made the staff presentation.

Vince Donnelly, President of the Kent Woodlands Homeowners Association, stated that he supports the modification recommended by the town staff, but opposes the recommendation that the fence be removed from lots 6, 7 and 8. Mr. Donnelly stated that the neighborhood behind these lots is a multi-family development and expressed concern that small children could access Smith Level Road through these three lots.

Graham Clayton, a resident of Kent Woodlands, stated that his is one of the homes located on lots 6, 7 and 8. Mr. Clayton stated that the 8-foot fence gives him a sense of security from Smith Level Road.

The following resolution was introduced by Alderman Alex Zaffron and duly seconded by Alderman Mark Dorosin.

A RESOLUTION APPROVING, WITH CONDITION, THE MINOR MODIFICATION TO THE CUP FOR THE KENT WOODLANDS SUBDIVISION ALLOWING THE FENCE CONSTRUCTED ALONG THE OPEN SPACE AREA TO REMAIN Resolution No. 12/2000-01

WHEREAS, the Carrboro Board of Aldermen approved a Conditional Use Permit for the Kent Woodlands Subdivision on June 3, 1997; and

WHEREAS, the Town of Carrboro Land Use Ordinance requires that certain changes to permits be reviewed by the permit issuing authority; and

WHEREAS, the Kent Woodlands Homeowner's Association has submitted a request for a minor modification to the Kent Woodlands CUP to erect a fence along a portion of their open space; and

WHEREAS, the Board of Aldermen finds that the fence does provide health and safety benefits to the residents of the Kent Woodlands subdivision.

NOW, THEREFORE BE IT RESOLVED by the Carrboro Board of Aldermen that the minor modification to the Kent Woodlands CUP allowing the fence to remain be approved with the following condition:

1. That the town administration identify the party responsible for installing the fence and consider assessing an appropriate civil penalty against that party for violation of the land use ordinance.

The foregoing resolution having been submitted to a vote, received the following vote and was duly adopted this 22nd day of August, 2000:

Ayes: Mark Dorosin, Diana McDuffee, Jacquelyn Gist, Michael Nelson, Allen Spalt, Alex Zaffron

Noes: None

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# WORKSESSION/SHAPING ORANGE COUNTY REPORT AND REQUEST TO SET A PUBLIC HEARING

This worksession on the Shaping Orange County's Future Task Force Provisional Report and Recommendations had three purposes: review of the document and staff's comments on the relationship of the recommendations to current policy, regulations and initiatives, setting a hearing date for public comment, and specifying the Board's intentions regarding use of the final version of the Task Force's report.

Alderman Gist expressed concern that the steering committee has not met in quite some time.

Norm Gustavidson stated that this is a comprehensive plan for the county for the next 30 years.

Ellen Ironsides stated that the recommendation made by the task force had been reached by consensus. Ms. Ironsides stated that she understood the Carrboro Board's concern about community building in the original report. She stated that the report would be amended to reflect the Board's concern.

Carl Shy stated that the task force had used a base line scenario in making its recommendations.

Herby McKiver stated that all the issues and goals are connected. Mr. McKiver emphasized the comprehensiveness of the task force's report.

Peggy Pollitizer stated that she hopes that the Carrboro Board of Aldermen will look at the recommendations of the task force and think about how much better Carrboro can be using some of the recommendations.

The following resolution was introduced by Alderman Diana McDuffee and duly seconded by Alderman Mark Dorosin.

# A RESOLUTION SETTING A PUBLIC HEARING ON SHAPING ORANGE COUNTY'S FUTURE TASK FORCE PROVISIONAL REPORT AND RECOMMENDATIONS Resolution No. 9/2000-01

WHEREAS, the Carrboro Board of Aldermen has endorsed and supported countywide efforts to develop a comprehensive quality growth strategy, and

WHEREAS, the citizen-appointed Shaping Orange County's Future Task Force has completed step 12 of a 15step process to develop that strategy and has submitted this report to the elected bodies for consideration

NOW, THEREFORE BE IT RESOLVED by the Carrboro Board of Aldermen that the Aldermen sets a public hearing for September 26, 2000 to receive comment on the Provisional Report and Recommendations.

BE IT FURTHER RESOLVED by the Board of Aldermen that the following comments are made on the "Ten Critical Areas":

## **Putting Community Building First**

Alderman Zaffron - substitute "Encourage" for "Have" elected officials support and commit to participate in ongoing community-building training.

Alderman Dorosin - that the existing report on making the Board of Commissioners more representative be revisited, rather than establishing a study committee to analyze options for making the Board of Commissioners more representative of the county's rural citizens.

Alderman Spalt - it was very important that Carrboro citizens be given an opportunity to comment on the task force report.

The Board agreed that the Shaping Orange County Report would be used only as a guide to the town.

#### **Interlocal and Regional Cooperation and Planning**

Alderman McDuffee- expressed fear over the creation of a growth management board and how such a board would function.

Alderman Gist – the creation of a growth management board would be somewhat of a "Trojan horse."

Alderman Gist – would never support a merger of the town's recreation department with other entities.

Alderman Spalt - the growth management board is consistent with what Carrboro has been doing and would cooperate in making that happen.

Alderman McDuffee – does not feel anything else is needed to control growth when growth is connected with where water and sewer exists.

Alderman Zaffron - feels the recent legislation dealing with MPO's is ahead of the recommendations in the report. Suggested changing the language "reviewing and revising MPO boundaries" and insert "cooperate and coordinate with surrounding MPO's and regional planning.

#### Land Use Patterns that Meet People's Needs While Protecting Natural Resources

Alderman McDuffee - expressed concern about allowing villages to be zoned for an overall density of one to two units per acres with at least 50% open space. This is a little too prescriptive.

Alderman Spalt – one to two units per acre in a village is not enough--that's suburban sprawl.

Alderman Zaffron - suggested. "Encourage regional planning and local government cooperation."

Alderman Spalt - suggested that the task force report be summarized into an executive summary for those who will not read the entire report.

Alderman Dorosin - expressed concern that affordable housing and human services should be balanced with other areas in the report.

# Conserve Natural Areas, Farmland and Other Important Open Space

Alderman Spalt - when land is being preserved, different distinctions should be made for the different areas.

Alderman Zaffron – there should be master plan for creating hamlets, mixed use developments or villages.

# **Environmentally Sustainable Transportation Systems that Meet People's Needs**

Alderman Spalt - trains to Carrboro.

Alderman Zaffron - governments will be required to use lower emission motor vehicles because of federal legislation.

Alderman Dorosin – mixed use zoning is a way of reducing use of vehicles.

Alderman McDuffee- before we can have public transit that meets citizens' needs, we have to have a dependable public transit system and suggested strong language for what an adequate public transit system can do for the community.

## Water Supply Protection, Pollution Prevention, and Waste Reduction

Alderman Zaffron – has serious concerns about any structure charging fees for stormwater management or reference to a stormwater utility.

Alderman McDuffee - the jurisdictions need to work together on stormwater management. Is not convinced that "pay as you throw" would reduce solid waste.

Alderman Spalt - the focus should be on a study and implementation of cooperative arrangements for stormwater management.

## Supporting a Diverse Economy that Meets Local Needs

Alderman Dorosin - concerned about how narrow the recommendation is for economic recruitment. Where can these businesses be put? What areas can be made available?

Alderman Zaffron – there should be bullets added which talk about the county taking on a proactive approach to economic development and recruitment.

Alderman Spalt - supports building off the presence of UNC-CH and UNC Hospitals.

Alderman Zaffron - supports offering educational programs for start-up businesses.

#### **Affordable Housing**

Alderman Spalt – the Board has established affordable housing as a high priority.

Alderman Dorosin – the governments should explore land they currently own or that could be acquired for affordable housing.

# Human Services Priorities

Alderman Gist - mental health should be emphasized.

Alderman Dorosin - the health and human service priories for the Latino community should be added as a separate bullet.

## K-12 Education

Alderman Zaffron - additional language should be added employing more efficient and cost effective school construction and property acquisition.

Alderman Dorosin – applauds the inclusion of the local third rail of merger.

Alderman McDuffee - something should be included to ensure that joint efforts for use of school facilities allow public access.

Alderman Spalt – there is too much focus on merger. There is a Schools and Land Use Council in existence that is looking at joint use of facilities and joint purchase of land. The reduction of class sizes is a matter of money.

BE IT FURTHER RESOLVED by the Board of Aldermen that the Aldermen plan to accept the final version of the document as a benchmark that may inform future planning efforts and against which future changes to policy and procedure may be measured.

The foregoing resolution having been submitted to a vote, received the following vote and was duly adopted this 22nd day of August, 2000:

Ayes: Mark Dorosin, Diana McDuffee, Jacquelyn Gist, Michael Nelson, Allen Spalt, Alex Zaffron

Noes: None

Absent or Excused: Joal Hall Broun

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# REQUEST TO ADOPT A REVISED RESOLUTION TRANSFERRING OWNERSHIP OF THE TIME WARNER FRANCHISE FROM TIME WARNER TO AOL-TIME WARNER AND A TRANSFER OF CONTROL FROM MEDIA ONE GROUP TO AT&T CORPORATION AND STATUS REPORT ON CABLE TV FRANCHISE NEGOTIATIONS

The Board adopted a resolution on June 13, 2000 authorizing a conditional transfer of control of the cable TV franchise from Time Warner. On June 22, the Ninth United States Circuit Court of Appeals reversed a lower court decision that affects the resolution adopted on June 13th. David Premar, Triangle J COG legal counsel, recommended that Carrboro consider rescinding that resolution and adopting a revised resolution. The purpose of this agenda item was to consider this recommendation.

Bob Sepe, the town's cable TV consultant, answered the Board's questions.

The following resolution was introduced by Alderman Diana McDuffee and duly seconded by Alderman Mark Dorosin.

## A RESOLUTION RESCINDING THE PREVIOUSLY ADOPTED RESOLUTION RELATING TO THE TRANSFER OF CONTROL OF THE CABLE TELEVISION FRANCHISE FROM TIME WARNER, INC., TO AOL-TIME WARNER, INC., AND A TRANSFER OF CONTROL FROM MEDIA ONE GROUP, INC., TO AT&T CORPORATION Resolution No. 2/2000-01

WHEREAS, on June 13, 2000 the Town of Carrboro adopted a resolution relating to the transfer of control of a cable television franchise from Time Warner, Inc., to AOL-Time Warner, Inc., and a transfer of control from Media One Group, Inc., to AT&T Corporation; and

WHEREAS, since adoption of the resolution, the relevant case law relating to one of the conditions which the Town of Carrboro placed upon its approval of the transfer of control has changed; and

WHEREAS, Time Warner Entertainment-Advance/New House Partnership ("TWEAN") has provided additional information and assurances to the Town; and

WHEREAS, based upon new case law and these new assurances, the Town of Carrboro desires to rescind its previous consent to the transfer of control and adopt a new resolution subject to different terms and conditions relating to its consent to the transfer of control.

NOW, THEREFORE, be it resolved that in consideration of the foregoing, the Board of Aldermen of the Town of Carrboro hereby rescinds its previously adopted Resolution No. 172/1999-2000, dated June 13, 2000.

The foregoing resolution having been submitted to a vote, received the following vote and was duly adopted this 22nd day of August, 2000:

Ayes: Mark Dorosin, Diana McDuffee, Michael Nelson, Allen Spalt

Noes: Jacquelyn Gist, Alex Zaffron

Absent or Excused: Joal Hall Broun

The following resolution was introduced by Alderman Diana McDuffee and duly seconded by Alderman Mark Dorosin.

# A RESOLUTION GRANTING THE CONSENT OF THE TOWN OF CARRBORO TO THE TRANSFER OF CONTROL OF A CABLE TELEVISION FRANCHISE FROM TIME WARNER, INC., TO AOL TIME WARNER, INC., AND A TRANSFER OF CONTROL FROM MEDIA ONE GROUP, INC., TO AT&T CORPORATION Resolution No. 3/2000-01

WHEREAS, Time Warner Entertainment-Advance/Newhouse Partnership ("TWEAN") holds a valid, non-exclusive franchise to operate a cable television system in Carrboro, North Carolina (the "Franchising Authority"); and

WHEREAS, TWEAN is a subsidiary of Time Warner, Inc. ("TWI"); and

WHEREAS, Media One Group, Inc., ("Media One") holds a 25.51% interest in Time Warner Entertainment Company, L.P., ("TWE") which in turn owns a 66.66% interest in TWEAN; and

WHEREAS, a wholly-owned subsidiary of AT&T Corporation ("AT&T") is acquiring all of the shares of Media One pursuant to an Agreement and Plan of Merger dated May 6, 1999, ("Transaction No. 1") so that following closing of the transaction, AT&T will control an approximate 17% interest in TWEAN; and

WHEREAS, TWI and America Online, Inc., ("AOL") have entered into an Agreement and Plan of Merger dated January 10, 2000 ("Transaction No. 2"); and

WHEREAS, the merger agreement will result in a stock to stock merger ("Transaction No. 2") in which TWI and AOL will merge with subsidiaries of a newly formed holding company; and

WHEREAS, as a result of Transaction No. 2, both TWI and AOL will become wholly owned subsidiaries of the new company, AOL-Time Warner, Inc. ("AOL-TW"); and

WHEREAS, the franchisee, TWEAN, and TWI, AOL-TW, Media One, and AT&T, have requested the consent of the Franchising Authority, if it determines consent is necessary, to the aforementioned change of control and Transaction Nos. 1 and 2; and

WHEREAS, on or about February 10, 2000, TWI, as transferor, and AOL-TW, as transferee, filed an FCC Form 394 seeking the consent of the Franchising Authority to Transaction No. 2; and

WHEREAS, on or about February 18, 2000, Media One, transferor, and AT&T, transferee, filed a Form 394 with the Franchising Authority seeking consent to Transaction No. 1; and

WHEREAS, the Franchising Authority has conducted a thorough review of the legal, technical and financial qualifications of the applicants and the transferees to own and operate the cable system; and

WHEREAS, the Franchising Authority has received and reviewed the report of its cable television consultant concerning the legal, technical and financial qualifications of the transferees and provided an opportunity for public comments; and

WHEREAS, AT&T and TWI are the two largest cable television operators in the United States and AOL is the largest and most dominant provider of internet services; and

WHEREAS, TWI and AOL have entered into a Memorandum of Understanding dated February 29, 2000 (the "MOU") (a copy of which is attached hereto as Attachment A) setting forth significant commitments that AOL/TW will undertake to enable cable modem subscribers to obtain service from affiliated Internet service providers ("ISPs"). Included among those commitments is the commitment of AOL/TW to operate its cable systems in a manner that does not discriminate among ISPs based on their affiliation with AOL/TW; and

WHEREAS, following further review and an investigation, the Franchising Authority has concluded that the transferees have established that they meet the technical, legal and financial criteria to operate the cable system and have satisfied all criteria set forth in and/or under all applicable or required local government and federal documents, laws, rules and regulations, including FCC Form 394 and contingent upon applicants meeting all of the requirements set forth below;

NOW, THERFORE, BE IT RESOLVED that in consideration of the foregoing and the promises set forth herein, the Franchising Authority and the transferees agree to the following:

1. The Franchising Authority consents to Transaction Nos. 1 and 2, effective immediately upon the closing of the transactions contemplated by the agreements, provided that said closings take place prior to July 1, 2001.

- 2. The Franchising Authority confirms that:
  - (a) the franchise held by the franchisee is valid and in full force and effect.
  - (b) the franchisee will be in material compliance with the franchise if the other conditions set forth in this Resolution are met.
- 3. TWEAN:
  - (a) agrees to be bound by the franchise and perform all duties and obligations thereunder;
  - (b) represents and warrants that it is able to provide and agrees to provide all services required under said franchise;
  - (c) acknowledges and agrees that TWEAN is subject to the regulatory authority of the grantor as provided by state and federal law;
  - (d) agrees to cooperate fully with the Franchising Authority and to obtain from any governmental agency having jurisdiction, all licenses, permits and other authority necessary for lawful operation and maintenance of the cable system.

4. The past performance of TWEAN under the control of TWI pursuant to the franchise is not waived by the Franchising Authority consenting to this transfer and adopting this Resolution. TWEAN (under the control of its new parent, AOL-TW) agrees to be responsible for and bound by the breaches and non-performance, if any, of TWEAN (under the control of TWI) prior to this transfer. The Franchising Authority may, after consummation of the Transaction Nos. 1 and 2, consider in any ongoing renewal proceeding, the past performance of TWEAN (under the control of TWI) to the extent permitted under 47 U.S.C. §546, as if it were the past performance of TWEAN (under the control of AOL-TW).

5. TWEAN and AOL-TW agrees that the revaluation of the cable system assets, if any, resulting from Transaction Nos. 1 and 2 shall not be the basis for any future rate increases for any regulated cable service, including, but not limited to, basic cable service, equipment rentals and installation costs.

6. This Resolution shall become effective on the date of its passage but shall be automatically rescinded and the transfer of control denied (1) if not accepted in writing by TWEAN, within thirty (30) days of passage; or (2) if any of the conditions of this consent resolution are determined to be invalid in a final judgment by a court of competent jurisdiction.

7. Within thirty days following the adoption of this Resolution, TWEAN shall pay the sum of \$2,500 to the Franchising Authority if it has 1,000 or more subscribers and the sum of \$1,250 to the Franchising Authority if it has 999 or less subscribers to reimburse the Franchising Authority for its expenses in connection with this transfer. None of the foregoing expenses described in this paragraph or TWEAN's payment thereof shall constitute an offset against franchise fees or any other amounts due the Franchising Authority from TWEAN pursuant to the terms of the Franchise or otherwise.

8. The Franchising Authority is granting its consent to the transfer of control of the Franchise in reliance on the commitment of TWI and AOL (as expressed in the MOU), and Franchisee (as an entity substantially owned by TWI, and proposed to be substantially owned by AOL/TW, to the principles expressed in and underlying the MOU.

The foregoing resolution having been submitted to a vote, received the following vote and was duly adopted this 22nd day of August, 2000:

Ayes: Mark Dorosin, Diana McDuffee, Allen Spalt

Noes: Jacquelyn Gist, Michael Nelson, Alex Zaffron

Absent or Excused: Joal Hall Broun

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# **REQUEST TO ADOPT AN UPDATE TO THE RESIDENTIAL TRAFFIC MANAGEMENT PLAN**

The Board of Aldermen adopted a Residential Traffic Management Plan (RTMP) on June 11, 1996. The plan was revised on May 6, 1997. A staff analysis in early 2000 revealed some areas that would benefit from further revision. The Transportation Advisory Board has reviewed and recommends the proposed revisions. A resolution that adopts the revisions to the RTMP was recommended for the Board's consideration. As amendments to the Land Use Ordinance and Town Code were needed to give the Town the authority to set standards for traffic calming devices on private streets, the recommended resolution also set a public hearing for September 26, 200 for the land use ordinance amendment.

Phil Conrad, the town's Transportation Planner, made the presentation.

The Board referred this matter back to the Transportation Advisory Board with the request for further review and discussion of:

The removal of the phrase that 85<sup>th</sup> percentile vehicle speeds must exceed 35 mph. Deletion of traffic control devices from the list and definitions; and Changing "speed humps" to "speed bumps"

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# REPORT ON PEDESTRIAN ACCESS TO SHOPPING CENTERS

On March 21, 2000 the Board of Aldermen included among their Action Agenda items an objective to promote a comprehensive approach to creating a walkable community. The first project identified was an evaluation of pedestrian access to the Willow Creek and Carrboro Plaza shopping centers. Staff has compiled information on this matter for the Board's review.

The following resolution was introduced by Alderman Alex Zaffron and duly seconded by Alderman Diana McDuffee.

# A RESOLUTION RECEIVING THE REPORT ON PEDESTRAIN ACCESS TO SHOPPING CENTERS Resolution No. 179/1999-2000

WHEREAS, the Carrboro Board of Aldermen requested information on pedestrian access to the Willow Creek and Carrboro Plaza shopping centers.

NOW, THEREFORE BE IT RESOLVED by the Carrboro Board of Aldermen that the Aldermen has reviewed the report provided by the Planning Staff and identified areas for further study.

BE IT FURTHER RESOLVED by the Carrboro Board of Aldermen that the Aldermen accepts the report, inclusive of any changes agreed upon at the meeting on August 22, 2000

The foregoing resolution having been submitted to a vote, received the following vote and was duly adopted this 22nd day of August, 2000:

Ayes: Mark Dorosin, Diana McDuffee, Jacquelyn Gist, Michael Nelson, Allen Spalt, Alex Zaffron

Noes: None

Absent or Excused: Joal Hall Broun

The Board requested that the town staff investigate marking island and pedestrian crossings.

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## **DISCUSSION OF ADVISORY BOARD RECOGNITION**

Mayor Nelson requested that the Board discuss recognition of advisory board members' service to the town.

The Board expressed its desire to have the advisory board's recognition dinner in February at the Carrboro Century Center.

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## NOMINATIONS TO AIRPORT ADVISORY COMMITTEE

MOTION WAS MADE BY MARK DOROSIN AND SECONDED BY DIANA MCDUFFEE TO NOMINATE ALLEN SPALT AND STEVE SMALL TO SERVE AS THE TOWN'S REPRESENTATIVES ON THE AIRPORT ADVISORY COMMITTEE. VOTE: AFFIRMATIVE SIX, ABSENT ONE (BROUND)

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## **STORMWATER REGULATIONS**

Mayor Nelson requested that the Agenda Planning Committee schedule a review of the new stormwater regulations that become effective in 2003.

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#### **TELECASTING OF BOARD MEETINGS**

Alderman McDuffee stated that she had received a complaint about a "buzzing" sound during the telecasting of Board meetings.

Mr. Morgan stated that he would look into this matter.

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# FLOODING AT ROCKY BROOK TRAILER PARK

Alderman Gist stated that she had received a complaint from a resident of Rocky Brook Trailer Park about increased flooding from upstream of the trailer park.

This matter was referred to the town staff to investigate.

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MOTION WAS MADE BY MARK DOROSIN AND SECONDED BY ALLEN SPALT TO ADJOURN TO CLOSED SESSION TO DISCUSS A PERSONNEL MATTER. VOTE: AFFIRMATIVE SIX, ABSENT ONE (BROUN)

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Mayor

Town Clerk