

A regular meeting of the Carrboro Board of Aldermen was held on Tuesday, August 29, 2000 at 7:30 p.m. in the Town Hall Board Room.

Present and presiding:

Mayor	Michael Nelson
Aldermen	Joal Hall Broun
	Mark Dorosin
	Jacquelyn Gist
	Diana McDuffee
	Allen Spalt
	Alex Zaffron
Town Manager	Robert W. Morgan
Deputy Town Clerk	James Spivey
Town Attorney	Michael B. Brough

### **AUTUMN DRIVE CONNECTIVITY ISSUES**

Stephanie Padilla, 103 Autumn Drive resident, addressed and questioned the Board regarding the Board decision to connect Autumn Drive and the connectivity policy in general. Ms. Padilla distributed to the Board and read from a document with specific questions regarding the Board decision-making process regarding connecting Autumn Drive and the connectivity policy. She requested that the Board respond to the specific questions.

The Board directed that this item be referred to the Agenda Planning Committee.

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### **FARMERS MARKET ISSUES**

Patrick Mulkey, president of the Carrboro Farmers Market, addressed the Board regarding a Recreation & Parks' planned trip for seniors to the State Farmers Market. Mr. Mulkey stated that a Carrboro Farmers Market's vendor brought the planned trip to his attention. Additionally, Mr. Mulkey presented a \$10,050.00 check to the town for parking lot usage, trolley usage, and electrical work.

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### **CONNECTIVITY ISSUE**

Richard Ellington, 109 Bruton Drive resident, reiterated Ms. Padilla's above-referenced comments and voiced his disappointment that only one representative of Board attended a pedestrian road show sponsored by Federal Highway Administration on pedestrian safety. Mr. Ellington informed the Board of some the points discussed regarding pedestrian and traffic safety; specifically traffic calming devices.

Mayor Nelson, Aldermen Spalt and Zaffron responded to some of Mr. Ellington's comments.

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### **OPEN BURNING POLICY**

Barry Jacobs addressed the Board regarding the open burning policy. Mr. Jacob clarified that he was not speaking as a representative of the County Commissioners but just to share information regarding the

Commissioners' efforts to regulate open burning. He stated that the County staff was in the process of developing an open burning policy for consideration by the Commissioners.

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**APPROVAL OF MINUTES OF PREVIOUS MEETING**

MOTION WAS MADE BY JACQUELYN GIST AND SECONDED BY ALEX ZAFFRON TO APPROVE THE AUGUST 22, 2000 MINUTES. VOTE: AFFIRMATIVE ALL

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**CHARGES ISSUED**

The Deputy Town Clerk issued the charge of a Planning Board member to Rob Hogan and the charge of an Appearance Commission/Neighborhood Preservation District Commission member to Gail Gillespie.

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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**

At the meeting on August 22, 2000 the Board of Aldermen voted to rescind the resolution adopted on June 13<sup>th</sup> relating to the transfer of control of the cable television franchise from Time Warner, Inc. to AOL-Time Warner, Inc. In addition, the Board introduced a revised resolution granting the town's consent to the transfer of control of the cable franchise from Time Warner to AOL-Time Warner. The Board's action resulted in a tie-vote. Therefore this resolution is before the Board for a second reading at tonight's meeting.

Bob Sepe, the town's cable television consultant, responded to questions from the Board regarding this matter.

The following resolution was introduced by Alderman Jacquelyn Gist and duly seconded by Alderman Allen Spalt.

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, THEREFORE, 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 29th day of August, 2000:

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

Noes: None

Absent or Excused: None

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**FOLLOW-UP: JOINT PLANNING LAND USE PLAN AMENDMENT TO ALLOW EXPANSION OF EXTRACTIVE USE**

On June 6th, the Board of Aldermen considered the proposed Joint Planning Land Use Plan amendment and requested additional information related to action taken by the Board of Directors of the Orange Water and Sewer Authority (OWASA) on proposed mitigation measures. Staff compiled the requested materials. The Administration recommended that the Board of Aldermen adopt a resolution that supports the JPALUP amendment.

The following resolution was introduced by Alderman Jacquelyn Gist and duly seconded by Alderman Diana McDuffee.

**A RESOLUTION ADOPTING A JOINT PLANNING LAND USE PLAN AMENDMENT TO ALLOW THE EXPANSION OF AN EXTRACTIVE USE IN THE RURAL BUFFER  
RESOLUTION NO. 15/2000-01**

WHEREAS, Orange County, the Town of Chapel Hill, and the Town of Carrboro entered into a Joint Planning Agreement, dated September 22, 1987, as amended April 2, 1990; and

WHEREAS, pursuant to the Joint Planning Agreement, a Joint Planning Area Land Use Plan (JPALUP) was adopted on October 13, 1986 by all parties to the Joint Planning Agreement, and has since been amended on several occasions; and

WHEREAS, the American Stone Company, Orange Water and Sewer Authority and Philip and Alice Durham have requested an amendment to the Joint Planning Area Land Use Plan to allow expansion of an extractive use (mining and stone quarrying) located on property in the Bingham Township that is designated Rural Buffer in the JPALUP; and

WHEREAS, this issue was considered during a joint public hearing on April 12, 2000;

Now, Therefore, the Board of Aldermen of the Town of Carrboro hereby resolves that the Joint Planning Area Land Use Plan be amended by extending the extractive use plan category to a 15.20 acre parcel (PIN 9759-63-9813) and a 60-acre parcel (PIN 9759-62-1992) located adjacent to the existing American Stone quarry in the Bingham Township.

Be it further resolved that the Board of Aldermen of the Town of Carrboro authorizes submission of this resolution to the Orange County Board of County Commissioners and requests the Commissioners to address the following issues during their consideration of the rezoning and Special Use Permit for quarry expansion:

- The range of uses and permit requirements in Rural Activity Industrial Nodes should be carefully evaluated, and perhaps amended, to ensure that higher-intensity uses are permissible only where most suitable, following extensive scrutiny, and subject to operating limitations;
- The proposed mitigation measures noted in letters dated June 23, 2000 and June 28, 2000 from Peter Gordon, Chair of the Orange Water and Sewer Authority Board of Directors should be included as conditions of the Special Use Permit;
- That if an adverse health condition is determined and public water supplies are extended to this area, that American Stone should bear the cost of this extension;
- That Bethel Hickory Grove Church Road, if it is moved, be relocated in such a way as to still intersect NC 54 at its current location and not as proposed at the bottom of the hill; one possible way to accomplish this is to relocate the road between the two quarry pits rather than entirely to the east of the existing OWASA quarry reservoir;
- That the American stone rock crusher be relocated into the pit in a maximum of 3.5 years (and not 7 years as proposed) from approval of any revised permit; the Carrboro Board of Aldermen recommends that the Orange County Commissioners make approval of any permits conditional on such action;
- That OWASA should complete the purchase of the Durham property used for quarry operations; and that the Carrboro Board of Aldermen recommends that the Orange County Commissioners withhold make approval of any permits conditional on such purchase;
- That “Rural Industrial Activity Node” zoning proposed is not the appropriate zoning category for the watershed; that an alternative category to be called “extractive use/public water supply” or some other such more limited category be developed and used; and that only the minimum necessary acreage for quarry operations; not the whole tract be rezoned; and
- That recognizing the inadequacies of the environmental analysis of the proposal to date, the Carrboro Board of Aldermen recommend that the Orange County Commissioners require comprehensive environmental analysis as part of their consideration of any permit.

This amendment shall become effective upon adoption by the governing bodies of Orange County, Chapel Hill, and Carrboro.

The foregoing resolution having been submitted to a vote, received the following vote and was duly adopted this 29<sup>th</sup> day of August, 2000:

Ayes: Joal Hall Broun, Diana McDuffee, Jacquelyn Gist, Alex Zaffron

Noes: Mark Dorosin, Michael Nelson; Allen Spalt

Absent or Excused: None

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**REPORT FROM TOWN ENGINEER: STORMWATER, SEDIMENTATION AND EROSION CONTROL CONCERNS**

On August 15<sup>th</sup>, two citizens, Rosilind Council and Richard Ellington, addressed the Board with concerns about stormwater regulations and the maintenance of stormwater control structures. In follow-up, staff has compiled information related to the issues noted by Ms. Council and Mr. Ellington that will serve as background to a presentation by Henry Wells, Town Engineer. A resolution accepting this report was recommended for the Board’s adoption.

Henry Wells, Town Engineer, made a presentation regarding the town’s stormwater management practices.

Attorney Michael Brough suggested that the Governing Board define the standards that must be met for a decision of “no damage” to be concluded in regards to stormwater management.

The following resolution was introduced by Alderman Alex Zaffron and duly seconded by Alderman Allen Spalt.

A RESOLUTION ACCEPTING THE TOWN ENGINEER’S REPORT ON STORMWATER AND  
SEDIMENTATION AND EROSION CONTROL REGULATIONS, REVIEW AND MAINTENANCE  
RESOLUTION NO. 17/2000-01

WHEREAS, the Carrboro Board of Aldermen periodically receives citizen comments regarding Town regulations, review and enforcement procedures.

NOW, THEREFORE BE IT RESOLVED that the Board accepts the Town Engineer’s report regarding stormwater regulations and review and maintenance of sedimentation and erosion control structures.

The foregoing resolution having been submitted to a vote, received the following vote and was duly adopted this 29th day of August, 2000:

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

Noes: None

Absent or Excused: None

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**REQUEST TO SET A PUBLIC HEARING/LAND USE ORDINANCE AMENDMENT TO REVISE THE DENSITY AND RECREATIONAL FACILITIES REQUIREMENTS FOR SINGLE-ROOM OCCUPANCY UNITS**

Francis Chan has submitted a request to amend the land use ordinance to revise the density and recreational facilities requirements associated with single-room occupancy units. Staff has reviewed the request and discussed alternative approaches to achieving the goals presented by Mr. Chan. A resolution that sets a public hearing on the requested and alternative text amendments was recommended for the Board’s adoption.

The following resolution was introduced by Alderman Jacquelyn Gist and duly seconded by Alderman Alex Zaffron.

A RESOLUTION CALLING A PUBLIC HEARING ON A LAND USE ORDINANCE TEXT AMENDMENT  
TO REVISE SINGLE-ROOM OCCUPANCY USE REQUIREMENTS  
RESOLUTION NO. 14/2000-01

WHEREAS, the Carrboro Board of Aldermen seeks to provide ample opportunities for the public to comment on proposed developments; and

NOW, THEREFORE BE IT RESOLVED by the Carrboro Board of Aldermen that the Aldermen directs staff to prepare a draft ordinance that includes the following elements:

- 1) Amend the definition of an SRO to limit occupancy to one person.

- 2) Specify that SRO density is two times that permitted for all other residential types.
- 3) Add a recreational point requirement for SRO units of 2.97 per unit.
- 4) Remove the requirement for children's play equipment in SRO developments.

BE IT FURTHER RESOLVED that the Board of Aldermen call a public hearing on October 10, 2000 to receive public comment on these proposed changes;

BE IT FURTHER RESOLVED that the draft ordinance be referred to Orange County for review per the Joint Planning Agreement, to the Planning Board for comment and recommendation to the Board, and to the HOME Council of the Orange County Consortium.

The foregoing resolution having been submitted to a vote, received the following vote and was duly adopted this 29th day of August, 2000:

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

Noes: None

Absent or Excused: None

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**REQUEST TO SET A PUBLIC HEARING/LAND USE ORDINANCE AMENDMENT TO PROVIDE THE MANAGER WITH AUTHORITY TO ACCEPT BONDING**

Ordinance provisions that require the Board of Aldermen to accept bonds for occupancy or use associated with special and conditional use permits have resulted in unnecessary delays to permit recipients. A text amendment that would allow the Town Manager to accept bonds in these instances has been prepared. A resolution that sets a public hearing on this change was recommended for the Board's adoption.

The following resolution was introduced by Alderman Jacquelyn Gist and duly seconded by Alderman Alex Zaffron.

**A RESOLUTION CALLING A PUBLIC HEARING ON A LAND USE ORDINANCE TEXT AMENDMENT TO PROVIDE THE MANAGER WITH THE AUTHORITY TO ACCEPT BONDING  
RESOLUTION NO. 11/2000-01**

WHEREAS, the Carrboro Board of Aldermen seeks to provide ample opportunities for the public to comment on proposed developments; and

NOW, THEREFORE BE IT RESOLVED by the Carrboro Board of Aldermen that the Aldermen call a public hearing on October 10, 2000 to receive public comment on "An Ordinance Amending Section 15-60 of the Carrboro Land Use Ordinance to Provide the Manager with Bond Acceptance Authority;"

BE IT FURTHER RESOLVED that the draft ordinance be referred to Orange County for review per the Joint Planning Agreement, and to the Planning Board for comment and recommendation to the Board

The foregoing resolution having been submitted to a vote, received the following vote and was duly adopted this 29th day of August, 2000:

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

Noes: None

Absent or Excused: None

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**LEAGUE OF MUNICIPALITIES ACTION ALERT**

The Board received an action request from the League of Municipalities to send a letter of opposition to the proposed markup of S. 1028, The “Citizens Access to Justice Act” (Takings Bill).

By consensus, the Board directed that a letter be sent as requested by the League Alert notice.

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**NORTHERN TRANSITION AREA ADVISORY BOARD MEETING**

Alderman Zaffron asked that staff begin to develop a self-contained packet of ordinance amendments that operationalize the Small Area Plan and that the packet contains explanations of each ordinance amendment.

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MOTION WAS MADE BY JACQUELYN GIST AND SECONDED BY ALEX ZAFFRON TO ADJOURN AND GO INTO CLOSED SESSION TO DISCUSS PROPERTY ACQUISITION. VOTE: AFFIRMATIVE ALL.

MOTION WAS MADE BY JOAL HALL BROUN AND SECONDED BY MARK DOROSIN TO ADJOURN TO OPEN SESSION. VOTE: AFFIRMATIVE ALL.

MOTION WAS MADE BY JOAL HALL BROUN AND SECONDED BY MARK DOROSIN THAT THE MEETING BE ADJOURNED AT 10:30 PM. VOTE: AFFIRMATIVE ALL.

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Mayor

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Town Clerk