



TOWN OF CHAPEL HILL

Town Hall
405 Martin Luther King Jr.
Boulevard
Chapel Hill, NC 27514

Town Council

Meeting Minutes - Final

Mayor Pam Hemminger
Mayor pro tem Jessica Anderson
Council Member Donna Bell
Council Member Allen Buansi
Council Member Hongbin Gu

Council Member Nancy Oates
Council Member Michael Parker
Council Member Karen Stegman
Council Member Rachel Schaevitz

Wednesday, December 5, 2018

7:00 PM

RM 110 | Council Chamber

Roll Call

Present: 9 - Mayor Pam Hemminger, Mayor pro tem Jessica Anderson, Council Member Donna Bell, Council Member Allen Buansi, Council Member Hongbin Gu, Council Member Nancy Oates, Council Member Michael Parker, Council Member Karen Stegman, and Council Member Rachel Schaevitz

Other Attendees

Town Manager Maurice Jones, Deputy Town Manager Florentine Miller, Assistant Town Manager Mary Jane Nirdlinger, Town Attorney Ralph Karpinos, Communications Specialist Mark Losey, Director of Planning and Development Services Ben Hitchings, Planner II Jake Lowman, Manager of Engineering & Infrastructure Chris Roberts, Housing and Community Executive Director Loryn Clark, Planner I Becky McDonnell, Fire Marshal Tommy Gregory, Traffic Engineering Manager Kumar Neppalli, Police Officer Rick Fahrer, Communications and Public Affairs Director and Town Clerk Sabrina Oliver

OPENING

0.1 0.1. Successes Video: Holiday Safety.

[\[18-1013\]](#)

Mayor Hemminger opened the meeting at 7:00 pm with a "Success Video" that reminded the community about safety regarding Christmas trees.

PETITIONS FROM THE PUBLIC AND COUNCIL MEMBERS

Petitions and other similar requests submitted by the public, whether written or oral, are heard at the beginning of each regular meeting. Except in the case of urgency and unanimous vote of the Council members present, petitions will not be acted upon at the time presented. After receiving a petitions, the Council shall, by simple motion, dispose of it as follows: consideration at a future regular Council meeting; referral to another board or committee for study and report; referral to the Town Manager for investigation and report; receive for information. See the Status of Petitions to Council webpage to track the petition. Receiving or referring of a petition does not constitute approval, agreeemnt, or consent.

1. Petitions from the Public and Council Members.

[\[18-0984\]](#)

a. Environmental Stewardship Advisory Board Regarding Solar Energy Systems.

Tom Henkel, former vice chair of the Environmental Stewardship Advisory Board, distributed a handout and explained proposed additions to a petition on solar energy systems that he had submitted a few months earlier.

A motion was made by Mayor pro tem Anderson, seconded by Council Member Schaevitz, that this Petition be received and referred to the Town Manager and Mayor. The motion carried by a unanimous vote.

1.1 1.1. Paul Pritchard Request to Defer Reforestation at Cleland, Rogerson, and Oakwood Intersection.

[\[18-1014\]](#)

Paul Pritchard, a Chapel Hill resident, said that a planned conversion of open space at the intersection of Rogerson, Cleland and Oakwood was completely counter to the purpose for which open space had been dedicated and sold to the Town. He warned against creating a swampy area in its place and said that his petition already included 165 signatures from neighbors who wanted the project deferred for additional dialogue.

A motion was made by Mayor pro tem Anderson, seconded by Council Member Bell, that this Petition be received and referred to the Town Manager and Mayor. The motion carried by a unanimous vote.

1.2 1.2. Andrew Ross Request Regarding Permanent Space for Chapel Hill Farmer's Market.

[\[18-1015\]](#)

Andrew Ross, representing the Chapel Hill Farmers Market, presented part of a video showing farmers and others who support having a permanent Farmers Market at the Town-owned American Legion property. Mr. Ross pointed out how the Farmers Market benefited the Town and said that the American Legion Task Force -- as well as survey respondents and charrette participants -- had supported the idea.

A motion was made by Mayor pro tem Anderson, seconded by Council

Member Schaevitz, that this Petition be received and referred to the Town Manager and Mayor. The motion carried by a unanimous vote.

1.3 1.3. Renuka Soll Regarding Gun Buyback Petition. [\[18-1016\]](#)

Renuka Soll asked if her petition, which the Council had received in spring 2018, had been overlooked. The petition had included an end-of-year time limit, but there had been no response, and it was not listed on the Town's website, she said.

Mayor Hemminger said that the petition should have been on the list and that she would get back to Ms. Soll about it the next day.

PUBLIC COMMENT - ITEMS NOT ON PRINTED AGENDA

ANNOUNCEMENTS BY COUNCIL MEMBERS

1.4 1.4. Council Member Oates Regarding Meeting. [\[18-1017\]](#)

Council Member Oates pointed out that the meeting was likely to be long and that those who might need more space might want to sit in the front row.

1.5 1.5. Mayor Hemminger Regarding Agenda Changes. [\[18-1018\]](#)

The Council agreed to move Item 9 to a date in January. They also added an item to the Consent Agenda: to appoint Council Member Parker to the Metropolitan Planning Organization with Mayor Hemminger as the alternate.

1.6 1.6. Mayor Hemminger Regarding Event to Honor Civil Rights History and Chapel Hill Nine. [\[18-1019\]](#)

Mayor Hemminger said a recent "Opening Our Future" event honoring the Town's civil rights history had been very well attended. The four remaining members of the Chapel Hill Nine were there, she said, explaining that those nine men had staged a sit-in at Colonial Drug Store in 1969, when they were teens. She said the Colonial Drug sit-in had been the nation's first such protest by high school students and that the Town was very proud of those men.

1.7 1.7. Mayor Hemminger Regarding Council Committee on Economic Sustainability Meeting. [\[18-1020\]](#)

Mayor Hemminger said the Council Committee on Economic Sustainability would meet on Friday at 8:00 am at the Chapel Hill Public Library.

1.8 1.8. Mayor Hemminger Regarding Holiday Parade. [\[18-1021\]](#)

Mayor Hemminger said the annual holiday parade would take place on Franklin Street on Saturday, beginning at 10:00 am.

1.9 1.9. Mayor Hemminger Regarding Potential Winter Weather. [\[18-1022\]](#)

Mayor Hemminger noted there was a chance of bad weather on Saturday night. She advised citizens to watch for updates on the Town website.

CONSENT*Approval of the Consent Agenda*

A motion was made by Council Member Parker, seconded by Council Member Buansi, that R-1 be adopted as amended to add Item 5.1, which approved the Consent Agenda. The motion carried by a unanimous vote.

2. Approve all Consent Agenda Items. [\[18-0985\]](#)

This resolution(s) and/or ordinance(s) was adopted and/or enacted.

3. Adopt a Resolution Supporting an Application for Transportation Demand Management (TDM) Grant. [\[18-0986\]](#)

This resolution(s) and/or ordinance(s) was adopted and/or enacted.

4. Adopt a Resolution Opposing North Carolina Department of Transportation Incursion into the Oosting Natural Area. [\[18-0987\]](#)

This resolution(s) and/or ordinance(s) was adopted and/or enacted.

5. Amend the 2018-19 Council Calendar. [\[18-0988\]](#)

This resolution(s) and/or ordinance(s) was adopted and/or enacted.

5.1 Make Council Appointments to the Metropolitan Planning Organization Policy Board. [\[18-1012\]](#)

This resolution(s) and/or ordinance(s) was adopted and/or enacted.

INFORMATION**6.** Receive Upcoming Public Hearing Items and Petition Status List. [\[18-0989\]](#)

This item was received as presented.

DISCUSSION**7.** Consider a Resolution in Support of Campaign to Make North Carolina a No-Torture State. [\[18-0990\]](#)

Peggy Misch, speaking on behalf of a campaign to make North Carolina a no-torture state, asked for a Council resolution regarding an annual reading of the Bill of Rights at noon on December 15, 2018 at the Peace and Justice Plaza in Downtown Chapel Hill. Ms. Misch said that Mayor pro tem Anderson would read the 10 amendments that had been added before

the Constitution was ratified in 1791. She called special attention to the 8th amendment which prohibits excessive bail, fines, and cruel and unusual punishment. Ms. Misch said that citizens would be able to sign a related petition at the event.

A motion was made by Mayor pro tem Anderson, seconded by Council Member Bell, that R-5 be adopted. The motion carried by a unanimous vote.

SPECIAL USE PERMIT

8. Consider an Application for Special Use Permit [\[18-0991\]](#)
Modification-Tri-City Medical Building, 5002 Barbee Chapel Road.

Planner Jake Lowman presented a Special Use Permit modification request to extend the start date for Tri City Medical Office Building. He provided background on the project and recommended that the Council close the public hearing and adopt Resolution A in favor of the action.

A motion was made by Mayor pro tem Anderson, seconded by Council Member Parker, to close the Public Hearing. The motion carried by a unanimous vote.

A motion was made by Mayor pro tem Anderson, seconded by Council Member Bell, that R-6 be adopted. The motion carried by a unanimous vote.

Continued Discussion

9. North South Bus Rapid Transit - Locally Preferred Alternative Update. [\[18-0992\]](#)
This item was deferred to January 2019.
10. Open the Public Hearing and Consider a Request to Close a Portion of the Public Right-of-Way on Aberdeen Drive for the Expansion of the Lumina Theater. [\[18-1000\]](#)

Manager of Engineering and Infrastructure Chris Roberts gave a PowerPoint presentation on a request from Dixon Pitt/Bryan Properties to open a public hearing regarding a partial closing of the public right-of-way at Aberdeen Drive. He showed the Southern Village location on a map and indicated where the applicant wanted to expand the Lumina Theater and add a tap room.

Mr. Roberts described how a sidewalk would need to be shifted. He said that no concerns had been raised regarding the request and a related Zoning Compliance Permit application was underway. He recommended that the Council open and close the public hearing and adopt Resolution 9 approving the closure.

A motion was made by Mayor pro tem Anderson, seconded by Council Member Parker, to close the Public Hearing. The motion carried by a unanimous vote.

A motion was made by Mayor pro tem Anderson, seconded by Council Member Parker, that R-9 be adopted. The motion carried by a unanimous vote.

ZONING ATLAS AMENDMENT and SPECIAL USE PERMIT

ZONING ATLAS AMENDMENT

- 11.** Discussion and Consideration of an Application for Zoning Atlas Amendment - Homestead Road Active Adult Housing, 2217 Homestead Road (Project #17-107).

[\[18-0943\]](#)

Principal Planner Judy Johnson presented a rezoning application for an Active Adults Housing project, including a revised resolution of consistency, a revised rezoning ordinance, and an affordable housing agreement. She reviewed the process thus far and explained the applicant's request to rezone from Residential 2 to Residential 5 Conditional, which would change the site's designation from medium to high density on the land use map.

Ms. Johnson gave a PowerPoint presentation, showing a map of the site and nearby properties. She pointed out that the Town's affordable housing (AH) expectation with a request for higher density was 15 percent. With the applicant's proposal of 190 units, that would mean 28.5 affordable units, but the applicant had proposed a \$315,000 payment in lieu or an equivalent value of on-site units, she said.

Ms. Johnson noted that the Town's Housing Advisory Board (HAB) had endorsed the applicant's \$315,000 proposal. She discussed options for Council consideration. If the Council were to find the application acceptable, then it should close the public hearing, adopt Resolution 10, enact Ordinance 1 and continue to Item 12, she said.

Council Member Stegman confirmed with Ms. Johnson that the applicant was asking for a floor area bonus.

Applicant Josh Gurlitz presented information regarding the proposed rezoning, addressed density and traffic issues, and discussed impervious surface, environmental concerns, and the Town's Inclusionary Zoning Ordinance. He said that restricting the project to senior citizens would reduce its impact and render it medium density even though the number of units would increase with the rezoning. He said the Special Use Permit (SUP) modification would increase the population by 23 people and the proposed \$315,000 payment in lieu would subsidize 14 permanently affordable homes.

Mr. Gurlitz noted sidewalk and road improvements that had or would be made in the area, and noted that construction documents for road widening were in the Council's packet. He mentioned an HNTB traffic impact analysis regarding the active senior demographic. He argued that the project fit into the Inclusionary Zoning category because the Town did not have rental housing specifically for the over 55 age group which was a community need specified in the Town's purpose statement.

Mr. Gurlitz noted that the HAB had unanimously recommended a \$315,000 payment in lieu to subsidize 14 permanently affordable homes. He accepted that recommendation, he said, but he noted that it was not consistent with the way the Town had treated other projects. He pointed out that the project had already incurred about \$700,000 worth of additional Town-requested project costs.

Council Member Oates pointed out that 15 percent of Timber Hollow's units were affordable.

Mr. Gurlitz agreed, with respect to new construction, but said that those units represented only 4.5 percent of the project.

Mayor pro tem Anderson confirmed with Mr. Gurlitz that his target group would be people in their 70s to late 80s and that there would be 109 one-bedroom and 82 two-bedroom units. She verified with him that the project was expected to be 90 percent occupied.

Council Member Gu confirmed with Town Attorney Ralph Karpinos that the condition the units be for seniors only would run with the land. A future property owner could ask for that to be changed, but it would take a Council vote to do so, Mr. Karpinos said.

Mary Jean Seyda, HAB chair, explained the process by which the HAB had reached its recommendation for a payment in lieu for AH. She said she had not realized the applicant had changed his proposal to include units. Therefore, what was on the Council's agenda had never been before the HAB, she said.

Mayor Hemminger confirmed with Ms. Seyda that the HAB had voted in favor of a \$315,000 payment in lieu.

Mayor pro tem Anderson asked how the HAB had gone from an original \$2.4 million estimate to \$315,000, and Ms. Seyda replied some HAB members thought \$2.4 million for 28 units of housing would kill the project. The HAB had ultimately based its recommendation on the amount of subsidies that would go toward a home from Habitat for Humanity or the Community Home Trust, she said.

Susan Levy, executive director at Habitat for Humanity and chair of the

Orange County Affordable Housing Coalition said the Coalition had not been aware of the HAB's recommendation for a \$315,000 payment in lieu until early November after the Coalition had reached a consensus that the developer should provide 10 percent of the total number of units as affordable to a single-person household earning 60 percent and below the area median income (AMI). Affordability should be for a minimum of 20 years, but 30 years would be preferable, she said.

Ms. Levy said given the circumstances, the Coalition had revised its recommendation to propose that 5 percent of the units be affordable to single-person households at or below 60 percent of AMI for a minimum of 20 years. She said that was a reasonable compromise between what the developer was offering and what the Coalition would have recommended if it had been engaged sooner.

Ms. Levy encouraged the Council to develop a realistic and fair policy so everyone would know the rules. She said the applicant's current offer was not adequate, coming nowhere close to the 15 percent the Town required for home-ownership. Actual units were highly preferable to payments in lieu, and \$315,000 was unlikely to produce many new units -- and certainly not in a timely manner, she said.

Ryan Nathaniel Lavalley, an occupational therapist with the Orange County Department on Aging, stated that housing for seniors should be distinctly different from regular apartments and the Town should encourage developers to take advantage of the Department on Aging's training regarding standards and amenities. He proposed having an accessible bus route in the area to increase access to the Seymour Center and decrease traffic.

Cherie Rosemond, representing UNC Partnerships in Aging, said that 80 percent of seniors prefer to age in their communities but have difficulty finding affordable rent. She shared anecdotal information about Orange County seniors who were in need of rental housing.

Cheryl Tate, speaking on behalf of Homestead Village residents, said there was not a compelling need for senior housing in Chapel Hill. She had seen apartment rentals on Zillow that were affordable and in more convenient locations than the development being proposed, she said.

Derek Ross, a Courtyards at Homestead resident, argued that there was no compelling evidence to justify rezoning from R-2 to R-5 next to a well-designed R-2 senior facility and none to support that the proposal would be good for the targeted age group. He also said there was no evidence the applicant had the expertise to manage such a facility.

Peter Lee, a Chapel Hill resident, urged the Council to stand firm for a larger payment in lieu and to deny the rezoning request. He expressed concern that a senior could rent a unit and then allow his or her child or

grandchild to live in it.

Martin Malloy, a Chapel Hill resident, listed several design features needed in senior housing and said the project would be just another apartment building without them. He asked the Council to deny the rezoning request.

Josh Kim, a Chapel Hill resident, said the proposed building would be too tall and too dense for the neighborhood.

Lee Ann Swanecamp and Wayne Vanderburg, Chapel Hill residents, argued that there already was too much density and too much traffic on Homestead Road.

Scott Windham, a Chapel Hill resident, discussed the integrity of the zoning process and said the area zoned R-2 constituted a promise to citizens. The proposal to rezone it to R-5 represented a breach of trust, he said. Mr. Windham urged the Council to move forward with managed, consistent, and coherent development. He also expressed concern about property values being compromised.

Jackie Jenks, executive director of The Inter-Faith Council, said that the Town desperately needed AH. However, as a Homestead area resident, she was personally concerned about traffic and quality of life issues for those who already live there, she said. Ms. Jenks acknowledged that AH was one reason to accommodate greater density and said she hoped that any change in zoning would automatically result in onsite AH units, not a payment in lieu. She asked the Council to seriously consider the AH Coalition's recommendation that 5 percent of the units be affordable to households at or below 60 percent of AMI for a minimum of 20 years.

Hudson Vaughan, representing the Marion Cheeks Jackson Center, read biographies of seniors who needed affordable apartments. If the developer were to build what was currently allowed in R-2, it could offer 60 ownership units with nine required to be permanently affordable, he said. Mr. Vaughan argued that tripling the density should result in more affordable units on the site and pointed out that each development sets a precedent for the next.

Alex Eyssen, vice president of development at Bainbridge Companies, explained that he had been working with Mr. Gulitz on the project and provided background on the proposal. It would be a relatively new space that would not be the same as independent living or assisted living, he said. Mr. Eyssen asked the Council to support the SUP, noting that the HAB and all other Town boards and committees had unanimously approved the request.

Ali Aran, a Chapel Hill resident, said that the neighbors' opinions had not been well represented. He was not against AH or senior citizens' rights,

but was uncomfortable with the proposal because of the number of projects already going on within a short stretch of Homestead Road, he said. Mr. Aran said that HNTB's updated traffic analysis had not included 2200 Homestead and The Townhomes. In addition, the proposed project was too tall and dense, he said.

Council Member Stegman said she disagreed with the applicant's suggestion that the proposed AH component complied with the spirit of the Town's 2020 Comprehensive Plan and Inclusionary Zoning Policy. She read from the Town's 2009 resolution regarding AH and said the applicant's proposal did not come close. She expressed agreement with the speakers who had said that affordable units were far preferable to a payment in lieu.

Council Member Stegman said she recognized that it was late in the process and that there was openness to payment in lieu. However, that would have to come a lot closer to the intent of the ordinance, she said. She acknowledged there were some good elements in the application, but suggested the applicant return in January after having further discussion with staff.

Mayor pro tem Anderson said she agreed with all that Council Member Stegman had said and that she preferred on-site units to a payment in lieu. There was a need for active senior housing in Town, but the request was radical in terms of the rezoning, she said.

Council Member Gu agreed that there was a critical need for senior rental apartments in Town, but said she felt confused about how AH was being discussed. The Town's Inclusionary Zoning Ordinance was unclear with regard to rentals, and she agreed with the applicant and speakers about the need for a coherent Town plan, she said. Council Member Gu proposed that the HAB and developer talk and come up with a reasonable proposal, adding that she strongly preferred having affordable units on site. In addition, Council Member Gu emphasized the importance of having the development standards for senior housing.

Council Member Bell recommended that the developer and staff discuss following the Coalition for Affordable Housing's recommendation. She said the best way to get predictability was to develop property as it is zoned, but pointed out that zoning was not written in stone. Council Member Bell recommended getting the issues addressed before January or February and said AH was the one still standing out in her mind.

Council Member Parker agreed that the Coalition's proposal of five percent (10 units) was reasonable and achievable. He expressed sympathy for the developer over the Council's "amorphous" process, but "we are where we are and it's important to get those units on site," he said. Council Member Parker said that he understood the neighbors' concerns about density, but he was comfortable with 11 units per acre. He agreed with

the speakers who had said the Town needed to take a more comprehensive look at traffic on Homestead Road.

Council Member Buansi expressed agreement with Council Member Stegman's comments and suggested the applicant work with staff and return with a stronger plan in January. The applicant was asking for a significant rezoning, so the Town should ask for more in return, he said. He pointed out that the spirit of the Inclusionary Zoning Ordinance was to develop mixed income, integrated communities and that the proposal for a payment in lieu did not achieve that. He strongly preferred on-site units and would like to see more than 5 percent, Council Member Buansi said.

Council Member Schaevitz stated she generally agrees that the proposed use was a good one for the area and said she liked the idea of senior rentals on the property, provided that they were built to appropriate standards. She agreed with others that the project was not consistent with the 2020 Comprehensive Plan, and she strongly advocated for units on site.

Council Member Schaevitz said she appreciated the Coalition's proposal but agreed with Council Member Buansi that the developer and staff should work toward more than 5 percent. She pointed out the HAB had proposed a payment in lieu formula that the Council had not addressed. The Council needed to move on that and build more predictability in for developers going forward, she said. She would continue to prefer and strongly advocate for units on site, Council Member Schaevitz said.

Council Member Oates pointed out that traffic in the area posed a danger, especially for those who are older and have slower reaction time. She was not convinced that rezoning to R-5 was consistent with the 2020 Comprehensive Plan, she said, but added that her greatest concern pertained to affordability. She provided anecdotal information about the Town's pressing need for AH and said she strongly advocated for having 28 units on site that would be affordable in perpetuity.

Mayor Hemminger said she wanted to see units on site as well. The concern about younger people staying in the units would be addressed by requiring that units be owner occupied, she pointed out. She said the location would be great for seniors and noted the Town did need senior housing. She asked the applicant for a response.

Mr. Gurlitz replied that he definitely was interested in working with staff and coming back in January. He asked if he could also have an opportunity to get feedback from Council members during that period.

Mayor Hemminger confirmed with Mr. Karpinos that Council members could provide individual feedback to staff which could then be shared with Mr. Gurlitz. The Council could not provide feedback to the applicant as a group, Mr. Karpinos said.

Council Member Bell proposed giving staff direction regarding 5 percent (10 units) or 15 percent (28 units). She said that the range was usually between 30 and 80 percent and that she supported the Affordable Housing Coalition's recommendation for 60 percent.

Council Member Parker proposed the applicant share some of its financial information with staff so the Town could better understand the numbers behind its decision-making process.

Mayor Hemminger expressed agreement with Council Member Bell's recommendation for a range, and for having staff try to forge an agreement. She pointed out the next item on the Council's agenda (the related SUP) would be postponed to January 16, 2019 as well.

A motion was made by Mayor pro tem Anderson, seconded by Council Member Parker, that this Zoning Atlas Amendment be continued to January 16, 2019. The motion carried by a unanimous vote.

SPECIAL USE PERMIT

12. Discuss and Consider an Application for Special Use Permit - Homestead Road Active Adults Housing, 2217 Homestead Road (Project #17-096). [\[18-0942\]](#)

A motion was made by Mayor pro tem Anderson, seconded by Council Member Parker, that this Special Use Permit be continued to January 16, 2019. The motion carried by a unanimous vote.

Continued Discussion

13. Consider Authorizing the Town Manager to Execute a Cooperative Agreement with GoTriangle on the Durham-Orange Light Rail Transit Project. [\[18-1001\]](#)

Planning Director Ben Hitchings opened the continuing discussion with GoTriangle (GT) regarding a cooperative agreement for the Light Rail Transit (LRT) project. He presented three options for Council's consideration: 1) take a Council vote on the agreement tonight; 2) send staff back for further discussions with GT and defer the vote to the Council's January 16, 2019 meeting; or 3) send the item back to staff and authorize the Town Manager to finalize the agreement based upon Council direction.

Mr. Hitchings summarized the Council's previous discussion and feedback. He said that staff had worked since that time to revise and align the agreement more with Durham's cooperative agreement, as the Council had requested. Mr. Hitchings noted key revisions pertained to stormwater, landscaping, public notification and communication, GT's responsibilities,

and more.

Mayor Hemminger said the agreement had been much improved and the Council appreciated all the effort that had gone into achieving that.

Mayor pro tem Anderson asked about a discrepancy regarding termination dates of 2019 or 2021.

GT Interim Project Director John Tallmadge explained that GT had asked for a 2021 date (rather than the state's November 2019 date) to avoid adding an additional action that all parties would have to take. He said the later date enabled GT to decide whether or not and how to go forward without requiring additional activities that would have to come afterward.

Mayor pro tem Anderson asked if there was a reason why GT could not just ask for an extension -- or have a mechanism for an automatic extension if funding came through in some other form -- rather than adding years when there was no funding attached. She asked why the Town's date could not be the end of December 2019. If GT needed to meet with the commissioners within 15 days that would give them time to negotiate, she said.

Mr. Tallmadge explained that GT's goal was for the parties to proceed, unless a decision were made to not do so. If Orange County, Durham County and GT decided not to continue, then the agreement would expire. So the effort was to get language that would have those three cost-sharing parties agree to not pursue the LRT project and terminate the agreement, rather than tying it to the Orange County Transit Plan, he said.

Council Member Parker suggested a date of perhaps six months or a year beyond November, or other language that would set a shorter deadline. Perhaps the deadline could be when it is removed from the Orange County Transit Plan, he said. Council Member Parker said that GT should not need two years, and he asked if mid-2020 would give them enough time.

Mr. Tallmadge noted the difficulty of forecasting what all the positions might be, and said GT was trying to tie the date to the funding partners' decision about whether to proceed with the project. He asked the Council to think about the proposed language, and about whether or not it could be tied to the earlier of the 2021 date or a decision by the cost-sharing partners to no longer pursue the project.

Council Member Buansi said that Council Member Parker's suggestion to have the agreement terminate in mid-2020 seemed like more than enough time for GT to figure out whether it had an agreement from the funding partners. He did not understand why GT would not accept that, he said.

Mr. Tallmadge expressed willingness to accept a November 1, 2020 date

and Mayor Hemminger confirmed with Council Member Buansi that it would be better. Council Member Buansi said that he still wondered, however, why GT needed an entire year.

Mr. Tallmadge replied that he was merely speculating, since he did not know what the variables would be. If the decision were made to remove GT from the plan, the document could be terminated at that point, he said.

Council Member Schaevitz clarified GTs' suggestion: If the Federal Transit Authority (FTA) full-funding grant and state funding were not in place by November 30, 2019, then the other funding partners would have two years to figure out how to move forward without that funding.

Mr. Tallmadge replied that it was a standard agreement that allowed for time for the unknown. The cost-sharing agreement did not have an indefinite period of time to determine a direction forward after not receiving one of those sources of big funding, he said.

Council Member Schaevitz asked Mr. Tallmadge to provide more information on the timeline and Mayor pro tem Anderson said she was still not clear about why it was such a problem. Why couldn't the Council put it on a consent agenda if the state or federal government did not come up with funding, she wondered.

Council Member Bell said that settling the date would avoid having to have the same conversation again with a different Council. She said that Mr. Tallmadge seemed to be saying that the collaboration would be void if the funding did not exist. She pointed out that the agreement was only about the process of creating the LRT. If that does not exist, then the document does not exist, and that was why it would be terminated or just expire on December 31, 2021, said Council Member Bell.

Mr. Tallmadge replied that Council Member Bell's assessment was absolutely true and that he had been trying to point out the viability of the project did not rest solely with GT.

Council Member Bell said the proposed date avoided putting the onus on a new Council to try and figure out the details of the Town's collaboration with GT regarding stations within the Town's jurisdiction.

Mayor Hemminger asked if six months (June 1st) would meet GT's need, and Council Member Buansi expressed support for that date.

Council Member Bell said she supported six months as well, as long as it would not put GT in a position of not being able to meet an agreed-upon deadline.

Mayor pro tem Anderson said that looking out for the Town's interests was

the point of the agreement. The FTA not funding the project would be because of financial risk or environmental impact, and the Council should have the opportunity to renegotiate or add items to the agreement, she said.

Council Member Gu said November 2019 was a very important checkpoint at which she would still want to hear the concerns and feedback from the FTA or state in order to decide whether to continue as is or make adjustments. It made sense to give that same opportunity to the new Council at that time, she said. For that reason, it seemed natural to link the Town's agreement to that key point in funding, she said.

Mr. Tallmadge agreed that November 30, 2019 was critical. The full funding grant would need to be in place by that time or else a serious decision would need to be made by the cost-sharing partners, he said. However, the cooperative agreement was not about whether the project would go forward or not; it was about how GT and the Town would work together effectively, he said. Whether or not the agreement is in place would not affect the decision about going forward; that would be an Orange County, Durham County and GT decision, he pointed out.

Council Member Gu and Mayor Hemminger noted the importance of the November 2019 deadline.

Council Member Parker said the 2019 deadline was important but was imposed by the state and the FTA was not bound by it. The state could give GT an extension because it was basically trying to force the FTA to agree by November 19, he said. He added that it was not unusual for the FTA to delay its decisions on full funding agreements.

Council Member Parker outlined possible funding scenarios and said that GT was trying to achieve breathing space and an ability to accommodate changes in the schedule. He did not think that anyone would assume that the project could be built without the \$1.25 million from the FTA, so it was not a question of us getting money from somewhere else, he said. The project depended on FTA funding and would not happen without it, he said.

Council Member Stegman suggested having the same timeline as those in the other agreements. If that was not workable, then a year would be reasonable, she said. She disagreed with the idea of putting it on a consent agenda to be re-litigated every couple of years.

Mayor Hemminger proposed that the Council move on to other topics and return to the termination date issue during the comments portion of the meeting. She asked if GT was amenable to having a public information session at the 75 percent of design point, and Mr. Tallmadge agreed but pointed out that GT would have only the basis of engineering design drawings, not complete drawings, at that point. He offered to do a series

of meetings over the next six months and to put that in the agreement.

Council Member Oates verified with Mr. Hitchings that a summary of staff responses to Council members' requests was attached to the Council's packets. She confirmed that Durham City Council had approved a rail maintenance facility that the Town did not have land use authority over even though Chapel Hill citizens lived there. Council Member Oates asked if there was anything the Town could do to ensure that GT would mitigate noise for those who live in that area.

Mr. Tallmadge began to reply, but Mayor Hemminger asked if GT was amenable to having Town staff review transformer boxes to make sure they conformed to Town standards.

Mr. Tallmadge replied that it was appropriate for GT to bring those to the Town's Community Design Commission for comments on the visual aspects.

Mayor Hemminger confirmed with Mr. Hitchings that a requirement to meet the Town's stormwater requirements was in the document, as was a specific provision that would make parking and station areas outside the right-of-way subject to the Town's stormwater requirements. Regarding a question about Town versus state standards, Mr. Tallmadge said GT would follow whichever were most stringent.

Mr. Tallmadge went on to explain language about limiting noise impacts to the acceptable range in the noise ordinance as currently written. He discussed Town and GT coordination during project design regarding noise levels.

Rachel Baker, from GT's legal team, pointed out that GT was proposing revised language to the noise ordinance in order to address the Council's concerns.

Mr. Tallmadge explained that the purpose of the language was to recognize that GT's analysis had found that noise levels would fall within the decibel levels of the Town's current noise ordinance.

Council Member Parker pointed out that development projects were held to the standards at the time of development. However, the LRT project would need to comply with those standards when it ultimately went live and he wanted to be sure that the standards would be met in actuality, not just on paper, he said.

Mr. Tallmadge reviewed the process that GT used for noise testing where potential moderate impacts had been identified along the corridor. He said that GT would have a policy for how it would mitigate noise projected impacts and would monitor noise on an ongoing basis as the system aged. GT did not expect to have impacts higher than the current noise

ordinance, he said.

Council Member Oates asked how GT planned to protect Chapel Hill citizens who live near maintenance facilities and how the Council could get that into the contract.

Mr. Tallmadge replied that even Creekside Elementary School, which was about 1/4-mile away, would not have noise impacts from the rail operations and maintenance facility. There would be some "wheel squeal" but that would be mitigated by lubrication, and the sound would be significantly quieter than a city bus accelerating down the street, he said.

Council Member Oates verified with Mr. Tallmadge that horns would not be tested in the morning at that maintenance facility. GT would find sites to test horns that were not in populated areas, he said.

Mayor Hemminger asked about the process for communicating with GT if noise did bother Town residents, and Mr. Tallmadge said that GT had discussed having a safety manager/noise compliance officer for the system and would definitely identify such a process and contact individuals.

Council Member Gu asked why compliance with noise mitigation standards was not included with the standards for stormwater, buffering, parking, landscaping, etc...

Mr. Hitchings explained that the noise ordinance was located in a different section in the Code of Ordinances than the ECP (engineering construction permit) process. He asked Mr. Tallmadge if a reference to noise modeling and testing could be included as part of ECP review.

Mr. Tallmadge replied that he was wary of having minor changes trigger another noise analysis as project design advanced. That would cost several hundred thousand dollars, he said.

Katherine Eggleston, GT project development manager, said that the FTA had an environmental evaluation check list that GT used to determine whether changes to the project during design were substantive enough to require further environmental analysis.

Council Member Gu confirmed with Ms. Eggleston that noise was one of the categories on that checklist and asked that it be linked with the ECP.

Ms. Baker read proposed new language on public involvement which included GT providing regular updates to staff and Council and holding public workshops related to design, construction and operations.

Mr. Tallmadge addressed three other specific edits pertaining to a plan for disadvantaged business enterprise participation, a change in how budget

information was described and characterized, and CDC advice on enclosures for utilities.

Council Member Oates confirmed with Mr. Tallmadge that the CDC's input would be advisory in nature.

Mr. Hitchings said that GT might commit to, "GT is willing to make aesthetic adjustments that do not compromise functionality."

Mr. Tallmadge asked that "practicable changes" be inserted due to cost impacts and constraints.

Ms. Baker proposed, "Go Triangle will use reasonable efforts to incorporate comments to the extent practicable," and Mayor Hemminger asked staff to work out the language with GT.

Sue Hunter, representing NEXT, a community organization that advocates for transit infrastructure and smart growth, commended all for the multi-member partnership and the example set for proactive intergovernmental cooperation. She encouraged the Council to vote in favor of the agreement, stating that the project was for the greater good of the community and reflected the will of voters who had supported the transit tax.

Kira Heikes, a UNC graduate student, said many University employees, graduate students, post doctorates, researchers, faculty members, staff, and young professionals would take full advantage of LRT. She asked the Council to vote in favor of the agreement.

Maia Hutt, speaking for the Southern Environmental Law Center, asked the Council to sign the agreement and pointed out that the transportation sector was the single greatest source of greenhouse gas emission. The LRT project was an opportunity to stop and even reverse that unsustainable trend, she said.

Nick Jimenez, of the Southern Environmental Law Center, noted several health benefits of light rail and asked the Council to vote in favor of the agreement.

Molly DeMarco, a NEXT member, gave examples of how GT had shown itself to be a good partner over time and urged the Council to vote for agreement.

Joan Guilkey, a Chapel Hill resident, said that the proposed improvements to the agreement were helpful but that other issues had still not been addressed. She said that Option 2 (more discussion with staff and deferring to January) was most likely to protect the Town. Leaving the November 30, 2019 date for termination of the project would send a signal to the Orange County Commissioners that the Town agrees to continue

paying GT every month from then until December 2021, she said.

Julie McClintock, representing CHALT (Chapel Hill Alliance for a Livable Town) advocated for November 30, 2019 as the ending date of the contract if FTA funding was not forthcoming. She pointed out that September 30, 2019 was the date when the FTA was expected to approve or disapprove the full funding agreement application. Therefore, November 20, 2019 would give the FTA some time and would allow the Council to make a decision on moving forward based on what the FTA says, she said.

Ms. McClintock said that any FTA denial would be based on concerns related to management, financial risk, capability, or environmental impact; therefore, the Town should not waive its right to evaluate a way forward which it would do if it kept the agreement going for two more years, she said. Ms. McClintock raised other concerns and asked the Council to not do anything that would remove the Town's leverage.

Council Member Gu verified with Mayor Hemminger that the Town's cooperative agreement was about the construction approval process only. She confirmed with Mayor Hemminger and Mr. Tallmadge that expiration of the agreement would have no implications regarding funding.

Mayor Hemminger expressed a preference for Option 3 (more staff discussions with GT and authorize the Manager to finalize the document) and verified that there was consensus on the Council regarding language that had been added.

Council Member Schaevitz confirmed with Mr. Hitchings that a reimbursement cap of \$75,000 was in a separate reimbursement agreement with GT. She also verified with him that the amount was a little less than the agreement with Durham because Durham's included more stations and miles.

Council Member Gu ascertained from Mr. Hitchings that \$75,000 translated into more than 2,000 hours of staff review.

Council Member Buansi asked about the urgency behind getting the agreement approved rather than postponing it to January.

Ms. Eggleston explained that the FTA could assign additional risk to a project if a third party agreement had not been executed at the time of the risk assessment. That might mean that GT would be expected to have additional contingency funds to cover that risk, she said. Ms. Eggleston said GT had been given two weeks to provide updates and additional information for the FTA to consider in its quantitative analysis.

Council Member Parker said he did not think extending the agreement would imply that the Council was approving spending more money, noting

that the project would end if the FTA turned the application down. Stating that a deadline at the end of April 2020 would give comfort to some of his colleagues, he moved Option 3 with an agreement expiration date of April 30, 2020.

Council Member Oates argued for keeping the November 30, 2019 date. If something dramatic were to change, the Council would be flexible in extending that, she said.

Council Member Stegman said she did not want to put an arbitrary deadline in place that would hamper the process for GT. It was a big and complicated project, and the Town needed to give GT enough time, she said. Council Member Stegman said she did not think the date was as big an issue as the Council was making it out to be.

Council Member Gu suggested linking the expiration date to federal and state funding and suggested two months after final funding decisions are made.

Mayor pro tem Anderson agreed to that as a reasonable solution.

Mayor Hemminger called for a vote and the motion failed.

Council Member Gu said she preferred Option 2 because so much had just been added and she had not had a chance to look at the edits. In addition, she hoped the expiration date would be linked to the funding decision, she said.

Council Member Schaevitz confirmed with Mr. Tallmadge that GT had an executed \$99,000 interim reimbursement agreement with the City of Durham for the first range of work, and a full reimbursement agreement was being negotiated. The cooperative agreement with Durham had been executed on Monday night, but the reimbursement agreement was independent of that, he said. Mr. Tallmadge explained that the purpose of the towns' two cooperative agreements were the same, but it was taking Durham longer to estimate the scope of work because its project was larger.

Mayor Hemminger spoke again in favor of Option 3. She said that the date seemed to be where the Council was stuck.

A motion was made by Council Member Parker, seconded by Council Member Buansi, for Option 3 with an expiration of three months after a final determination by FTA that would not fund the project. Mayor pro tem Anderson requested a friendly amendment stating that the Manager would try to share a final draft with Council members for individual review. The motion carried by a unanimous vote.

Amendment and a Code of Ordinance Text Amendment.

Planner Becky McDonnell provided background on the Advisory Board Membership Policy and Code of Ordinance amendments. The Council had asked for clarification of the attendance policy and there had been a question about whether board members were aware of a childcare and transportation reimbursement policy, she said. She also said that the Human Services Advisory Board had asked to update part of its policy.

Ms. McDonnell reviewed each of the following recommended changes: adoption of Resolution 15 regarding advisory board membership policy changes; enactment of Ordinance 2 to amend the Code of Ordinances to update the attendance and length of term for several boards; adoption of Resolution 16 (the Resolution of Consistency with the Comprehensive Plan); and enactment of Ordinance 3 to amend the Land Use Management Ordinance.

Mayor pro tem Anderson confirmed with Ms. McDonnell that Resolution 15 could include information about who would notify a person that s/he was about to be removed from a board. She also verified that the Environmental Stewardship Advisory Board would change from nine to 10 members and that the Stormwater Advisory Board was not being eliminated.

Council Member Parker ascertained from Ms. McDonnell that the definition of "excused absence" essentially included sickness, death, or other emergencies.

Council Member Gu verified that there would be a new seat on the Environmental Stewardship Advisory Board. As the Council liaison to that board, she had heard them express concern about having an even number of seats, she said. She also said the Environmental Stewardship Advisory Board had suggested having a liaison from stormwater attend their meetings. That was different from their current proposal, she pointed out.

Ms. McDonnell offered to obtain more information on those matters.

Mayor Hemminger and Mayor pro tem Anderson discussed creating more clarity around the boards' different roles.

Council Member Oates verified that one intent of R-15 was that excused absences be at the discretion of the board chair.

A motion was made by Mayor pro tem Anderson, seconded by Council Member Bell, that R-15 be adopted. The motion carried by a unanimous vote.

A motion was made by Mayor pro tem Anderson, seconded by Council Member Bell, that O-2 be enacted. The motion carried unanimously.

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15. Consider a Land Use Management Ordinance Text Amendment - Proposed Changes to Sections 8.3 (Board of Adjustment) and 8.4 (Historic District Commission).

[\[18-1003\]](#)

A motion was made by Mayor pro tem Anderson, seconded by Council Member Bell, that the public hearing be closed. The motion carried by a unanimous vote.

A motion was made by Mayor pro tem Anderson, seconded by Council Member Buansi, that R-16 be adopted. The motion carried by a unanimous vote.

A motion was made by Mayor pro tem Anderson, seconded by Council Member Bell, that O-3 be enacted. The motion carried by a unanimous vote.

ADJOURNMENT

The meeting was adjourned at 12:07 a.m.