

*presentation of a more detailed analysis of the employment and land supply issues facing Cary.*

*As an alternative, staff advises that action on the case be deferred until after the aforementioned council work session.*

This item was tabled.

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## **6.6 Amendment to Town Noise Ordinance Regarding Golf Course Facilities (PD15-008)**

**Summary:** *Staff requests that Town Council consider clarifying the existing noise ordinance as it relates to the use of powered landscaping equipment by golf course operators. Staff recommends the approval of an Ordinance amending Town Code Sections 22-103 through 22-105 by defining relevant terms and the method used to determine compliance with the noise ordinance.*

**Proposed Council Action:** Council may take action.

**Speaker:** Tony Godwin

***Background:*** *The Police Department administers the Town noise ordinance (Town Code Sections 22-102 – 22-112). Over the years, staff has received numerous complaints about noise associated with golf course operations. The noise ordinance generally prohibits the making of a sound that exceeds 60 dB(A) affecting any residential structure. The decibel level is measured at the nearest residential property line of the complainant. However, the use of lawnmowers and landscaping equipment is exempt from the noise ordinance during specified hours: Monday through Friday, from 7:00 a.m. through 9:00 p.m., and on Saturdays and Sundays from 9:00 a.m. through 9:00 p.m. Additionally, the mowing of golf course greens is exempt from the noise ordinance from 6:00 a.m. through 9:00 p.m. during the months of April through September. Recently, a citizen complained about the noise created by the greens keeping staff at MacGregor Downs Country Club. Staff worked with both the citizen and golf course management in an effort to find a suitable resolution to the complaints, but ultimately was unable to satisfy both parties. Staff determined that the golf course was not violating the decibel limit of 60 dB(A) prior to 6:00 a.m. based on our usual method of measurement. This method consists of taking an average decibel level over a one minute time period as measured by our sound level meter. The citizen did not agree with this method, stating that any instantaneous sound exceeding the 60 dB(A) limit is disturbing. On October 30, 2014 Council directed staff to look at the noise ordinance as it relates to the operation of golf courses. Since that time, additional citizens have contacted staff and Council with complaints similar to the issues raised by the MacGregor Downs citizen. These additional complaints have been noted to be a result of operations at the Lochmere and Prestonwood golf courses.*

***Discussion:*** *Staff began by taking a look at numerous other communities and their noise ordinances for clarity on how they have addressed golf course operations or landscaping equipment. The approach is widely varied as it relates to hours when powered lawn mowers and landscaping equipment are permitted. While most communities allow work in or near residential areas to start between 7:00 am and 9:00 am (depending upon the day of the week), cut off times range anywhere from 7:00 pm to 11:00 pm. Of the communities that we examined, none carved out any specific exceptions for golf courses except for the Town of Wake Forest. While we have historically carved out a specific exemption for golf course operations, this is certainly not a requirement and Council could establish that landscaping activities in residential areas are restricted the same across the Town without exception. With regard to other communities' ordinances, the methods used to measure the noise levels fell generally into 2 categories:*

*1 - An average taken over a set period of time (as is our current practice), or*

2 - A series of instantaneous readings taking over a set period of time with either a set number or a fraction of the total readings exceeding the decibel limit triggering a violation. The measurement equipment that we currently have allows for either method to be employed. We currently take a measurement using the A weighted scale for a period of 60 seconds. The meter that we use takes this measurement automatically and computes an average reading over that period of time to establish the specific dB(A) reading. The City of Wilmington, NC uses this same method, but their ordinance specifies that the sound cannot exceed the prescribed decibel level by more than three (3) dB(A) at any period during the measurement phase or it is deemed to be in violation. The other method that we see used in some communities is to take a series of instantaneous readings with a limit of either a certain percentage of the readings exceeding the specified decibel limit, or a specific number of times in excess of the prescribed decibel limit triggering the violation. The Town of Apex and the City of Raleigh use these methods, respectively; in both jurisdictions, as many as 100 instantaneous readings are required to be taken in 10 second intervals. Thus, it may take over 15 minutes to complete the noise measurement and assess whether there is a violation. In addition to examining the timing of golf course landscaping activity and the method of measuring noise violation, staff has identified a number of other areas that Council may wish to clarify in an ordinance amendment. The following table delineates the issues identified, lists possible options, and finally notes staff's recommendation for each.

<b>Issue</b>	<b>Options</b>	<b>Staff Recommendation</b>
Should the ordinance allow an exception for golf course mowing to begin earlier than other landscaping activities?	<p>1 – Yes, keep it as is currently allowed (beginning at 6:00 a.m., April through September)</p> <p>2 – Yes, but adjust the times and/or days and/or months</p> <p>3 – No, remove the exception for golf courses</p>	Staff recommends Option 1. Staff recognizes the need for a slightly earlier start to allow for typical golf course operation. Historically, this has not proven to generate a tremendous number of complaints to the Police Department.
Should the ordinance be amended to vary the times or days when general landscaping activities are allowed to exceed 60dB(A)?	<p>1 – No, keep it as is currently allowed (Monday - Friday, 7:00 a.m. - 9:00 p.m.; Saturdays and Sundays, 9:00 a.m. - 9:00 p.m.)</p> <p>2 – Yes, adjust the weekday times and/or weekend times</p> <p>3 – Yes, establish specific times when mowing is allowed with no restriction on days</p>	Staff recommends Option 1. The ordinance as written seems to have worked well in the past and staff typically receives very few complaints related to this exception.
How should the ordinance define "golf course greens" (Sec. 22-105(10))?	<p>Define "golf course greens" as:</p> <p>1 – Only the putting green</p> <p>2 – Only the putting green and tee box area</p> <p>3 – Any playing surface on the golf course</p>	Staff recommends Option 1, , and believes it reasonable to strictly define "greens" to mean only the putting surface on a golf course (which has been staff's interpretation of the current ordinance).

<p><i>How should the ordinance define “mowing” of golf course greens (Sec. 22-105(10))?</i></p>	<p><i>Define “mowing” as:</i></p> <p><i>1 – The use of powered equipment that is designed strictly for grass cutting. String trimmers (commonly referred to as “weed eaters”) would not be allowed under this definition.</i></p> <p><i>2 – The use of any powered equipment that is designed for grass cutting. String trimmers would be allowed under this definition.</i></p> <p><i>3 – The use of any powered equipment for landscaping purposes, including blowers and trimmers.</i></p>	<p><i>Staff recommends Option 1. Staff believes the original intent of this rule was to allow a reasonable accommodation for the business of golf course operations by allowing a slightly earlier start time for the basic necessity of mowing the green. We believe other activities could still be accomplished through the regular hours of operation and would minimize inconvenience to the residents surrounding the course as well as the users of the course facilities.</i></p>
<p><i>What method should staff use to determine if a violation exists?</i></p>	<p><i>1 – Average taken over a set period of time (current method)</i></p> <p><i>2 – Instantaneous readings with a percentage of the total readings in excess of the limit constituting a violation</i></p> <p><i>3 – Instantaneous readings with a set number of readings in excess of the limit constituting a violation</i></p> <p><i>4 – Average taken over a set period of time with a “cap” such that a reading in excess of the cap within the averaging period would constitute a violation of the ordinance</i></p>	<p><i>Staff recommends Option 4, an average reading with an upper limit threshold. Staff recommends that the cap be 3 decibels over the established limit. Thus, when the decibel limit is 60 dB(A), any reading of 63 dB(A) or above during the 60-second measuring period would constitute a violation of the noise ordinance, even if the average reading for the 60 second time period is below 60 dB(A).</i></p>

**Fiscal Impact:** Staff’s recommended options for each of the above items would have no additional operating impacts. Should Council decide to change from the current method of sound measurement (one-minute readings) to a large number of instantaneous readings spread 10-seconds apart (similar to Raleigh and Apex), there will be some staff impact on time spent on calls to determine sound levels. Our current meters are capable of taking this type of measurement manually.

**Staff Recommendation:** Staff requests that Council provide guidance to staff for each item listed in the above table. Staff will return to Council at a later date with specific wording for any necessary ordinance amendments.

Godwin presented report.

Weinbrecht stated he was contacted by the general manager of MacGregor Downs, Mr. Curtis. Mr. Curtis contacted the general managers of Prestonwood and Lochmere. The general managers would like to sit down with the mayor to discuss issues. The speaker (Mr. Butler) brought up good points about certain equipment items. He sees benefit in tabling to receive more information and input.

Smith questioned if municipalities around Pinehurst were researched. Godwin stated the Pinehurst ordinance was reviewed and does not include an exception for golf course operations.

Smith questioned the proximity of the homes to the golf course in Pinehurst in comparison to Cary. Had lunch with six couples who reside on a cul-de-sac in MacGregor Downs and the couples were split on noise on the golf course.

Bush would be interested in knowing if noise can be separated based on the type of equipment. Questioned Pinehurst not having golf course noise regulations. Godwin stated he could not find anything in the Pinehurst noise ordinance that provides an exception to when golf courses can start lawn maintenance.

Yerha questioned the Wake Forest exception for golf courses. Godwin stated the Wake Forest noise ordinance is similar to the Cary noise ordinance.

**ACTION:**

**Motion: Smith moved to table.**

**Second: Robinson**

**Vote: Unanimous**

**6.7 Owner-Initiated Annexation Petition, Leon and Shirley Herndon Annexation (14-A-17) (PL15-032)**

*Summary: Consider adoption of the ordinance for Annexation request.*

Proposed Council Action: Council may take action.

Speaker: Mary Beerman

**14-A-17**

**AN ORDINANCE ANNEXING LANDS CONTIGUOUS TO THE MUNICIPAL BOUNDARIES OF THE TOWN OF CARY**

*WHEREAS, on 9/25/2014, the Town Council has been petitioned under G.S. 160A-31 to annex the area described below:*

***Leon and Shirley Herndon; Kathleen Herndon Revocable Trust***

Wake County Parcel Identification #0733772367, 0733763757; including 15.78 acres, plus 2.95 acres of adjacent right-of-way; which are contiguous to the existing municipal limits of the Town of Cary; and WHEREAS, on 11/20/2014, the Town Clerk of the Town of Cary certified the sufficiency of said Petition, the same being duly made after investigation; and

WHEREAS, on 11/20/2014, the Town Council of the Town of Cary ordered a public hearing on the question of said annexation and Notice of a Public Hearing was published as required by law; and

WHEREAS, the matter came for public hearing before the Town Council of the Town of Cary on 12/11/2014 at which time all persons opposed and all persons in favor of said annexation were allowed to be heard; and

WHEREAS, the Petition above mentioned meets all the requirements of G.S. 160A-31.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Cary, North Carolina that:

Section 1. The area described in the petition and depicted on the map (which is on file in the Planning Department), is hereby annexed to and made a part of the Town of Cary, effective on 3/12/2015 with a condition that the property owner connect to the Town of Cary sewer/water line based upon the Town's policy(ies) in place on the effective date of this ordinance.

**LEGAL DESCRIPTION:** Wake County Parcel Identification #0733772367, 0733763757

Section 2. That from and after the effective date of this ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances and regulations in force in the Town of Cary, and shall be entitled to the same privileges and benefits as other parts of the municipality. Said annexed territory shall be subjected to municipal taxes according to G.S. 160A-58.10.

Section 3. The Mayor of the Town of Cary shall cause an accurate map of the newly annexed territory together with a copy of this ordinance, duly certified, to be recorded in the Office of the Register of Deeds of Wake County and in the Office of the Secretary of State of North Carolina.

Section 4. Pursuant of G.S. 160A-22, the Town Clerk is directed to update the Official Town Map by drawing in the territory annexed, or setting out the boundaries in a written description, or showing the current Town boundaries by a combination of these techniques. Such a map shall also be delivered to the Wake County Board of Elections as required by G.S. 163-288.1

Section 5. Pursuant of G.S. 160A-23, the boundaries of Electoral District A are hereby revised to account for and include the territory annexed, and the Official Town Map of Electoral Wards is hereby amended to include the annexed territory in the said Electoral District.

Adopted on 3/12/2015

Beerman presented report.

**ACTION:**

**Motion: Bush moved to approve the Leon and Shirley Herndon annexation 14-A-17.**

**Second: Frantz**

**Vote: Unanimous**

**6.8 Herndon Property Rezoning (14-REZ-33) (PL15-036)**

Summary: To amend the Town of Cary Official Zoning Map to apply initial Town of Cary zoning of Transitional Residential Conditional Use (TR-CU) to 15.78 acres located at the northwest corner of the NC 55 Highway and Turner Creek Road intersection, with zoning conditions that include limiting land use to a maximum of 48 detached dwellings (3.0 du/acre); associated case: annexation petition 14-A-17.

Planning and Zoning Board Recommendation: Recommended approval 8-0.

Proposed Council Action: Council may take action.

Speaker: Mary Beerman

**ORDINANCE FOR CONSIDERATION 14-REZ-33 Herndon Burt Property**

AN ORDINANCE TO ESTABLISH INITIAL TOWN OF CARY ZONING FOR APPROXIMATELY 15.78 ACRES LOCATED AT THE NORTHWEST CORNER OF THE NC 55 HIGHWAY AND TURNER CREEK ROAD INTERSECTION BY APPLYING TRANSITIONAL RESIDENTIAL CONDITIONAL USE (TR-CU) AND WATERSHED PROTECTION OVERLAY DISTRICT (JORDAN LAKE SUB-AREA) ZONING TO PROPERTY CURRENTLY ZONED WAKE COUNTY RESIDENTIAL 40 WATERSHED DISTRICT [R-40(W)] AND WAKE COUNTY HIGHWAY DISTRICT (HD). BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CARY:

**Section 1:** The Official Zoning Map is hereby amended by rezoning the area described as follows:

**PARCEL & OWNER INFORMATION**

<b>Property Owner(s)</b>	<b>County Parcel Number (10-digit)</b>	<b>Real Estate ID</b>	<b>Current Zoning (Wake County)</b>	<b>Deeded Acreage</b>
Leon W. & Shirley W. Herndon 6828 Turner Creek Road Cary, NC	0733772367	0288461	R-40(W) HD	12.74
Kathleen Lassiter Burt 6824 Turner Creek Road Cary, NC	0733763757	0288460	R-40(W) HD	3.04
<b>Total Area</b>				<b>15.78</b>

**Section 2:** That this Property is rezoned from Wake County R-40 and HD, to TR-CU, subject to the individualized development conditions set forth herein, and to all the requirements of the Cary Land Development Ordinance (LDO) and other applicable laws, standards, policies and guidelines, all of which shall constitute the zoning regulations for the approved district and are binding on the Property.

**Section 3:** The conditions proposed by the applicant to address conformance of the development and use of the Property to ordinances and officially adopted plans, to address impacts reasonably expected to be generated by the rezoning, and to promote the public health, safety and general welfare, and accepted and approved by the Town are:

1. Permitted uses shall be limited to detached dwellings.
2. The maximum development density permitted shall be 48 total dwelling units.

3. *Development of the property shall not include an eastbound left turn movement from the site directly onto NC 55 Highway. Any access directly onto NC 55 Highway from the property shall be limited to a right-in/right-out turn movement (and may include a left-over movement for northbound traffic on NC 55 Highway). All access to NC 55 Highway is subject to approval by the NC Department of Transportation. -*
4. *A 100-foot building and parking setback shall be provided along the northern boundary of the property.*
5. *The following setbacks shall apply to the property:*
  - a. *Minimum side yard setbacks shall be five (5) feet.*
  - b. *Minimum rear yard setbacks shall be twenty (20) feet.*
  - c. *Minimum front yard setbacks shall be eighteen (18) feet.*

**Section 4:** *This ordinance shall be effective on the date of adoption.*

*Adopted and effective: March 12, 2015*

Beerman presented the staff report.

Weinbrecht stated his concern is the requested Transitional Residential Conditional Use district (TR-CU). The property in question has been before Council several times. TR-CU usually has small lots of 5,000 square feet and side yard setbacks of five feet.

Bush stated our citizenry wants a variety of housing stock and this is missing in Cary.

Yerha noted that the proposed combined side yard setback is ten feet, with five feet on each side; whereas the TR district requires a combined side yard setback of six feet. Beerman confirmed that this is correct.

Yerha stated he had heard no neighborhood opposition to this request, and added that the elementary school across the street had capacity.

**ACTION:**

**Motion:** Bush moved to approve the Herndon property rezoning 14-REZ-33.

**Second:** Frantz

**Vote:** Weinbrecht and Robinson voted no. All other members voted yes.

**Motion carried by simple majority.**

**6.9 Consistency and Reasonableness Statement for Rezoning 14-REZ-33, Herndon Property**

*Summary: Request to approve a statement of consistency and reasonableness for 14-REZ-33, Herndon Property rezoning request.*

Proposed Council Action: Council may take action.

Speaker: Mary Beerman

**ACTION:**

**Motion: Bush moved to approve Consistency and Reasonableness Statement for rezoning 14-REZ-33, Herndon Property.**

**Second: Frantz**

**Vote: Robinson voted no. All others voted yes. Motion carried by simple majority.**

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**7. CLOSED SESSION**

**ACTION:**

**Motion: Frantz moved to go into closed session.**

**Second: Bush**

**Vote: Unanimous at 7:52 PM.**

Pursuant to NC GS. 143-318.11(a)(1) and (3), I move that we hold a closed session to:

1. Consult with attorneys employed by and/or retained by the town in order to preserve the attorney-client privilege between the attorneys and the Town.
2. To prevent the disclosure of information that is made privileged or confidential by NC GS 143-318.10(e).

Council returned to open session at 8:04 PM.

Transportation and Facilities Director Laura Cove stated staff identified a parcel at 31 Kilmayne Drive as a site to consider for a Town's water tank. Staff recommends approval and execution of an appropriate resolution authorizing condemnation:

**RESOLUTION AUTHORIZING CONDEMNATION  
TO ACQUIRE IN FEE SIMPLE PROPERTY OWNED BY NORTHSTAR  
PARTNERS, LLE, ET AL, and ANY INTEREST IN THE KILMAYNE VILLAGE  
PLAZA ASSOCIATION, INC.**

WHEREAS, the governing body of the Town of Cary hereby determines that it is necessary and in the public interest to acquire certain properties owned by Northstar Partners, LLC et al., and any interest in the Kilmayne Village Association, Inc., for the following public purpose:

To protect the public health, to provide the public with an adequate and sound water system, and to improve such system to meet the need for expanded or upgraded services, the Town of Cary is condemning the herein described property interests, specifically, to construct and maintain the WT1214 Maynard Road Water Tank Replacement Project.

WHEREAS, the proper officials or representatives of the Town of Cary have been unable to acquire the needed interest in this property.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE TOWN OF CARY, THAT:

1. The Town of Cary shall acquire in fee simple by condemnation, for the purposes stated above, two parcels as described in Deed Book 12697 at Page 0001.

The property interest areas taken are more particularly described as follows:

Lying and being in the Town of Cary, Wake County, North Carolina, and being more particularly described as follows:

LOT 4, containing 3.045 acres, more or less, as shown on a plat by Jimmy E. Bass, Professional Land Surveyor, of Withers & Ravenel Engineering & Surveying, Inc., entitled "KILMAYNE VILLAGE PLAZA", dated 6-21-01, and recorded in the Wake County, North Carolina Registry in Book of Maps 2001, Page 1275, said plat being incorporated by reference as if fully set out herein.

2. The attorneys representing the Town of Cary are directed to institute the necessary proceedings under NCGS § 40A-1, et. seq. as authorized by NCGS § 40A-3(b)(4) and/or other appropriate statutory provisions and local acts to acquire the property herein described.

Duly adopted this 12<sup>th</sup> day of March, 2015.

**ACTION:**

**Motion: Robinson moved to approve the resolution.**

**Second: Smith**

**Vote: Unanimous**

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**8. ADJOURNMENT**

**ACTION:**

**Motion: Smith moved to adjourn at 8:05 p.m.**

**Second: Bush**

**Vote: Unanimous**