

**OLD BUSINESS**

*Commissioner Jensen*

**Old Business Item # 01 - Site Location Wastewater Reclamation Facility**

Possible motion to consider a Resolution regarding site selection for the Wastewater Reclamation Facility.

Mayor Weatherly stated before consideration of this item, Town Attorney Fordham requests the Board move into closed session for the purpose of taking advice from him on this matter. **Action:** Motion by Commissioner Schulze and second by Commissioner Gossage to move into closed session as permitted under law at 7:52 p.m. Motion carried unanimously. **Action:** Motion by Commissioner Jones and second by Commissioner Gossage to move back into regular session at 8:02 p.m. Motion carried unanimously. Minutes of Closed Session are recorded separately.

Mayor Weatherly recognized Commissioner Jensen who introduced a Resolution in consideration of the sister community of New Hill, that will be impacted by the present proposed location of the sewer facility. He noted one alternate site, and also noted by Commissioner Jones in the past that would serve just as well in all likelihood and would not impact the New Hill folks to nearly that degree. He noted it was reviewed and his concern is the site selection criteria that this plant was selected under specifically didn't consider the ultimate use of the property as a criteria; it seemed to overweight the number of property owners that would own a potential piece of property that the facility could be built on because once the property is purchased, those folks are out of the picture; the folks next door have to live with the situation.

**Action:** Motion by Commissioner Jensen to adopt this Resolution as presented with Commissioner Sutton making a second to the motion.

Discussion followed: Commissioner Jones stated there had been discussion of one alternative site over the past months and he offered a substitute Resolution with the same basic intent, however re-worded slightly; one correction had been made changing the word sufficient to official in the 7<sup>th</sup> paragraph. It was not his intent to discuss the criteria that was used; it could be debated, the criteria that had been used in the process for the past two years, and adding tonight could add nauseam if we wanted to and for a long time too, but, he doesn't think that... what he's trying to accomplish is official consideration of an alternate site to the one that has already been selected.

**Action:** Motion by Commissioner Jones to substitute this Resolution for the one presented, with a second to the motion made by Commissioner Gossage. Mayor Weatherly stated the debate recurs on the amendment by Commissioner Jones.

**Action:** Motion by Commissioner Sutton to amend the amendment of Commissioner Jones, the last part of the last sentence which says..... or to proceed with Site C, which would allow that to be done. He would like to take out the ...or to and add ...and not proceed with Site C. He offered this as an amendment to Commissioner Jones amendment. To him it's a crux of the matter, either they like Site C or don't like Site C. Mayor Weatherly asked if this was a motion, and Commissioner Sutton responded, it was a motion to amend the amendment. Mayor Weatherly stated this was a second degree amendment that would offer the addition of the wording in the last clause. Mayor Weatherly asked if there were a second. Commissioner Jensen asked Commissioner Sutton if this was all he wished to amend on this since he had one shot at it, with his concern, and asking Town Attorney Fordham if this is correct. Town Attorney Fordham asked Commissioner Jensen to restate his question. Commissioner Jensen asked if they voted to amend the amendment, if that is the end of line; the end amending the amended resolution, so there is not a chain of amendments to this item.

Attorney Fordham began to advise the Board, with Mayor Weatherly addressing the question, advising there couldn't be more than a second degree amendment pending at any time, so once the second degree amendment is disposed with then the floor would be open to amend the amendment, but there can't be more than an amendment to the amendment. Commissioner Jensen clarified the amendment to the amendment being what Commissioner Sutton had stated, with Mayor Weatherly responding exactly, and that until that amendment is disposed of, no further amendments would be in order. Commissioner Jensen questioned Commissioner Sutton, asking him if he had anything else to add to that. Commissioner Sutton responded that was the only part of Commissioner Jones' proposal that he objected to, which is the part he mentioned with the other being ok by him.

Mayor Weatherly asked if there were a second to Commissioner Sutton's amendment, with Commissioner Jensen making a second to the amendment. Mayor Weatherly added the discussion is now on the second degree amendment to Commissioner Jones' amendment.

**Action:** Commissioner Gossage called for the question. Mayor Weatherly stated there needed to be a majority vote to call the question, with Commissioner Gossage adding, they would now vote on the amendment to the amendment. Mayor Weatherly stated Commissioner Jensen had made a second and were now on the discussion of the second degree amendment, and the question would be called if another member of the Board also joined with him to call the question, and the majority that would like to cut off debate. Commissioner Gossage stated he calls for the previous question. Commissioner Sutton asked if Commissioner Jones stated he would comment on Commissioner Suttons' amendment to the amendment.

Mayor Weatherly responded they were still in discussion until the majority ...with Commissioner Jensen interjecting, that he takes back his second on Commissioner Suttons so the call does not count. Mayor Weatherly then stated, the motion fails for a lack of a second, and the debate recurs on Commissioner Jones amendment. Commissioner Jones stated basically that his resolution asks the partners to declare its conclusion on whether or not the alternative site meets criteria which justify continued review or to proceed with Site C. He addressed Commissioner Sutton, stating the reason he did not say and not proceed is because they have already proceeded with Site C – "the horse is out of the barn" not that it couldn't be put back, but the process is already in place, with Commissioner Sutton interjecting, "...lets put it back. Commissioner Jones asked if he were saying and not to proceed, with Commissioner Sutton interjecting, "lets put the horse back". Commissioner Jones continued that's what he's asking them to do, to consider an alternate to see if it meets ... with Commissioner Sutton interjecting, that when he says or to proceed, you are allowing them to proceed, saying either/or is fine with him. Commissioner Jones responded that he didn't say that, and that if he read the first half of the Whereas he would see that that is not how he feels about it. Commissioner Sutton asked how he did feel about it. Commissioner Jones responded if he read all of the Whereas he would know that he thinks the site selection is an inappropriate site. Commissioner Sutton asked if he felt Site C was an inappropriate site. Commissioner Jensen added that's what he said at the public forum, with Commissioner Jones adding that's what he's reading right here, .....that's it's in an area currently recognized as the New Hill community near the intersection of two major roadways where municipal planning might prescribe commercial development, and at lease one alternate site exists with characteristics that differ from Site C, meaning it's not near the New Hill community and not near two major roadways.

*Old Business continued*

Commissioner Jensen stated the criteria this site was selected under did not consider whether it was at the intersection of two major roads or could be used to a better alternate use; as you well know you folks have been over to Cary and discussed this and the consultant took an evaluation of this next site that is down one mile and came up with a number that made it less desirable for the wastewater facility than Site C because it was based on criteria that in his opinion is highly flawed. It does not consider the ultimate use of the land and should not consider to the degree that it does the number of property owners, and if they don't have some sort of different criteria then they will go back to the same path and right down to Site C. One other thing, he asked, "who is driving the dog, is it the tail or the dog that's doing the driving?" The problem he has is the consultant comes up with the criteria, and they (the board) never voted on what criteria they are going to be talking about. They come up with the criteria and they do their own evaluation and say under this criteria, they came up with... with Mayor Weatherly asking, who is they and addressing Commissioner Jensen, with Commissioner Jensen responding the consultant ... with Mayor Weatherly responding ... that was not true at all, with Commissioner Jensen adding that he had never voted on the criteria. Mayor Weatherly stated they had empowered staff to be their representative at the technical management team; Bruce Radford he thinks was at every one of those meetings; Tim Donnelly Public Works Director represented Apex at every one of those meetings and never once did any member of this body say that was not sufficient representation – the technical aspects of this project being as it is and certainly unless someone wishes to say the incompetence of those staff members representing the board made for a flawed process, then they can entertain that suggestion. Commissioner Jensen stated he believed that the number of criteria and the type of criteria were insufficient; he's not saying staff is incompetent, he's saying the criteria was insufficient; he feels incompetent and thinks they are all incompetent in not reviewing the criteria themselves because they were the folks representing all of these folks and the folks in Apex and the Cary Town Council is representing their folks. Every email he had gotten from anybody in Apex regarding this, the people we all represent, is negative on this site selection and thinks that they (the board) were remiss; he's not picking on anyone, with Mayor Weatherly adding, they had empowered staff to represent..... with Commissioner Jensen interjecting, they should have watched this more closely and had that come back to take a look at criteria. Mayor Weatherly stated hind-sight was a wonderful thing.

Commissioner Jones stated, they may recall when this alternate site was unofficially scored; the resulting score was basically the same as Site C – a fraction and compared to the other sites it was pretty wide variance. Therefore, he didn't think it was the criteria that makes any difference in this process, and it was scored the very same score and he was asking the Partners make an official consideration of the site.

Commissioner Schulze stated, he agreed with this and doesn't think Site C should be taken off the table – that is his opinion. He thinks as it stands now, Site C from everything they have been told is the best site. If there are other sites out there, he's open to listening if they are better than Site C, but he's opposed they remove Site C.

Mayor Weatherly stated they should be honest here; what they are doing is an exercise in grandstanding because it has no substance. The legal status that Apex is in and the legal status of the site is that it has been selected by the Partnership – Apex is a part of that Partnership and until a majority vote of the Partnership, there will be no change in the site nor additional sites reviewed and he comes to them making a wager with anyone of them that there won't be any support on the Partnership, for no matter what the wording of this language is to suggest the criteria flawed or the other sites need to be reviewed; there will not be a single other member support any change in our stance until the State has had opportunity to speak, so we are dealing with an exercise in futility here that has no meaning and no substance. He suggests they move to the vote on Commissioner Jones amendment and will call the question.

Commissioner Sutton asked Attorney Fordham that his understanding is that the Partners each had an equal say contractually in site selection; it was not a majority of the Partners to say this or that, that it had to be a unanimous vote by the Partners, asking if that's what the contract called for. Attorney Fordham answered, that is correct. Commissioner Sutton, then stated, but we haven't voted on it yet, asking, have we? Attorney Fordham deferred to Mayor Weatherly for response to the question.

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Mayor Weatherly responded they have formally sent a letter communicating our support for that site before the property was acquired through eminent domain. Commissioner Sutton asked, but we haven't voted on it; he continued, Commissioner Jones told him they had not voted on it. Mayor Weatherly responded, no this body has not voted on it. Mayor Weatherly stated the letter was communicated prior to that based on recommendation from staff. Commissioner Sutton stated he hoped they could vote on it, whether to approve the site or not approve the site; of course his vote would be not to approve Site C.

Mayor Weatherly stated the motion is for the amendment offered by Commissioner Jones, to amend as a substitute for the underlying resolution. Mayor Weatherly asked for the vote of the amendment. Commissioner Jensen stated he had withdrawn his second, with Mayor Weatherly adding, and therefore we have been discussing Commissioner Jones amendment, now the vote is on Commissioner Jones amendment. He asked all in favor to vote eye. Voting eye were Commissioner Gossage, Commissioner Jones and Commissioner Schulze. Mayor Weatherly asked for those being opposed to vote no. Commissioner Sutton and Commissioner Jensen voted no. Mayor Weatherly stated the amendment is adopted 3 to 2. The Resolution was amended by a substitution. He then stated the debate is on the amended resolution.

Commissioner Jensen asked if they were discussing the amended resolution, which is what Commissioner Jones made. Mayor Weatherly stated that is right, the underlying motion; pending motion is the adoption of the amended resolution. Commissioner Jensen asked if they could amend the amended resolution at this point. Attorney Fordham stated a motion to amend would be in order. Commissioner Jensen asked Commissioner Sutton if he wanted to make his motion one more time to amend the amended resolution. Commissioner Sutton asked if he meant the same one they had just voted down. Commissioner Jensen responded no; in order to amend this resolution to say what he had noted before. Commissioner Sutton asked if this were the amendment that was passed out here. Commissioner Jensen stated he wanted to say, and not select Site C, with Commissioner Sutton responding that's what he had asked. Commissioner Jensen asked if he would like to make that motion again. Commissioner Sutton responded he thought they had just voted on it. Mayor Weatherly responded no, it didn't have a second.

**Action:** Commissioner Sutton then made a motion to strike in the last sentence, the words... or to and add the words ... and not; this means the not proceed with Site C. Commissioner Jensen then made a second. Mayor Weatherly stated the motion was made and seconded and the discussion is on the amendment.

Commissioner Jones again stated Site C is currently – he doesn't like it, but is currently being reviewed by the State, so the process is proceeding. His basic intent is to get as he said before an official re-evaluation of alternate site. Mayor Weatherly stated the site has been acquired. Commissioner Sutton asked how they could re-evaluate then if it's already... with Commissioner Jensen saying been evaluated. Commissioner Sutton again asked how could they re-evaluate; you want them to re-evaluate, but he says they already evaluated Site C. Commissioner Jones responded he wanted them to do it officially as Western Wake Partnership; that hasn't happened previously. Commissioner Sutton stated he wanted officially the Western Wake Partnership to not proceed with Site C. Commissioner Jensen then stated and that's your motion. Mayor Weatherly stated that's the motion and a second, asking all in favor, the vote is on the amendment of Commissioner Sutton's amendment, asking all in favor signify by voting eye. Commissioner Jensen and Commissioner Sutton voted eye. Mayor Weatherly asked those opposed vote no, with Commissioner Jones, Commissioner Gossage and Commissioner Schulze voting no. Mayor Weatherly stated the amendment fails 3 to 2, and now the debate recurs on the underlying motion, Commissioner Jones. There was no debate so he called for the question on the underlying motion, asking all in favor of the resolution as amended signify by voting eye, with Commissioner Jones, Commissioner Gossage and Commissioner Schulze voting eye. Mayor Weatherly asked those opposed vote no, with Commissioner Sutton and Commissioner Jensen voting no. Mayor Weatherly stated the resolution was adopted 3 to 2.

Apex Board did not vote to approve Site C