REQUEST

WSP Sells, on behalf of the developer and property owner, ForeverHome, has requested approval of a subdivision and site plan to develop 150 townhomes on approximately 26 acres located on Cary Glen Boulevard between Green Level Church Road and Carpenter Fire Station Road. The proposal includes several Minor Modifications to Town standards, including the acceptance of a partial payment-in-lieu (PIL) for a traffic signal, the elimination of vehicular and pedestrian connectivity to adjacent properties, the use of hardscape edges for stormwater management, the encroachment of development into perimeter buffers, and the removal/replacement of several champion trees.

Changes since September 2013: The applicant has revised their proposed plan to reduce the number of townhomes from 150 to 144. This would allow the elimination of the proposed buffer encroachments for the Best Management Practices (BMP), to reduce the buffer encroachment related to the sewer, and to save two additional champion trees on the property. In addition, the applicant was approached by the developer of the nearby Meacham property, RKM Development, in regards to their participating in the signalization of the Cary Glen Boulevard and Carpenter Fire Station Road intersection.

SUBJECT PARCELS

<table>
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<tr>
<th>Property Owner</th>
<th>Wake County Parcel Identification Number (PIN) (10-digit)</th>
<th>Real Estate ID Number</th>
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<td>Cary Glen, LLC</td>
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<td>0029356</td>
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<tr>
<td>8310 Bandford Way</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Raleigh, NC 27615</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Area</td>
<td></td>
<td></td>
<td>25.89</td>
</tr>
</tbody>
</table>

BACKGROUND INFORMATION

| Applicant’s Agent       | Ed Tang                                                  |
|                        | WSP Sells                                                |
|                        | 15401 Weston Parkway, Suite 100                          |
|                        | Cary, NC 27513                                           |
|                        | (919) 678-0035                                           |
|                        | ed.tang@wpsells.com                                      |
| General Location       | South side of Cary Glen Boulevard, approximately 800 feet south of Carpenter Fire Station Road |
| Land Use Plan Designation | High-Density and Medium-Density Residential (HDR and MDR) |
| Zoning Districts       | Mixed Use (MXD) – 12-REZ-16 (Glencroft Townhomes PDP)    |
| Within Town Limits     | Yes                                                      |
| Staff Contact          | Kevin A. Hales, Senior Planner                           |
|                        | Town of Cary Planning Department                         |
|                        | P.O. Box 8005                                            |
|                        | Cary, NC 27512-8005                                      |
|                        | (919) 462-3944                                           |
|                        | kevin.hales@townofcary.org                               |
LIST OF EXHIBITS

The following documents incorporated into this staff report are to be entered into the record for this hearing:

Exhibit A: 13-SP-010 Application (3 pages)  
Exhibit B: 13-SP-010 Plan Set (122 pages) (FTP site – Planning/Quasi-Judicial Cases/)  
Exhibit C: 13-SP-010 Champion Tree Report (4 pages)  
Exhibit D: 13-SP-010 Payment-in-lieu Request (2 pages)  
Exhibit E: Waiver Justification Statement (4 pages)  
Exhibit F: 12-TAR-346 Executive Summary (7 pages)  
Exhibit G: Original Staff Report (16 pages)  
Exhibit H: 13-SP-010 Revised Plan Set (122 pages)  
Exhibit I: Summary of Revisions (2 pages)  
Exhibit J: Amended Payment-in-lieu Request (4 pages)

PROJECT DESCRIPTION/SUMMARY OF REQUEST

WSP Sells, on behalf of the developer and property owner, ForeverHome, has requested approval of a subdivision and site plan to develop 150 townhomes on 26 acres located on Cary Glen Boulevard between Green Level Church Road and Carpenter Fire Station Road. Primary access to the development would be via Cary Glen Boulevard, with secondary access via a vehicular connection being provided to the Grove at Cary Park multi-family development located to the southwest. The proposed development would also have access to Carpenter Fire Station Road via a future connection through the multi-family site currently under design to the north. Stormwater management would be provided through eight stormwater devices located around the property. Pedestrian connections through the future Town Park to the Mills Park Middle and Elementary Schools would be provided.

As proposed, this project includes several Minor Modifications to Town development standards. The applicant has proposed to provide a partial PIL for the signalization of the Carpenter Fire Station Road/Cary Glen Boulevard intersection. This PIL would be consistent with the partial PIL recently approved for the Cary Park Medical Office project located two properties north of this site. The PIL also anticipates the participation of the multi-family site located immediately to the north. The proposed townhome project would not provide street connections to the properties located to the south (Town of Cary park site) or to the east (Duke Energy Progress utility substation). Pedestrian access would be provided to the Town park site; however, no pedestrian access would be provided to the substation property.

In addition to the traffic and connectivity modification, the proposed project includes a number of modifications to the Town’s aesthetic and landscape regulations. The topography of the site presents challenges to the development of the property and, as a result, the applicant has proposed to use modular masonry walls in the design of two of the proposed stormwater best management practices (BMPs). In addition to the walls, two of the proposed BMPs would be partially located within the required perimeter buffer. These BMPs would be bio-retention areas, requiring that their surface area be planted with trees and shrubs. The Town’s Community Appearance Manual (CAM) requires a higher density of plant material when bio-retention areas are permitted to encroach into a required buffer. In addition to the BMP encroachment, the applicant has proposed a sewer line within a 20-foot utility easement that would be located coincidentally with the required 20-foot perimeter buffer. This encroachment would be limited to a short section of the southern perimeter buffer, which is adjacent to the future Town of Cary park. This encroachment did appear in the approved Preliminary Development Plan for the site; however, it was not specifically called out as a modification at that time. Finally, a survey of the existing tree cover on the site identified a number of trees in excess of 30 inches in diameter. The applicant had a registered forester evaluate the identified trees and prepare a report describing their health and their suitability for retention. The report indicated that there are six trees that should be construed as champion trees. The applicant has proposed to remove five of these champion trees and to retain the one remaining tree. The champion trees removed from the site would be replaced as required by the LDO.

**Changes since September 2013:** The applicant has proposed several changes to their original layout to address the concerns they feel were expressed at the September council meeting. While the
Minor Modifications to the Town’s connectivity requirements would remain unchanged, the requested payment-in-lieu for the signalization of the intersection at Cary Glen Boulevard and Carpenter Fire Station Road would be reduced from the original amount of $110,000 to $73,334 in recognition of a third development contributing to the cost of the improvement.

The proposed layout has been revised to save two additional champion trees and to remove the proposed encroachments from the perimeter buffers, thereby resulting in the loss of six units. The proposed stormwater BMPs have been modified to remove their impacts to the perimeter buffers. Removing the stormwater encroachments from the perimeter buffer necessitated the redesign of the BMPs, which included modifications to the proposed retaining walls and resulted in the need for additional walls in some locations. The removal of the lots around the champion tree at the southeastern corner of the property allowed the relocation of the sewer line in that corner of the site and its associated buffer impacts.

SITE CHARACTERISTICS

Streams: The development of the property is constrained by two parallel stream buffers located in the northwestern and the southeastern portions of the property.

Floodplain: There is no floodplain or flood hazard area impacting development of the property.

Wetlands: There are no wetlands impacting development of the property.

Topography: The elevation of the site descends approximately 50 feet from a knoll at the northern end of the site toward the streams located to the northwest and southeast.

Surrounding Land Uses:
North – Vacant (future apartment site in Cary Park)
South – Vacant (Mills Park site)
East – Duke Energy Progress utility substation
West – The Grove at Cary Park multi-family complex

SUMMARY OF PROCESS AND ACTIONS TO DATE

Notification
The Planning Department mailed notification of the public hearing on the subdivision and site plan to property owners within 400 feet of the site on August 27, 2013. Notification consistent with North Carolina General Statutes was published in the Cary News both on August 28 and on September 4, 2013.

Property Posting
Notice of the public hearing was posted on the property on August 28, 2013.

Quasi-Judicial Public Hearing:
The quasi-judicial public hearing for the proposed subdivision and site plan was opened on September 12, 2013. Following the staff and applicant presentations, the hearing was continued to the November 21, 2013 Town Council meeting to allow the applicant time to make revisions to the plan to address the concerns expressed by the council. Due to the number of cases on the November 21, 2013 meeting, the hearing was again continued until the December 12, 2013 council meeting.

CONSISTENCY WITH THE LAND DEVELOPMENT ORDINANCE (LDO)

Traffic
This project was submitted prior to March 1, 2013, and a Traffic Impact Analysis (TIA) was performed for the project by MAB, the executive summary of which is attached (Exhibit F) to this report. The TIA identified a number of mitigations for the project’s impacts to the surrounding intersections that are outlined below:

Cary Glen Boulevard/Access Drive #1
- Align Access Drive #1 with existing Cary Reserve Drive.
- Provide one inbound and one outbound lane.
Carpenter Fire Station Road/Cary Glen Boulevard

- Install two-phase signal at intersection following a warrant analysis for signalization.
- Restripe northbound Cary Glen Boulevard approach to provide an exclusive left-turn lane and a shared through/right-turn lane.

The proposed subdivision and site plan include the design specified for the project’s entrance onto Cary Glen Boulevard. However, the applicant has requested that the Town Council approve a partial PIL for the signalization of the Cary Glen Boulevard/Carpenter Fire Station Road intersection. Section 3.23 of the LDO allows Town Council to waive or to modify traffic mitigations identified in TIAs conducted for plans submitted prior to March 1, 2013, for which a Certificate of Adequate Public Facilities for Roads (CAPFR) has not been issued. The council may consider such a request if the proposed plan will not create unsafe conditions for pedestrians or motorists, will not create unsafe ingress and/or egress conditions for emergency services, and will not result in traffic congestion impacts reasonably expected to be generated by the project that will not be mitigated.

The proposed traffic signal would be designed with a standard metal pole and mast arm design with pedestrian accommodation and with a total estimated cost of approximately $250,000. The signalization of this intersection appears in at least two other TIAs performed for other developments in the immediate vicinity of this project. Town Council approved a PIL of $30,000, or 12% of the total signalization cost, as part of the approval of the Cary Park Medical Office (12-SP-036, approved by council March 14, 2013), located at the intersection of Cary Glen Boulevard and Carpenter Fire Station Road. The Glencroft Townhome project has proposed to make a PIL of $110,000 toward the signalization of the intersection, which is one-half of the remaining $220,000 project cost. The applicant provided a justification statement (Exhibit E) that indicates this number is consistent with a private agreement between ForeverHome and Crowne Partners that obligates each project to a PIL in the amount of $110,000. Crowne Partners prepared a TIA (13-TAR-363) in preparation for submitting their multi-family development for review by the Town, which identified signalization of the Cary Glen Boulevard/Carpenter Fire Station Road intersection as mitigation for their project’s traffic impacts as well. The development plan for the Crowne Partner multi-family project will be subject to the recent LDO amendments that eliminated the requirement for a traffic study as part of site plan review but now require Town Council review for all projects proposing 100 or more residential units. Therefore, it is unknown at this time when or if the remaining PIL would be made.

Changes since September 2013: There have been changes to the development picture in the area since the initial public hearing on this item. Most notably, the rezoning of the Meacham property at the intersection of Carpenter Fire Station Road and Green Level Church Road has been submitted for council consideration. The developer of that property, RKM Development, has worked with this applicant and the adjacent Crowne Partners site to further distribute the cost of the proposed signalization. The applicant has now proposed a PIL in the amount of $73,334 toward the improvement. The Meacham property has proposed a zoning condition that they provide a PIL in the amount of $73,333, which will be considered by council as that project proceeds through the process. The Crowne Partners multi-family site was recently submitted for consideration and is expected to include a similar request for a PIL of signalization in the amount of $73,333. That plan will require Town Council action at a future quasi-judicial hearing. A copy of the private three-party agreement between the various development entities has been included in Exhibit J.

Comprehensive Transportation Plan (CTP) Improvements
The subject property has access onto Cary Glen Boulevard through an existing 50-foot-wide local street (unnamed) right-of-way turnout. The proposed private street system would tie into the right-of-way stubbed into the property, and no other road improvements would be required by the Comprehensive Transportation Plan.

Buffers and Streetscapes
The property is located within the Mixed Use Overlay District and was rezoned to Mixed Use (MXD) in November 2012. As part of that process, a Preliminary Development Plan (PDP) was approved by Town Council, which established the required perimeter buffers and streetscapes. The PDP was approved with a 20-foot Type B buffer along the northern, the western, and the southern property lines. A 15-foot buffer, representing the project’s half of a 30-foot Type B buffer, is required along the eastern property line. The
PDP does not indicate a requirement for a streetscape, which is due to the extremely limited frontage of the project along Cary Glen Boulevard. The proposed subdivision and site plan would be consistent with the PDP approved by Town Council.

**Champion Trees**

The tree survey required by Section 7.2.5(A) of the LDO identified 12 trees in excess of 30 inches in diameter (at breast height or DBH). The applicant had Steven Ball, a registered forester, examine the trees in the field and evaluate them as to whether or not they should be considered as champion trees due to size, health, or to other professional criteria. Mr. Ball’s report is attached to this staff report as Exhibit C. The results of his evaluation of the trees were that of the 12 originally identified large-diameter trees, six trees should be classified as champion trees for the Town’s purposes. The remaining six trees were disqualified for a number of reasons, most notably measurement error in the original survey or due to disease and/or structural damage.

The LDO requires that no Champion Tree be removed from the site without the approval of the Planning Director or, in this case, the Town Council. The applicant has not provided specific justification for the tree removals as part of their waiver requests; however, many of the trees are located within or in close proximity to required infrastructure. Sheet C1.0B of the plan set has overlaid the locations of the trees identified in the forester’s report with the proposed site layout. The trees identified by numbers 1, 2, 4, 7, 10, and 11 are the trees which the forester has indicated should be considered as champions by the Town. Of these, trees 1, 2, 4, 10, and 11 are proposed for removal and replacement. Replacement of the trees removed from the site would be consistent with the requirements of Section 7.2.5 of the LDO.

Trees 1 and 2 are located in or immediately adjacent to a proposed street connection to the Grove at Cary Park multi-family site. The location of this connection is fixed by the location and the alignment of the existing vehicular stub from the adjacent property. Therefore, little could be done to save these two trees. Likewise, tree 11 is located at the back-of-curb for the street connection to Cary Glen Boulevard. The location and alignment of this connection is also dictated by the existing right-of-way turnout from Cary Glen Boulevard, and there is little that could be done to save that tree.

Trees 4 and 10 are not directly impacted by infrastructure alignment and are located on the rear of proposed lots. Tree 4 is a 32-inch oak located on the rear of proposed lot 25. A proposed retaining wall supporting lot 26 to the south terminates just south of the tree. The required tree protection area for tree 4 would be 40 feet in diameter, which would make development of the proposed lot difficult if not impossible. Tree 10 is a 30-inch oak located on the rear of proposed lot 90. Lots 90 and 91 are being graded to reduce the existing slopes on the rear of the lots, and a retaining wall is located on the northern and eastern sides of lot 91. The developer has proposed approximately three feet of cut where the tree is located. In addition, the tree protection required for a 30-inch tree would be 37.5 feet in diameter and would make development of both lot 90 and lot 91 difficult.

**Changes since September 2013:** The proposed layout has been revised to save trees 4 and 10. The two lots impacted by the critical root zone (CRZ) of tree 4 have been removed and a new neighborhood green, including a small dog park, has been added in their place. The tree being preserved would provide shade and anchor this open space in the southwestern corner of the development. A small percentage of the CRZ (~12%) would be impacted by the routing of a storm drain line collecting stormwater from the rear of lots 20 through 23. The Community Appearance Manual (CAM) allows disturbance of up to 25% of the CRZ of champion trees.

The two lots impacted by tree 10 have also been removed from the development. The open space originally proposed at the end of Cary Mill Drive has been relocated to incorporate the champion tree in a more passive design. The removal of the affected lots would allow the relocation of the adjacent sewer connection to remove its buffer impacts. However, in doing so, the sewer line would impact approximately 21% of the CRZ of tree 10. This percentage does assume the worst case scenario in which the entire 20-foot easement containing the line is disturbed, which may or may not be the case in the field.

Tree 7 is proposed to remain on site and is located south of the proposed street connection to the Grove at Cary Park development. An adjacent pedestrian connection to the future Mills Park site would cause some disturbance within the typical tree protection area associated with the tree; however, it is anticipated that, with proper care during and after construction, the tree will survive.
**Connectivity with Adjacent Properties**

The LDO requires that development provide connections to adjacent parcels to facilitate internal and external traffic movement in the community. The applicant has requested that Town Council consider waiving of the requirement to provide vehicular connections to the parcels located to both the south and the east of the proposed development. The applicable section of the LDO, Section 7.10.3(B)(1), reads as follows:

> The proposed public or private street system shall be designed to provide vehicular interconnections to facilitate internal and external traffic movements in the area. In addition to the specific connectivity requirements described above, roadway interconnections shall be provided during the initial phase of any development plan between the development site and its adjacent properties with one roadway interconnection every one thousand two hundred fifty (1,250) to one thousand five hundred (1,500) linear feet for each direction (north, south, east, west) in which the subject property abuts. If the common property boundary in any direction is less than one thousand two hundred fifty (1,250) linear feet, the subject property will be required to provide an interconnection if it is determined by the Planning Director that the interconnection in that direction can best be accomplished through the subject property. When the Planning Director deems a vehicular connection not possible due to topographical and/or environmental constraints, he/she may increase the length requirement and/or require pedestrian connections. The Planning Director may delay the interconnection if such interconnection requires state approval. The intent of this standard is to improve access/egress for Town neighborhoods, provide faster response time for emergency vehicles, and improve the connections between neighborhoods.

The property located to the south of the proposed Glencroft Townhomes project is owned by the Town of Cary and is identified as a future park (Mills Park) in the Parks, Recreation, and Cultural Resources (PRCR) Facilities Master Plan. Mills Park is one of the projects covered under the recent bond referendum, and a conceptual master plan for the park did not contemplate access from the Glencroft Townhomes project. A street stub from Glencroft Townhomes would require the Town to evaluate an extension of that road through the future park that could potentially impact the park’s operation and layout. The extension of the road would also require crossing approximately 450 feet of floodplain on the northern half of the park property.

The applicant proposes to provide an access easement at the southern terminus of Cary Mill Drive, a private street within the Glencroft Townhomes project, in lieu of constructing the street to the project boundary. Typically, access easements are used to satisfy connectivity requirements when topographical or other conditions prevent the improvements from being constructed. An access easement would not remove the requirement for the Town to evaluate an extension of that street in future development of the park. However, provision of an easement would prevent a dead-end street stub if council were to decide not to extend the street in the future. The applicant has proposed to provide pedestrian connectivity to the future park at two locations along the southern property line whether the street connection is made or not. These pedestrian connections would connect the development to the Panther Creek Greenway, a second bond referendum project that would run along the stream corridor on the park property.

The applicant has also requested that Town Council waive the requirement for vehicular and pedestrian connectivity to the east. The adjacent property was developed as a utility substation that is owned and maintained by Duke Energy. The creation of an interconnection to that property would provide no enhancement to the traffic circulation in the community since the property is located adjacent to the I-540 right-of-way. Additionally, such connections would potentially create security concerns for the utility company and would make potentially hazardous areas more accessible to members of the general public.

**Stormwater Management**

Stormwater management would be handled through the use of eight BMPs scattered across the site. Three of the BMPs would be constructed wetlands and the remainder would be bio-retention areas. The applicant has requested a few Minor Modifications to the regulations regarding the aesthetic design and the location of their BMPs due to the topography of the site and the design requirements for their proposed street network. These modifications include the use of hardscape edges in two BMPs (BMP #2 and #4) and the encroachment of three BMPs (BMP #1, #2, and #4) into the perimeter buffers identified in the approved PDP.
BMP #1 is located in the northwestern corner of the site between the Crowne Partners site and the proposed entrance drive into the development. The BMP is a proposed bio-retention area, the surface area of which requires tree and shrub plantings. A portion of the proposed impoundment for the bio-retention area would be located within the 20-foot buffer established by council’s approval of the Glencroft Townhomes PDP. This area of encroachment would be less able to be planted to the required Type B buffer planting standard. Section 7.2.3(H) of the LDO prohibits stormwater devices within perimeter buffers unless no reasonable alternative location exists. Where encroachment is permitted, supplemental planting shall be provided as necessary to meet the required buffer standard. The applicant has proposed to plant the area of bio-retention area immediately adjacent to the perimeter buffer at twice the planting density that would otherwise be required, which would satisfy the required buffer standard.

**Changes since September 2013:** The proposed bio-retention area and overall stormwater plan have been revised to eliminate the requested encroachment of the BMP impoundment into the buffer.

BMP #2 is a bio-retention area located in the northwestern portion of the site, just southwest of BMP #1. The applicant has proposed to use an earth-toned, modular concrete masonry unit (CMU) wall along the southwestern edge of this BMP behind several proposed townhome lots. The proposed wall would be approximately 100 feet long and approximately three-and-a-half feet tall at its highest point. As previously mentioned, the surface area of the bio-retention area is required to be planted with shrubs that will, in addition to their stormwater benefits, serve as evergreen screening of the wall at maturity. A very small portion of the impoundment for this BMP would also encroach into the 20-foot Type B buffer adjacent to the Grove at Cary Park multi-family site. In order to meet the requirements of the LDO, the applicant has indicated that the area immediately adjacent to the encroachment would be planted at the higher density mentioned above.

**Changes since September 2013:** The proposed bio-retention area and the overall stormwater plan have been revised to eliminate the requested encroachment of the BMP impoundment into the buffer. No substantial changes were made to the proposed retaining wall in the BMP.

BMP #4 is also a bio-retention area and is located in the southeastern corner of the site, just east of the street connection into the Grove at Cary Park multi-family site. Like BMP #2, the applicant has proposed an earth-toned, modular CMU retaining wall along one side of the BMP. The proposed wall would be approximately 245 feet in length and would run along the southern side of one of the internal streets. The wall is proposed at a maximum height of eleven feet at its highest point. The proposed wall would not be tiered, as would typically be required by the ordinance, partly due to the horizontal and the vertical controls that dictate the alignment of the street at the northern edge of the BMP. The impoundment proposed for this BMP would have a significant impact on the adjacent perimeter buffer along the shared property line with the future park. As with BMPs #1 and #2, the applicant has proposed planting additional plant material adjacent to the impacted buffer to satisfy the buffer requirements of the PDP.

**Changes since September 2013:** The proposed bio-retention area has been revised to eliminate the requested encroachment of the BMP impoundment into the buffer. This redesign was more extensive than the other two and has resulted in the loss of two units. In addition, the wall proposed along the right-of-way has been reduced from eleven feet to six feet in height. This reduction did necessitate an additional wall on the back side of the impoundment, facing the future park property and the adjacent stream buffer.

**Utilities**

The project is well located in regard to access to both water and sewer services. Water would be provided via an existing 12-inch water line in Cary Glen Boulevard. Water line stubs would be provided to both the northern property line and the southern terminus of the proposed cul-de-sac. A new reclaimed water line would be provided along the western side of Cary Glen Boulevard to tie into the existing reclaimed water line along Green Level Church Road. Reclaimed water within the development would be limited to the proposed Neighborhood Green #1.

Sewer would be provided to the community through two existing sewer lines. The first would be a connection to the system currently serving the Grove at Cary Park multi-family site located west of the proposed development. A second sewer connection would be made to an existing line in the extreme southeastern corner of the site. This connection has prompted the applicant to request a Minor Modification from council to allow the associated public utility easement to be located coincidentally with
the perimeter buffer identified in the Glencroft Townhomes PDP. The Town does not allow the installation of trees within a utility easement and restricts shrub plantings to the outer five feet of such easements.

The Glencroft Townhomes PDP approved by Town Council in November 2012 proposed a 20-foot Type B buffer along all property lines. The PDP also included the proposed easement encroachment; however, it was not identified as a specific deviation from the development standards through that process and is, therefore, subject to the requirements of the LDO. Section 7.2.3(H) of the LDO restricts development within buffers, including utilities that do not cross the buffer at an angle of at least 75 degrees from parallel. Where utility lines have been unable to cross at a 75-degree or higher angle, staff has required an equivalent area of buffer adjacent to the utility encroachment.

The proposed utility plan includes approximately 215 feet of sanitary sewer line within a 20-foot public utility easement, which coincides exactly with the required 20-foot Type B buffer. Provision of a 20-foot buffer north of the proposed easement would result in the elimination of lot 90. Staff suggested that the applicant could approach the PRCR Department regarding the provision of a landscape easement or a relocation of the easement onto the adjacent Town property to remove the buffer encroachment. The applicant indicated that neither of those options was received particularly well and decided to proceed with a Minor Modification request to keep the line consistent with the approved PDP. The applicant has indicated in their justification statement that the adjacent park is an open space use and no impact is anticipated. Additionally, the applicant has offered to relocate the plant material that would have been in the buffer to the rear of the nearby lots to enhance the visual screening of those lots from the utility substation located to the east.

**Changes since September 2013:** The preservation of tree 10 allowed the applicant to shift the proposed sewer alignment to reduce the encroachment into the perimeter buffer. The sewer line would be required to impact some portion of the buffer in order to make the connection to the existing line. The LDO contemplates the need for utility lines to cross buffers or streetscapes and requires that such crossings be made at no less than a 75-degree angle. This is not practical in this situation given the location of tree 10 in relation to the existing sewer manhole. Increasing the angle of the proposed crossing would result in more impact to or the removal of tree 10. Creating a shallower angle for the crossing would result in additional CRZ preservation for tree 10 and an increase in the impacts to the perimeter buffer. The proposed angle appears to be as close to ideal as possible given the constraints of the site.
DEVELOPMENT PLAN WORKSHEET
AND
SUGGESTED MOTIONS

Section 3.9.2(I) of the LDO states that a development plan may be approved by the Town Council only if it meets six listed criteria. As part of determining whether the first criterion is satisfied, council must determine whether to grant the Minor Modifications to the development standards requested by the applicant. Staff comments are included as appropriate in italics following each criterion. A roadmap of the decisions council must make is provided below:

<table>
<thead>
<tr>
<th>WORKSHEET 1</th>
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<tbody>
<tr>
<td>1. Does the plan comply with all applicable requirements of the LDO, including the development and design standards of Chapters 7 and 8 as well as the dedication and improvements provisions of Chapter 8 as well as all applicable Town specifications?</td>
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   As indicated in the staff report above, the proposed development plan is not in compliance with the requirements of the LDO. The applicant has requested approval of several Minor Modifications to the Town’s development standards. Council must find that each of the requested modifications: (1) advances the goals and purposes of the LDO; and (2) either results in less visual impact or more effective environmental or open space preservation, or relieves practical difficulties in developing the site. When considering the requested payment-in-lieu of construction of a required traffic mitigation, council must find that the request would not result in (1) unsafe conditions for pedestrians or motorists, (2) unsafe access for emergency services, and (3) traffic impacts expected to be generated by the project that are not mitigated.

   Once council has made a decision on the Minor Modifications, it may then turn to the remaining site plan approval criteria:

<table>
<thead>
<tr>
<th>WORKSHEET 2</th>
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<tbody>
<tr>
<td>2. Does the plan adequately protect other property, or residential uses located on the same property, from the potential adverse effects of the proposed development?</td>
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<tr>
<td>3. Does the plan provide harmony and unity with the development of nearby properties?</td>
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<tr>
<td>4. Does the plan provide safe conditions for pedestrians or motorists and prevent a dangerous arrangement of pedestrian and vehicular ways?</td>
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<tr>
<td>5. Does the plan provide safe ingress and egress for emergency services to the site?</td>
</tr>
<tr>
<td>6. Does the plan provide mitigation for traffic congestion impacts reasonably expected to be generated by the project?</td>
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</tbody>
</table>
1. Does the plan comply with all applicable requirements of this Ordinance, including the development and design standards of Chapters 7 and 8 as well as the dedication and improvements provisions of Chapter 8 as well as all applicable Town specifications? (Note: Plans within Planned Developments may be subject to different requirements based on the approval).

The request for acceptance of a payment-in-lieu of physical improvements is governed by Section 3.23 of the LDO. Section 3.19 of the LDO governs Minor Modifications to other requirements of the LDO.

Town Council should consider and approve the Minor Modification requests below pursuant to section 3.19.1(C)(2) of the LDO. Council may approve a Minor Modification to the development standards at any point before it approves the associated development plan. However, in order to approve a requested Minor Modification, the council must find the following:

(1) That the modification advances the goals and purposes of this Ordinance and
(2) That the modification either
   A. Results in less visual impact or more effective environmental or open space preservation, or
   B. Relieves practical difficulties in developing a site. In determining if “practical difficulty” exists, the factors set forth in Section 3.20.5, “Approval Criteria” (for Variances) shall be considered.

The criteria for determining whether or not ‘practical difficulty’ exists include the following:

a. Whether there can be any beneficial use of the property without the variance;
b. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
c. Whether the variance would adversely affect the delivery of public services such as water and sewer;
d. Whether the applicant purchased the property with knowledge of the requirement; and
   e. Whether the applicant’s predicament can be mitigated through some method other than a variance.

In granting a Minor Modification, council may require conditions that will substantially secure the objectives of the standard that is being modified and that will substantially mitigate any potential adverse impact on the environment or on adjacent properties, including but not limited to additional landscaping or buffering. In addition to the requirements of Section 3.19, individual requests may have additional criteria for consideration.

1. Request that the Town Council accept a payment of $73,334 in lieu of signalization of the Cary Glen Boulevard/Carpenter Fire Station Road intersection per Section 3.23 of the LDO

(1) Would the proposed alternative create unsafe conditions for pedestrians or motorists or a dangerous arrangement of pedestrian and vehicular ways?

Signalization of the intersection would provide safer conditions for pedestrians and motorists in the community. A waiver to the signalization identified in the TIA would potentially delay the signalization of the intersection indefinitely. The PIL request would fund a portion (~33%) of the remaining cost ($220,000) of the signalization with the project to be administered by the Town in the future. The requested PIL would allow for
the cost of the signalization, which appears as mitigation in several TIAs for development in the immediate vicinity, to be divided proportionally among several projects according to each project’s share of the projected impacts. The council approved a similar request for a PIL for the same signal associated with the Cary Park Medical Office site plan (12-SP-036) in March 2013. The proposed PIL would not alter the current traffic patterns in the surrounding community.

TEST SATISFIED? __ YES __NO

(2) Would the proposed alternative create unsafe ingress and egress for emergency services to the site?

The signalization and the requested PIL would not be expected to significantly impact access to project. Fire service would be provided from Fire Station #8 located on Mills Park Drive. Unlike fire service, police service is less centralized at a fixed location; therefore, the delay in signalization of the intersection would not be expected to have a significant impact on the provision of police service.

TEST SATISFIED? __ YES __NO

(3) Would the alternative result in traffic congestion impacts reasonably expected to be generated by the project that will not be mitigated?

The proposed PIL would result in the Town managing the installation of the required signal with the project being funded by multiple developers in the immediate vicinity. Therefore, the alternative proposed by the developer is not expected to result in the project generating traffic impacts that would not be mitigated.

TEST SATISFIED? __ YES __NO

2. Request that the Town Council approve the removal and the replacement of three champion trees per Section 7.2.5 of the LDO

2a. Remove and replace a 30-inch oak (tree 1)
2b. Remove and replace a 30-inch oak (tree 2)
2c. Remove and replace a 36-inch poplar (tree 11)

(1) Does the modification advance the goals and purposes of this Ordinance?

Section 7.2.5 of the LDO states that existing significant vegetation should be retained to the extent practical and reasonable, while taking unique site conditions and features into consideration. Three of the trees proposed for removal (1, 2, and 11) would be located within the corridor of disturbance for the internal street network for the proposed development. The streets that would necessitate the removal of these three trees are required by the LDO and, due to the locations of the existing infrastructure, relocation of the required connections would be impractical.

TEST SATISFIED? __ YES __NO

(2) Does the modification result in less visual impact or more effective environmental or open space preservation or relieve practical difficulties in developing a site?

As mentioned previously, trees 1, 2, and 11 would be located within the corridor of disturbance for streets required to serve the proposed development. Due to the street network required by the LDO, no part of the affected infrastructure corridor would be eligible for preservation. The alignments of the applicable streets would be controlled by the alignment of the facilities into which the proposed streets would connect.

TEST SATISFIED? __ YES __NO
3. Request that the Town Council approve modifications to the connectivity requirements of Section 7.10.3 of the LDO

| 3a. Provide an access easement in-lieu of a physical vehicular connection to the south | 3b. Eliminate both vehicular and pedestrian connections to the east |

(2) Does the modification advance the goals and purposes of this Ordinance?

The LDO requires connectivity to adjacent properties to create highly connected transportation network and to connect neighborhoods to each other and to local destinations, such as schools, shopping centers, and parks. The applicant has proposed to provide an access easement in-lieu of constructing the physical street connection to the southern property line. The requested modification would make a future connection less likely; however, the access easement would provide opportunity for a street connection in the future should the Town deem such a connection desirable. In the meantime, the provision of an easement in-lieu of the physical connection would prevent the creation of a dead-end street until the ultimate dispensation of the street stub is decided.

The property located east of the proposed development is a utility substation owned and operated by Duke Energy. Such uses are not locations that the surrounding community would need or desire access to. The property owner would prefer to restrict access points to their substation to increase security for their facility. No additional connectivity benefits would be provided by making a connection to the property since the substation property is located adjacent to the I-540 corridor and borders Carpenter Fire Station Road (to which Glencroft Townhomes will ultimately have access) and the Mills Park School properties (which were not designed to accept any connection from the north).

TEST SATISFIED? __ YES __NO

(2) Does the modification result in less visual impact or more effective environmental or open space preservation or relieve practical difficulties in developing a site?

The proposed access easement to the southern property line is located coincidentally with a utility easement associated with a sanitary sewer line. In addition, the grading required to install the proposed cul-de-sac would encroach into the perimeter buffer regardless of the any access easement provided. Therefore, the provision of an easement would result in marginally more effective environmental protection.

The elimination of both pedestrian and vehicular connectivity to the eastern property line would prevent the disturbance of the 20-foot perimeter buffer required along the eastern property line. There is a significant change in elevation from the closest proposed street in the proposed development and the eastern property line; therefore, the installation of a vehicular and/or pedestrian connection would require significant grading within the perimeter buffer.

TEST SATISFIED? __ YES __NO

4. Request that the Town Council approve the use of hardscape edges in the design of stormwater BMPs per Section 7.2.8(A) of the LDO

| 4a. Approve the use of an earth-toned, CMU wall in stormwater BMP #2 | 4b. Approve the use of two earth-toned, CMU walls in stormwater BMP #4 |

(1) Does the modification advance the goals and purposes of this Ordinance?

Section 7.2.8(A) of the LDO restricts the use of hardscape edges in stormwater BMPs to reduce their visual impact in the community. Stormwater BMPs should be graded and landscaped to blend in with the surrounding landscape. The proposed stormwater BMPs in which the developer has proposed to use hardscape edges are bio-retention areas, the
surface area of which would be planted with trees and shrubs. The wall in stormwater BMP #2 would be three-and-a-half feet in height with the shrubs in the bio-retention area providing screening to reduce the visibility of the wall from the adjacent street. The wall adjacent to the right-of-way proposed for stormwater BMP #4 would be six feet in height; however, the wall would face the adjacent park site, limiting public visibility from adjacent streets. The shrubs and trees in the bio-retention area would serve to soften the visual impacts of the wall, though not to the extent of those in stormwater BMP #2. A second wall located on the back side of the proposed impoundment for BMP #2 has been proposed to allow the original encroachment into the perimeter buffer to be removed. This wall would be approximately ten feet in height and would face the adjacent park site and stream buffer. The vegetation in those protected areas would serve to soften the appearance of the wall, which should have limited visibility from any public vantage point.

TEST SATISFIED? __ YES __NO

(2) Does the modification result in less visual impact or more effective environmental or open space preservation or relieve practical difficulties in developing a site?

The proposed wall in stormwater BMP #2 would provide additional rear yard space for the adjacent townhome lots. The use of a wall in the stormwater BMP design would reduce the footprint of the stormwater BMP though it would not, in this instance, result in any additional environmental protection since the townhome lots would be required grading either way. The wall proposed in stormwater BMP #4 would be necessary to allow the installation of the adjacent street, which connects to the adjacent multi-family site, while maintaining sufficient space to install the stormwater BMP. Likewise, the wall on the back side of the impoundment would be necessary to retain the existing vegetation in the perimeter and stream buffers adjacent to the BMP.

TEST SATISFIED? __ YES __NO

5. Request that the Town Council approve the encroachment of a public utility crossing the 20-foot perimeter buffer along the southern property line at less than 75-degrees per Section 7.2.3 of the LDO.

(1) Does the modification advance the goals and purposes of this Ordinance?

The proposed sewer connection would be located to preserve the maximum area of critical root zone for tree 10 (as identified in the arborist’s report) and to minimize the area of encroachment into the 20-foot perimeter buffer. The proposed encroachment would be located in a portion of the perimeter buffer adjacent to the future Mills Park site. The applicant has indicated that the encroachment into the perimeter buffer would not result in visual impacts to the adjacent property since the portion of the park property adjacent to the encroachment would more than likely not be developed as active space.

TEST SATISFIED? __ YES __NO

(2) Does the modification result in less visual impact or more effective environmental or open space preservation or relieve practical difficulties in developing a site?

The encroachment into the southern perimeter buffer would result in the clearing of vegetation in the buffer that otherwise might be preserved. An increase in the angle of crossing would require the removal of a champion tree (tree 10) proposed for retention on the site. The tree survey shows a single 16-inch maple as the only significant tree (trees greater than 10 inches in diameter) within the proposed area of encroachment.

TEST SATISFIED? __ YES __NO
(3) Is there a reasonable alternative location for the sanitary sewer line?

The proposed location for the sewer connection is as close to ideal as possible given the surrounding constraints. The proximity of the champion tree to the corner of the property has necessitated that the sewer connection cross the buffer at a less than ideal angle. Increasing the angle would cause more impact to the CRZ of the champion tree, or potentially require its removal. A shallower angle for the crossing would save more CRZ at the cost of a larger impact to significant trees located in the perimeter buffer.

TEST SATISFIED? __ YES ___NO

SUGGESTED MOTIONS FOR MINOR MODIFICATION REQUEST

MOTION TO APPROVE ALL MINOR MODIFICATION REQUEST:

For the reasons discussed, I move that we APPROVE the Minor Modification requests made by the applicant as the requests meet all the approval criteria of Section 3.19.1 and Section 3.23 of the LDO.

This approval is conditioned upon the following:

1. [insert any conditions necessary to bring the project into compliance with the LDO or other standards]

MOTION TO APPROVE INDIVIDUAL MINOR MODIFICATION REQUESTS:

For the reasons discussed, I move that we APPROVE Minor Modification requests number(s) __________ made by the applicant as the requests meet all the approval criteria of Section 3.19.1 and/or Section 3.23 of the LDO.

This approval is conditioned upon the following:

1. [insert any conditions necessary to bring the project into compliance with the LDO or other standards]

MOTION TO DENY ALL MINOR MODIFICATION REQUESTS:

For the reasons discussed, I move that we DENY the Minor Modification requests made by the applicant as the requests do not meet all the approval criteria of Section 3.19.1 and/or Section 3.23 of the LDO.

MOTION TO DENY INDIVIDUAL MINOR MODIFICATION REQUESTS:

For the reasons discussed, I move that we DENY Minor Modification requests number(s) __________ made by the applicant as the requests do not meet all the approval criteria of Section 3.19.1 and/or Section 3.23 of the LDO.
2. Does the plan adequately protect other property, or residential uses located on the same property, from the potential adverse effects of the proposed development?

   The proposed plan is generally consistent with the requirements of the LDO except as indicated above. The property located to the west of the proposed development is a multi-family residential project. Likewise, the property to the north of the development is zoned for development of a multi-family residential product. The properties to the east and south of the project would ultimately be un-manned facilities (utility substation and public park) and would not be expected to be subject to adverse effects from this development.

   TEST SATISFIED? __ YES __ NO

3. Does the plan provide harmony and unity with the development of nearby properties?

   The proposed development would be a residential townhome development. As mentioned previously, the residential developments in the immediate vicinity are multi-family development consisting of multi-story blocks of units. The proposed townhome development would be less dense in terms of building mass than the surrounding residential communities. The utility substation to the east has significant vegetative buffering to mitigate any adverse effects from that use.

   TEST SATISFIED? __ YES __ NO

4. Does the plan provide safe conditions for pedestrians or motorists and prevent a dangerous arrangement of pedestrian and vehicular ways?

   The proposed development would comply with all design requirements for roadways and sidewalks found in the LDO and the Town’s Standards and Specification Manual. Adequate sight distance would be provided at all intersections consistent with AASHTO standards. The TIA for the property identified a need for signalization at the intersection of Cary Glen Boulevard and Carpenter Fire Station Road. The applicant has requested a payment-in-lieu be accepted by the council to distribute the cost of the signalization among several developers in the area. Vehicular connections would be provided to the north and east, with pedestrian connections provided to the future greenway and park site to the south. The LDO allows Town Council to consider waiving or other alternatives to identified traffic mitigations if they would not result in unmitigated traffic impacts to surrounding transportation infrastructure.

   TEST SATISFIED? __ YES __ NO

5. Does the plan provide safe ingress and egress for emergency services to the site?

   The proposed plan would provide street access from Cary Glen Boulevard. The site could also be accessed from the Grove at Cary Park multi-family site through a street interconnection to their parking lot. The project would also have access to Carpenter Fire Station Road through the Crowne Partners and Cary Park Medical Office sites to the north once their developments are completed.

   TEST SATISFIED? __ YES __ NO

6. Does the plan provide mitigation for traffic congestion impacts reasonably expected to be generated by the project?

   The Town performed a TIA for the project that identified a single, off-site mitigation for the traffic expected to be generated by this project. The TIA indicated that signalization of the Cary Glen Boulevard/Carpenter Fire Station Road intersection was required. This mitigation also appeared
in the TIAs performed by the Cary Park Medical Office and the Crowne Partners sites. This applicant has proposed a partial payment-in-lieu for that signalization.

TEST SATISFIED? __ YES __ NO

SUGGESTED MOTIONS FOR SITE PLAN

MOTION TO APPROVE THE SUBDIVISION AND SITE PLAN
For the reasons discussed, I move that we APPROVE the proposed subdivision and site plan with conditions as stated below, as it meets all of the approval criteria set of Section 3.9.2(I).

This approval is conditioned upon the following:

1. The applicant must satisfactorily address any remaining Development Review Committee comments on the master plan set submitted for signature.

2. The payment-in-lieu of signalization of the Cary Glen Boulevard/Carpenter Fire Station Road intersection in the amount of $73,334.00 shall be paid to the Town prior to plan approval (signature of the master set).

3. [insert any additional conditions necessary to bring the project into compliance with the LDO or other standards]

OR

MOTION TO DENY THE SUBDIVISION AND SITE PLAN
For the reasons discussed, I move that we DENY the proposed subdivision and site plan, as it does not meet all of the approval criteria set forth in Section 3.9.2(I).