ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: November 5, 2013

Action Agenda Item No. 7-b

SUBJECT: Southern Branch Library Siting Criteria, Process Update

DEPARTMENT: Library, Asset Management (AMS), Planning

PUBLIC HEARING: (Y/N) No

ATTACHMENT(S):
1) October 23, 2013 Letters from Town of Carrboro in Response to Request for Additional Information and Attachments (A – F)
2) October 17, 2013 Documents from Joint Meeting with Town of Carrboro and Board of County Commissioners

INFORMATION CONTACT:
Lucinda Munger, (919) 245-2528
Jeff Thompson, (919) 245-2625
Michael Harvey, (919) 245-2597

PURPOSE: To receive an update on the Southern Branch Library siting process, discuss/consider Carrboro's response(s) to County staff requests as well as County staff recommendations, and provide direction to staff regarding next steps.

BACKGROUND: On September 18, 2012 the Orange County Board of Commissioners (BOCC), in conjunction with the Carrboro Board of Aldermen, approved a set of guiding principles and a comprehensive site selection criterion for locating the new Southern Branch of the Orange County Library (hereafter "the Branch"). Since that time the Town has submitted several properties for review by County staff consistent with the approved Branch siting process.

Following the September 18, 2013 BOCC work session, staff was authorized to commence the second level of Phase 1 for review on the following 3 sites:

1) 1128 Hillsborough Road, commonly referred to as the Shetley property,
2) 401 Fidelity Street, commonly referred to as the Town of Carrboro cemetery property, and
3) 120 Brewer Lane, commonly referred to as the Butler Farm property.

Staff began the second phase of Phase I by requesting pertinent due diligence information from Carrboro staff. This information request was submitted in a letter from Interim County Manager Michael Talbert on October 1, 2013 to Town Manager David Andrews (included in Attachment 2) The Board may recall that staff due diligence processes exhaust readily available and cost free information prior to investing in professional services such as environmental, traffic, geotechnical, etc. studies. At this point staff has not engaged in professional services agreements.

On October 23, 2013 the Town of Carrboro responded to the letter in an email from the Carrboro Town Manager and Planning Director. (Attachment 1). Among the items noted in the response:

A) 1128 Hillsborough Road, Shetley property. The Board of Aldermen has not taken an official position on the land swap, but is not inclined to support such an action. Further consideration and inquiry will be necessary. (See Attachment A within Attachment 1 - October 23, 2013 David Andrews letter.) The Board may recall that staff feels that development of the Shetley property without a proper land swap agreement with Carrboro and the MLK Park is not feasible.

B) 401 Fidelity Street, Town of Carrboro cemetery property. There is significant exposed weathered rock crowning in the center of the most logical building site for a potential library structure and associated parking, indicating sizable potential subterranean rock formations. County staff requested a legal opinion from Carrboro with regard to associated liabilities involving development adjacent to a cemetery-specifically related to the County's interest in rock blasting that is probable should this property be chosen for library development.

   The Town Attorney provided an opinion. (See Attachment E within Attachment 1 - 10/23/13 David Andrews letter) There are strong concerns from Orange County staff that probable blasting adjacent to a cemetery exposes the County to significant liabilities that will not only drive up the cost of the project, but may cause concerns with residents and stakeholders in Orange County.

   County staffs' experience is that rock blasting and removal adds significant cost to a project ranging from a 5-15% increase of a project's overall cost. ***Potential liability costs associated with disturbing existing cemetery burial plots adjacent to the building site through a probable rock blasting process are incalculable.***

C) 120 Brewer Lane, the Butler property. Carrboro staff will provide requested information on the existing permit limits as requested. (See Attachment F within Attachment 1 - 10/23/13 David Andrews Letter)

FINANCIAL IMPACT: There is no financial impact associated with the discussion of the library siting efforts. There are sufficient funds available for the in-depth study of the original two properties recommended (401 Fidelity Street and 1128 Hillsborough Street) as well as for the 120 Brewer Lane property. Each in-depth study is estimated to cost $10,000 to $15,000. Up to this point, staff has not yet engaged in any professional services agreements.

RECOMMENDATION(S): The Interim Manager recommends that the Board:

1) Receive and discuss the letters from the Town of Carrboro;
2) Eliminate 1128 Hillsborough Road and 401 Fidelity Street from further consideration for a Southern Branch Library; and
3) Direct staff to conduct further Phase 1 Site Criteria Analysis for 120 Brewer Lane and provide follow-up information to the Board.

If the Board does direct staff to move forward with the analysis of 120 Brewer Lane as noted in #3 above, staff will report back to the Board at its January 23, 2014 regular meeting. Following the completion of due diligence and reporting back to the Board, staff recommends moving to the "Public Phase" of the library siting process, including the Board conducting a public hearing on the library siting efforts.

ATTACHMENT 1

TOWN OF CARRBORO
NORTH CAROLINA
WWW.TOWNOFCARRBORO.ORG

October 23, 2013

Michael Talbert
Orange County Interim Manager
200 South Cameron Street, P.O. Box 8181
Hillsborough, NC 27278

RE: October 1st Letter re: Library Sites

Dear Michael,

In response to your letter from October 1, 2013, please see the responses from Town of Carrboro Staff below.

A) 1128 Hillsborough Road, Shetley property:

- The Board of Aldermen has not taken an official position on the land swap. Please see the attached letter to that effect. (Attachment A)

- Pertinent information from the Town's files regarding the permitting process for filling the previously-existing pond on the site is attached to this reply (Attachment B). All files are available for viewing if needed.

- A site constraints map from the Town's GIS system also is attached (Attachment C). The map shows a stream and associated buffer, along with various mixed tree areas. The wetland area identified on the map is the previous location for the pond. The stream buffer area, 60-feet on either side of the stream, must remain undisturbed unless disturbance is specifically authorized by the Town's Land Use Ordinance (LUO) for purposes of a driveway or similar necessary but limited intrusion. The LUO is written in a way that strives for retention of the mixed tree areas but intrusion into such areas is not forbidden from a regulatory perspective for a non-residential project.

B) 401 Fidelity Street, Town of Carrboro cemetery property:

- Traffic data
  - For peak flow time traffic counts for both streets, note that the following data was submitted to the Town in 2006 during its review of a development application near the intersection of Davie Road and Jones Ferry Road. The volumes may differ slightly at the Davie Road / Fidelity Street intersection because of the residential land uses along Davie Road, but this information hopefully will prove helpful. Land uses in this area have not changed much in the last decade or so.
    - AM peak hour traffic turning onto Davie, going NB, was 55
    - AM peak hour traffic turning from Davie, going SB, was 68
    - PM peak hour traffic turning onto Davie, going NB, was 77
    - PM peak hour traffic turning from Davie, going SB, was 50

- Regarding traffic concerns, to date, the Town's Transportation Planner has not identified traffic congestion as an issue in the vicinity of Fidelity Street and Davie Road;
- Regarding analysis of the availability of on-street parking, note that Fidelity Street has bike lanes. There is no parking in bike lanes generally, per Town Code Sec. 6-18(a)(14); parking is allowed on the south side of Fidelity Street adjacent to the town cemetery during funerals, per 6-18(b)(1)(h). The same section allows parking during certain hours (e.g. Farmers' Market) but the extent of that exception only goes to the western White Oak driveway;

- A site constraints map from the Town's GIS system is attached (Attachment D). The map shows a stream and associated buffer, along with various mixed tree areas and a small hardwood tree area in the southeast corner of the site. With the exception of the stream buffer (in the northeast area of the site) (buffer extends 30-feet on either side of the stream) there do not appear to be any LUO regulated areas that could not be disturbed on the site. Again, the LUO is written in a way that strives for retention of the mixed tree areas but intrusion into such areas is not forbidden from a regulatory perspective for a non-residential project;

- The Town Attorney has prepared a response to the question of liability associated with excavation and blasting, which is attached (Attachment E).

C) <u>120 Brewer Lane, the Butler property:</u>

- Copies of the approved project plans and conditional use permit for the Butler property are included with this reply (Attachment F).

- Modifying the conditional use permit to allow a library and other governmental uses would need to be initiated by or with permission of the permit holder. Whether a public hearing would be needed for such a request would be determined once it was clear how much change was being requested from what was previously approved. This would include physical changes to the site design as well as traffic impact changes, so an update to the traffic and parking study would most likely be needed. LUO Section 15-64 guides staff in determining whether the requested changes should be considered minor or major. Generally, a modified plan would go through the Town's development review process, which would include review by multiple agencies for compliance with all applicable ordinances and regulations. Depending on the extent of change from what was originally approved, such a review could take a few months or possibly several months if the changes are determined to be major in nature. If considered a major change, then the LUO does also require a concept review with the Town's advisory boards prior to submittal of an application.

Please let me know if you need additional information.

Sincerely,

David Andrews
Town Manager

CC: Mayor & Board of Aldermen
Patricia McGuire, AICP

ATTACHMENT A

TOWN OF CARRBORO
NORTH CAROLINA
WWW.TOWNOFCARRBORO.ORG

October 23, 2013

Michael Talbert
Orange County Interim Manager
200 South Cameron Street, P.O. Box 8181
Hillsborough, NC 27278

RE: Hillsborough Road Library Site

Dear Michael,

In response to your letter from October 1, 2013, and in particular in response to the inquiry on the Town of Carrboro's interest in "swapping" property located at 1128 Hillsborough Road (Shetley Property) for the site of MLK Jr. Park, the Carrboro Board of Aldermen have not taken an official position as to whether they will or will not support such an arrangement. However, initial conversations with members of the Board indicate that there is not currently support for such an action. Further inquiry and consideration will be needed in order to respond.

Please let me know if you need additional information.

Sincerely,

David Andrews
Town Manager

CC: Mayor & Board of Aldermen

Westwood Cemetery

TOWN OF CARRBORO
301 W. Main St
Carrboro, NC 27510

Printed Oct 22, 2013

NC State Plane Coordinate System (NAD83)

THIS MAP IS NOT A CERTIFIED SURVEY
NO RELIANCE MAY BE PLACED IN ITS ACCURACY

The Town of Carrboro assumes no liability for damages caused by inaccuracies in this map or supporting data and makes no warranty, expressed or implied, as to the accuracy of the information presented. The fact of distribution does not constitute such a warranty

Property in Question
Properties

Wooded Areas, not Hardwood
Type
MIXED
PINE
Slopes Between 15 and 25%
10 Foot Topographic Contours
2 Foot Topographic Contours

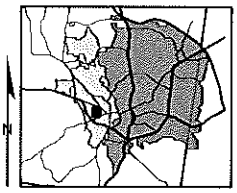
Utility Easement
Hardwood Areas
Wetlands
Slopes Greater Than 25%

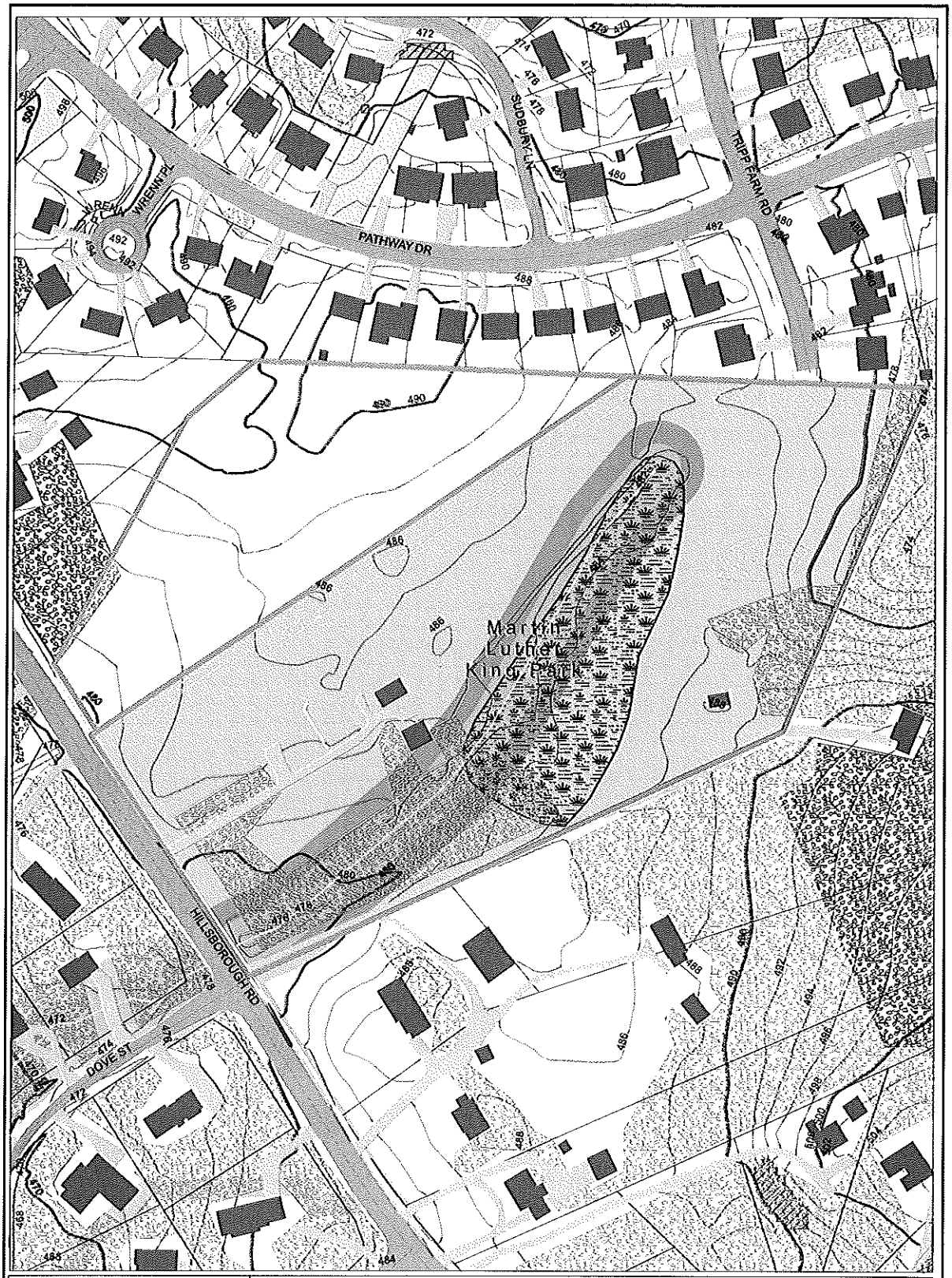
Major Road Buffer
distance
50
100
Zone 1 Stream Buffer
Zone 2 Stream Buffer

Floodplain
FLD_ZONE, FLOODWAY
500 yr Floodplain
100 yr Floodplain
100 yr Floodway
Dedicated Public Access

Other Open Space

Open Space Type
CONSERVATION EASEMENT
ORANGE COUNTY OPEN SPACE
TRIANGLE LAND CONSERVANCY
Subdivision Open Space
Parks
Graveyards





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MLK Park and Shetley Property

Properties in Question
Properties

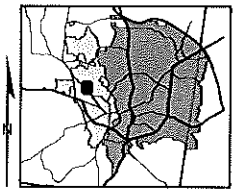
Wooded Areas, not Hardwood Type
MIXED
PINE
Slopes Between 15 and 25%
10-Foot Topographic Contours
2-Foot Topographic Contours
Utility Easement
Hardwood Areas
Wetlands
Slopes Greater Than 25%

Major Road Buffer distance
50
100
Zone 1 Stream Buffer
Zone 2 Stream Buffer

Floodplain
FLD_ZONE, FLOODWAY
500 yr Floodplain
100 yr Floodplain
100 yr Floodway
Dedicated Public Access

Other Open Space

Open Space Type
CONSERVATION EASEMENT
ORANGE COUNTY OPEN SPACE
TRIANGLE LAND CONSERVANCY
Subdivision Open Space
Parks



ATTACHMENT E

MEMORANDUM

TO: David Andrews, Town Manager and Patricia McGuire, Planning Director

FROM: The Brough Law Firm; Robert E. Hornik, Jr.

RE: Town Cemetery; Potential Library Site/Potential Liability

DATE: October 23, 2013

The Town of Carrboro has identified a portion of the property on which a Town cemetery is situated, located on Fidelity Street, as a potential/candidate site for the proposed Southern Branch of the Orange County Library. We understand that there are no gravesites on the portion of the property identified as a potential Library site. Orange County has asked for an opinion "addressing potential liability issues associated with a County concern over potential impacts on interment (SP) as a result of excavating/blasting activity on the property." This Memorandum is provided in response to the County's request.

The Town regulates cemeteries pursuant to Town Code Chapter 13. According to Section 13-12, the Town sells "burial rights" in the cemetery and issues a "Certificate of Burial Rights" to the purchaser. The Certificate of Burial Rights "transfers no property right to the certificate owner." Town Code Section 13-13. Rather, the Certificate owner is entitled to the use of the designated burial plot, subject to the Town's authority to operate, regulate, control and abandon cemeteries. So, the Town remains the owner of the real property in the cemetery, subject only to the burial rights which it sells. Article IV of Town Code Chapter 13 also provides that the owners/holder of Certificates of Burial Rights are obligated to place, replace, repair and maintain monuments and/or markers on gravesites in the Town cemetery. While the Town Code does not say so expressly, it is my opinion that the markers/monuments are personal property owned by the Certificate holder and are not Town property.

There is some case law regarding a property owner's liability for damage caused to adjoining property resulting from negligent excavation for the construction of a building. In *Waters v. Blesecker*, 309 N.C. 165 (1983), the North Carolina Supreme Court addressed, among other issues, a local government entity's (in *Waters*, a local ABC board) liability for damages allegedly caused by its negligent failure to warn a neighboring property owner of the excavation to be undertaken in the construction of a new building on the government agency's property. In *Waters*, excavation removed lateral support from the foundation wall of plaintiff's building resulting in damage to the building. In *Waters*, the Court recognized the defendant entity's duty to the neighboring property owner to advise the neighbor of its plans so that then neighbor "might adopt measures for self protection." The Court further recognized that the defendant, on whose property the excavation was being performed, had a duty not to dig in a negligent manner so as to injure the adjoining property, and that the defendant had an obligation to notify the adjoining property owner prior to the commencement of the work so the adjoining property owner could take steps to protect its property.

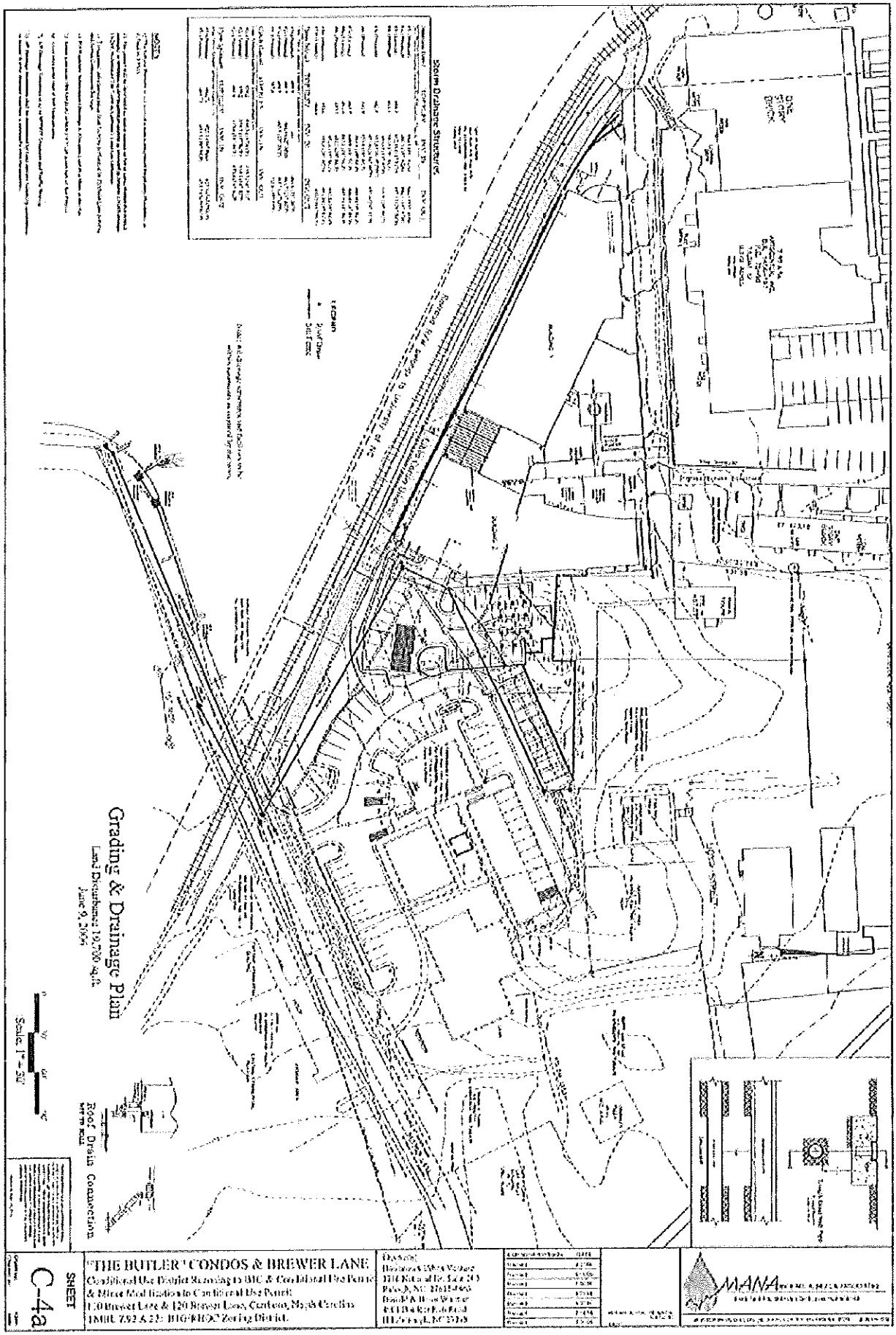
I have not found any statutory or case law specifically addressing liability related to disturbance to gravesites caused by construction activity on neighboring property.

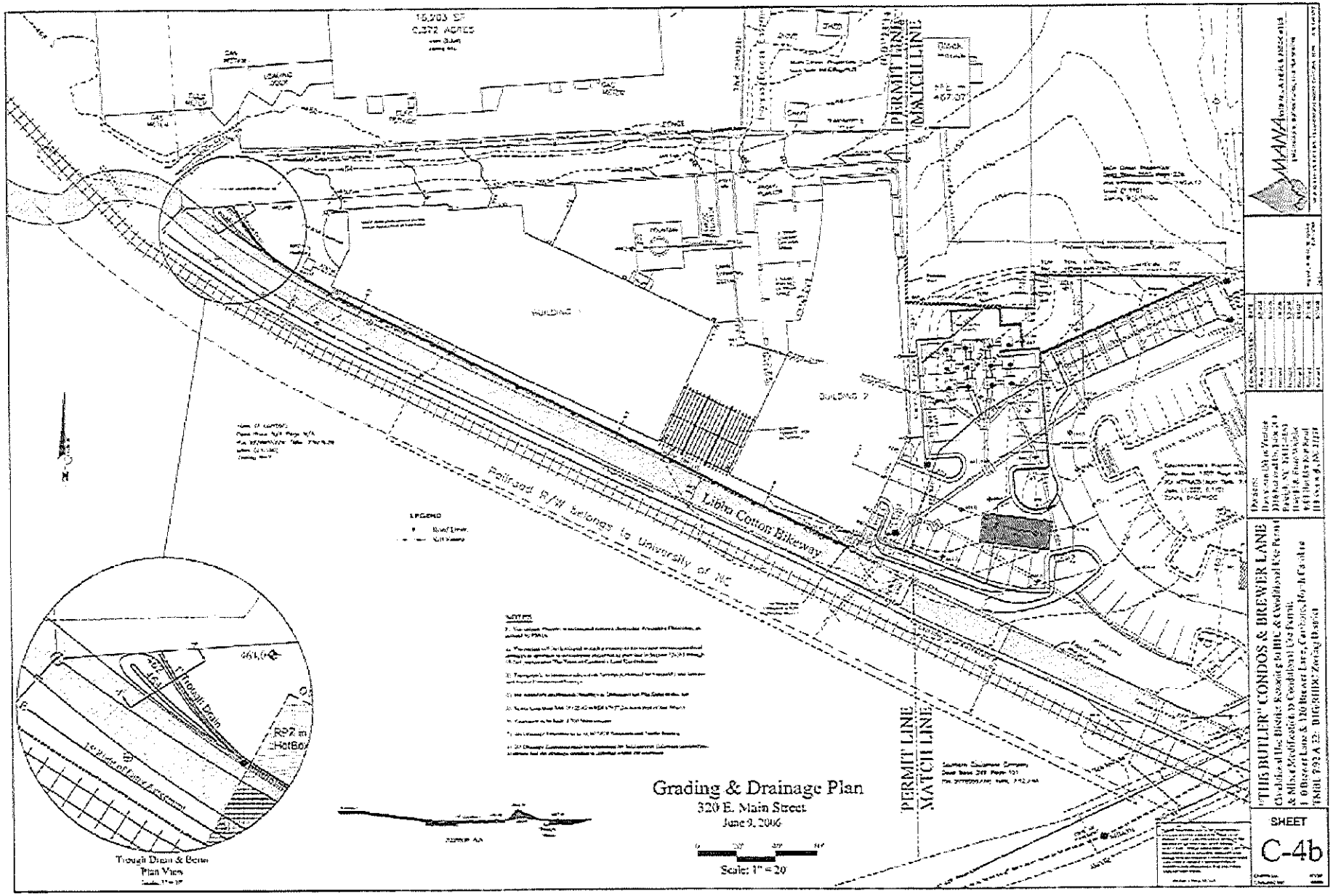
In the circumstances presented with the Library site, the Town owns the cemetery property. I have assumed for purposes of this memorandum that the Town would either sell the Library site to the County, or enter into a long term lease of the Library site with the County, and would continue to own/operate the Town cemetery. Under the reasoning in *Waters*, the County would have some obligation to notify the Town of its plans to excavate and/or blast during the library construction process, so that the Town could take appropriate steps to protect its property. The County would also be obligated to take reasonable steps to protect the cemetery from foreseeable damage caused by any excavation or blasting related to the library construction. The County would have a duty to "exercise due care to anticipate and prevent injurious consequences" of the construction activity on its property. The County would have this same obligation at any site chosen for the Library.

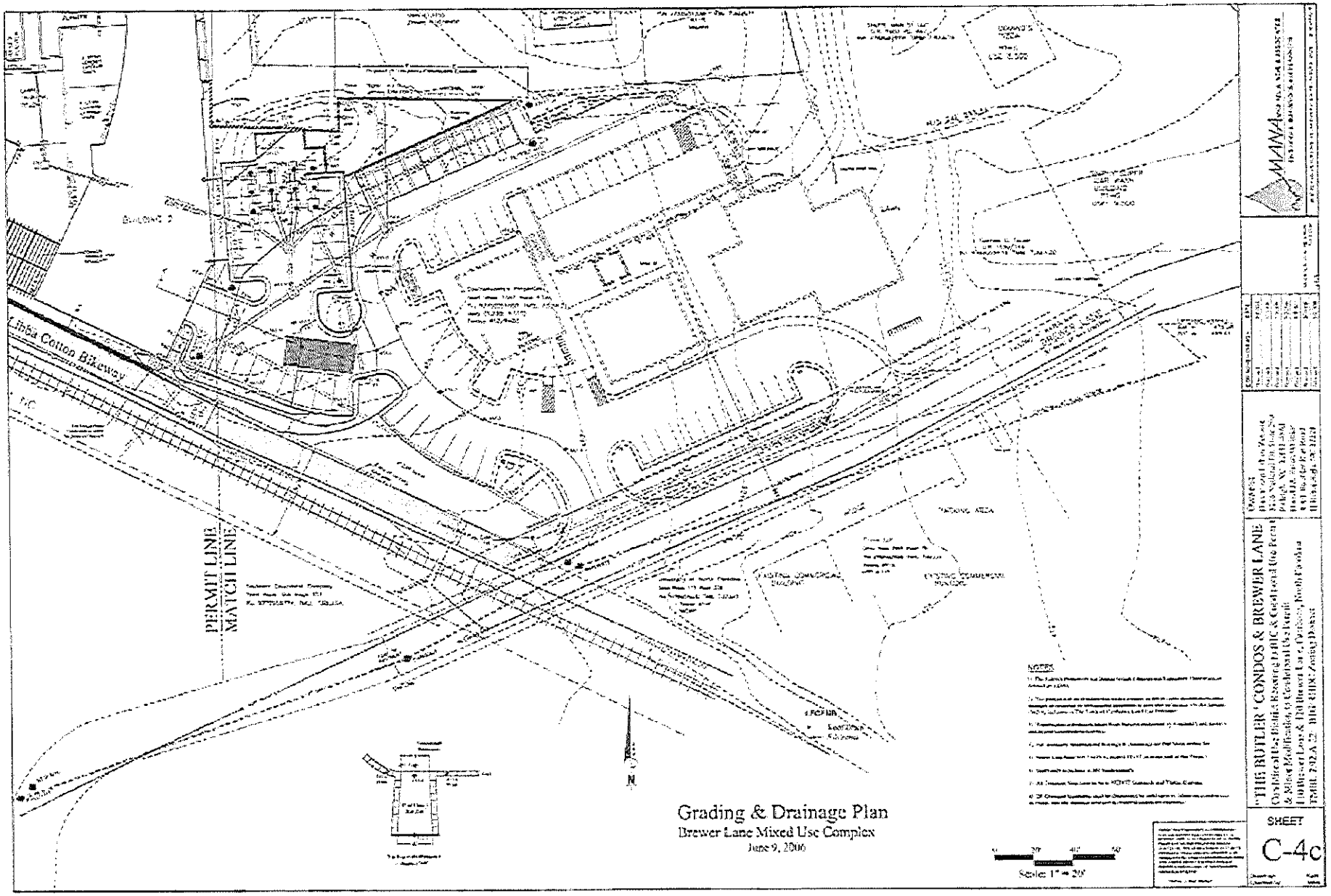
Summary And Conclusion

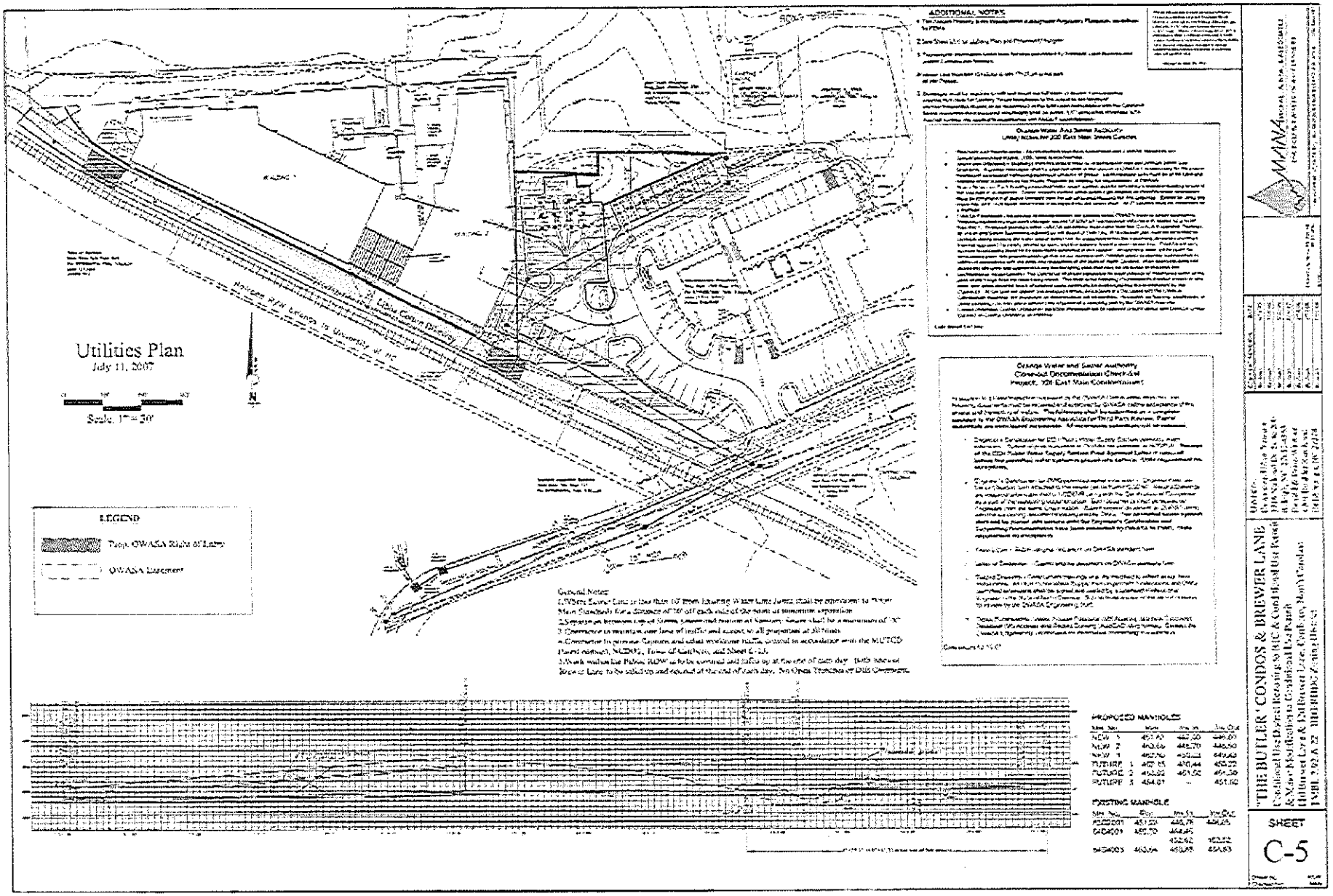
If the Fidelity Street site were selected for the library, the plans and implementation of the project should include consideration of potential impacts of construction activity (like excavating and/or blasting) on, and protection for, the gravesites. However, the County's legal obligation would not appear to be any greater than or different from the obligation that an excavating owner otherwise has to neighboring properties. In this scenario of the possible construction of a library building on a portion of the Town of Carrboro Cemetery property, it appears that the County would have a duty to notify the Town of its excavating/blasting plan, so that the Town could take necessary measures to protect its property. *Waters, supra*, 309 N.C. at 169-170. The County would also have the typical duty of designing and performing the work (or causing/requiring it to be performed by its contractors) in a way to prevent reasonably foreseeable harm to adjoining property. It does not appear, based on my limited research, that the presence of gravesites on the adjoining property presents any enhanced or greater duty or degree of potential liability. I would anticipate, however, a greater degree of sensitivity due to the nature of the use of the cemetery property. I would also suggest that if the cemetery property were selected as the Library site, that the owners/holders of Certificates of Burial Rights should be notified prior to the commencement of any excavation or blasting that might cause any damage to markers and monuments, so that they may have an opportunity to take whatever protective measures might be appropriate.

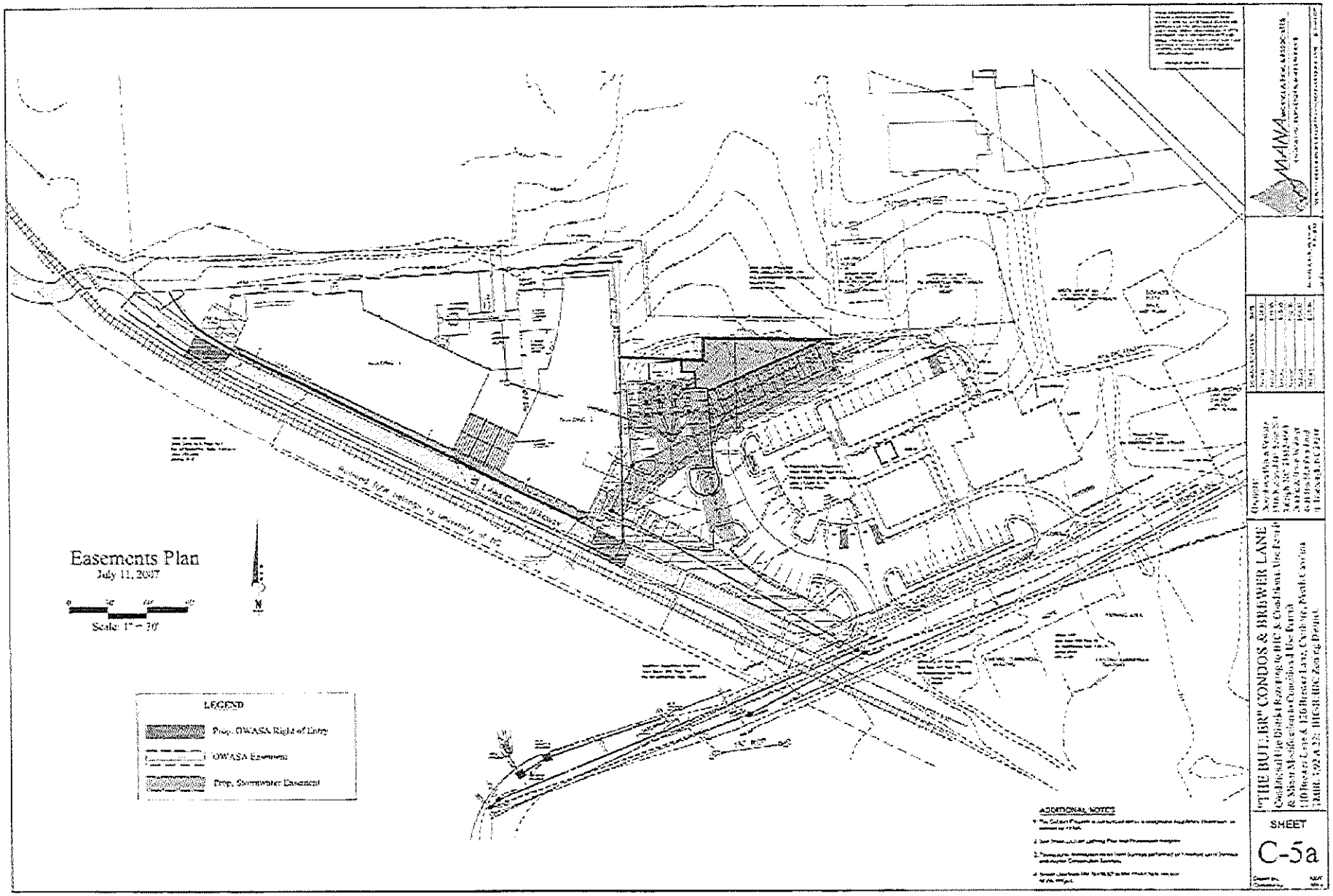
Attachment F, part 1




Grading & Drainage Plan
320 E. Main Street
June 9, 2006
Scale: 1" = 20'
Railroad R/W belongs to University of NC
Libba Cotton Bikeway
PERMIT LINE
MATCH LINE
BUILDING 1
BUILDING 2
LEGEND
Trough Drain & Berm
Plan View
"THE BUTLER" CONDOS & BREWER LANE
SHEET
C-4b


Cotton Bikeway
PERMIT LINE
MATCH LINE
Grading & Drainage Plan
Brewer Lane Mixed Use Complex
June 9, 2006
Scale: 1" = 20'
"THE BUTLER" CONDOS & BREWER LANE
SHEET
C-4c


Utilities Plan
July 11, 2007
Scale: 1"=30'
LEGEND
OWASA Right of Way
OWASA Easement
ADDITIONAL NOTES
PROPOSED MANHOLES
EXISTING MANHOLE
THE BUTLER CONDOS & BREWER LANE
SHEET
C-5


Easements Plan
July 11, 2007
Scale: 1" = 30'
N
LEGEND
Prop. OWASA Right of Entry
OWASA Easement
Prop. Stormwater Easement
ADDITIONAL NOTES
"THE BUTLER" CONDOS & BREWER LANE
SHEET
C-5a

Attachment F, Part 2

MM

2008102700050450 PERMIT
Bk:RD4618 Pg:473
10/22/2008 01:25:25 PM 1/5

Filed Joyce H. Pearson
Register of Deeds, Orange Co, NC
Recording Fee: $26.00
NC Real Estate TX: $.00

4M
LB

PREPARED BY AND RETURN TO:
TOWN CLERK
TOWN OF CARRBORO
301 West Main Street
CARRBORO, NORTH CAROLINA 27510

ORANGE COUNTY
NORTH CAROLINA

TOWN OF CARRBORO
CONDITIONAL USE PERMIT GRANTED
The Butler Mixed Use Building

On the date(s) listed below, the Board of Aldermen of the Town of Carrboro met and held a public hearing to consider the following application:

APPLICANT:	Downtown Urban Ventures, LLC and Edwin Andrews Properties, Inc.
OWNERS:	Downtown Urban Ventures, LLC and Edwin Andrews Properties, Inc.
PROPERTY LOCATION (Street Address):	120 Brewer Lane
TAX MAP, BLOCK, LOT(S):	7.92.A.22 9778-96-8060
PROPOSED USE OF PROPERTY:	Construction of a five-story mixed use building.
CARRBORO LAND USE ORDINANCE USE CATEGORY:	Building Site: 27.000, Combination Use including: 1.310, 3.110, 3.120, 3.130, 3.150, 3.210, 3.220, 3.250
MEETING DATES:	June 24 and August 26, 2008

Having heard all the evidence and arguments presented at the hearing, the Board finds that the application is complete, that the application complies with all of the applicable requirements of the Carrboro Land Use Ordinance for the development proposed, and that therefore the application to make use of the above-described property for the purpose indicated is hereby approved, subject to all applicable provisions of the Land Use Ordinance and the following conditions:

1. The applicant shall complete the development strictly in accordance with the plans submitted to and approved by this Board, a copy of which is filed in the Carrboro Town Hall. Any deviations from or changes in these plans must be submitted to the Development Review Administrator in writing and specific written approval obtained as provided in Section 15-64 of the Land Use Ordinance.

2. If any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void of no effect.