

BOARD OF ALDERMEN

ITEM NO. D(1)

AGENDA ITEM ABSTRACT

MEETING DATE: Tuesday, October 9, 2001

TITLE: PUBLIC HEARING: Land Use Ordinance Text Amendment to Transfer Impervious Surface Capacity from One Lot to Another in Certain Districts

DEPARTMENT: PLANNING	PUBLIC HEARING: YES <u>X</u> NO <u> </u>
ATTACHMENTS: A. Draft Ordinance B. Request to amend land use ordinance C. Section 15-266 D. Map showing University Lake watershed zoning districts E. Advisory Board Recommendations F. Density Averaging Minimum Criteria	FOR INFORMATION CONTACT: Patricia McGuire – 918-7327 Mike Brough -- 929-3905

PURPOSE

A draft ordinance that allows impervious surface transfers within the Watershed Residential zoning district has been prepared and distributed for review per the direction of the Board of Aldermen. This hearing provides an opportunity for the Board of Aldermen to receive public comment on the draft ordinance as is required by the Land Use Ordinance. The Administration recommends that, the Board of Aldermen adopt “An Ordinance Amending the Carrboro Land Use Ordinance to Allow the Transfer of Impervious Surface Capacity from One Lot to Another Within the Town’s Planning Jurisdiction,” pending receipt of comments from OWASA, the conclusion of the minimum criteria evaluation with the staff of the Division of Water Quality, and the preparation of any additional ordinance provisions.

INFORMATION

Christopher Conover submitted a Land Use Ordinance Amendment Request to the Planning Department on August 22, 2001 (*Attachment B*). Mr. Conover had submitted a memorandum to the Board of Aldermen in December 2000 and been in contact with staff and the Town Attorney early in 2001. The Board of Aldermen discussed the memorandum on March 6, 2001 and directed staff to prepare a report on options for transfers of impervious surfaces. The amendment request proposes the following changes to the Land Use Ordinance:

That the ordinance allows transfers of impervious capacity from one lot to another within the town’s planning jurisdiction.

The current limitations on impervious surfaces in the University Lake watershed were incorporated into the Land Use Ordinance on May 15, 1990. Since that time, only one sizeable development, Winsome Lane, has utilized the impervious surface allotment procedures specified in Section 15- 266 (*Attachment C*). A map

depicting the location of the University Lake watershed zoning districts (B-5, C, WM-3 and WR) is attached (*Attachment D*).

Staff reviewed the request and determined that the requested change was rather broad. A draft ordinance that would allow the transfer of impervious surface capacity between any lots in the WR zoning district where the impervious surface allotment has been reduced below the minimums specified in Section 15-266 was prepared and submitted for the Board's review on August 28, 2001 (*Attachment A*). The Board set a public hearing and referred the draft ordinance to the Planning Board, per the requirements of Section 15-322, Orange County, per the Joint Planning Agreement, and the Environmental Advisory Board and Northern Transition Area Advisory Committee. The Recommendations or comments from the advisory boards are attached (*Attachment E*). The Board of Aldermen also referred the draft ordinance to OWASA. Review by the OWASA Board of Directors is expected to occur on October 25th. Staff of Orange County have reviewed the matter and found no inconsistency with the Joint Planning Area Land Use Plan.

Evaluation of Proposed Amendments

"An Ordinance Amending the Land Use Ordinance to Allow the Transfer of Impervious Surface Capacity from One Lot to Another Within the Town's Planning Jurisdiction" contains four sections that include ten substantive changes, as follows:

1. Section 1 adds a new provision that allows the reallocation of impervious surface by the recording of an instrument that clearly shows the gains and losses for any affected lots, so long as the lot maximums do not exceed those already established in Section 15-266.
2. Section 2 adds a new subsection that allows impervious surface reallocations on lots in the WR zoning district for which the maximum impervious surface allocation has been reduced either through the subdivision process or otherwise, subject to eight provisions that include
 - a. Defines the transferring and receiving lots as "grantor lot" and "grantee lot," respectively.
 - b. Defines "impervious surface allocation" as impervious surface coverage permissible in the WR zoning district.
 - c. Requires that both grantor and grantee lots be located within either the town's corporate limits, the town's ETJ, or the Carrboro Joint Planning Area at the time of the transfer.
 - d. Requires that the transfer will be documented by the recording of an instrument, signed by the owners of grantor and grantee lots, that transfers a specified number of square feet of impervious surface allocation that would otherwise be available to the grantor lot, and shall also indicate that the allocation is no longer available to the grantor lot and that such reduction in impervious surface allocation may limit the development potential of the grantor lot. The form of the instrument will be approved by the Town Attorney
 - e. Requires that the transferring instrument include a certificate signed by the Planning Director, stating that the grantor lot has available for transfer the specified impervious surface allocation.
 - f. Specifies that this procedure may not be used to increase the amount of impervious surface permissible on any lot beyond that established by Section 15-266 (b).
 - g. Specifies that the recordation of the transferring instrument will reduce the impervious surface allocation available to the grantor lot, and that the reduction shall carry forward and affect the allocation available to any subdivided lots.
 - h. Specifies that the provisions of this subsection supplement those found in Section 15-266 (c)(6).
3. Section 3 repeals any sections of the Land Use Ordinance that are in conflict with this section.
4. Section 4 specifies an effective date for the draft ordinance.

Consistency with Other Regulations and Policy

The State Water Supply Watershed Protection Ordinance (15A NCAC 2B.0104(u) allows “density averaging of noncontiguous parcels.” Staff of the Division of Water Quality has determined that the proposed amendment to transfer impervious surface is an application of “density averaging.” Although explicitly allowed, any local ordinances that seek to utilize the density averaging – type mechanisms must submit adopted ordinance changes for review by the Water Quality Committee (WQC) of the Environmental Management Commission. An approved copy of the ordinance must be submitted by November 14th in order to be included among the WQC review items in December.

Staff is currently working with staff of the Division of Water Quality to review the requirements of the density averaging provisions and to determine whether the proposed amendment and existing ordinance provisions together satisfy minimum criteria (*Attachment F*) associated with the density averaging procedure. Evaluations of the criteria to date indicate that some additional provisions will need to be included in the ordinance changes. Staff will be discussing this further with representatives of the Division of Water Quality on October 8th. Ordinance provisions to address these requirements will likely not be immediately available for consideration.

Policy 2.12 of the Carrboro Vision2020 document specifies as follows:

2.12 The town should limit development in sensitive areas such as the watershed, wetlands, and other areas the development of which could adversely affect water supplies and habitat. The town’s restrictions on development within the University Lake Watershed should be retained and enforced.

The draft ordinance proposes no changes to the overall development opportunities within the University Lake watershed as there will be no net gain of impervious surface area. The town’s restrictions on development will be retained and continue to be enforced in order to prevent adverse impacts to the water supply watershed.

Applicability of the Proposed Amendment and Administrative Procedures

To date, Winsome Lane is the only major, residential subdivision that has utilized the provisions of Section 15-266 (c) to reduce the impervious surface allocation for any lots in the WR zoning district. The 142-acre subdivision was approved on May 16, 1992 with 26 lots ranging in size from 5 acres to 11.09 acres. This change would only be available to lots in the Winsome Lane subdivision that had not yet maximized their impervious surface allocation.

Administrative procedures that will be developed and utilized by the Town’s Zoning Division, as well as the recordation requirements specified in the draft ordinance will ensure that information on the transfers (increases and reductions in impervious surface allocations) will be readily available to present and future property owners.

ADMINISTRATION’S RECOMMENDATION

The Administration recommends that the Board of Aldermen adopt “An Ordinance Amending the Carrboro Land Use Ordinance to Allow the Transfer of Impervious Surface Capacity from One Lot to Another Within the Town’s Planning Jurisdiction” (*Attachment A*), pending receipt of comments from OWASA, the conclusion of the minimum criteria evaluation with the staff of the Division of Water Quality, and the preparation of any additional ordinance provisions.