

BOARD OF ALDERMEN

ITEM NO. B(5)

AGENDA ITEM ABSTRACT

MEETING DATE: Tuesday, October 23, 2001

TITLE: REQUEST-TO-SET: Land Use Ordinance Text Amendment to Transfer Impervious Surface Capacity from One Lot to Another in Certain Districts

DEPARTMENT: PLANNING	PUBLIC HEARING: YES __ NO <u>X</u>
ATTACHMENTS: A. Resolution setting a public hearing for November 13, 2001	FOR INFORMATION CONTACT: Patricia McGuire – 918-7327 Mike Brough -- 929-3905

PURPOSE

Per Chris Conover, petitioner for this text amendment, the scheduled October 9 public hearing was delayed and the draft ordinance referred back to the Planning Board and Environmental Advisory Board for additional review. In order for this amendment, if approved, to be reviewed by the Water Quality Committee (WQC) of the Environmental Management Commission at their December meeting, a public hearing will need to be held on November 13, 2001. The WQC will not meet again until February 2002. The Planning Board, Environmental Advisory Board and OWASA are expected to have completed their reviews by November 12. A resolution that sets a November 13 public hearing on amendments to the impervious surface provisions of the Land Use Ordinance is recommended for the Board's adoption.

INFORMATION

Christopher Conover submitted a Land Use Ordinance Amendment Request to the Planning Department on August 22, 2001. 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 this year. 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 the Land Use Ordinance.

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 the Land Use Ordinance was prepared and submitted for the Board's review on August 28, 2001. 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. Staff of Orange County have reviewed the matter and found no inconsistency with the Joint Planning Area Land Use Plan.

A copy of the draft ordinance was also submitted to staff of the Division of Water Quality for a review of its consistency with State Water Supply Watershed Protection rules that are found in 15 A NCAC 2B. Staff of the Division of Water Quality determined that the proposed amendment to transfer impervious surface is an application of "density averaging of non-contiguous parcels." 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 Commission of the Environmental Management Commission. Should the public hearing be held and this amendment be approved, it will be submitted for review at the next WQC meeting in December 2001.

On October 9, staff concluded its evaluation 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 associated minimum criteria. Additional ordinance provisions that will satisfy the minimum criteria are in preparation and will be provided for review at the public hearing, should the Board of Aldermen wish to proceed with further review of this draft ordinance.

Via communication with the Town Manager on October 8, Mr. Conover expressed his interest in requesting that the Board of Aldermen delay consideration of the draft ordinance to provide additional time for advisory boards to consider the effect of the density averaging minimum criteria on the draft ordinance and the extent to which it might be utilized in the University Lake watershed. On October 9, the Board of Aldermen voted unanimously to refer the request back for further advisory board consideration. The Planning Board will review the draft ordinance again on October 18 and the Environmental Advisory Board on November 12.

Discussion of Draft Ordinance

"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.

ADMINISTRATION’S RECOMMENDATION

The Administration recommends that the Board of Aldermen adopt the resolution (*Attachment A*) that sets a public hearing date of November 13, 2001.