

BOARD OF ALDERMEN

ITEM NO. D(2)

AGENDA ITEM ABSTRACT

MEETING DATE: Tuesday, November 13, 2001

TITLE: Joint Discussion: 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 B. Request to amend land use ordinance C. Section 15-266 D. Map showing University Lake watershed zoning districts E. Draft Ordinance F. Density Averaging Minimum Criteria	FOR INFORMATION CONTACT: Patricia McGuire – 918-7327 Mike Brough -- 929-3905

PURPOSE

In the review of a request-to-set a public hearing on October 23, the Board of Aldermen scheduled a discussion on the proposed impervious surface transfer amendment and invited the Planning Board and Environmental Advisory Board to participate. A resolution that specifies any additional action 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 (*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 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 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*).

Consideration of Proposed Amendment to Date

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 E*). 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 (*Attachment F*). 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.

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 would need to have been held on November 13, 2001. The WQC will not meet again until February 2002. The Planning Board, Environmental Advisory Board and OWASA reviews were completed by November 12.

Rather than set a public hearing on October 23, 2001, the Board of Aldermen decided to schedule further discussion of the item before scheduling a hearing. Advisory board input has also been sought. Planning Board and Environmental Advisory Board chairs have discussed the matter with members and will be determining whether a representative of each board will be attending the discussion on November 13.

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 Carboro 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.

Within the October 9, public hearing abstract agenda, staff recommended in favor of the proposed amendment. Since that time, the administrative procedures needed to satisfy the State’s density averaging minimum criteria have been clarified. The recommendation, should the Board of Aldermen, wish to

proceed and reset the public hearing, will likely be in support of the proposed amendment. This finding is based on the following:

- 1) The proposed amendment will not result in any net gain of impervious surface;
- 2) The intention of the 4 Percent limit is clear with regard to lots and the overall development of the watershed. However, it is not clear whether the limit was intended to apply to all subdivisions. In fact, several scenarios under which a high percentage of impervious surface is permitted to be developed.
- 3) The developed portion of the University Lake watershed is restricted even further by the large area held in public ownership
- 4) The State watershed regulations represent a significant reduction in the development opportunity. Ms. Lane indicated

It is proposed there is an ongoing need to trade away some/or all of some rights to develop impervious surface on parcels within the watershed. This trading would seek to establish a balance of the improvements and costs of such property.

ADMINISTRATION'S RECOMMENDATION

The Administration recommends that the Board of Aldermen adopt the resolution (*Attachment A*) that specifies any additional action.

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