

BOARD OF ALDERMEN

ITEM NO. E(3)

AGENDA ITEM ABSTRACT

MEETING DATE: Tuesday, April 16, 2002

**TITLE: REQUEST-TO-SET A PUBLIC HEARING: Land Use
Ordinance Text Amendment to Open Space Provisions**

DEPARTMENT: PLANNING	PUBLIC HEARING: YES __ NO <u>X</u>
ATTACHMENTS: A. Resolution B. Excerpt of Board of Aldermen Minutes, January 22, 2002 C. Draft Ordinance D. LUO Sections 15-198 - 15-203 and Section 15-238	FOR INFORMATION CONTACT: Patricia McGuire – 918-7327 Michael Brough – 929-3905

PURPOSE

The Board of Aldermen has referred to staff a citizen request regarding whether the 40 percent open space requirement is needed in the University Lake watershed. Information has been compiled and staff has requested that OWASA review this matter. A draft ordinance has been prepared. The Administration recommends that the Board of Aldermen adopt the attached resolution setting a public hearing on this matter for June 11, 2002 and referring a draft ordinance to the Planning Board and Orange County.

INFORMATION

On January 22, 2002, Sammy Martin asked the Board of Aldermen for a review of whether the 40 percent open space requirement is needed in the watershed-zoning district in light of other constraints. The Board referred the matter to the town staff for analysis and requested that OWASA have input in the matter (*Attachment B*).

When the 40 percent open space requirement was adopted in 1995, it was done so in order to change the way in which residential developments were created by ensuring that open areas would be preserved for passive recreation, wildlife habitat and bio diversity. The implementation of this provision since that time has resulted in an equal percentage contribution from all developments subject to the requirement.

There has been concern, as expressed by Mr. Martin, that the equal application of this requirement has a greater economic impact on developments containing larger lots and with fewer units overall. The potential impact in the University Lake watershed has been particularly noted, as AIS provisions are not available, and well and septic location requirements disallow

clustering of these facilities. The alternative to an open space design in these instances is considered infeasible, as the cost of making a payment-in-lieu of the open space, i.e. 40 percent of the tax value of the property, represents the replacement cost of the Town acquiring open space in the vicinity of the subject property. Other issues arise in relation to the location requirements for on-site septic systems. Currently, nearly all lots in the watershed must be self-sufficient with adequate space for on-site septic systems and wells. With open space requirements constraining the overall developability of a tract or mandating clustering, the on-site provision of all utilities may be problematic.

Due to the low-density, and relatively large lot requirement for residential development in the watershed, some flexibility may be warranted. A draft ordinance has been prepared (*Attachment C*). The draft ordinance is described below. Copies of the pertinent Land Use Ordinance provisions are attached (*Attachment D*). Italic text provides further explanation.

- 1) Reduces to 20 percent the common open space requirement for subdivisions in the WR zoning district. *The ordinance assumes two general purposes for open space currently, preservation and common ownership. Through continued fee simple ownership by a common entity, this change addresses both preservation of some open areas and the purpose of common ownership. The R-2 district, for very different reasons, provides a model for the reduction to 20 percent open space. Some would consider a reasonable approach to be one that removed the requirement in its entirety, due to the low-density and intensity of development permitted in the watershed.*
- 2) Expands the definition of “on-site” provision of septic systems in watershed zones to include common open space created in a development that created the lots served by these systems. *This change is proposed in recognition of the development constraints, e.g. well, septic and home separation requirements, soil suitability, et cetera, associated with watershed development. Will likely require the establishment of individual easements over those portions of the open space where septic facilities are installed. Currently, sewer lines and associated easements are a permitted “use” of open space outside of the watershed.*
- 3) Clarifies the exemption provision to allow subdivisions of less than 15 units to choose between setting aside open space, dedicating it to the Town, or making a payment-in-lieu. *This change is not prompted by the request from Mr. Martin but constitutes a “housekeeping” amendment needed to address a conflict in the ordinance. It is included here merely as a convenience. Existing subsection 15-198 (j) requires that residential subdivisions of less than 15 units that are not required to set aside open space must dedicate such space to the town if the town agrees to accept it. Case law makes such a mandatory dedication unenforceable. In addition, subsection 15-203(b) allows residential developments that are exempt from the requirement that they provide open space and recreational facilities within the development to either provide the open space and recreational facilities on site or make a payment in lieu. The amendment conforms 198(j) with 203(b).*

Alternative approaches may also be considered, such as allowing the common open space in watershed subdivisions to be held as an easement by a homeowners’ association. In this case, on-site septic systems could be allowed within the open space easements, but would still be located on the lots they serve.

A copy of the draft ordinance was submitted to OWASA's Executive Director, Ed Kerwin, on April 11th, requesting a review of the 40 percent open space requirements in the University Lake watershed. The OWASA staff has scheduled to present this matter to the Board of Directors on April 25th.

RECOMMENDATION

The Administration recommends that the Board adopt the resolution that schedules a public hearing on this matter and refers a draft ordinance to the Planning Board, and Orange County (*Attachment A*).