

**A RESOLUTION CALLING A PUBLIC HEARING ON LAND USE ORDINANCE  
TEXT AMENDMENTS CHANGING THE ETJ AND TRANSITION AREA  
REPRESENTATION ON THE PLANNING BOARD**

**Resolution No. 105/2005-06**

WHEREAS, the Carrboro Board of Aldermen seeks to provide ample opportunities for the public to consider modifications to existing policies and regulations; and

NOW, THEREFORE BE IT RESOLVED that the Board of Aldermen calls a public hearing on April 25, 2006 to consider adopting "An Ordinance Amending the Carrboro Land Use Ordinance to Provide that only one member must be a resident of the ETJ and only one member must be a resident of the Joint Planning Transition Area."

BE IT FURTHER RESOLVED that the draft ordinance is referred to Orange County for review per the Joint Planning Agreement and to the Town of Carrboro Planning Board for its recommendations.

## MEMORANDUM

Memorandum to: Mayor and Board of Aldermen

From: Mike Brough

Subject: ETJ and Transition Area Representation on Planning Board

Date: February 28, 2006

At the Board's request, I have reviewed applicable state law and the town charter to determine whether the Land Use Ordinance could be amended to reduce the number of planning board members who must live in the extraterritorial planning jurisdiction (ETJ) and the joint planning transition area (actually, Carrboro has two transition areas, but they are referred to collectively in this memo as the 'transition area'). My conclusion is that the ordinance can be so amended.

G.S. 160A-362 requires proportional representation (based on population) on the planning board and board of adjustment for residents of the town's ETJ. At least one resident of the ETJ must be appointed to each board. The statute provides a complicated formula for determining when more than one such resident must be appointed, but suffice it to say, based upon the numbers presented below, that this statute does not require that more than one ETJ resident be appointed.

Similarly, the town charter provisions authorizing the Joint Planning Agreement and the Agreement itself (Section 2.7) both require the town to appoint at least one member of the transition area to the planning board and board of adjustment "in the same manner as representation of extraterritorial planning area residents is provided for..." The current Land Use Ordinance establishes a planning board of eleven members, two of which must be residents of the ETJ and two of which must be residents of the transition area. The board of adjustment consists of nine members, one of which must live in the ETJ and one in the transition area.

Roy Williford has prepared estimates of the town's population (18,098) and the population of the ETJ (651) and the transition areas (452). These figures reveal that only one resident from the ETJ and one member from the transition area need be appointed to the planning board to satisfy the above referenced requirements.

It would therefore be possible to amend Section 15-21 of the Land Use Ordinance (under the standard procedures for such LUO amendments) to require that only one ETJ resident and one transition area resident be appointed. If the Board chooses to do so, it could keep the same number of seats on the planning board or drop its membership to nine.

Under the Joint Planning Agreement, such an amendment, like other text amendments, must be referred to Orange County for comment thirty days before the

required public hearing. A text amendments to which Orange County objects cannot become “effective within the Joint Planning Area until it is adopted by Orange County.” It is easy to understand what this provision means when dealing with substantive standards under the LUO. It is not so clear what this might mean in connection with the qualifications of members on the planning board. In any event the Joint Planning Agreement provides that any objection by the County must be “based on a determination...that the proposed amendment is inconsistent with the adopted Joint Planning Area Land Use Plan.” I am not aware that the referenced plan discusses the membership of the planning board. In any event, it is clear that the Joint Planning Agreement itself requires only one transition area resident on the planning board, so it seems unlikely that the County would raise any objection to such an amendment.

Attached to this memorandum is a draft ordinance that keeps the planning board membership at eleven but reduces the number of ETJ and transition area residents from two each to one each.

## ARTICLE III

### ADMINISTRATION MECHANISMS

#### PART I. PLANNING BOARD

##### Section 15-21 Appointment and Terms of Planning Board Members

(a) There shall be a planning board consisting of eleven members. Seven members, appointed by the Board of Aldermen, shall reside within the town. Two members, appointed by the Orange County Board of Commissioners, shall reside within the town's extraterritorial planning area. Two members, appointed by the Orange County Board of Commissioners, shall reside within the town's joint planning transition area. If the Orange County Board fails to make these appointments within ninety days after receiving a resolution from the Board of Aldermen requesting that they be made, the board may make them. **(AMENDED 5/26/81; 5/27/86; 11/14/88; 09/13/94)**

(b) Planning board members shall be appointed for three year staggered terms, but members may continue to serve until their successors have been appointed. The terms of all membership seats on the planning board on the effective date of this subsection (whether filled or vacant) shall expire on January 31, 1987. Effective February 1, 1987, three in town residents and one extraterritorial area resident shall be appointed for initial terms of three years, two in town residents and one extraterritorial area resident shall be appointed for initial terms of two years, and two in-town residents and one extraterritorial area resident shall be appointed for initial terms of one year. Effective July 1, 1988, one joint planning transition area resident shall be appointed for an initial term of one year and six months, this term to expire on January 31, 1990. Vacancies shall be filled for the unexpired terms only. **(AMENDED 05/27/86; 11/14/88)**

(1) Effective, September 13, 1994, the Planning Board seat reserved for a resident of the extraterritorial planning area, who's original three-year term commenced February 1, 1987, shall become a seat reserved for a resident of the joint planning transition area. **(AMENDED 09/13/94)**

(c) Members may be appointed to successive terms without limitation.

(d) All members may participate in and vote on all issues before the board, regardless of whether the issue affects property within the town or within the extraterritorial planning area.

(e) Members may be removed as follows: **(AMENDED 05/27/86)**

(1) The chairman shall file or cause to be filed with the town clerk an attendance report after each meeting identifying those members who were present or absent.

- (2) Unless the chairman waives the requirement, members shall be removed if they are absent for three consecutive meetings or if they miss more than thirty percent of the meetings during a twelve month period. The town clerk shall notify the chairman in writing as soon as a member becomes subject to removal under this section. The chairman will have ten days after receipt of such notice to waive the removal. If the chairman fails to notify the town clerk in writing within ten days after receipt of such notice that the automatic removal requirement should be waived, the town clerk will send a removal notice to the member. This removal shall be effective on the date of such notice.
- (3) Members may also be removed by the appointing authority, after a hearing, for any good cause related to performance of duty.

**Section 15-22 Meetings of the Planning Board.**

(a) The planning board shall establish a regular meeting schedule and shall meet frequently enough so that it can take action in conformity with Section 15-66 (Applications to be Processed Expeditiously).

(b) Since the board has only advisory authority, it need not conduct its meetings strictly in accordance with the quasi-judicial procedures set forth in Articles IV, V, and VI. However, it shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.

(c) Minutes shall be kept of all board procedures and the vote of every member on each issue shall be recorded.

(d) All board meetings shall be open to the public, and whenever feasible the agenda for each board meeting shall be made available in advance of the meeting.

(e) Whenever the board is called upon to make recommendations concerning a conditional use permit request, special use permit request, or a minor zoning amendment proposal, the planning staff shall post on or near the subject property one or more notices that are sufficiently conspicuous in terms of size, location, and content to provide reasonably adequate notice to potentially interested persons of the matter that will appear on the board's agenda at a specified date and time. Such notice(s) shall be posted at least seven days prior to the meeting at which the matter is to be considered.

**Section 15-23 Quorum and Voting.**

(a) A quorum for the planning board shall consist of six members if there are no vacant seats, five members if there are one or two vacant seats, and four members if there are more than two vacant seats. A quorum is necessary for the board to take official action.

(b) All actions of the planning board shall be taken by majority vote, a quorum being present.

(c) A roll call vote shall be taken upon the request of any member.

**Section 15-24 Planning Board Officers.**

(a) The planning board shall designate one of its members to serve as chairman and one member to serve as vice-chairman. These officers shall be selected annually at the board's first regular meeting in February and shall serve for terms of one year unless their terms of appointment to the board sooner expire. Vacancies shall be filled for the unexpired terms only. (AMENDED 01/10/84)

(b) The chairman and vice-chairman may take part in all deliberations and vote on all issues.

**Section 15-25 Powers and Duties of the Planning Board.**

(a) The planning board may:

- (1) Make studies and recommend to the Board of Aldermen plans, goals and objectives relating to the growth, development and redevelopment of the town and the surrounding extraterritorial planning area.
- (2) Develop and recommend to the Board of Aldermen policies, ordinances, administrative procedures and other means for carrying out plans in a coordinated and efficient manner.
- (3) Make recommendations to the Board of Aldermen concerning proposed conditional use permits and proposed land use ordinance and zoning map changes as provided by Section 15-57 and 15-322.
- (4) Perform any other duties assigned by the Board of Aldermen.

(b) The planning board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this chapter.

**Section 15-26 Advisory Committees.**

(a) From time to time, the Board of Aldermen may appoint one or more individuals to assist the planning board to carry out its planning responsibilities with respect to a particular subject area. By way of illustration, without limitation, the Board of Aldermen may appoint advisory committees to consider the thoroughfare plan, bikeway plans, housing plans, economic development plans, etc.

(b) Members of such advisory committees shall sit as nonvoting members of the planning board when such issues are being considered and shall lend their talents, energies, and expertise to the planning board. However, all formal recommendations to the Board of Aldermen shall be made by the planning board.

(c) Nothing in this section shall prevent the Board of Aldermen from establishing independent advisory groups, committees, or commissions to make recommendations on any issue directly to the Board of Aldermen.

## ATTACHMENT D

### AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO PROVIDE THAT ONLY ONE MEMBER MUST BE A RESIDENT OF THE ETJ AND ONLY ONE MEMBER MUST BE A RESIDENT OF THE JOINT PLANNING TRANSITION AREA

THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO ORDAINS:

Section 1. Subsection 15-21(a) of the Carrboro Land Use Ordinance is amended to read as follows:

(a) There shall be a planning board consisting of eleven members. Nine members, appointed by the Board of Aldermen, shall reside within the town. One member, appointed by the Orange County Board of Commissioners, shall reside within the town's extraterritorial planning area. One member, appointed by the Orange County Board of Commissioners, shall reside within the town's joint planning transition area. If the Orange County Board fails to make these appointments within ninety days after receiving a resolution from the Board of Aldermen requesting that they be made, the Board of Aldermen may make them.

Section 2. Subsection 15-21(b) is amended to read as follows:

(b) Planning board members shall be appointed for three year staggered terms, but members may continue to serve until their successors have been appointed. Vacancies shall be filled for the unexpired terms only.

Section 3. The term of one of the new in-town members shall expire January 31, 2009 (this seat replaces the vacant seat of an ETJ member whose term would have expired on that date) and the term of the other new in-town member shall expire January 31, 2007 (this seat replaces the vacant seat of a transition area member whose term would have expired on that date).

Section 4. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 5. This ordinance shall become effective upon adoption.