

BOARD OF ALDERMEN

ITEM NO. (3)

AGENDA ITEM ABSTRACT

MEETING DATE: March 27, 2007

TITLE: Public Hearing on a Draft Ordinance that Establishes a Six-Month Development Moratorium in Carrboro's Northern Study Area

DEPARTMENT: PLANNING	PUBLIC HEARING: YES <u>X</u> NO <u> </u>
ATTACHMENTS: A. Resolution finding consistency with adopted policy/plan B. Resolution finding inconsistency with adopted policy/plan C. Draft ordinance and map D. Resolutions #134, #138 E. Orange County memo F. Section 2.4 Joint Planning Agreement G. Board Comments and Recommendations	FOR INFORMATION CONTACT: Patricia McGuire – 918-7327 Mike Brough – 929-3905

PURPOSE

It is necessary for the Board of Aldermen to receive public comment before acting on an ordinance that will amend the text of Carrboro's Land use Ordinance by temporarily suspending its applicability for rezoning and special use and conditional use permit applications in the Northern Study Area (NSA).

INFORMATION

Background information on this request may be found on the Town's website at http://www.townofcarrboro.org/BoA/Agendas/2007/02_06_2007_D2.pdf. The Board of Aldermen has also embarked upon a process to review the implementation of the Facilitated Small Area Plan for Carrboro's Northern Study Area, as specified in Resolution #134 and #138 (*Attachment D*). A review committee was established on March 6th; the first meeting of the group was held on March 15th. Community fora on this matter are scheduled to take place on April 14 and June 16.

Description of the draft ordinance

See attached (*Attachment C*). As required by North Carolina General Statute 160A-381 (g), the ordinance establishing a development moratorium for Carrboro's NSA must specify the need, purpose, time frame, applicability, and expected accomplishments. The draft ordinance includes these required features, describes the requirements under the Joint Planning Agreement and also notes those projects or approvals that will not be subject to the moratorium. Pending and recently approved development applications are noted below. The status of these projects in relation to the moratorium is noted.

	Type	Concept Plan Review	Concept Plan Approval/SUP or CUP Application	Subject to Moratorium
Tallyho AIS	Residential	Underway	No/No	No ¹
Litchfield AIS	Residential	Yes	Yes/No	No ¹
Claremont II AIS	Residential	Yes	Yes/Yes	No
Carolina Commons	Residential	Yes	No/No	No ¹
Carolina North	Details available	not No	No/No	Yes
Twin Creeks Park	Recreational	No	No/No	No ²
Won Buddhism Center on Old NC 86	Community	No	NA/No	No ²
Ballentine AIS	Residential	Yes	Yes/Yes	No
Jones Property AIS	Residential	Yes	Yes/Yes	No
Elementary #10	Educational	NA	Yes/Yes(approved)	No
Claremont I AIS	Residential	Yes	Yes/Yes(approved)	No

¹ As drafted, concept plan review can continue.

² As drafted, moratorium applies to residential projects only.

Issue of vested rights. A development moratorium cannot affect the consideration and due process of already accepted applications. However, it does not protect any projects from the effect of subsequent changes in regulations (i.e. either to the text or map of the Land Use Ordinance). Exceptions to development moratoria do not provide any vested rights to the outcome of the development review process, only to the right for that process to continue. If a community's plan or policy review and implementation process reaches the finish line before the development project, any application can be held to the new rules. The Carrboro Land Use Ordinance provides for applicants a means of requesting relief from changes that have been made while development review has been underway. The permit-issuing authority has the authority to decide whether or not to grant any deviation in these types of circumstances based on information that is provided regarding the extent to which an applicant has made substantial expenditures in reliance on the existing regulations.

Issue of effective dates. A substantial portion of the NSA is located with the Transition Areas portion of the Joint Planning Area as identified in the Joint Planning Agreement (JPA) (see map, *Attachment C-2*). The JPA allows the enactment of a moratorium, initially for no more than six months in duration (*Attachments E and F*). The moratorium may be extended one time for more than six months following the same procedures. With respect to Carrboro's Transition Areas, the moratorium can not be effective until adopted by the Town and approved by Orange County following a public hearing conducted by the Town of Carrboro. A joint public hearing is not required. The Board of County Commissioners (BOCC) has decided to receive public comment at the April 26th Joint Planning public hearing. The BOCC has indicated that it will make a decision regarding approval, subject of course to any action the Board of Aldermen has previously taken, on April 26 or later.

The component jurisdictions and decision-making authority in the NSA are summarized in the table below.

	Controlling Instrument	Time frame	Adoption/ Approval	Total Area /% NSA	Available Area (under- or undeveloped)
NSA – Carrboro (ETJ and Town Limits)	NC General Statutes	Reasonable	Board of Aldermen	1,412/37 percent	595
NSA – Orange County	Joint Planning Agreement	6 months; max 6 mo-extension	Board of Aldermen/BOCC	2,375/63 percent	613

Benefits and limitations of a moratorium. The Board of Aldermen has launched a review process that is aggressive and time-limited. Many prospective applicants are likely to consider this a de-facto moratorium. Applicants for at least two projects have accelerated submittals of conditional use permit plans and one concept plan submittal was accelerated so that project review can continue. It would be somewhat rare for large projects such as the ones submitted that are so early in the review phase to reach the terminus of the development review process during the 6-month NSAPIR review period. At that point, the risk of having committed funds and energy to a project that could be out of compliance with land use regulations would be considerably heightened. A relatively short moratorium makes clear that the community does not wish to expend its energy on the review of such applications, nor does it wish property owners and development permit applicants to expend their time or funds in such a fashion.

Any moratorium has the potential for slowing down the submittal, approval, construction, and occupancy of new development projects. As such, the community accepts a risk that some developers will decide to pursue projects in other locations, where a development moratorium is not in effect.

Recommendations and comments. The Board of Aldermen referred the draft ordinance on the moratorium to six advisory boards and Orange County. Any action taken by these boards is summarized below.

Board/Committee	Action
Planning Board	Recommended approval, with modification
Appearance Commission	Selected NSAPIRC representative. Otherwise, no comment
Environmental Advisory Board	Recommended approval, with clarification
Recreation and Parks Commission	No comment; lack of quorum
Transportation Advisory Board	
Northern Transition Area Advisory Committee	Declined to comment
Orange County Board of County Commissioners	Will receive public comment on April 26 th and take action afterwards

Copies of recommendations and comments are provided (*Attachment G*).

Action Options

1. Take no action; rely on review process to proceed post-haste. Review process establishes de-facto moratorium and folks wait out the brief review period before finalizing the submittal of new applications under modified land use regulations. Development

community accepts risk for proceeding with development review of projects that may be out of compliance with land use regulations if the review process results in changes prior to public hearing on projects.

2. Adopt draft ordinance as drafted. Town accepts responsibility for slow-down or loss of development applications during and subsequent to the development moratorium. Based on the existing design and development activity, the moratorium may have only a small effect on possible submittals.
3. Modify language in relation to advisory board recommendations and/or other comments or issues, and adopt. Possible effects are similar to those described under option 2.

FISCAL IMPACT

Published notice costs for this hearing have totaled \$498.

STAFF RECOMMENDATION

The staff recommends that the Board of Aldermen consider 1) adoption of the resolutions finding that the ordinance establishing a six-month moratorium is either consistent or inconsistent with adopted policy and adoption or rejection of the ordinance establishing a six-month moratorium on rezonings and certain permits for residential development for the Northern Study Area (*Attachments A, B, and C*), as is desired.