

# BOARD OF ALDERMEN

ITEM NO. B(3)

## AGENDA ITEM ABSTRACT MEETING DATE: November 24, 2009

**TITLE: Public Hearing to Consider Land Use Ordinance Text Amendments to Article XX (“Amendments”), Section 15-323 (“Hearing Required; Notice) in Order to Comply With Recent Amendments to N.C.G.S. Section 160A-384 Requiring Non-owner Applicants for Zoning Map Amendments to Provide Actual Notice to the Owners of the Affected Parcels**

<b>DEPARTMENT: PLANNING</b>	<b>PUBLIC HEARING: YES X or NO</b>
<b>ATTACHMENTS:</b> <b>A. Consistency Resolutions</b> <b>B. Draft Ordinance</b> <b>C. LUO Section 15-323</b> <b>D. S.L. 2009-178</b> <b>E. Recommendations and Comments</b>	<b>FOR INFORMATION CONTACT:</b> Patricia McGuire – <b>918-7327</b> Mike Brough – <b>929-3905</b>

### PURPOSE

Statutory requirements for notice during rezoning have been revised. A draft ordinance that will make the town’s notice requirements consistent with the General Statutes has been prepared. The Board of Aldermen must receive public comment before taking action on amendments to the Land Use Ordinance.

### INFORMATION

NCGS 160A-384 (Method of Procedure) requires that the Board of Aldermen provide for the determination, establishment, enforcement of, and revisions to zoning regulations, restrictions, and boundaries. The Statutes have long required a public hearing prior to consideration of zoning amendments and published notice of such hearing in a newspaper of general circulation once a week for two successive calendar weeks. The statutes also require mailed notice of the hearing to the most directly affected landowners when a zoning map amendment is proposed and physical posting of the affected property and these requirements have been part included as Section 15-323 of the Town’s land use regulations for some time (*Attachment C*).

During the 2009 Session, the General Assembly enacted legislation (S.L. 2009-178 *Attachment D*) addressing the situation wherein the applicant for a zoning map amendment is someone other than the owner of the affected property or the municipality. The new statute places the burden on the applicant to certify to the governing board that the owner of the parcel of land, as shown on the county tax listing, has received actual notice of the proposed amendment and a copy of the notice of hearing. In addition, the amendment requires that actual notice under these circumstances be provided by any of the methods provided for service of process under Rule 4(j) of the North Carolina Rules of Civil Procedure, which govern the service of process in civil actions filed in the District and Superior Courts. These methods include personal delivery, registered or certified mail, or by a designated delivery service authorized pursuant to Title 26 U.S.C. Section 7502(f)(2). Alternatively, where notice cannot with due diligence be achieved by one of these methods, notice may be given by publication consistent with Rule 4(j1) of the North Carolina Rules of Civil Procedure. A draft ordinance that amends the Land Use Ordinance to comply with the new statute has been prepared (*Attachment B*).

The draft ordinance has been referred to Orange County staff and the Planning Board for review. Comments and recommendations are attached (*Attachment E*).

**FISCAL AND STAFF IMPACT**

None noted.

**RECOMMENDATION**

The staff recommends that the Board of Aldermen adopt the resolution finding consistency of the ordinance and the ordinance itself (*Attachments A1 and B*).