

BOARD OF ALDERMEN

ITEM NO. B(2)

AGENDA ITEM ABSTRACT

MEETING DATE JUNE 22ND, 2010

**SUBJECT: CONTINUATION, MINOR MODIFICATION OF THE BALLENTINE
ARCHITECTURALLY INTEGRATED SUBDIVISION CONDITIONAL USE PERMIT,
8110 OLD NC 86, PHASING PLAN.**

DEPARTMENT: PLANNING DEPARTMENT	PUBLIC HEARING: YES No <u>X</u>
ATTACHMENTS: A. RESOLUTION ADOPTING THE MODIFICATION B. EXISTING PHASING PLAN WITH SITE PLAN C. PROPOSED PHASING PLAN D. APPROVED CONDITIONAL USE PERMIT DOCUMENT E. MEETING MINUTES FROM THE ORIGINAL HEARING F. NEW ATTACHMENT: ORANGE COUNTY APPROVAL LETTER FOR SECONDARY EMERGENCY ACCESS EMAILS G. NEW ATTACHMENT: STAFF EMAIL PERTAINING TO NCDOT INQUIRY REGARDING OLD NC86 ACCESS LOCATION	FOR INFORMATION CONTACT: JEFF KLEAVELAND, 918-7332

PURPOSE

M/I Homes, developer of the 96 unit dwelling unit subdivision located at 8110 Old NC 86, has submitted an application for a *Minor Modification* to the Conditional Use Permit issued for the AIS on August 28, 2007 (Attachment D); (meeting minutes, Attachment E). Town staff requests that the Board review, deliberate and make a decision on the application.

INFORMATION

This agenda item is continued from the June 15, 2010 Board of Aldermen meeting. It has been revised in key areas and supersedes the previous agenda item.

Background Information

This permit modification is only for the project's phasing plan. The applicant wishes to revise the *two* phases originally shown in the approved CUP (Attachment B) to *four* phases total (Attachment C).

This change enables the developer to build and sell portions of the property in smaller increments while allowing them to pursue alternate commercial/residential development scenarios for phases 3 and 4 per an earlier request made by the Aldermen during their June 16th, 2009 review of a permit extension for the project.

Please note that modification of the actual content of the existing, approved Ballentine plans (layout, grading, landscaping etc.) to accommodate the Aldermen's request, will require both rezoning and major permit modifications, two processes which require public hearing, advisory board review, and advance notification to neighboring properties. If a rezoning application does not move forward then it is very likely that the applicant will build what has already been approved.

The phasing revision has been reviewed by staff and each phase has been found to be independently compliant with the LUO indicating that recreation and open space amenities are satisfied in each phase independent of the others.

Also note, for this phasing plan to work it is essential that secondary emergency access to Phase 2 is secured since construction of the public street along the northern property line is to be delayed until the new Phase 3. This emergency access will be provided by way of the existing east-west gravel drive shared with the Orange County property along the northern property line as well as construction of most of the north-south sub-collector shown in Phases 1 & 2 of the revised phasing plan. Orange County has approved this arrangement as is indicated by the attached letter (Attachment F)

Because of the necessity of this secondary access the following condition for the new phasing plan is recommended:

- That prior to authorizing commencement of framing for buildings in Phases One or Two that the emergency access infrastructure (including secondary emergency access) is constructed for these phases in conformity with the state fire code subject to the approval by the Town Fire Department.

Because of the possibility that Phase 3 construction may be delayed, the status of the secondary access as an unfinished gravel road may continue for some time. This access is meant to be for emergency vehicles only and will require collapsible bollards to restrict its use.

Additional Information as Requested by the Board of Aldermen.

During the June 15th, 2010 Board of Aldermen meeting, Board members requested additional information related to the following topics: 1) Proposed Greenways, 2) NCDOT status of the Old NC 86 connection; In response see below:

Proposed Greenways: The project contains internally a greenway that bisects the property extending the Legends greenway to Ballentine's northern property line (Attachment B-2). This is proposed to be constructed in Phase 3.

In addition, along the eastern property line of the project is an area identified by Condition 11 of the CUP as a proposed greenway dedication area. This area will give the Town multiple options in providing a critical connecting link to existing and proposed greenways in the immediate area. This linkage has not yet been designed but may involve simply using the proposed bike and pedestrian facilities along the proposed street.

In the original CUP Condition 11, an offer of dedication of this area is required but is not tied to any phase of the project. Currently the Town is seeking a temporary pedestrian easement in this area to accommodate existing pedestrian use of OWASA easements therein.

The applicant voluntarily agrees to modify condition 11 so as to tie an offer of dedication to the recordation of Phase 1 final plat. Because of this staff recommends that Condition 11 be replaced as follows:

11. ~~That an offer of dedication of the open space areas on east side of Lake Hogan Farm road extension be made to the Town.~~
11. *Replace with:* That prior to final plat approval for Phase 1, an offer of dedication of the open space areas on the east side and adjacent to the Lake Hogan Farm road extension be made to the Town.

NCDOT status of the Old NC 86 connection: Regarding Ballentine's proposed connection to Old NC 86, note that Condition 28 of the approved CUP states the following:

28. *That prior to Construction Drawing approval Town staff and the Consulting Engineer meets with NCDOT District Engineer to pursue the reduction in speed along Old NC 86. If NCDOT reduces the speed limit, the intersection could be moved to the original access easement location (subject to NCDOT approval). If not, the intersection would remain as shown on the CUP plans.*

As is evident by the attached emails, the Town has satisfied this condition (Attachment G). Ultimately however, NCDOT is responsible for issuing driveway permits along Old NC 86 and not the Town. Though they have this intersection in their queue for further study they have also informally stated that a speed reduction in this area is only as good as its reliable enforcement.

Because of existing non-conformities in the adjacent vertical curves, the non-existence of a viable road shoulder, and the observed speed of cars, they favor the current location.

Since the proposed phasing plan places the construction of the road in Phase 3, other opportunities may exist to review the intersection in the context of a possible upcoming rezoning application.

Revision of Existing Conditions made necessary by the new phasing plan

As a result of the proposed re-phasing the following, original, Conditional Use Permit (Attachment D) conditions will need to be revised and replaced (or removed, as in the case of #16). The following conditions reflect then new phasing plan while addressing the uncertainty of future changes made necessary by the forthcoming rezoning request (again, Phase 3 and 4 will be subject to this request), the remaining conditions of the original permit do not require modification:

Existing conditions to be replaced with the following:

5. That, prior to final plat approval for Phase 3, the applicant provides to the Town, in accordance with applicable LUO provisions, a financial security sufficient to construct their portion of the remaining, uncompleted road and stream crossing, from the eastern terminus of Street A, as shown on plans, to the

property line directly to the east. The value of said security shall be determined by the Consulting Engineer with approval by the Town Engineer and shall be retained until the road segment and stream crossing is constructed or until an alternate stream crossing is constructed. Furthermore, the estimate shall be renewed annually and adjusted for inflation via the Consumer Price Index. The security shall be returned to the applicant if (1), the Town determines that the road and crossing will not be constructed, or (2), a period of ten years has passed from the date of initial posting of the financial security with the Town.

6. That prior to construction plan approval for Phase 3 the applicant provide to the Town evidence of a shared-access easement (or equivalent) agreed upon by Orange County so as to allow for the construction of Street A, as shown on the approved CUP plans.
7. That prior to construction plan approval for Phase 1 the applicant provide to the Town evidence that the portion of property owned by the Lake Hogan Farms Homeowner's Association necessary to allow Street B2 to connect to the Hogan Hills Road R/W has been substantially secured.
8. That prior to construction plan approval, the applicant receive a driveway permit from NCDOT in accordance with any conditions imposed by such agency including but not limited to encroachment/maintenance agreements for lighting and sidewalks.
- ~~16. That an "alternate" stormwater management facility be constructed as part of Phase 1 (West Side of Buckhorn Branch) of the development if, 10 months after Phase 1 final plat approval, either a) the Buckhorn Branch CLOMR is not received or, b) an approval for a bond extension to cover the construction of the stormwater management facility to treat Street 'A', is not obtained. (This condition is to be removed since the new phasing plan doesn't require the construction of Street A. The stormwater facility referenced is not required unless Street A is built).~~
17. That the Buckhorn Branch CLOMR be received prior to Phase 3 final plat approval.
18. That a LOMR be received prior to granting building permits for the final 50% of Phase 3 lots unless a bond is posted covering a LOMR approval and any potential infrastructure modifications deemed necessary as a result of the LOMR approval process for Buckhorn Branch.
- ~~24. That the Board authorizes the receipt of funds in lieu of 142.06 recreation points valued at \$26,022.55 to be used on proposed greenway improvements for Jones Creek. These funds are to be paid prior to final plat approval. (This project was presented to the Board with a deficit of recreation points thus prompting the applicant to request a payment-in-lieu option. Since the recreational components of the later phases of the project are unknown at this time, it is reasonable to forgo this condition until further information is received).~~
24. That prior to construction plan approval for Phase 3, the applicant provide evidence to the Town that the project meets the recreation facility requirements in accordance with Section 15-196 of the Town of Carrboro Land Use Ordinance. Payment in lieu of recreation points for Phase 3 may require approval by the Board of Aldermen. *(This condition is to replace existing condition #24. It is written broadly to state mainly that any proposals made for Phases 3 and 4 will be subject to the requirements of 15-196. Since the new Phases 1 and 2 stand alone with respect to their recreational points, there will be no points deficit created with the construction of these two Phases).*

The above modifications to the existing CUP conditions will make it consistent with the new phasing plan. Note that construction plans nearing approval are being reviewed by the Town Engineer. These plans reflect the proposed changes to the phasing plans presented in this modification. Should the Aldermen approve this minor modification shortly hereafter these plans are expected to be approved thereby authorizing construction in the newly created Phases 1 and 2.

STAFF RECOMMENDATION

Town Staff recommends that the Board of Aldermen review, deliberate and make a decision regarding the applicant's request. If the request is approved it is recommended that the attached resolution approving the Minor Modification to the Conditional Use Permit (Attachment A), be adopted.