

BOARD OF ALDERMEN
AGENDA ITEM ABSTRACT

ITEM NO. C (2)

MEETING DATE: Tuesday, March 15, 2011

**TITLE: Request-to-Set a Public Hearing to consider an LUO Text Amendment
regarding subdivision covenants and energy and water conservation**

DEPARTMENT: PLANNING	PUBLIC HEARING: YES _ NO _X_
ATTACHMENTS: A. Resolution B. Session Law 2009-427 C. Draft Ordinance	FOR INFORMATION CONTACT: Patricia McGuire – 918-7327

PURPOSE

The Town has been granted authority to prevent subdivision restrictive covenants from prohibiting installation of devices related to energy generation and conservation or water conservation. A draft ordinance making these changes has been prepared. A resolution setting a public hearing for April 26, 2011 and referring the changes to advisory boards and Orange County has been prepared for the Board's use.

INFORMATION

In February 2009 the Board of Aldermen held a public hearing to receive comments on a proposed amendment to the Town's charter regarding the prohibition of restrictive covenants that prevented the installation of solar collectors and other devices that conserved energy or generated energy or that captured, stored, or reused water (http://www.townofcarrboro.org/BoA/Minutes/2009/02_17_2009.pdf, see page 3). The Board instructed the Town Attorney to draft a charter amendment to exclude condominium associations and forward the requested amendment to the Town's legislative delegation.

A senate bill advancing the requested charter amendment was filed on March 9, 2009 and ratified on August 5, 2009 as Session Law 2009-427, Senate Bill 475 (*Attachment B*). The draft ordinance (*Attachment C*) includes the following recommended changes:

- 1) Adds a new section to Article IV, Permits and Plat Approval, to the Land Use Ordinance, entitled "Covenants May Not Prohibit Devices that Generate or Conserve Energy or Water;" and
- 2) Specifies that final plat approval may not be granted if covenants or restrictions prohibit or have the effect of prohibition, or allow a homeowners association to prohibit the orderly installation of a variety of energy saving/generating and/or water saving devices; and
- 3) Requires that any installation must be done on behalf of a person who otherwise has a property right to install noted devices; and
- 4) States that the prohibitions do not apply to condominiums created under Chapter 47 or 47C of the North Carolina General Statutes; and
- 5) States that the prohibition does not apply to any covenant or restriction, or any rule or regulation adopted by a property owners association that affects a common area, is designed to ensure the safe installation and maintenance of noted devices, or that regulates the location or screening of a noted device (unless it has the effect of preventing the reasonable use of such device).

- 6) Specifies that prior to the approval of a final plat creating lots within residential subdivisions, the plat approval authority must determine that any covenants or restrictions are consistent with the requirements; and

It will be necessary to submit the draft ordinance to the Planning Board and to Orange County for review and comment. The Board of Aldermen often refers ordinances to other advisory boards as well. The attached resolution includes a section which refers the draft ordinance to the Appearance Commission, Environmental Advisory Board, and the Economic Sustainability Commission (*Attachment A*).

FISCAL IMPACT

Amending the Land Use Ordinance involves staff analysis and administration of the proposed amendment, advisory board review, and advertising costs associated with ordinance preparation and public notice.

STAFF RECOMMENDATION

The staff recommends that the Board of Aldermen adopt the attached resolution setting a public hearing on text amendments and referring the draft ordinance to the Planning Board and other advisory boards, as well as Orange County staff. (*Attachment A*).