

BOARD OF ALDERMEN

ITEM NO. A(2)

AGENDA ITEM ABSTRACT

MEETING DATE: Tuesday, April 26, 2011

**TITLE: Public Hearing on an Land Use Ordinance Text Amendment Regarding
Subdivision Covenants and Energy and Water Conservation**

DEPARTMENT: PLANNING	PUBLIC HEARING: YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
ATTACHMENTS: A. Consistency Resolutions B. Draft Ordinance C. Session Law 2009-427 D. Carrboro Vision2020 Excerpt E. Recommendations and Comments	FOR INFORMATION CONTACT: Patricia McGuire – 918-7327

PURPOSE

The Town has been granted authority to prevent subdivision restrictive covenants from prohibiting the installation of devices related to energy generation and conservation or water conservation. A draft ordinance making these changes has been prepared. The Board of Aldermen has set a public hearing for April 26, 2011 and referred the draft ordinance to advisory boards and Orange County for review and recommendations. The Board must receive public comments before taking action on the draft ordinance.

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 request for the amendment resulted from a citizen who had been unable to install a clothesline due to homeowner association covenants. The Board instructed the Town Attorney to modify the proposed 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 C*). The draft ordinance (*Attachment B*) 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

Per Section 15-324, the Board of Aldermen shall, prior to accepting or rejecting a proposed amendment, adopt a statement describing whether the amendment is consistent with an officially adopted plan and explaining why the action is reasonable and in the public interest. As an adopted plan does not address this matter, policies from Carrboro Vision2020 that appear to relate to this topic have been identified in the resolution finding consistency (*Attachment A-1*).

A Board member shall not vote on any amendment where the outcome of the matter is reasonably likely to have direct, substantial, and readily identifiable financial impact on the member.

FISCAL IMPACT

Some additional review time by staff and the Town Attorney's office will be needed in the course of reviewing homeowner association documents for consistency with these provisions. This additional time is estimated to be nominal.

RECOMMENDATION

The staff that the Board of Aldermen review and consider adoption of the resolution finding consistency and the draft ordinance amending the Carrboro Land Use Ordinance (*Attachments A-1 and B*).