

Preliminary Discussion of Special Use Permit Scenarios: Aquabella Subdivision

If the applicant desires to pursue a Special Use Permit application that includes a proposal to construct stormwater facilities between the Pinehurst Drive sidewalk and the current property line, we foresee two scenarios:

- Submit a Special Use Permit application that provides a request to abandon that portion of the Pinehurst Drive right-of-way where the applicant is proposing to construct stormwater facilities; or
- Submit a Special Use Permit application that proposes to construct the facilities within the existing public right-of-way.

Each scenario, including, some preliminary points of consideration, is briefly discussed below.

Abandonment of a portion of the Pinehurst Drive right-of-way: Along with the submission of a Special Use Permit application, this scenario would anticipate an accompanying submission of a request to close a portion of the Pinehurst Drive right-of-way for the construction of the stormwater facilities. Upon considering this approach, we believe that have identified two factors what will need to be considered if this option is pursued: A) Closing a portion of the Pinehurst Drive right-of-way; and B) Modification to the Land Use Management Ordinance.

A) **Closing a portion of the Pinehurst Drive right-of-way:** The abandonment of the unused portion of the Pinehurst Drive right-of-way would revert to the adjacent property owner under NCGS 160A-299. Prior to acting on a request to close public right-of-way, the Council is required to hold a public hearing on the request. Staff evaluation of the request to close the right-of-way and its potential impact would also be considered. Until such time that we receive a formal request and undertake the required public notification, we are unable to identify all of the potential issues associated with this type of request.

B) **Modification to the Land Use Management Ordinance:** Because this scenario includes a proposal to abandon the public right-of-way, one issue associated with the change from public right-of-way to private property is the Resource Conservation District. Public lands, such as state owned properties or public right-of-way are not subject to the Resource Conservation District. Therefore the 100 foot wide Resource Conservation District boundary, associated with the intermittent stream on the applicant's property, does not extend into the public right-of-way along Pinehurst Drive. However, if a portion of the Pinehurst Drive right-of-way is abandoned and is included within the boundary of the proposed development, a portion of the area proposed for the stormwater facilities will be located within the Resource Conservation District.

The Land Use Management Ordinance does not permit the construct of private stormwater management facilities within the first 50-feet (stream side corridor) of the Resource Conservation District. In order to for the Council to consider a development proposal that is not in accord with regulations in the Land Use Management Ordinance, the applicant must request a modification to the Land Use Management Ordinance and provided a public purpose justification for this modification. For additional discussion please refer to the discussion under Special Use Permit Process in the main memorandum.

Option 2: Private stormwater facility in the public right-of-way: Another scenario involves applicant submittal of a Special Use Permit application that allows the applicant to propose private stormwater management facilities within the Pinehurst Drive right-of-way. We have identified several factors what will need to be considered if this option is pursued: A) Locating private facilities within the public right-of-way B) Encroachment Agreement for construction within the right-of-way; and C) Required modification to the Land Use Management Ordinance.

A) Locating private facilities within the public right of way: Historically, the public right-of-way has been reserved for public facilities that provide service to the greater community. Below is a brief description of the purpose and functional/operational activities associated with the public right-of-way:

- The Town regulates and maintains public right-of-way property. Rights-of-way are established and reserved to allow placement of facilities that benefit and support public health, safety and welfare (such as streets and utility service lines). In public right-of-way the Town reserves the right to restrict/regulate placement of facilities that can be placed elsewhere, that are non-essential, and/or that primarily benefit private property owners. Facilities that are allowed in public rights-of-way are maintained by the Town or by facility owners via formal franchise or encroachment agreements that include specific stipulations protecting the Town.
- Public rights-of-way must remain open and available for future public improvements that may become necessary. Non-essential encroachments into/onto public rights-of-way could impede future use of the right-of-way for public benefit.
- The Town is responsible for maintaining and managing public rights-of-way in a manner that reasonably protects public safety. The installation of non-essential facilities into/onto public right-of-way could unnecessarily increase the Town's liability exposure.

The installation of non-essential facilities on public rights-of-way would set a precedent for future encroachments.

B) Encroachment Agreement to construct within the right-of-way: An Encroachment Agreement and Engineering Construction Permit are required for any work occurring in the Town public right-of-way.

As part of the Encroachment Agreement, we would anticipate the submission of an Operations and Maintenance Bond. The bond would insure that the stormwater management facilities will continue to perform and be maintained in compliance with the standards of the Land Use Management Ordinance. We anticipate that the bonding would require that property liens be placed on all lots within the proposed subdivision in order to assure financial responsible for any failure of the facilities.

Additionally, we would anticipate that the execution of the Encroachment Agreement would include reservation of future site within the proposed subdivision in the eventuality that the stormwater management facilities must be moved if the Town needs to use the right-of-way at this location (for example, a bus pull-off or utility installation). A reserved area within the subdivision would have to meet all the Land Use Management Ordinance requirements for stormwater management.

C) Modification to the Land Use Management Ordinance: Because this Option includes a proposal to construct stormwater management facilities within the public right-of-way, the project does not comply with the Land Use Management Ordinance. In order to for the Council to consider a development proposal that is not in accord with regulations in the Land Use Management Ordinance, the applicant must request a modification to the Land Use Management Ordinance and provide a public purpose justification for this modification. For additional discussion please refer to the discussion under Special Use Permit Process in the main memorandum.