

SUMMARY OF PLANNING BOARD ACTION

Subject: Aydan Court - Application for Special Use Permit

Meeting Date: September 2, 2008

Recommendation: That the Council deny the Resolution of approval for a Special Use Permit:

The Board voted unanimously (8-0) to recommend that Council deny the Aydan Court Special Use Permit application for the following reasons:

- The application does not meet the goals on the Comprehensive Plan:
 - The application proposes residential development on a site designated on the Land Use Plan (a component of the Comprehensive Plan) as Open Space.
 - The application proposes to disturb more than 25% of the slopes on the site that are 25% or greater, contrary to the Land Use Management Ordinance regulations (the applicant requested a Modification to Regulations for Steep Slope regulations).
 - The proposal does not meet the current zoning district, Residential-1 (R-1) and the board recommended denial of the accompanying rezoning request to the Residential-Special Standards-Conditional (R-SS-C) zoning district.
- The Board also voted to append a detailed list of concerns from one of the Planning Board members, Judy Weseman.

Vote: 8-0

Ayes: George Cianciolo (Chair), Michael Collins (Vice-Chair), John Ager, Michael Gerhardt, Andrea Rohrbacher, Del Snow, James Stroud, and Judith Weseman

Nay: None

Prepared by: George Cianciolo, Chair
Phil Mason, Staff

Addendum to Planning Board Summary of Action

Ayden Court Special Use Permit and Rezoning Request
Chapel Hill Planning Board Meeting
September 2, 2008

My major concerns about Ayden Court are summarized below.

1. The Comprehensive Plan shows open space as the recommended land use for this property. Hence, I do not agree with the applicant's position that the project conforms to the Comprehensive Plan since open space would be replaced with housing.
2. The project is located immediately adjacent to the Army Corps of Engineers Jordan Lake Watershed Property. This property is a significant waterfowl habitat. Changes in the use of the adjacent property will increase the volume of stormwater entering this property and will also increase the stormwater pollutant load entering the property. Impacts on waterfowl are foreseeable.
3. The applicant maintains they will conserve and protect the natural setting of Chapel Hill and elaborates this point by stating that the adjacent land, also called the Upper Little Creek Waterfowl Impoundment Area, will be protected by a combination of factors including the high stormwater standards adopted by the Town. I disagree that they will meet this requirement. Although the Town has adopted state recommended stormwater standards, those standards do not require that post-construction stormwater water quality and quantity be equal or better than pre-construction standards.

Instead, the standards require that pre- and post-construction stormwater runoff for a two year storm be unchanged. However, for a more significant rainfall (somewhat more than two inches over a defined time interval), new developments such as Ayden Court must just design to contain stormwater flow to protect the public safety, not to avoid downstream increases in water quantity. So for a five year storm (i.e., a larger amount of rainfall that typically falls every five years), the waterfowl impoundment will see increased flow. There is philosophical debate in the scientific community that these five, 25, and 100 year heavy rainfalls are occurring at shorter intervals than their named frequency meaning that, if anything, the number of severe storms impacting the waterfowl impoundment may be increasing.

Water quality will also be changed. Right now, Chapel Hill only requires that a relatively high percentage (85%) of sediment be removed prior to discharge of stormwater. Still, not all sediment is removed. This will cause the nearby waterfowl impoundment to slowly fill with sediment over time. In manmade stormwater detention ponds, maintenance including periodic removal of sediment is required. In the case of Ayden Court, they are not required to clean outside their property limits.

Chapel Hill presently doesn't require that other common pollutants found in stormwater such as nitrogen and phosphorus be removed. The construction of Ayden Court will likely increase

nitrogen and phosphorus in stormwater compared with current conditions since these are the two active ingredients in fertilizer. Fertilizer would be expected to be used on the landscaped areas where now it is not.

Jordan Lake has been identified as a nutrient sensitive lake with the worst area that at the New Hope Creek discharge area. Ayden Court will drain into the waterfowl impoundment which drains into New Hope Creek. The nitrogen and phosphorus can cause increased algae and algal blooms in the waterfowl impoundment and exacerbate algae and other related problems in Jordan Lake. The algal plant cycle also lowers dissolved oxygen which adversely affects fish populations.

Ayden Court petitioners state that they plan to capture stormwater for irrigation reuse. Although water reuse is encouraged and will potentially lessen the nitrogen and phosphorus discharge into the adjacent waterfowl impoundment, the simple math of stormwater capture and reuse shows that 100% recycle does not occur. In addition, once the stormwater storage areas fill, additional stormwater will flow through the system into the impoundment. This is particularly significant during months in which irrigation isn't applied (winter months) or during times of sufficient rain when irrigation isn't needed.

In summary, I am opposed to making an exception to the comprehensive plan by allowing an exception to the land use plan because this project has not shown any compelling reason why such an exception should be made. Further, the project represents a significant potential of harm to the adjacent preserved area and wildlife habitat because of increased pollution loads including sediment, nitrogen and phosphorus.

Judy Weseman
Planning Board Member



THE UNIVERSITY
of NORTH CAROLINA
at CHAPEL HILL

ASSOCIATE VICE CHANCELLOR
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www.fpc.unc.edu

January 13, 2009

Mayor Kevin C. Foy
Town of Chapel Hill
405 Martin Luther King Jr. Blvd.
Chapel Hill, NC 27514

Dear Mayor Foy:

On behalf of The University of North Carolina at Chapel Hill Foundation, Inc. (the "Foundation"), I am writing in regard to the Aydan Court development proposal to express the Foundation's strong concern about the possibility of the Town Council imposing a 100 foot hunting/stormwater buffer and/or a 150 yard hunting safety buffer requirement on this project. As you are aware, the Foundation owns the Lloyd property, the 50+/- acre parcel adjacent to Aydan Court. To the extent that imposition of either or both of these buffers on the Aydan Court property would cause the Town to impose similar buffers on the Foundation's property, the Foundation objects in the strongest terms.

We have received information from Aydan Court developer Carol Ann Zinn and planner Scott Radway that shows that either buffer restriction on Aydan Court would have serious, negative implications for the development potential of the Foundation's property, as shown on the attached map. As can be seen, if a 150 yard buffer were imposed, the development potential of the lower portion of the Foundation's property would be severely limited and development of the northern portion would be impossible. Obviously, such limitations on the Foundation's property are highly objectionable. Moreover, such a buffer presents a problem since it would extend into an already developed area of The Cedars at Meadowmont.

Based on information provided to Ms. Zinn from the Army Corps of Engineers and the North Carolina Wildlife Resources Commission, these extensive buffer areas are "recommendations" only. Importantly, in one memorandum, the NCWRC, which generally recommends a 150 yard hunting safety buffer, makes clear that it would not be reasonable to impose such a buffer when it would take away all or most of the development potential of a property. In such a case, they instead recommend establishing the "widest buffer possible between the Game Land boundary and the permanently inhabited residences". We ask the Town Council to take a similarly reasoned approach to the matter when it continues its public hearing of the Aydan Court project.

Town of Chapel Hill
January 13, 2009
Page 2 of 2

In fact, such a buffer may be established entirely on the Game Land. While the Council's concern for the adjacent natural reserve area is understandable, it does not need to lead to a decision which would effectively bar development in the area. As we are all aware, development that is sensitive to the surrounding environment through such measures as stormwater and landscaping management can certainly be accomplished. It is our understanding that Aydan Court plans to implement such measures.

Thank you for your consideration of our comments.

Sincerely,


Bruce L. Runberg

Cc: Richard L. Mann, Vice Chancellor for Finance & Administration



**DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS**

B. EVERETT JORDAN DAM AND LAKE
P.O. Box 144
MONCURE, NORTH CAROLINA 27559

October 30, 2008

Mayor Kevin C. Foy
Town of Chapel Hill
405 Martin Luther King Jr. Blvd.
Chapel Hill, North Carolina 27514

Dear Mayor Foy:

It is my understanding that you and the Chapel Hill Town Council are considering requests for a zoning amendment and a special use permit for the proposed Aydan Court Townhomes and Condominiums development (File No. 9798-04-94-5193). The proposed development is located adjacent to Government property along the Little Creek portion of B. Everett Jordan Lake. The public lands at Jordan Lake are under the stewardship of the U. S. Army Corps of Engineers, Wilmington District.

Our letters of April 11 and October 17, 2007 regarding Aydan Court are enclosed for your consideration. Representatives of the Corps of Engineers and the North Carolina Wildlife Resources Commission also met with members of the Chapel Hill planning staff previously on two occasions. We appreciate the consideration given our comments by the Chapel Hill planning staff and the Planning Board. It is our understanding that the Board voted unanimously to deny the requested changes.

The public lands and waters at Jordan Lake support five Congressionally authorized purposes; water supply, maintenance of down stream water quality, flood damage reduction, recreation, and fish and wildlife conservation. As the steward of this public resource the Corps of Engineers is mandated to sustain the ability of the lands and waters to fulfill these purposes for current and future generations. The Corps cannot accomplish this task alone; we rely on the State of North Carolina, local governments, and all those that live in, work in, and visit the Jordan Lake watershed to each do their part.

I trust that you and the Town Council will consider possible impacts to public lands to water quality when making a determination on this request and other future requests in this area. Thank you for the opportunity to comment. If we may provide any additional information or clarification please contact me at telephone 919-542-4501, extension 23.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig S. Shoe", is written over the typed name.

Craig S. Shoe
Operations Manager
B. Everett Jordan Dam & Lake
Cape Fear River Lock & Dams

Enclosures



DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS

B. EVERETT JORDAN DAM AND LAKE
P.O. Box 144
MONCURE, NORTH CAROLINA 27559

October 17, 2007

Ms. Dana Stidham
Durham City-County Planning Department
101 City Hall Plaza
Durham, North Carolina 27701

Dear Ms. Stidham:

Thank you for the opportunity to comment on the proposed Ayden Court Townhomes and Condominiums project. This tract is located on the north side of NC 54 and is bordered on the northeast section by Federal property under the stewardship of the US Army Corps of Engineers at Jordan Lake.

Federal property in this area is leased to the State of North Carolina, designated in the Jordan Lake Master Plan as permanent wildlife lands and is managed by the North Carolina Wildlife Resources Commission (NCWRC) as game lands. Game lands are open to public hunting and fishing by licensed individuals in accordance with all NCWRC fishing, hunting, and trapping regulations.

On lots available for purchase adjacent to Federal property we request that the buyer be notified of activities that may occur on game lands such as hunting, forest management activities, and other recreational activities. One suggestion is to post signs adjacent to the game lands that notify potential buyers that hunting is allowed on game lands. Another way to protect the natural area and permanent wildlife lands is through the use of buffers.

It appears in the site plan that was submitted that you have planned for a buffer between Federal Lands and any lots for development. We appreciate your efforts to include a buffer in your plans. Typically when development occurs adjacent to natural areas and permanent wildlife management lands we recommend that a buffer of at least 100 feet of undisturbed vegetation be left along the boundary whenever possible. Buffers provide aesthetic benefits to adjacent private landowners and screen their property from changes on public lands that may result from forestry practices such as prescribed burns or timber harvests, and from public recreational activities. Additionally, buffers increase safety for landowners adjacent to public hunting areas as well as help protect water quality and minimize runoff from adjacent properties.

The waters of Jordan Lake and surrounding Federal Lands are managed for public drinking water supply, fish and wildlife habitat, natural resource based public recreation, and flood storage. Development of adjacent property can adversely impact these project purposes by decreasing the minimum flow from any streams on the property, increasing the volume or rate of storm water discharge from the property, increasing the sediment or nutrient loads leaving the property, and adversely impacting wetlands. Again, we recommend that a 100-foot buffer of undisturbed vegetation be left adjacent to the boundary to help protect water quality. Other steps should also be taken to avoid adverse water quality impacts including the incorporation of storm water retention/detention structures into storm water planning and by avoiding or minimizing impacts to wetland areas on the property.

We appreciate the opportunity to comment on this proposed development adjacent to public lands. If we can provide any additional information, please contact Francis Ferrell at the Jordan Lake Visitor Assistance Center (919) 542-4501 extension 28.

Sincerely,

A handwritten signature in cursive script, appearing to read "Craig Shoe", written in black ink.

Craig Shoe
Operations Manager
B. Everett Jordan Lake



**DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS**

B. EVERETT JORDAN DAM AND LAKE
P.O. Box 144
MONCURE, NORTH CAROLINA 27559

April 11, 2007

Mr. Scott Radway
Radway Design Associates
1709 Legion Road, Suite 210
Chapel Hill, North Carolina 27517

Dear Mr. Radway:

Thank you for the opportunity to comment on the proposed site plan for the Belvedere Development. The tract for development is located on the north side of the intersection of Hwy 54 and Downing Creek Parkway. The tract is bordered on the northeast by Federal property under the stewardship of the US Army Corps of Engineers at Jordan Lake.

Federal property in this area is leased to the State of North Carolina and is designated by the North Carolina Wildlife Resources Commission (NCWRC) as Permanent Wildlife Lands and managed as game lands. In addition, this area is managed as a waterfowl sub-impoundment and is open to public hunting and fishing by licensed individuals in accordance with all NCWRC Inland Fishing, Hunting, and Trapping Regulations.

On lots available for purchase adjacent to Federal property we request that the buyer be notified of activities that may occur on game lands such as hunting, forestry activities, and other recreational activities. One suggestion is to post signs adjacent to the game lands that notify potential buyers that hunting is allowed on game lands in accordance with all NCWRC regulations. Another way to protect the natural area and permanent wildlife lands is through the use of buffers.

There is typically a more concentrated amount of hunting activity on waterfowl sub-impoundments, therefore we would recommend that you increase the planned 10 foot buffer to a 100 foot buffer between any buildings or parking lots that border government property. We believe a 100 hundred foot buffer will provide more safety to any future residents and cut down on conflicts between residents and hunters.

When development occurs adjacent to natural areas and permanent wildlife lands we typically recommend a buffer of at least 100 feet of undisturbed vegetation be left along the boundary whenever possible. In addition to increased safety, buffers provide aesthetic benefits to adjacent private landowners. They also screen the property from changes on public lands that may result from forestry practices such as prescribed burns or timber harvests, and from other public recreational activities.

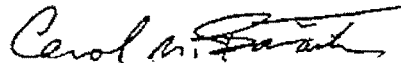
The waters of Jordan Lake and surrounding Federal Lands are managed for public drinking water supply, fish and wildlife habitat, natural resource based public recreation, and flood storage. Development of adjacent property can adversely impact

these management activities by decreasing the minimum flow from any streams on the property, increasing the volume or rate of storm water discharge from the property, increasing the sediment or nutrient loads leaving the property, and adversely impacting wetlands. Again, we recommend that a 100-foot buffer of undisturbed vegetation be left adjacent to the boundary to help protect water quality.

Other steps should also be taken to avoid adverse water quality impacts including the incorporation of storm water retention/detention structures into storm water planning and by avoiding or minimizing impacts to wetland areas on the property. If you have not done so already you should coordinate with the U.S. Army Corps of Engineers Regulatory Office in Raleigh to discuss any possible impacts to the intermittent stream on the property.

Again, we appreciate the opportunity to comment on this proposed development adjacent to public lands. If we can provide any additional information, please contact Francis Ferrell at the Jordan Lake Visitor Assistance Center (919) 542-4501 extension 28.

Sincerely,



Carol M. Banaitis, R.F.
Operations Manager, Acting
B. Everett Jordan Lake

CF:
Ms. Gail Sharron
Durham City-County Planning Department
101 City Hall Plaza
Durham, North Carolina 27701

J. B. Culpepper, Director
Chapel Hill Town Planning Department
Town Hall, 3rd Floor
405 Martin Luther King Jr. Blvd
Chapel Hill, North Carolina 27514

Isaac Harrold
NC Wildlife Resources Commission
2513 White Pine Lane
Mebane, North Carolina 27302-8133

Combined Correspondence in Support

From: jzeggers@aol.com [mailto:jzeggers@aol.com]
Sent: Wednesday, March 18, 2009 11:17 AM
To: Town Council
Subject: re Aydan Courtt

Subject: Aydan Court Support

To the Mayor and Council:

I have been following Aydan Court. I think it is a very good development. Please approve it, and please approve the zoning district you need in order to approve Aydan Court.

Aydan Court has been in the development review process for two years. It deserves a fair hearing. With people who oppose growth pressing you, I can see that Aydan Court is not getting a fair hearing. That really concerns me. I think each development that goes through your review deserves a fair hearing, and I think Aydan Court has a lot to offer Chapel Hill.

If you were concerned about growth and density where the Aydan Court location is, why didn't you tell this to the developer at first and save them all their money?

You talk about your concern for protecting the Impoundment, and then when the Aydan Court developer creates a stormwater system which does this, then you don't talk about environment, instead you talk about growth and density. I am counting on you for follow through on questions and positive statements you have made in the past about Aydan Court.

When I look at what is happening around this project, I feel that I am looking at a confused process. This seems strange to me, because I believe Aydan Court is a very good development and located in the right place, next to UNC property which will be densely developed.

Thank you for taking the time to carefully consider my remarks.

Joan Eggers

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From: Rick Ricozzi [mailto:rricozzi@mac.com]
Sent: Wednesday, March 18, 2009 10:22 AM
To: Town Council
Subject: Subject: Aydan Court Support

Mayor Foy and Council:

I hope you will give a positive vote to the amended R-SS-C zoning district for use for Aydan Court and a positive vote for Aydan Court on March 23.

I have been watching with interest the Aydan Court process. Please do not turn away from your publicly stated goals of comparing single family and Aydan Court. This must be done. And if Aydan Court turns out to be better (as I think it will), please approve this exceptional development.

Aydan Court has been going through the development review process for over 2 years. You said you liked Aydan Court at concept review in May 2008, and you told the developer to proceed. In June 2008 you told Planning Dept. to change wording for an existing zone for this project. These were positive indications, and the developer proceeded. This developer stated several months ago that she had spent \$600,000 already to get to that point. After all this time, and with a developer who has acted in good faith, who has not shirked from providing environmental protection for the Impoundment and making other contributions to Chapel Hill, please do not bend to the anti growth people who are out in force. What kind of message does this send to our community?

With its responsible environmental programs, this development is a model for enlightened development in our town. People seem to be reacting to the East 54 development, or to the prospect of Glenn Lennox development, and not really considering what is Aydan Court and what it offers our community. This developer has gone beyond the extra mile to give you and our community a project which excels in all respects.

Thank you for thinking about this.



From: Erin Daniel [mailto:erinproperties@gmail.com]
Sent: Wednesday, March 18, 2009 1:21 PM
To: Town Council
Subject: Aydan Court Project

To the Mayor and Council:

I have been closely following the proceedings regarding Aydan Court, a well thought out and well designed neighborhood that will provide benefit both in terms of alternative living for people, as well as making major contributions to nearby local businesses.

As I have stated before this project is, hands down, a better plan than a few sprawling McMansions that would negatively impact the enviroment more than well thought out compact living.

For over two years now, Carol Ann Zinn has been meeting and answering every request you have made and has spent an immense amount of time and money in trying to do

so. When you raised a concern she answered it, and if she couldn't, she employed the help of experts to derive alternative solutions to resolve issues. In fact her proposed resolutions don't only solve a problem, but in the case of the storm water management system she is proposing, the solution can actually serve as a future model for other developers who desire to develop **responsibly**.

Aydan Court deserves a fair hearing. With people who oppose growth pressing you, I can see that Aydan Court is not getting a fair hearing. That really concerns me. I think each development that goes through your review deserves a fair hearing, and I think Aydan Court has a lot to offer Chapel Hill.

It seems the tune continues to switch from "anti-environment" to now "anti-new growth". Which is it? And if all along it has been "anti-new growth" then why wasn't she informed of this two years ago, which would have saved her an immense amount of time and money.

Moreover, sending a message of anti-growth especially during times when growth is going to be what pushes this economy forward seems counter intuitive. Chapel Hill continues to be an incredibly desirable place to live and there is no evidence to suggest that this will change. With the tax rates that we face and the struggling independent businesses that continue to fold, it seems that you all would be in support of defraying tax costs and aiding businesses by allowing more people the opportunity to live in our area. When this is proposed and developed RESPONSIBLY, as Carol Ann Zinn wants to do, you should not hesitate to take a serious and fair look at it.

While I realize there are other projects that have caused people concern, namely 54 East and the Glen Lennox project, Aydan Court should not automatically be lumped in with these projects. It deserves to stand alone and be considered independently. If your review the history in Chapel Hill, communities like Southern Village and Meadowmont faced an enormous amount of objections from the community and yet these two neighborhoods have been incredibly successful, both in terms of providing wonderful locations to live and work and places for independent businesses to thrive.

While it is easy to be swayed by numbers at a meeting, your responsibility as elected officials is to evaluate each project on its own merits.

Thank you for taking the time to carefully consider my remarks.

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Erin S. Daniel
Claremont Sales Office
Prudential York Simpson Underwood
T. 919.967.1813
M. 919.260.0700

www.claremontchapelhill.com
claremonthomes@gmail.com

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From: MAR MAR [mailto:marmarwright@yahoo.com]
Sent: Wednesday, March 18, 2009 1:02 PM
To: Town Council; Gene Poveromo; JB Culpepper
Cc: Scott Wright; Sheryl Wright; nannie maxwell; Lucas Wright; Mom Dad; alan@hackettbrass.com
Subject: AYDAN COURT CALL TO ACTION

Mayor Foy and Council:

I hope you will give a positive vote to the amended R-SS-C zoning district for use for Aydan Court and a positive vote for Aydan Court on March 23.

I have been watching with interest the Aydan Court process. Please do not turn away from your publicly stated goals of comparing single family and Aydan Court. This must be done. And if Aydan Court turns out to be better (as I think it will), please approve this exceptional development.

Aydan Court has been going through the development review process for over 2 years. You said you liked Aydan Court at concept review in May 2008, and you told the developer to proceed. In June 2008 you told Planning Dept. to change wording for an existing zone for this project. These were positive indications, and the developer proceeded. This developer stated several months ago that she had spent \$600,000 already to get to that point. After all this time, and with a developer who has acted in good faith, who has not shirked from providing environmental protection for the Impoundment and making other contributions to Chapel Hill, please do not bend to the anti growth people who are out in force. What kind of message does this send to our community?

With its responsible environmental programs, this development is a model for enlightened development in our town. People seem to be reacting to the East 54 development, or to the prospect of Glenn Lennox development, and not really considering what is Aydan Court and what it offers our community. This developer has gone beyond the extra mile to give you and our community a project which excels in all respects.

Thank you for thinking about this.

Marcia Wright

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From: Debwelch22@aol.com [mailto:Debwelch22@aol.com]
Sent: Wednesday, March 18, 2009 12:31 PM
To: Town Council; Gene Poveromo; JB Culpepper
Subject: No Subject

Councilors, please do not bow to anti-growth elements who seem to be confusing their feelings about 54 East and Glenn Lennox with Aydan Court, a well-conceived development of which Chapel Hill will be proud. Aydan Court deserves your approval. Please don't be the Council to put your head in the sand and think growth will not take place. Your job is to plan for growth sensibly. Please don't be the Council that voted to put large lot single family sprawl in place of a beautiful, compact, progressive design like Aydan Court. Please don't be the Council who rejected a state-of-the-art storm water facility in place of single family large lot storm water dumping into the Impoundment. And please don't be the Council who ignores the current economic issues and turns away jobs, and desirable housing for our community. Thank you for your consideration. Debbie Welch

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From: Dave Nelson [mailto:dave@helpusellcarolina.com]
Sent: Wednesday, March 18, 2009 11:42 AM
To: Town Council; Gene Poveromo; JB Culpepper
Subject: Subject: Aydan Court Support

Mayor Foy and Council:

I hope you will give a positive vote to the amended R-SS-C zoning district for use for Aydan Court and a positive vote for Aydan Court on March 23.

I have been watching with interest the Aydan Court process. Please do not turn away from your publicly stated goals of comparing single family and Aydan Court. This must be done. And if Aydan Court turns out to be better (as I think it will), please approve this exceptional development.

Aydan Court has been going through the development review process for over 2 years. You said you liked Aydan Court at concept review in May 2008, and you told the developer to proceed. In June 2008 you told Planning Dept. to change wording for an existing zone for this project. These were positive indications, and the developer proceeded. This developer stated several months ago that she had spent \$600,000 already to get to that point. After all this time, and with a developer who has acted in good faith, who has not shirked from providing environmental protection for the Impoundment and making other contributions to Chapel Hill, please do not bend to the anti growth people who are out in force. What kind of message does this send to our community?

With its responsible environmental programs, this development is a model for enlightened development in our town. People seem to be reacting to the East 54 development, or to the prospect of Glenn Lennox development, and not really considering what is Aydan Court and what it offers our community. This developer has

gone beyond the extra mile to give you and our community a project which excels in all respects.

Thank you for thinking about this.

David C. Nelson

Broker

Help-U-Sell Tar Heel Realty

1229 E. Franklin Street

Chapel Hill, NC 27514

Office (919) 636-4145

Cell (919) 604-0932

Fax (919) 869-1361

www.helpusellcarolina.com

dave@helpusellcarolina.com



NEW HOPE AUDUBON SOCIETY

PO Box 2693 • Chapel Hill, North Carolina 27515 • www.newhopeaudubon.org

February 9, 2009

Mayor and Council

Although we have already sent a letter to you concerning this matter, we feel very strongly that approving a rezoning in this case would set a very bad precedent that the Town Comprehensive Plan does not support in any manner. The New Hope Audubon Society, serving Chatham, Durham, and Orange Counties, formally opposes the rezoning of Aydan Court property. We believe the potential rezoning would allow too much density on one of the most sensitive parcels in Chapel Hill. We urge the Council to reject the Rezoning Application and Special Use Permit for the Aydan Court development for the following reasons:

- 1) the high density development lies directly adjacent to the Upper Little Creek Impoundment (that has been declared impaired by the NC DENR) with the Resource Conservation District buffering on part of the tract;
- 2) the tract is in the Lake Jordan Watershed that has also been declared impaired by the NC DENR, in part from nutrient loading and sediment runoff from Chapel Hill
- 3) the tract is also designated as a State Natural Heritage area; and
- 4) the specific characteristics of this property would require a massive grading of steep slopes, resulting in extensive runoff and pollution of the watershed.
- 5) The North Carolina Legislature is currently considering the Jordan Lake Rules, brought about largely because of the excessive sedimentation of the streams flowing into Jordan Lake. Projects such as this one are one of the reasons Jordan Lake is in such an impaired condition.

Using a denser zone is not appropriate for this environmentally sensitive tract. The Land Use Management Ordinance (LUMO) sets strict guidelines for allowable disturbance of steep slopes. We ask the Council not to rezone nor grant exceptions to the steep slope standards or the RCD in the LUMO for this special area. Making arguments for granting exceptions may have a place for an over-riding public purpose, but not for this special area. A denser zone should not be allowed adjacent to impaired bodies of water; instead, we in Chapel Hill should be enacting more stringent rules to improve impaired bodies of water (especially those bodies of water that we plan to use as drinking water).

There is no necessity to rezone this property. As we know Chapel Hill's Comprehensive Land Use Plan offers us a framework and goals for development. One key goal in the plan to identify, protect, and preserve open spaces and critical natural areas. This goal clearly does not support this kind of rezoning.

Thank you for your consideration.

Sincerely yours,

Robert Howes, President
New Hope Audubon Society

Dear Mayor Foy and Council members:

My name is Mike Collins, and tonight I'm speaking on behalf of the grass-roots citizen group Neighborhoods for Responsible Growth, or NRG.

Many times we are forced to make difficult choices when it comes to changes in our community. Do the benefits of the change outweigh the impact on existing conditions? It is often difficult to see what is right.

This is not one of those times.

The application before you proposes to place a dense residential development adjacent to one of the most environmentally sensitive areas in our community.

On October 20th of last year, NRG urged the Council to reject the Rezoning Application and Special Use Permit for the Aydan Court development for the following reasons:

- 1) the high density development lies directly adjacent to the Upper Little Creek Impoundment with the RCD buffering on part of the tract;
- 2) the tract is in the Lake Jordan Watershed;
- 3) the tract is part of an area designated as a State Natural Heritage area;
- 4) development would require a massive grading of steep slopes, potentially resulting in extensive runoff.

To approve this development, you must vote against the unanimous recommendation of the Planning Board, and against the recommendation of the Town staff. NRG can see no compelling advantages to this proposal that would justify such a vote.

- Construction of Aydan Court will require a variance to permit greater disturbance of steep slopes than is allowable under the LUMO - adjacent to the very watershed that the steep slopes requirements were enacted to protect. While much attention has focused on the slopes >25%, wide areas of other slopes on this rolling tract will be disturbed, with potentially serious consequences for the ecology of the Waterfowl Impoundment.
- The Aydan Court proposal is calling for application of the newly revised R-SS-C zone. For it to qualify under this zone, it must comply with each of the 9 objectives. It fails on most if not all of them:

Zone point 3. Aydan Court will not result in increased balance in our local transportation system. Residents will be relatively isolated, and are likely to be older empty nesters. They will drive to and from their destinations.

Zone point 4. Aydan Court does not promote a healthy downtown district. It is too far away, and it is unlikely that residents will use transit or pedestrian facilities even to access nearby Meadowmont, let alone downtown.

Zone point 5. Aydan Court will not promote public or private art in any measure that will significantly benefit the community. Its very design and location

will discourage access by non-residents, and it will not be visible from the roadway. Any art on display will be seen only by the residents.

Zone point 6. Regarding protection of adjoining residential uses and neighborhoods, the applicant has suggested that this objective does not apply. While this may be true in the strictest sense, many if not most of us consider the Waterfowl Impoundment to be an important natural 'residential area,' if you will, and the amount of disturbance will not produce something that is '...congruous and sensitive to the surrounding residential areas.'

Zone point 7. The proposal fails on point #7 most severely. Protection of steep slopes is explicitly called for under this point. The proposed disturbance should not be undertaken adjacent to such a sensitive ecology.

Zone point 8. It is the opinion of NRG that the very siting of such a development next to such a sensitive area is by definition ecologically unsound. The applicant acquired the property and began planning this development after the stricter steep slopes regulations were enacted and must have been aware of them.

Zone point 9. Aydan Court does nothing to encourage a community character that promotes environmental protection or social equity. This will not be a development that my family or most of my acquaintances would be able to afford, and if approved, will come to be seen as one of our community's worst examples of disregard for the environment in the name of profit.

We submit that this application does not satisfy any but the most uncontroversial objectives of the R-SS-C zone. For that reason we urge that you vote for denial as the staff has recommended.

Regarding the R-SS-C zone itself, and whether it should be extended to apply to the Meadowmont area, we ask that the Council NOT take that action. When the modifications to this zone first came under consideration, NRG stated its concerns about the fact that this zone appeared to be being designed and applied to accommodate a single development application, rather than the result of a thorough and comprehensive process. We believe extending this zone simply to accommodate Aydan Court would compound this problem, making it difficult to refuse similar future requests from developers. Greater density zones should be the product of careful deliberation and planning with the entire community in mind.

Lastly, NRG has followed the progress of the Aydan Court development closely. Several aspects of the debate have come to concern us greatly, and we believe they deserve explicit rejection by the Council.

Specifically, we have listened with mounting consternation as the threat of a less appealing alternative to the proposed Aydan Court development has been dangled before Council, should Aydan Court fail to be approved.

We urge you to reject this approach in the sternest terms. Any legitimate development proposal placed before the town staff and elected officials deserves respectful consideration. However, to suggest that worse alternatives are in the wings if a proposal is not approved is an approach unworthy of the level of debate to which we are accustomed in Chapel Hill.

You will shortly vote to approve or deny this application; if you choose the latter, the sun will still rise tomorrow, and the applicant will still have the right to attempt another proposal more in line with the wishes of the community and consistent with our ordinances and community values. Whether that or any future proposal for this property will be suitable must be judged on a case by case basis, on its merits and in the context in which it is presented.

Whatever considerations you may weigh in your decision, we urge you to reject the shadow of some future less palatable proposal. Should such occur, you will be able to consider it at that time in the light of day, and so will the public.

Thank you for your consideration.

Mike Collins, NRG

October 20, 2008

Good evening Mayor Foy and Town Council members:

I am speaking tonight on behalf of Neighborhoods for Responsible Growth, or NRG.

NRG is a grass-roots group of citizens who have come together to advocate for sustainable development that promotes and maintains the quality of life in our community. As our name indicates, we understand that communities must grow to survive, but also believe that when it is not done responsibly, growth can also harm a community. Growing responsibly means giving due consideration to all aspects of sustainability: the environment, the local economy, and social equity. It is impossible to achieve some of these goals by sacrificing the others.

For that reason, NRG urges the Council to reject the rezoning application and SUP before you for the Aydan Court Development.

This high density development is proposed for an environmentally sensitive area, and lies directly adjacent to the Little Creek Waterfowl Impoundment with minimal buffers. The tract is in a watershed to Jordan Lake and has low lying wetland areas which will discharge close to the Lake. The area is also designated as a State Significant Natural Heritage Area. This application does not adequately address these constraints, nor do we believe that is possible with a development of this intensity.

Several years ago, as part of the new Land Use Management Ordinance, the Council adopted stricter guidelines for allowable disturbance of steep slopes. This forward-looking regulation was designed in part to reduce and halt the silting of Jordan Lake, much of which was being driven by intensive development in the Jordan Lake watershed.

The development before you flies in the face of these standards. It proposes a zone allowing denser development adjacent to a sensitive area. It calls for exemptions to the steep slopes regulations, and indeed will result in disturbance to all of the steep slopes on the area of the lot located behind the initial cut-through entryway. It places high-density residential development adjacent to an area used for hunting.

While we may have good intentions, our ability to predict and manage runoff from construction and developments is still uncertain. What is certain is that this development will have a negative impact on the sensitive area in which it is located.

We would like to point out that Chapel Hill's most recent Land Use Plan designates this area as parks and open space. It is currently zoned R-1 for low-density residential. We believe these assessments were and still are correct, and reflect the will of the larger community concerning environmental protection. The environmental sensitivity of this area should preclude the type of intensive development being proposed here.

We urge the Council to reject the rezoning and Special Use Permit for the Aydan Court development.

Thank you.

Julie McClinton
10/20/2008

Date: October 20, 2008

To: Chapel Hill Town Council

From: George Cianciolo

Re: My Reasons for Opposing Aydan Court – Application for Zoning Atlas Amendment

Council Members:

Along with seven other members of the Planning Board (PB) I voted on September 2, 2008 to recommend that the Chapel Hill Town Council deny the application for a Zoning Atlas Amendment for the Aydan Court Project. I am convinced that this project does not meet the goals of the Chapel Hill Comprehensive Plan, in particular because it does not comply with the Land Use Plan adopted and revised by the Council in January of this year.

It is of interest that the Town Manager has deferred making a recommendation on this application at this time because, in his words, "The Comprehensive Plan contains some conflicting values that are challenging to balance at times. In particular, the Aydan Court site is environmentally sensitive but also located on a major transportation corridor, prompting higher density development considerations." I agree that there are conflicting values but I believe that one value clearly outweighs the other.

My Points:

- (1) It is true that this project is on a major transportation corridor, prompting higher density development considerations. But in the Chapel Hill Land Use Plan, last revised in January 2008, this area continues to be recognized as park/open space or R-1. There have been no changes in the last 10 months that would, in my mind, justify increasing the risk to the environment, particularly through a Zoning Atlas Amendment designed to allow development dependent on major variances to existing regulations. Certainly the increased tax base the proposed application might bring is not a sufficient justification for increasing that risk.
- (2) The applicant's justification that this provides high density housing along a transit corridor rings hollow. The applicant proposes 2.1 parking spaces per unit. In comparison, another applicant proposing a zoning atlas amendment from an existing zone to the same new zone only proposed 1.6-1.7 parking spaces per unit. In an advisory board meeting I believe that the applicant stated that there would be no need to build the internal streets to Chapel Hill standards because there would be no need to run buses through the project since the residents living there would be unlikely to use bus transportation. The number of requested parking spaces suggests that this development is designed to be served primarily by automobile rather than transit.

The number of dwelling units that this Zoning Atlas Amendment would allow over the number allowed under current zoning is not going to make a major difference in the 'transit friendliness' of this corridor but it has the potential for making a major, negative impact upon the environment.

- (3) The applicant is requesting a 150% increase in the amount of land disturbance on steep slopes greater than 25% over that allowed by LUMO. For an area as environmentally-sensitive as this, such a request is, in my opinion, totally unjustifiable. In my 3+ years on the Planning Board and 9+ years on the Community Design Commission I cannot recall any project ever requesting such a large variance from the steep slope regulations.
- (4) In their material stipulating how this project addresses the themes of the Comprehensive Plan the applicant states (their point #3) that there are no existing neighborhoods directly abutting Aydan Court. I strongly disagree. There is a neighborhood (Upper Little Creek Waterfowl Impoundment Area) whose residents consist of birds, ducks, geese, bald eagles, small and large mammals and various forms of plants and freshwater organisms. The proposed project not only abuts but is actually in the neighborhood since it is located within a state-designated Significant Natural Heritage Area. The residents of this neighborhood cannot come to this public hearing and petition the Council for protection so they require the Council to act on their behalf. To say that these 'neighbors' have no voice is to disregard years of Council actions.
- (5) The applicant stipulates (their point #4) that this addresses another theme of the Comprehensive Plan by conserving and protecting the natural setting of Chapel Hill. They state that the Upper Little Creek Waterfowl Impoundment Area will be protected primarily by the high standards adopted by the Town of Chapel Hill. We have seen other projects in Chapel Hill where residents come back later complaining that silt runoff has not been adequately controlled despite our best efforts.

If we have learned anything from the past decade, on local, national and international levels, it is that we continue to underestimate man's negative impacts upon the environment and to overestimate man's ability to mitigate such impacts after the fact. This environmentally-sensitive area, probably one of the most, if not the most, sensitive area in Chapel Hill's planning jurisdiction, should not be a training ground to see how much we can 'bend the rules' we already have in place since we already know that even these rules may not be sufficient.

- (6) The applicant's stipulation (their #8) that this allows cooperative planning with UNC-CH carries no value. The experiences of the Chapel Hill Town Council in coordinating planning development with the University suggest that that a single private developer, with no regulatory authority, will have negligible influence, if any, on what occurs on the University's adjoining property.

In summary, I believe that the applicant's proposed Zoning Atlas Amendment to allow higher density development on this site, while potentially appropriate for a designated transit corridor, does not even begin to justify the risk to one of Chapel Hill's most environmentally-sensitive areas. Chapel Hill residents have a long history of seeking to protect the environment and the Chapel Hill Town Council has a strong record of supporting its citizens' commitment to the environment. This is not the time to soften that commitment – if anything it is the time to reaffirm it. I realize that there is a potential gain of tax base if the Council approves the requested Zoning Atlas Amendment but, if I might paraphrase a quote from a movie:

"Principles probably mean a lot more if you stick to them when it's inconvenient"

Amy Harvey

From: Steve Hall [stephen.hall@ncmail.net]
Sent: Monday, October 20, 2008 4:56 PM
To: All Agenda Materials
Subject: Comments on the Proposed Ayden Court Development

The proposed Aydan Court development falls within the boundaries of the Little Creek Bottomlands, a Significant Natural Heritage Area identified in inventories of Durham County conducted by the North Carolina Natural Heritage Program (Hall, 1995; Hall et al., 1999). Although no state or federally listed species are known to reside within this site, it contains one of the last remnants in the state of the large bottomland forests that once dominated the Triassic Basins and still supports a high diversity of the wildlife typical of this region.

The uplands that border the floodplain of Little Creek are an integral part of this natural area, providing important buffers against the penetration of noise, lights, domestic animals, and other types of disturbances associated with developed areas. The upland buffers surrounding the wildlife sub-impoundments - such as the one that adjoins the proposed project - are particularly important, in that they provide important areas of refuge for non-aquatic species during the winter months when waters are backed up to the very edge of the floodplain.

In our conservation recommendations for this site, as well as other sites located within the Army Corps Lands at the upper end of Jordan Lake, we have strongly supported the protection of these upland buffers that were largely left out of the original Corps purchase. The construction of high density developments within these natural areas is completely contrary to these recommendations. Consequently, we urge that the current zoning for this site be retained.

References:

Hall, S.P. 1995. Inventory of the wildlife habitats, movement corridors, and rare animal populations of Durham County, North Carolina. NC Natural Heritage Program, Durham County Inventory Review Committee, and Triangle Land Conservancy.

Hall, S.P.; Sutter, R.D.; Pullman, E.; Simpson, A.C.; and Wilson, A.C. 1999. Durham County inventory of important natural areas, plants, and wildlife. NC Natural Heritage Program, Durham County Inventory Review Committee, and Triangle Land Conservancy.

Stephen Hall, Invertebrate Zoologist
NC Natural Heritage Program



NEW HOPE AUDUBON SOCIETY

PO Box 2693 • Chapel Hill, North Carolina 27515 • www.newhopeaudubon.org

Chapel Hill Town Council
405 Martin Luther King Jr. Blvd
Chapel Hill, NC 27514

October 20, 2008

Re: Aydan Court

Dear Mayor and Council:

We are opposed to the proposed Special Use Permit and the Zoning Atlas Amendments that are under consideration for the Aydan Court development. We believe development of this property will be detrimental to the water quality of the Jordan Lake Watershed. With the steep slopes on this property that empty into the Jordan Lake Watershed, we believe there is no way to prevent sedimentation from the building of the proposed complex. Building on this site would cause storm water runoff problems, thus the project would cause water quality issues that would continue in the future. Sedimentation and runoff will affect those downstream who rely on this water for drinking and have an adverse effect on wildlife in the areas directly adjoining this property.

In addition, the area adjoining this property is owned by the US Army Corps of Engineers and managed for wildlife purposes by the NC Wildlife Resources Commission. The Jordan Lake Watershed waterfowl impoundment is a popular hunting destination for many of our local hunters. Putting 58 dwellings next to an actively hunted property is an invitation to a disaster. At best, the close proximity will engender complaints about hunters and hunting.

The New Hope Audubon Society, advocate for nature and the environment for Chatham, Durham, and Orange Counties, strongly urges the Chapel Hill Town Council to reject the various applications of Cazco regarding this development. The sensitive environmental areas under consideration would not survive such drastic changes to the nature and character of the land.

We urge the Council to follow the lead of the Planning Board and reject Cazco's applications for a Special Use Permit and rezoning requests. If you have any questions or would like to discuss this matter further, then please contact me at 919 370 3202.

Sincerely,

Robert Howes, President
New Hope Audubon Society

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Oct 20, 2008

Dear Mr. Stancil,

How are you? My name is Dr. Henry Veggian. I teach in the department of English at UNC Chapel Hill, where I am also faculty advisor to the Carolina Fishing Club.

I am writing to you with respect to the imminent vote on the development near Little Upper Creek Waterfowl Impoundment. Our Fishing Club often uses the impoundment to for a variety of activities. These include fishing as well as community service projects such as clean-ups and outdoor activities such as nature walks, kayaking, and bird-watching.

As a result, the members and I have witnessed first hand the adverse effects of development in the area of the Creek.

For example, last year I reported a series of oil spills in the creek to the State Game Commission. They determined these were created by run-off, but the result was terrible: algae blooms that depleted oxygen levels, fish kills, and a permanent layer of chemicals in the sediment that will affect the entire food chain and spread to the rest of the area. Over the past 2 years alone, development in the area has reduced a once vibrant wetlands march into a sad wasteland.

A new development will only contribute to this problem. Even if it is built according to the most progressive environmental standards, the increase in car and human traffic will nonetheless further damage the Impoundment. I urge you to resist adding to the continued deterioration of a natural resource that is vital to all members of the local outdoors community, including the good students of our fishing club at UNC Chapel Hill, who learn responsible environmental practices from that resource even as they use it.

Sincerely,

Dr. Henry Veggian
torino3@email.unc.edu