

MEMORANDUM

TO: Roger L. Stancil, Town Manager

FROM: Ray (Butch) Kisiah, Parks and Recreation Director
Bill Webster, Assistant Parks and Recreation Director
J.B. Culpepper, Planning Director

SUBJECT: Land Use Management Ordinance Text Amendment – Recreation Requirements and Payments in Lieu

DATE: May 18, 2009

PURPOSE

Tonight the Town Council continues the public hearing from April 20, 2009. Adoption of the attached ordinance would enact a proposed Land Use Management Ordinance text amendment regarding various sections of Article 5.5 of the Land Use Management Ordinance and associated definitions.

BACKGROUND

On July 10, 2008, House Bill 2580 was ratified by the General Assembly. The bill provides enabling legislation that allows the Town to make changes to the Town's Land Use Management Ordinance related to payments in lieu of Recreation Area and Recreation Space.

We have also identified sections of Article 5.5 of the Land Use Management Ordinance that could be improved to help clarify the intent of the ordinance and shift resources required for recreation purposes to more effective uses.

On April 20, 2009 the Council opened a public hearing to consider language amending various sections of Article 5.5 of the Land Use Management Ordinance. No comments were received.

The Council also moved a public hearing originally scheduled for June 15 to a public hearing date on October 19, 2009. This public hearing is scheduled to consider language related to requiring recreation space requirements for non-residential development that is proposed in the form of Special Use Permit applications.

DISCUSSION

We have identified three general categories of proposed changes to Article 5.5 of the Land Use Management Ordinance:

- Changes related to the ability of the Council to require payments in lieu of Recreation Area and Recreation Space.
- Language that would provide greater clarity to the ordinance and better highlight the importance of the Town's greenways program.

- Changes to the definitions section of the ordinance to better address Recreation Area and Recreation Space.

The staff and Town advisory boards have agreed on the language proposed in the attached ordinance.

PROPOSED CHANGES THAT WOULD ALLOW THE COUNCIL TO REQUIRE PAYMENTS IN LIEU OF PROVIDING ON-SITE RECREATION AREAS AND RECREATION SPACES

Requiring Recreation Area Payments in Lieu – Section 5.5.2(d)(2): Currently the ordinance allows the Council to require payments in lieu of Recreation Area if the required area is 2 acres or less. In 2008, the North Carolina General Assembly enacted legislation that gives the Town authority to increase the threshold for requiring payments in lieu of Recreation Area from the current 2 acres to 4 acres or less.

We think that increasing the limit would give the Council more flexibility to allow resources intended for improving recreational opportunities in the Town to be used in the most effective manner. In some cases the future residents of a proposed subdivision could be better served if nearby public facilities are improved using a payment in lieu rather than providing an unimproved Recreation Area within the subdivision. The attached ordinance includes language increasing the threshold from 2 acres to 4 acres.

Requiring Improved Recreation Space Payments in Lieu - Section 5.5.2(h): Currently the Town Land Use Management Ordinance has no provision under which to require payments in lieu of improved Recreation Space, although we have a formula for calculating voluntary payments. The General Assembly has enacted legislation that now gives the Town authority to require payments in lieu of Recreation Space.

Adding the provision to require payments in lieu of Recreation Space to the Land Use Management Ordinance would give the Council more flexibility in dealing with multi-family development applications. We believe that in many past cases the provision of improved Recreation Space on-site has been ineffective. This seems to be especially true with smaller developments that do not have enough useable land and/or are not obligated to provide enough land for meaningful recreation facilities. We believe that in some cases resources could be better spent by improving nearby public facilities instead of trying to provide inappropriate Recreation Space improvements on projects that do not have an adequate amount or configuration of land to provide beneficial facilities for their residents. Suggested changes are shown in the attached Land Use Management Ordinance language.

PROPOSED CHANGES THAT WOULD RESULT IN GREATER CLARITY AND AN INCREASED RECOGNITION OF THE TOWN'S GREENWAYS PROGRAM

Changes Suggested for Clarity- Title of Section 5.5; Sections 5.5.2(a), 5.5.2(b)(3), 5.5.2(d)(1), 5.5.2(g), and 5.5.2(h): A number of minor changes are suggested throughout the draft document that are not substantive, but would improve clarity.

Required Review by the Greenways Commission - Section 5.5.1(c): We have added draft language that would require review by the Greenways Commission in the event that a development proposal impacts an identified greenway.

Use of Payments in Lieu Funds for Greenways – Section 5.5.2(d)(3) and 5.5.2(h): We have inserted the word “greenway” in the list of items for which payments in lieu can be used.

Changes to Exemption Provision - Section 5.5.2(e): The Council’s ability to grant an exemption if the required Recreation Area is less than 3,000 square feet would be retained. However, in order to provide the Council greater flexibility, specific reasons for such exemptions have been removed.

Greenway Land Dedication – Sections 5.5.2(b)(2), 5.5.2(e)(2), and 5.5.1(g): The current provision requires land to be dedicated to the Town if it abuts a Greenway corridor identified in the Comprehensive Plan. The provision was expanded in the preliminary staff recommendation to include the same requirement if the project is adjacent to a Greenway corridor identified in a greenway project conceptual plan or project master plan adopted by the Council. We currently have Council adopted conceptual plans for the Bolin Creek and Dry Creek Trails that vary in some ways from language in the older Greenways Master Plan, which is a part of the Comprehensive Plan. We have added language to the ordinance that would require dedication for Council approved greenways plans.

Calculation of Payments in Lieu of Recreation Space - Section 5.5.2(h): The recommended language would better describe the method for determining how to calculate payments in lieu of Recreation Space. Recreation Space is calculated by multiplying the amount of required Recreation Space by a dollar amount established by the Council in each year’s budget. Currently the amount is \$12 per square foot.

Definition of Recreation Area - Appendix A: The current Land Use Management Ordinance does not include a definition of Recreation Area. We believe that such a definition might be useful to all parties involved in the development process. We recommend deleting the definition of Recreation Land because there is no corresponding reference to Recreation Land in the body of the Land Use Management Ordinance.

Definition of Recreation Space - Appendix A: We propose a new definition of Recreation Space that includes examples of active facilities as well as examples of facilities that would not be considered active. The definition also proposes that up to 30% of the recreation space may consist of passive recreation elements if they are located adjacent to and support the more active recreation elements. For example, some picnic facilities, seating, and lawn games could be counted if they are adjacent to a children’s play area, basketball court, or swimming pool and support the mission of the active area.

ZONING AMENDMENT

Article 4.4 of the Land Use Management Ordinance establishes the intent of Zoning

Amendments (including both atlas and text amendments to the Ordinance) by stating that, “In order to establish and maintain sound, stable, and desirable development within the planning jurisdiction of the Town it is intended that this chapter shall not be amended except:

1. to correct a manifest error in the chapter; or
2. because of changed or changing conditions in a particular area or in the jurisdiction generally; or
3. to achieve the purposes of the Comprehensive Plan.

Article 4.4 further indicates: It is further intended that, if amended, this chapter be amended only as reasonably necessary to the promotion of the public health, safety, or general welfare, and in conformance with the Comprehensive Plan.

a) An amendment to the Land Use Management Ordinance (text amendment) is necessary to correct a manifest error in the chapter.

Staff Comment: We believe the information in the record to date can be summarized as follows:

1. Argument in Support: We are unable to identify any arguments in support of a manifest error.
2. Argument in Opposition: To date no arguments in opposition have been submitted.

b) An amendment to the Land Use Management Ordinance (text amendment) is necessary because of changed or changing conditions in a particular area or in the jurisdiction generally.

Staff Comment: We believe the information in the record thus far can be summarized as follows:

- Argument in Support: We are unable to identify any arguments in support of changed conditions.
- Argument in Opposition: To date no arguments in opposition have been submitted.

c) An amendment to the Land Use Management Ordinance (text amendment) is justified to achieve the purposes of the Comprehensive Plan.

Staff Comment: We believe the information in the record thus far can be summarized as follows:

Argument in Support: We believe that the changes proposed will allow the Council to make the following changes:

- Provide a greater degree of flexibility and clarity in administering programs related to Recreation Area, Recreation Space, and payments in lieu
- Emphasize the importance of greenway development and provide clarity related to greenways impacted by development.

For this reason, we believe the proposed text amendment would achieve the purposes found within the Comprehensive Plan including: 1) developing strategies to address fiscal issues; 2)

providing quality community facilities and services; and 3) working toward completion of the bikeway/greenway systems.

Argument in Opposition: To date no arguments in opposition have been submitted.

FISCAL NOTE

We believe that some of the changes proposed in the Land Use Management Ordinance will have a fiscal impact. We expect that changes related to requiring payments in lieu of recreation space and recreation area would generate additional revenues that could be used for capital level recreation projects and renovations.

RECOMMENDATIONS

Greenways Commission Recommendations: The Greenways Commission reviewed the proposed text amendment on February 25, 2009, and recommended that the Council enact the attached Ordinance. Please refer to the Attachment 1 for the Greenways Commission recommendation.

Parks and Recreation Commission Recommendations: The Parks and Recreation Commission reviewed the proposed text amendment on February 18, 2009, and recommended that the Council enact the attached Ordinance with changes. Please refer to the Attachment 2 for the Parks and Commission recommendation.

Planning Board Recommendation: The Planning Board reviewed the proposed text amendment on March 3, 2009, and recommended that the Council enact the attached Ordinance. Please refer to the Attachment 3 for the Summary of Planning Board Action.

Staff Recommendation: We recommend that the Council enact the Ordinance to amend the Land Use Management Ordinance to amend various sections of Article 5.5 of the Land Use Management Ordinance and associated definitions.

ATTACHMENTS

1. Greenways Commission Recommendation (p. 12).
2. Parks and Recreation Commission Recommendation (p. 13).
3. Summary of Planning Board Action (p. 14).