

## MEMORANDUM

TO: J.B. Culpepper, Acting Planning Director

FROM: Ralph D. Karpinos, Town Attorney *RDK*

SUBJECT: Legislative Changes

DATE: September 12, 2005

Senate Bill (S.B.) 518, "An Act to Clarify and Make Technical Changes to City and County Planning Statutes", and Senate Bill 814, "An Act to Modernize and Simplify City and County Planning and Land-Use Management Statutes" were enacted by the General Assembly in 2005.

The purpose of this memorandum is to advise you on the key points of these bills that require some response or change in procedure by the Town.

Both bills clarify some legal questions and codify into statute principles of law that have been followed based on decisions of the Courts. However, some provisions of the bill authorize new procedures or require new procedures. These are listed below. (Except where noted, changes are effective January 1, 2006.)

1. Section 2(a) of S.B. 518 establishes standards for the approval and denial of subdivision plats. Specifically, there is new language added to G.S. 160A-371 which provides that plat decisions "may be made only on the basis of standards explicitly set forth . . ." and that when an ordinance includes criteria for a decision that "require application of judgment, those criteria must provide adequate guiding standards for the entity charged with plat approval." We should review our ordinance for compliance with this new language.
2. Section 4(a) of S.B. 518 changes the requirements for the notice by publication option available for large scale zoning map amendments. The change allows such notice to be published twice rather than four times and sets a minimum size limit for the size of the required advertisement. Please check our procedures for providing notice.
3. Sections 5 and 6 of S.B. 518 change the form of protest petitions. Our ordinance says the procedures established by law are to be followed, so no ordinance change is needed, but we do need to change our procedures to meet the new rules.
4. Section 7(a) of S.B. 518 amends G.S. 160A-387 to provide that in the event the planning board does not provide a written report on a zoning amendment within 30 days, the governing board may proceed to consider the amendment without the board's report. Please check our ordinance and procedures to confirm that we comply with this new standard.
5. Section 8 (a) of S.B. 518 makes a number of minor changes to the statute on Boards of Adjustment. It also establishes, in (e) certain standards for non-participation in quasi-judicial decision making. These standards are generally

already provided for by case law and the Town's own ethical standards for the Council and board members, but should be shared again with members of Town Boards which conduct quasi-judicial proceedings.

6. Section 3(a) of S.B. 814 provides express authority to deny building permits for lots that have been illegally subdivided.
7. Section 5(a) of S.B. 814 specifically authorizes the planning board to issue special use permits. This may be an option, for some special use permits, meriting consideration of a possible LUMO amendment.
8. Section 5(a) of S.B. 814 codifies specific authority to enact temporary moratoria and establishes standards and procedure for their enactment. To some extent this section codifies principles existing in case law, but is better guidance if and when moratoria are being consideration. This section is effective Sept. 1,2005.
9. Section 6(a) of S.B. 814 amends provisions pertaining to special use permits in conditional districts. It provides that standards that may be imposed are limited to those mutually approved by the Town and the applicant. This, in effect, authorizes a form of contract zoning and makes it important when such procedures are being used to obtain the consent of the applicant at the time of approval. We should discuss this further at your convenience.
10. Section 7(a) of S.B. 814 requires an express statement by the governing board and the planning board when recommending and enacting any zoning amendment. The required statement relates to the determination of appropriateness of any amendment based on the comprehensive plan and the public interest. Future amendments considered by Planning Board and Council should include language which addresses these new requirements.
11. Section 9 (a) of S.B. 814 authorizes Development Agreements. Under this new section, the governing board and a property owner can enter into a long term binding agreement regarding development of large tracts (up to 20 years). We would need to enact appropriate ordinance provisions to be able to use this new authority. (This will likely be a useful tool when plans for the Horace Williams tract are being considered.)

Please let me know if I can provide further information or assist your staff in providing information to board members.

cc: W. Calvin Horton, Town Manager  
Jannice Ashley, Legal Intern