

To: Chapel Hill Town Council (cc: Kevin Foy, Seth Reice, Ray Burby, and Phil Berke)
From: Milton Heath
Date: May 25, 2002 (revised)
Subj.: Recommended changes in the proposed Chapel Hill Development Ordinance

1. The title of the ordinance (“The Development Ordinance”) should be changed. It does not do justice to the scope of the ordinance, and it distorts the spirit of the ordinance. This *does* matter, because references to “The Development Ordinance” are often used to justify shading interpretations to favor development.

Historically, of course, this ordinance is a combination of the zoning ordinance, the subdivision control ordinance, the building code, and other related provisions, all of which are essentially regulatory in nature. Like most towns Chapel Hill decided for convenience to combine these related provisions into one comprehensive ordinance. (Some towns called it the “Unified Development Ordinance”—either because it is a unifying document or because it was a single ordinance for several neighboring towns. We have apparently now simplified this to “The Development Ordinance.”)

Like the British we could call this the “Planning Ordinance,” but that could be confused with the Comprehensive Plan. *The council should* direct the consultants to rename the ordinance in the new draft as one of the following:

- * “The Land Use Ordinance”
- * “The Land Use Control Ordinance”
- * “The Land Use Management Ordinance” (by analogy to the North Carolina Environmental *Management* Commission, a compromise title which avoids using the terminology “environmental *protection.*”)

2. Revive the Environmental Impact and Assessment Ordinance that Chapel Hill once adopted but later repealed. Take it seriously, as Orange County does its EIS ordinance.

As a matter of timing, I request that the Council calendar consideration of this issue for the fall of 2002. By that time it will be possible to develop a specific proposal, taking into account the existing Orange County local EIS ordinance, the advice of Professor Ray Burby (who is away this summer), and the advice of the State Clearinghouse. There are issues, such as scope and redundancy, that need careful attention, and there is no necessity to act on an EIS ordinance now.

3. Tighten up the tree ordinance, so that it provides more reliable protection for important trees and groves, that is not subject to being ignored at the discretion of the town administration.

Specifically, I recommend strongly that the tree ordinance be made meaningful by making it applicable to single family lots and duplexes—thus eliminating a loophole that has made a mockery of this ordinance. I also recommend that the diameter of specimen trees be reduced from 24” to 18” and that the consultants be asked to develop language that will provide protection for groves or

stands of trees. If something more needs to be done to prevent the kind of advance clear-cutting incidents that have periodically plagued us, by all means do it.

4. Amend the ordinance procedures governing reconfiguration of lots in the Historic District, so that all such reconfigurations and recombinations must be reviewed and approved by the Historic District Commission. (This would involve picking up a trail that Bob Epting and Bob Stipe explored years ago. Both of them favor this change.)

5. Rewrite the obsolete and leaky subdivision control ordinance, so that it can serve as a reliable vehicle for review of subdivision of land even where old plots have been approved years ago.

I am aware that some changes have been made in the second draft, drawing on the unhappy experience of the subdivision adjacent to Village West, that would make it more difficult to get a building permit in similar situations by requiring access to a publicly maintained street, public water supply and sewage, and erosion control compliance. These are commendable changes and should be kept. Going beyond this, however, there is a need for a subdivision ordinance that admits of no exemptions, that requires developers to live up to and stick by their original plans unless changes are approved by the town, and that eliminates the grandfathering of old plats that is not necessary and is the source of much grief.

6. Review the Resource Conservation District ordinances and processes with an eye to making them serve as reliable and meaningful protectors of the resource values involved—no exceptions of *any* kind (grandfathering or otherwise). In other words, get it right and keep it right. Buffers and setbacks should be a minimum of 100' to 150', depending on slope, porosity, etc., as recommended by Seth Reice. Intermittent streams should be covered.

7. Take the watershed-wide plan that has been developed by the Morgan Creek Association, and any similar plan that may be developed by the Bolin Creek Association as points of departure for implementing town (and county) ordinances for protection of the stream bank, stream buffer and watershed values that are involved. Essentially, this means reviewing the existing ordinances associated with the Joint Planning Agreement, identifying ways in which these ordinances are (or are not) already a possible vehicle for watershed protection *in the broad sense*, not just water supply watershed protection, and go on from there. Ray Burby would add to this the thought that Chapel Hill should develop stream restoration plans for streams such as Bolin and Booker Creeks that have become degraded by prolonged inattention to storm water management. This could involve cleanup, occasional bank stabilization, etc. The town should take an active part in the state's (DWQ) ongoing watershed assessment and restoration project for Little Creek (Bolin & Booker).

8. Require the town manager and town planner to file with the mayor and council and with any Environmental Advisory Board that may be established copies

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of any discretionary actions they have taken and *propose to take* that would relieve developers and property owners from compliance with (a list of ordinances and requirements that are designed to protect environmental or neighborhood values). The filings of proposed actions must be timely enough to allow the council or the Advisory Board an opportunity to act or respond. If it were thought appropriate, the Advisory Board might serve as a specialized board of adjustment for this purpose.

Roger Waldon agrees with me that it would be appropriate to reword the final paragraph of Section 8.6 to read: Under no circumstances is the Town Manager permitted to make changes in this chapter or to grant exceptions (a) to the actual meaning of any clause, standard, or regulation contained in this chapter or (b) from any clause, standard or regulation contained in this chapter.

9. Ray Burby and Seth Reice have indicated to me general agreement with all of these ideas; also Bob Epting specifically with items 2, 3, and 4.

10. Seth Reice has indicated to me his concern about the need for updating our flood plain parameters, and his willingness to think about parameters for and delineation of appropriate stream buffers. I believe that he is also willing to consider the issue of which tributaries to include in the plan. It is vital that the town use every resource at its disposal to persuade the U.S.G.S. to update our flood maps expeditiously (not in seven years), because the storm water review and so many other things are dependent on current maps.

11. The reference in Section 7.5 (RCD) to Section 3.11.4 should be deleted, as there is no such section. This may have meant to be a reference to *existing* ordinance provisions that make exceptions from the RCD ordinance. They should *not* be retained if they give the manager discretion to waive RCD provisions.