

AGENDA # 3a(1)

-----Original Message-----

From: Dana Cattani [mailto:dcattani@nc.rr.com]

Sent: Monday, February 25, 2002 9:57 PM

To: Town Council

Subject: Unsightly Power Lines and Carol Woods

Dear Mayor and Town Council of Chapel Hill:

We petition the Council to consider the following modification (in italics) to the Chapel Hill Development Ordinance (July 2000) 14.10:

All utility lines, *including three-phase electric power distribution lines*, but excluding lines used only to transmit electricity between generating stations or substations shall be placed underground, and all surface disruptions required for installation shall be rehabilitated to the original or an improved condition.

Although the current ordinance permits above-ground three-phase electric power distribution lines to be installed, market pressures dictate that new developments, such as Meadowmont, bury such lines. However, there is nothing to prevent Duke Power from providing service to these new developments by running new three-phase power lines through existing easements outside the new developments. In such cases, new developments can disfigure their neighbors' properties in a way that developers deem unacceptable for their own property.

For example, a couple of months ago, Duke Power installed new three-phase power lines through an existing easement in our backyard in order to provide service to Carol Woods' new development under construction directly behind our property. The easement, which predates our neighborhood, had been neglected and densely overgrown. Unfortunately, the easement is located not at the edge of our backyard but rather within the confines of our property. Before installing these new three-phase lines, Duke Power clearcut the easement, removing a thirty foot swath of forest in our back yard visible directly outside our kitchen window.

It seems inconsistent to us that Duke Power be allowed to run new above-ground lines through our neighborhood where all utilities are underground in order to service a new development that also has completely underground utilities. Above-ground power lines may have made sense at the original date of the easement on our property, but they are now inconsistent with current market standards, and not used in the development for which they are providing new service: Carol Woods' development in process. New developments are willing to pay for underground lines within their property; they also should be required to pay for burying any new utilities not on their property introduced to service their development.

Power lines are an eye-sore and a blight on our forests. Other communities are in the process of burying existing utilities. Chapel Hill should take the first step in that direction by at least prohibiting installation of new above-ground lines.

2/27/2002

We would be happy to provide any clarification of this petition. We will plan to attend the March 18th council meeting that we understand will cover development ordinance issues.

Thank you for your consideration,

Kyle and Dana Cattani
7617 Justin Place
Chapel Hill
408-8028

dcattani@nc.rr.com

Dear Cal,

Thank you for following up. I would appreciate the chance to have my name and issue listed as a follow-up petition item for the August 26th meeting.

Best regards,

Kyle

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Dr. Cattani:

Any item placed on either the consent agenda or the information items agenda may be removed for discussion at the Council meeting. It is not unusual for a citizen or a Council Member to make such a request so that an item may be discussed. It would have been entirely appropriate for you to have made such a request at the last Council meeting, and I am sorry that we obviously did not make this clear to you as the staff was working on the report.

The Town Council will be meeting in a special called session on July 26 for limited purposes specified by the Council (to adopt a final budget and to receive a report regarding a waste disposal area at the University s Horace Williams property). This special called meeting will be held at 8:00 a.m. and is expected to last only a few minutes. I believe that the next appropriate time to comment further on the issue of utility lines would be at the Council s regular meeting on August 26. If you wish, we will be pleased to list your name and the issue as a follow-up petition item. We could attach your e-mail message and the June 24 report, if you desire.

The four standards that are mentioned in the resolution adopted by the Council reflect our understanding of the legal tests that must be met in order to satisfy federal and state standards. The first two standards grow out of specific federal case law that is controlling on what local governments may require of developers. We consulted with the Town Attorney in drafting these suggested standards for consideration by the Council. We believe that the Council may require utilities to be placed underground when these tests are met.

We note, also, that the new requirement for submittal of utility service plans with development

applications will give citizens and the Council an opportunity to consider such information in determining whether the plans will have an affect on the value of contiguous property.

As you know, the Council always welcomes citizen comment on Town policy matters. Your e-mail message has been distributed to the Council, and I encourage you to attend the August 26 regular Council meeting to present your additional points at the regular time for petitions.

Thank you for writing to the Council about your concerns.

Sincerely,

Cal Horton

Dear Mr. Mayor and Town Council,

I am new to this process and I am trying to understand the council s process for handling petitions by citizens. I have concerns with the resolution in response to questions regarding three-phase power lines that seems to have passed as part of the consent agenda (item 4h) on last Monday s town council meeting. I would like to request that the resolution be discussed in the next council meeting.

I recognize and appreciate the careful attention and thought that the town manager has given this issue. However, I am concerned that the resolution just passed by the town council is short sighted and timid. The essence of my petition was to require that all new three-phase power distribution lines be buried, rather than be installed above ground. My experience in places where I have lived before Chapel Hill is that towns can, and do, mandate that all new power distribution lines be buried. In fact, the town where my mother lives now requires not only that all new lines be buried but also that, over the next few years, the power company bury existing lines.

I believe that the current resolution is vague and ambiguous, and that all the vagueness and ambiguity favors developers and Duke Energy, given that the burden of proof lies with the town. Consider the last paragraph of the resolution that states:

BE IT FURTHER RESOLVED that burial of three-phase lines by the developer would be subject to these conditions: (1) there is a rational nexus between the impact of the proposed development and the proposed utility requirement; (2) the costs of placing the utilities underground is roughly proportional to the impacts of the development on the community; (3) placing the utility underground does not violate any provisions of the

electrical code or other relevant safety standard; and (4) the developer s having the legal right to do so if the lines are off-site.

Point (1) is vague and likely will be interpreted very differently according to the differing perspectives of developers and their neighbors. Point (2) also is very vague. What if a developer can save \$40K by causing \$10K worth of damage to a neighboring property? Is this roughly proportional? Why should the developer be allowed to cause ANY damage to neighboring properties? Point (3) is a red herring. The issue is one of economics, not safety. Given enough money, any power distribution line could be buried safely. (The economic trade off is raised in Point (2), although it is vague.) Point (4) is ambiguous. There is no incentive for the developer to seek the legal right to bury the lines and so it is not clear if Point (4) is a hurdle (i.e., a task) for the developer or an escape clause.

Finally, even if all the vagueness and ambiguity is resolved, in the end it appears that the resolution in the second to last paragraph gives veto power to Duke Energy through the statement require that three-phase lines be provided underground unless ... and when Duke Energy agrees to the burial.

The most significant issue raised by my petition is the issue of cost. Power lines can safely be buried, sometimes relatively inexpensively, other times at great cost. Since my petition deals only with new power distribution lines, which are driven by development, the cost should be incurred by developers. Any other payment mechanism would be a subsidy of new developments.

I encourage the town council to be bold and forward thinking on this issue. Let s stop now the installation of new lines that probably will be dismantled and buried in some future decade. By banning the installation of such lines, we can prevent the further pollution of our skyline. I encourage wording of the resolution to be much more direct and clear in banning new above-ground power distribution lines.

Thank you for your attention,

Kyle Cattani

Kyle Cattani
 kyle_cattani@stanfordalumni.org

Councilmembers --

Dr. Cattani asked the Mayor's Office to forward this e-mail to you. Dr. Cattani's petition will be on the Council's agenda for the August 26th meeting.

Michelle Lewis

-----Original Message-----

From: Cattani, Kyle [<mailto:cattanik@bschool.unc.edu>]

Sent: Mon 7/8/2002 10:42 PM

To: Kevin Foy

Cc:

Subject: RE: Burial of Utility Lines

Dear Kevin:

Thank you for following up on my petition.

The town where I most recently lived was Palo Alto, CA, where they apparently have banned above-ground power lines since 1965. I attach a file with an excerpt from their municipal code as posted on their web site. In addition to banning new above-ground lines, Palo Alto is systematically designating existing neighborhoods where the utilities must be buried. When a neighborhood is so designated, the utility company (which is owned by Palo Alto) is responsible for burying the distribution lines and then the individual homeowners are required to bury the lead from the street to the home. Eventually, they will have the entire town without power lines!

The town where my mother lives (and I grew up) is Tempe, Arizona. I will attach a file with an excerpt from the website of Tempe. I notice in their code some of the same exceptions that are proposed by the recommendation that the town council approved, but with a key difference: the burden of proof is clearly on the developer in Tempe, while the proposed Chapel Hill code leaves the burden of proof on the city. In addition to requiring that all new utility lines be buried, Tempe is also in the process of burying existing lines, albeit slowly. My brother tells me that he (along with all property owners in Tempe) is assessed a small fee each month in his power bill toward accomplishing the task.

Prior to living in Palo Alto, I lived in Central California. While I couldn't find documentation on the municipal code for the town where I lived, the neighboring town of Davis, CA appears to have a process similar to Palo Alto where neighborhoods are designated as "underground utility districts" after which designation all existing utilities are required to be buried within a certain time frame. Please see the attached excerpt from the Davis municipal code.

Based on my experiences in these towns where I lived prior to Chapel Hill, I was very surprised to find Duke Energy cutting down the forest in my back yard to install new above-ground lines. I believe that Chapel Hill would benefit by changing the code to immediately stop any new

installations of above-ground lines. I would love to see our town take the next step and actually begin to bury existing lines, but propose that we start with the more modest petition that would prevent further installations of lines that undoubtedly will be buried eventually.

Unfortunately, I do not have experience with towns in North Carolina other than Chapel Hill.

Thank you again for your help. Please let me know if there is other information that I can provide that might be helpful.

Best regards,

Kyle Cattani

Kyle Cattani

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Excerpt of municipal code for Davis, CA. From web site for Davis:
<http://www.city.davis.ca.us/cmo/citycode/chapter.cfm?chapter=38>

Chapter 38 UNDERGROUND UTILITY DISTRICTS*

38.01.030 Designation procedure.

The city council may, from time to time, and the city council shall, upon application by twenty percent of the property owners determined by reference to the last equalized assessment roll, call a public hearing to ascertain whether the public necessity, health or safety requires the removal of poles and overhead wires and associated overhead structures from the public streets, alleys and ways within designated areas of the city and the underground installation of wires and facilities for supplying electric, communication or similar or associated service. The city clerk shall notify all affected property owners and utilities by mail of the time and place of such hearings at least thirty days prior to the date thereof. If, after any such public hearing, the city council finds that the public necessity, health or safety requires such removal and such underground installation within any such area, the city council shall, by ordinance declare such area an underground utility district. Such ordinance shall include a description of the area comprising such district and shall fix the time within which such poles and such overhead wires and associated overhead structures shall be removed and within which affected property owners shall be ready to receive underground service. The city council shall allow a reasonable time for such removal, having due regard for the availability of necessary labor, materials and equipment for such removal and for the installation of such underground facilities as may be occasioned thereby. (Ord. No. 411, § 1.)

An excerpt from the web site for the city of Tempe, Arizona related to burying utility lines. The link to the web site is: <http://www.tempe.gov/citycode/25planning&development.htm>

Secs. 25-106-25-119. Reserved.

ARTICLE VII. REQUIREMENTS FOR PLACEMENT OF OVERHEAD

UTILITY LINES UNDERGROUND

Sec. 25-120. Definitions.

In this article, unless the context otherwise requires:

Communication lines means any line that provides one or two way transmissions by whatever means conveyed over lines in the public right-of-way including but not limited to transmissions of voice, video or data or anything of similar nature by which thought, idea or information is intended to be conveyed.

Developer shall be deemed to be any individual, firm, corporation, partnership, association, syndication, trust, governmental agency, or other legal entity that is responsible for the development or redevelopment of land that creates any demand for any utility service or causes alteration of existing utility services.

Development/redevelopment shall refer to either initial construction on previously vacant land, or the cumulative expansion (since effective date of this article) of greater than twenty-five percent (25%) of the building floor area existing or approved at the time of effective date of this article, or the cumulative alteration (since effective date of this article) at a cost exceeding fifty percent (50%) of the current appraised value of the structure.

Existing utility poles and lines means such poles, wires, aerial cables and any other related facilities that are in place and in operation within ninety (90) days of the effective date of this article.

New utility poles and lines means such poles, wires, aerial cables and other related facilities that are not in place and in operation within ninety (90) days as of the effective date of this article.

Off-site shall refer to easements and street rights-of-way within the development and adjacent to the development.

On-site shall refer to the individual lots, parcels, tracts, etc., of the development.

Power line extensions refers to those primary distribution lines that are to be extended through a developed or undeveloped area.

Primary distribution line means an electric line used for electrical distribution or electrical feeder, single-phase or three-phase, having a voltage rating of twelve thousand five hundred (12,500) volts or less.

Secondary and service lines means utility lines that provide electrical and communications service to commercial, industrial, residential, and public use areas.

Transmission line means an electric line used for the bulk transmission of electricity between generating or receiving points and major substations or delivery points, having a voltage rating greater than twelve thousand five hundred (12,500) volts, including multi-functional static ground wire.

Underground (undergrounding) means the placement of utility lines below ground, with the removal of above ground poles, wires, and structures as applicable.

Utility company shall refer to companies, corporations, and municipalities that undertake distribution and transmission of electricity, telephone, telegraph, radio, television, or telecommunications, or any other communications over communication lines.

Utility poles and lines shall refer to the poles, structures, wires, aerial cables and related facilities used in the distribution of electricity or communication lines.

(Ord. No. 88.85, 1-12-89; Ord. No. 2000.14, 6-8-00)

Sec. 25-121. Permits for new or relocated overhead lines or utility poles.

New or relocated overhead lines or utility poles shall not be installed unless a utility permit is granted by the city engineer.

(Ord. No. 88.85, 1-12-89)

Sec. 25-122. Undergrounding of overhead utility lines.

(a) All new or existing utility lines, other than transmission lines, shall be placed underground in conjunction with a development/redevelopment project that has been submitted for approval under the provision of the Tempe City Code. This requirement shall also apply to primary distribution lines and all communication lines, including underbuild on transmission poles, except for communication lines installed on transmission poles in the static neutral position. The required undergrounding shall be completed prior to approval and occupancy of the project.

(b) The (re)developer or owner of a (re)development project shall be responsible to make necessary arrangements with the affected utility companies for the installation of required underground facilities, including arrangements for the payment of any cost, as one of the conditions of plan approval. Nothing contained herein is intended to obligate a providing utility company to install such underground facilities without reimbursement except where the utility company is acting as a (re)developer.

(c) In those instances where poles to be removed include street lights, the street lights will be replaced with freestanding poles and luminaries by the (re)developer in accordance with the approved street light standards or agreements of the serving utility.

(d) The undergrounding requirement shall also apply to all situations where utility companies plan a system upgrade of power or communication line extensions that result in more conductors or wires on a pole. Individual pole mounted equipment shall not be considered an upgrade, such as transformers, switches, splice cases and capacitor banks. The cost for this undergrounding is to be borne by the affected utility company. All new electrical and communication lines requiring a right-of-way permit, other than electrical transmission lines, shall be placed underground. New

communication lines, including upgraded replacement lines, will not be allowed to be underbuilt on existing utility poles except for lines installed in the static neutral position.

(e) The undergrounding requirement shall apply to all situations where a governmental agency is acting as a (re)developer or has initiated a construction effort which requires the relocation of existing overhead utility lines. Nothing contained herein is intended to obligate a providing utility company to install such underground facilities without reimbursement from the governmental agency for any costs in excess of those not already the obligation of the utility company.

(f) Where utility lines are required to be placed underground due to a combination of needs generated by (re)development, utility system upgrade, and governmental improvement projects, there shall be an equitable sharing of the cost of that undergrounding effort.

(g) The undergrounding requirement shall not apply to the normal maintenance and repair of existing utility poles and lines. Temporary overhead line installations used to facilitate construction projects, maintenance activities or emergency restoration of power and communications will be allowed subject to approval of the city engineer.

(h) The undergrounding requirements shall apply regardless of the existence of easements for overhead lines.

(i) Equipment appurtenant to the underground facilities, such as surface-mounted transformers, pull boxes, pedestal cabinets, service terminals, telephone splice closures, concealed ducts, or other similar on-the-ground facilities normally used with or as part of an underground utility system, may be maintained above ground. The city maintains the right to approve the location and appearance of all surface-mounted communication equipment.

(j) The undergrounding requirements of this article shall not apply to electrical transmission lines.

(Ord. No. 88.85, 1-12-89; Ord. No. 2000.14, 6-8-00)

Sec. 25-123. Deferments of undergrounding.

(a) Deferment of undergrounding off-site lines may be requested from the city engineer for a (re)development with small frontage, where the cost is substantially more per unit length than it would otherwise be if a longer length (usually a minimum of six hundred sixty (660) feet), including the (re)development frontage, were being undergrounded at the same time. At all times, on-site lines shall be placed underground.

A request for deferment shall be requested in writing to the city engineer and include the following:

(1) The (re)developer shall procure from the appropriate utility companies a reliable estimate of the current cost for undergrounding what is required along the (re)development frontage, including new and existing lines in the adjacent off-site frontage.

(2) The (re)developer shall procure from the appropriate utility companies a reliable estimate of the current cost for undergrounding a longer, more practical length that includes the (re)development

frontage (usually a minimum of six hundred sixty (660) feet).

(3) If the project involves improvements in the public right-of-way (bike paths, sidewalks, landscaping, etc.) and deferment of undergrounding will involve costs of future restoration of those improvements, the (re)developer shall furnish a reliable estimate of such future restoration costs in current dollars.

(b) In reviewing a request for deferment, the city engineer shall consider the costs of installing overhead utilities, the cost of undergrounding the utilities, and the status of development in the area affected by the request.

(c) If deferment is authorized by the city engineer, the (re)developer shall deposit with the city a sum sufficient to cover all deferred construction required herein. Monies received shall be used by the city for undergrounding utilities associated with (re)developments within the city boundaries.

(d) Utility companies may request deferment of undergrounding for power line extensions through undeveloped areas. The request with justification shall be submitted to the city engineer. No deferred compensation fees will be required for this type of deferment.

(e) If deferment is denied by the city engineer, the (re)developer or utility company may appeal the city engineer's decision to the city council.

(f) If deferment is approved by the city engineer, an interested party who is affected by the decision may appeal the decision to the city council.

(Ord. No. 88.85, 1-12-89)

Sec. 25-124. Waiver of undergrounding.

(a) The requirement for undergrounding may be waived for the following reasons:

(1) When the (re)developer or utility company can show that the costs are unreasonably disproportionate to the costs for the proposed (re)development.

(2) New utility poles and wires erected for purely temporary purposes, such as providing temporary building construction power, emergency power, telephone service or the furnishing of power to temporary outdoor activities. A permit for such temporary use shall be obtained from the city. The length of the temporary use shall be specified in the permit and may not exceed twelve (12) months. An additional six (6) month permit may be issued upon a finding of necessity by the city.

(3) Poles or luminaries, but not wires or other conduits, used exclusively for street lighting.

(b) Requests for a waiver to the undergrounding requirements shall be submitted in writing to the city engineer.

(c) In reviewing a request for waiver, the city engineer shall consider the cost of installing overhead utilities, the costs of undergrounding the utilities, and the status of development in the area of the request.

(d) If a waiver is denied by the city engineer, the (re)developer may appeal the city engineer's decision to the city council.

(e) If a waiver is approved by the city engineer, an interested party who is affected by the decision may appeal the decision to the city council.

(Ord. No. 88.85, 1-12-89)

Sec. 25-125. Waiver for alternate plan.

The city council may waive portions or all of this article when a developer, utility company or governmental agency presents an alternate plan for undergrounding lines which provides greater public benefit than would be accomplished by a strict application of this article.

(Ord. No. 88.85, 1-12-89)

Sec. 25-126. Penalty for violation.

Any person, firm or corporation who shall violate any of the provisions of this article shall be guilty of a class I misdemeanor. Each day of violation which is continued shall be a separate offense punishable as herein above described.

(Ord. No. 88.85, 1-12-89)

Secs. 25-127-25-130. Reserved.

Municipal code for Palo Alto California, pulled from web site for the city of Palo Alto:
<http://www.city.palo-alto.ca.us/government/municipalcode.html>

Palo Alto Municipal Code

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12.16.010 Underground installation required for new construction.

The city council finds and determines that the public interest requires that all facilities and wires used in supplying electric, communication or similar associated service to be constructed in the city of Palo Alto after July 1, 1965, shall be placed underground in order to promote and preserve the health, safety and general welfare of the public and to assure the orderly development of the city of Palo Alto. The managing director of utilities, or his designee, may authorize overhead lines for new construction when in his opinion underground installation in any particular instance would not be feasible or practicable. His decision in such matters shall be final.

(Ord. [2611](#) § 5, 1971; Ord. [2231](#) (part), 1965; prior code § 37.201)

12.16.020 Underground utility districts established.

(a) The council further finds and determines that the public interest requires that the following described areas of the city of Palo Alto as delineated with more particularity in those certain maps entitled Underground Utility District Maps*, and made a part hereof by reference, be declared to be and the same are declared to be and established as underground utility districts, and persons maintaining poles and overhead lines and associated overhead structures in such districts shall remove the same within the period of time as indicated:

- (1) District No. 1. All lands fronting on Oregon Avenue - removal by September 1, 1965;
- (2) District No. 2. Palo Alto Foothills Park - removal by January 1, 1967;
- (3) District No. 3. Alexis Drive Area - removal by January 1, 1966;
- (4) District No. 4. All lands adjacent to El Camino Real from Matadero Creek to the southerly city limits of the city of Palo Alto - removal, in the case of communication and similar or associated services, by February 1, 1968; removal, in the case of electric and similar or associated services, within one year from the date of the completion and acceptance of the proposed improvements on El Camino Real to be constructed by the state of California pursuant to that certain agreement between the state and the city dated April 18, 1967, additional notice to be given and hearing held after said completion date has been determined;
- (5) District No 5. All lands within the limits of the city of Palo Alto fronting on the southwesterly side of El Camino Real between Maybell Avenue and Vista Avenue - removal by May 15, 1968;

- (6) District No. 6. All lands within Green Acres Unit II and adjacent territory - removal by October 31, 1968;
- (7) District No. 7. All lands within the Old Trace Road area - removal ninety days after completion and acceptance of the work;
- (8) District No. 8. Not yet established;
- (9) District No. 9. All lands within the West Bayshore Road Area from Chabot Terrace to Loma Verde Avenue - removal ninety days after completion and acceptance of the work;
- (10) District No. 10. All lands within the Laura Lane Area from East Bayshore Road approximately four hundred forty feet northeasterly, and the Geng Road Area from Embarcadero Road northwesterly approximately six hundred ten feet - removal ninety days after completion and acceptance of the work;
- (11) District No. 11. All lands within Stanford Industrial Park - removal ninety days after completion and acceptance of the work;
- (12) District No. 12. All lands within the city of Palo Alto adjacent to Middlefield Road from Oregon Expressway to the southeasterly city limits - removal ninety days after completion and acceptance of the work;
- (13) District No. 13. All lands within the city of Palo Alto generally fronting on California Avenue between El Camino Real and Amherst Street, and lands in Stanford industrial Park between California Avenue and Page Mill Road - removal ninety days after completion and acceptance of the work;
- (14) District No. 14. All lands within the city of Palo Alto generally fronting on Embarcadero Road from East Bayshore Road northeasterly and easterly to Harbor Road, northerly in Harbor Road approximately eight hundred feet, Embarcadero Way, Faber Place and Geng Road - removal ninety days after completion and acceptance of the work;
- (15) District No. 15. All lands within Green Acres I and adjacent territory - removal ninety days after completion and acceptance of the work;
- (16) District No. 16. Louis Road from East Meadow Drive to a point near Loma Verde Avenue, together with properties fronting thereon which require underground service conversion - removal ninety days after completion and acceptance of the work;
- (17) District No. 17. All lands within the city limits bounded by Florence Street, University Avenue, Ramona Street and Lytton Avenue, excepting the parcel at the southeasterly intersection of Florence Street and Lytton Avenue and the two parcels lying southeasterly and southwesterly thereof fronting on Florence Street and Lytton Avenue, respectively - removal ninety days after completion and acceptance of the work;
- (18) District No. 18. San Antonio Avenue from near the southerly approach to the Bayshore Freeway interchange southerly to Middlefield Road - removal ninety days after completion and acceptance of the work;
- (19) District No. 19. All properties fronting on both sides of Ramona Street from Forest Avenue to Homer Avenue - removal ninety days after completion and acceptance of the work;
- (20) District No. 20. All lands within the area of the city bounded by Hamilton Avenue, Channing Avenue, Lincoln Avenue and Center Street;
- (21) District No. 21. All lands within the area of the city fronting on Page Mill Road between El Camino Real and Birch Avenue - removal ninety days after completion and acceptance of the work;
- (22) District No. 22. All lands within the area of the city of Palo Alto bounded by Cambridge Avenue, El Camino Real, Sherman Avenue and Park Boulevard - removal ninety

days after completion and acceptance of the work;

(23) Reserved.

(24) District No. 24. All lands within the city bounded by Alma Street, Lytton Avenue, Ramona Street and Forest Avenue plus the area bounded by University Avenue, Bryant Street, Hamilton Avenue and Ramona Street, plus the area bounded by Cowper Street, University Avenue, Webster Street and alleyway between Cowper Street and Webster Street plus Assessment Parcel Number 120-3-68 located on Cowper Street, Assessment Parcel Number 120-27-045 located on Alma Street and Assessment Parcel Number 120-27-047 located on High Street - removal ninety days after completion and acceptance of the work;

(25) District No. 25. All lands within the city on Orme Street between Los Robles Avenue and Juana Briones School - removal ninety days after completion and acceptance of the work;

(26) District No. 26. All lands within the city within Arastradero Road from Alto Mesa Avenue to Hillview Avenue and adjacent to Arastradero Road on both sides from approximately fifty feet southerly of Alta Mesa Avenue to Georgia Avenue - removal ninety days after completion and acceptance of the work;

(27) District No. 27. All lands within the city on Cambridge Avenue between Birch Street and Park Boulevard - removal ninety days after completion and acceptance of the work;

(28) District No. 28. All lands within the city on Park Boulevard between Sherman Avenue and Lambert Avenue - removal ninety days after completion and acceptance of the work;

(29) District No. 29. All lands within the city of Palo Alto bounded by Cowper Street, Hamilton Avenue, Bryant Street, and Lytton Avenue, plus one block bounded by Tasso Street, University Avenue, Cowper Street, and Lytton Avenue - removal ninety days after completion and acceptance of the work;

(30) District No. 30. All lands within the city of Palo Alto, county of Santa Clara, bounded by San Francisquito Creek, Edgewood Drive, Island Drive, Hamilton Avenue, Center Drive, Dana Avenue, Alester Avenue and Jackson Drive - removal ninety days after completion and acceptance of work;

(31) District No. 31. All lands within the city of Palo Alto, county of Santa Clara, bounded by the southeasterly side of University Avenue, west of 1270 University Avenue, the west side of Marlow Street, University Avenue, Chaucer Street, Hamilton Avenue, parts of Seneca Street, and Fulton Avenue, all as more particularly shown on the map referenced in Section 3 of Ordinance 3874 - removal ninety days after completion and acceptance of the work;

(32) District No. 32. All of the area in the county of Santa Clara, city of Palo Alto, consisting of both sides of Middlefield Road from Palo Alto Avenue and an area northwesterly of 116 Middlefield Road to the north to Embarcadero Road to the south; all as more particularly shown on the map referenced in Section 3 of Ordinance 3874 - removal ninety days after completion and acceptance of the work;

(33) District No. 33. All of the area in the county of Santa Clara, city of Palo Alto, encompassing the area bounded by Cowper Street, Hamilton Avenue, Webster Street, Lytton Avenue, Middlefield Road and Forest Avenue, all as more particularly described on that certain map entitled "Downtown Three Underground Utility District Number 33," on file in the office of the city clerk;

(34) District No. 34. All of the area in the county of Santa Clara, city of Palo Alto, encompassing the area bounded by Cowper Street, Addison Avenue, Alma Street, and Forest

Avenue, all as more particularly described on that certain map entitled "Downtown IV and Channing/Addison Avenue Underground Utility District Number 34," on file in the office of the city clerk;

(35) District No. 35. All of the area in the county of Santa Clara, city of Palo Alto, encompassing the area bounded by Alma Avenue, Park Boulevard, El Camino Real, and Churchill Avenue, all as more particularly described on that certain map entitled "Southgate Underground Utility District Number 35," on file in the office of the city clerk;

(36) District No. 36. All of the area in the county of Santa Clara, city of Palo Alto, encompassing the areas contiguous with portions of Corporation Way and East Bayshore Road, and Fabian Way, Fabian Street, San Antonio Road, East Charleston Road, Industrial Avenue, Transport Street and Commercial Street, all as more particularly described on that certain map entitled "Commercial/Transport and Corporation Way Underground Utility District Number 36," on file in the office of the city clerk;

(37) District No. 37. All of the area in the county of Santa Clara, city of Palo Alto, encompassing the areas contiguous with portions of Embarcadero Road, Middlefield Road, Seale Avenue, Byron Street, Bret Harte Street, Mark Twain Street, Newell Road, Guinda Street, Fulton Street and Tennyson Avenue, all as more particularly described on that certain map entitled "Embarcadero/Middlefield Road Underground Utility District Number 37," on file in the office of the city clerk;

(38) District No. 38. All of the area in the county of Santa Clara, city of Palo Alto, encompassing the areas contiguous with portions of High Street and Cowper Street, and Oregon Expressway and Colorado Avenue, all as more particularly described on that certain map entitled "High/Cowper/Oregon and Colorado Avenue Underground Utility District Number 38," on file in the office of the city clerk.

(Ord. [4483](#) § 2, 1998: Ord. [4408](#) § 2, 1997: Ord. 4280, § 2, 1995: Ord. [4208](#) § 2, 1994: Ord. [4138](#) § 2, 1993: Ord. [4112](#) § 2, 1992: Ord. [4028](#) § 2, 1991: Ord. [3963](#) § 2, 1990: Ord. [3874](#) § 2, 1989: Ord. [3745](#) § 2, 1987: Ord. [3682](#) § 2, 1986: Ord. [3619](#) § 2 1985: Ord. [3616](#) § 2, 1985: Ord. [3605](#) § 2, 1985: Ord. [3464](#) § 2, 1983: Ord. [3408](#) § 2, 1983: Ord. [3227](#) § 2, 1980: Ord. [3142](#) § 2, 1979: Ord. [3136](#) § 2, 1979: Ord. [3035](#) § 2, 1977: Ord. [2834](#) § 3, 1975: Ord. [2814](#) § 3, 1974: Ord. [2757](#) § 3, 1973: Ord. [2653](#) § 2, 1972: Ord. [2628](#) § 3, 1971: Ord. [2616](#) (part), 1971: Ord. [2543](#) (part), 1970: Ord. [2502](#) (part), 1969: Ord. [2490](#) (part), 1969: Ord. [2486](#) (part), 1969: Ord. [2416](#) (part), 1968: Ord. [2411](#) (part), 1968: Ord. [2363](#) (part), 1967: Ord. [2231](#) (part), 1965: prior code § 37.202)

* Editor's Note: The maps referred to can be found at the end of this title in a printed edition of this code.

12.16.030 Overhead wires prohibited in underground districts.

(a) Unlawful to Maintain Poles After Removal Date. Whenever any area of the city is declared to be an underground utility district, it is unlawful for any person or utility to maintain any pole, overhead line or associated overhead structure within the district after the date when the utilities are required to be removed.

(b) **New Construction Prohibited.** From and after the effective date of the establishment of any underground utility district, it is unlawful for any person or utility to erect, construct, use or maintain any pole, overhead line or associated overhead structure within such underground utility district.

(c) **Violation a Misdemeanor.** Any person or utility who shall erect, construct, place, keep, maintain, continue, employ or operate any such pole or overhead line or associated overhead structure within any underground utility district or shall neglect to take down and remove any such pole, overhead wire, or associated overhead structures within the time designated in this chapter or who shall other-wise fail to comply with the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine not to exceed five hundred dollars. Each consecutive fifteen-day period during which the failure to comply with the provisions hereof continues shall constitute a separate offense. Such violation is likewise hereby declared to be a nuisance and may be abated by the city attorney in the manner provided for the abatement of nuisances.

(Ord. [4642](#) § 15, 2000: Ord. [2231](#) (part), 1965: prior code § 37.203)

12.16.040 Council may designate additional underground utility districts.

(a) The city council may from time to time call public hearings to ascertain whether the public necessity, health or safety requires the removal of poles and overhead lines and associated overhead structures from some designated area of the city. The city clerk shall publish a notice of the public hearing and the director of utilities shall notify all affected property owners as shown on the last equalized assessment roll and affected utilities by mail of the time and place of such hearings at least thirty days prior to the date thereof.

(b) If, after any such public hearing, the council finds that the public necessity, health and safety require such removal the council shall, by ordinance amending Section [12.16.020](#) of this chapter, declare such area an underground utility district. Such ordinance shall include a description of the area comprising such district and shall fix the time within which such poles and overhead lines and associated overhead structures shall be removed and within which affected property owners must be ready to receive underground service. The council shall allow a reasonable time for such removal having due regard for the availability of necessary labor, materials and equipment for such removal and for the installation of such underground facilities as may be occasioned thereby.

(Ord. [3709](#) § 7, 1986: Ord. 2452, 1968: Ord. [2231](#) (part), 1965: prior code § 37.204)

12.16.050 Exceptions.

- (a) The provisions of this chapter shall not apply to the following types of facilities:
- (1) Poles used exclusively for police and fire alarm boxes, traffic control facilities, or any similar municipal equipment installed under the supervision and to the satisfaction of the managing director of utilities, or his designee;
 - (2) Poles used exclusively for street lighting;
 - (3) An electric distribution or transmission system in excess of fifteen kilovolts unless the managing director of utilities, or his designee, determines that underground installation of

such transmission system is feasible and practicable. His decision in such matters shall be final;

(4) When authorized by the managing director of utilities or his designee, poles and overhead lines and associated overhead structures crossing or entering any portion of a district from which overhead wires have been prohibited and originating in an area in which poles and overhead lines and associated overhead structures are not prohibited;

(5) Overhead lines attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location on the building to another location on the same building or to an adjacent building without crossing any public street;

(6) Radio antenna and associated equipment and supporting structures used for furnishing communications services;

(7) Changes in or additions of aerial drop wires and anchors or the addition or replacement of wires and cables on poles in place on July 1, 1965; or

(8) Service terminals, in pedestals, above ground, used to distribute communication service in underground systems.

(b) Alterations and extensions to overhead facilities falling within the exceptions described in this section shall be permitted provided no additional poles are required for any such alteration or extension.

(Ord. [2611](#) § 6, 1971: Ord. [2231](#) (part), 1965: prior code § 37.205)

12.16.060 Special exceptions granted by city council.

Notwithstanding any other provisions of this chapter the city council may grant special exceptions on a permanent or temporary basis to the provisions hereof on such terms as the city council may deem appropriate in cases of emergency or unusual circumstances to any person to erect, construct, install, maintain, use or operate poles and overhead lines and associated overhead structures within any underground utility district provided that prior thereto the city council shall have made a finding that granting of such special exception does not violate the general purposes of this chapter, will not be detrimental to the public interest, welfare, safety, peace or health and that such action will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the underground utility district.

(Ord. [2231](#) (part), 1965: prior code § 37.206)

12.16.070 Time extensions.

In the event that any act hereby required by any parties herein referred to cannot be performed within the time herein provided on account of shortage of materials, war, restraint by public authorities, strikes, or by any circumstances beyond the control of the parties or by unusual hardships, then the time within which such acts shall be accomplished may be extended by the managing director of utilities, or his designee, for a period not exceeding one year.

(Ord. [2611](#) § 7, 1971: Ord. [2231](#) (part), 1965: prior code § 37.207)

12.16.080 Notification to affected property owners and utilities.

(a) Within thirty days after the establishment of the underground utility district the managing director of utilities, or his designee, shall so notify all affected utilities and all persons owning real property within the affected area. The managing director of utilities, or his designee, shall further notify such affected property owners that poles, overhead lines or associated overhead structures are to be removed and that if the property owners, the tenants or occupants of their property desire to continue to receive utility service or services they shall make all necessary facility changes on their premises so as to receive service from the utility at a new location subject to the applicable rules, regulations and tariffs of the respective utilities on file with the public utilities commission and the utility rules and regulations of the city of Palo Alto.

(b) Notification shall be made by mailing a copy of this chapter and the ordinance which designates the area an underground utility district to the affected utility and to affected property owners as shown on the last equalized tax roll of the city. Failure to give such notice by mail or of the persons addressed to receive same shall not affect the validity of such ordinance nor the authority of the city to proceed under Section [12.16.100](#).

(Ord. [2611](#) § 8, 1971; Ord. [2231](#) (part), 1965; prior code § 37.208)

12.16.090 Responsibility of property owner.

(a) All conduits, conductors and associated equipment necessary to receive utility service between service conductors or underground pipe or conduit of the supplying utility and the service facilities to the building or structure being served shall be provided by the person owning, operating, leasing or renting said property subject to applicable rules, regulations and tariffs of the utility or utilities concerned and the Utility Rules and Regulations of the city of Palo Alto.

(b) Such underground construction shall be accomplished within the time specified in Section [12.16.020](#) or within thirty days after the installation of the utilities facilities pursuant to the city's Utility Rules and Regulations.

(Ord. [2231](#) (part), 1965; prior code § 37.209)

-----Original Message-----

From: Cattani, Kyle [<mailto:cattanik@bschool.unc.edu>]

Sent: Fri 7/19/2002 5:41 PM

To: Kevin Foy

Cc:

Subject: RE: Burial of Utility Lines

Dear Kevin:

I have done a bit more research on the question of whether towns in North Carolina have enacted ordinances regulating the burial of utility lines.

I spoke with John Phelps at the NC League of Municipalities who pointed me to Richard Ducker, an Associate Professor of Public Law and Government here at UNC Chapel Hill. Richard is an expert on zoning and codes. Richard says he knows of nothing in North Carolina laws that would prohibit a town to have a resolution to bury lines; the town council should have authority to do so. (He says that the huge transmission lines are another story, where there is a NC statute that applies to them.)

I also did a quick Internet search and found that Cary and Charlotte have relevant ordinances, although perhaps not as strong as what I think Chapel Hill should enact. (Please see attachment with excerpts of Cary and Charlotte codes.)

In particular, Cary seems to have adopted recently (November, 2001) an ordinance that gives the town council the right to require burial of all utilities. (I was actually a bit surprised to find this ordinance in Cary, whose reputation I have always thought was not for being particularly thoughtful about development.)

The brief excerpt of Charlotte code in the attachment seems to be applicable although the Charlotte web page did not provide an easy way for me to search their entire code.

I hope this is helpful. Let me know if there is anything else I could provide.

Sincerely,

Kyle Cattani

Kyle Cattani

Operations Technology and Innovation Management Faculty

The Kenan-Flagler Business School

The University Of North Carolina at Chapel Hill

CB# 3490, McColl Building

Chapel Hill, NC 27599-3490

Phone: (919) 962-3273

Fax: (919) 962-6949

kyle_cattani@unc.edu

>Subject: Burial of Utility Lines

>

>Dear Dr. Cattani:

>

>Thank you for writing to the Town Council and me regarding the burial

>of

>utility lines. We would be glad to discuss this issue further.

>

>It would be helpful, though, for us to review the relevant ordinances

>for

>the towns to which you refer in your e-mail. So I would appreciate it if

>you would send to me the names of those towns. I particularly am

>interested in knowing whether any towns in North Carolina have such

>ordinances (since state laws may vary regarding public utilities).

>

>If you happen to have the citations for the applicable ordinances for

>each

>of the towns, it would be helpful if you would forward those to me.

>

>We appreciate your help on this.

>

>Sincerely,

>

>Kevin Foy

>Mayor of Chapel Hill

Cary

CODE OF ORDINANCES Town of CARY, NORTH CAROLINA Codified through Ord. No. 01-022, adopted Nov. 8, 2001. (Supplement No. 45)

"ARTICLE IX. REGULATORY POWERS*

"Section 9.3. Underground utilities.

In addition to the powers now or hereafter granted to municipalities by law, the town council by ordinance may require that all utility or other pipes, wiring, conduits, cables, and fixtures installed after the adoption of such ordinance within the planning and zoning jurisdiction of the town be installed underground, whether or not the same are installed in public rights-of-way.

Charlotte code of ordinances:

Section 12.509 Public utility transmission and distribution lines

All electricity, telephone, CATV, and other utility distribution lines, which deliver service to the end user from a transmission line providing service to an area larger than the individual parcel or project area in developing or redeveloping areas, shall be installed underground in all districts unless terrain, subsurface or surface obstructions inhibit installation. This provision does not apply to the Research, Institutional and BP districts.

MEMORANDUM

TO: Mayor and Town Council

FROM: W. Calvin Horton, Town Manager

SUBJECT: Response to Questions Regarding Three-Phase Power Lines

DATE: June 24, 2002

INTRODUCTION

This report responds to concerns raised by petitioners Mr. Kyle Cattani and Mr. Joe Capowski on March 25 regarding the installation of electric distribution lines related to the expansion of Carol Woods Retirement Community (Attachments 1-2). Adoption of the attached resolution would expand Special Use Permit application submittal requirements to further describe the current Utility Plan requirement and require identification of all proposed utilities on- and off-site, as well as upgrades, and the nature of any proposed improvements (above ground and underground).

BACKGROUND

On March 25, the Town Council received a report from the Manager regarding concerns about construction of overhead electric distribution lines in connection with the expansion of Carol Woods Retirement Community (Attachment 3). The report was in response to a January 14 oral petition from Mrs. Dana Cattani expressing concerns about clear-cutting, herbicide use, and the presence of three-phase power lines along the Cattani property. The Manager's report concluded that Duke Energy had a right to clear an existing utility easement on the Cattani property; that the Cattanis may elect to be "no-spray" customers if they do not want herbicides to be used on their property; and that three-phase power lines such as those involved in the Carol Woods expansion are not required by the Development Ordinance to be placed underground.

At the March 25 meeting, Mr. Cattani and Mr. Capowski petitioned the Council regarding various aspects of electric power distribution lines and their effect on development (see Attachments 1-2). An area map including the Cattani property is included as Attachment 4. Mr. Cattani's and Mr. Capowski's petitions were related to a written petition introduced by the Cattanis on February 25 (Attachment 5).

On March 25, the Council referred the petition to the Manager and Town Technology Committee and requested that items regarding the Development Ordinance be referred to the Development Ordinance consultant. We also requested response from Duke Energy, which is summarized below and included as Attachment 6.

DISCUSSION

Request for Modification of Development Ordinance

Mr. Cattani petitioned the Town Council to consider the following modification to the Development Ordinance (July 2000) 14.10:

“All utility lines, including three-phase electric power distribution lines but excluding lines used only to transmit electricity between generating stations, shall be placed underground. And all surface disruptions required for installation shall be rehabilitated to the original or an improved condition.”

The current Development Ordinance allows three-phase electric power distribution lines to be placed above ground. All new power lines other than three-phase lines are required to be underground:

“All utility lines other than lines used only to transmit electricity between generating stations or substations and three-phase electric power distribution lines shall be placed underground, and all surface disruptions required for installation shall be rehabilitated to the original or an improved condition.”

Manager’s Comment: Applications for development are required to provide a Utility Plan. The Council currently does not review plans for utility distribution systems and does not usually require that three-phase power distribution lines be placed underground. The Town may require underground burial of electric distribution lines at the expense of a property developer. However, regulations established by the Utilities Commission or the National Electric Safety Code (NESC) would have precedence over any rules established by the Council.

The Utilities Commission allows Duke Energy to pass along the extra cost to the third party requesting the burial of electrical lines. The NESC permits providers to operate and construct distribution lines using “least-cost” methods, and the standard method for power distribution is overhead construction.

We understand that Duke Energy has offered the Cattanis the option of relocating the power line section along the back of their property from overhead to underground for a cost of \$25,000 to \$40,000. The Cattanis can file appeals with the Utilities Commission to review these cost estimates. Appeal information can be accessed on the Utilities Commission’s web site: www.ncuc.commerce.state.nc.us.

We believe that the Council could consider modification of the Development Ordinance to require that all three-phase lines being installed as part of a proposed development be buried by the developer subject to these conditions: (1) there is a rational nexus between the impact of the proposed development and the proposed utility requirement; (2) the costs of placing the utilities underground is roughly proportional to the impacts of the development on the community; (3) placing the utility underground does not violate any provisions of the electrical code or other relevant safety standard; and (4) the developer’s having the legal right to do so if the lines are

off-site. We recommend that the Council direct the Development Ordinance consultant to consider this change in the Third Draft of the Development Ordinance.

Duke Energy's Comment: Duke Energy officials confirm that standard electric service rates reflect the cost of overhead service. Duke Energy will install underground service under a plan approved by the Utilities Commission at the expense of the requesting party (see Attachment 6). Duke Energy officials state that the cost implications of such a Development Ordinance change (from overhead to underground) would be significant, explaining that an underground installation for three-phase distribution lines is often cost-prohibitive for most customers.

Occupancy Permit for Carol Woods

Mr. Cattani also petitioned the Council to withhold occupancy approval to Carol Woods' new development until his concerns about his property have been addressed.

Manager's Comment: We do not believe that withholding of an occupancy permit is warranted. We believe that this particular issue is a private civil matter and is a subject to be addressed among the Cattanis, Duke Energy, and Carol Woods. In the opinion of the Town Attorney, the requested action would not likely be legally defensible.

Special Use Permit Process

Mr. Capowski recommended that: "The Town should employ, on an as-needed, contractual basis, an individual with competence in electrical systems who could advise the Council on development matters where utility lines are impacted." He further asked that the Council amend the wording of the Development Ordinance to "reflect the technical and economic reality of power distribution" and that the Council rely on experts hired by the Town who have reviewed the language of the Ordinance.

Mr. Capowski clarified his request through an email that is included as Attachment 7. Mr. Capowski recommended that a consultant with knowledge of power distribution review the language of the Town's Development Ordinance, study how other municipalities handle power distribution issues, propose potential wording, and discuss the wording with the Town and Duke Energy officials. Mr. Capowski said that the consultant should represent the Town and possibly negotiate proposed language.

Manager's Comment: The Council does not currently review plans for utility distribution systems and does not usually require that they be placed underground. We recommend that the Council consider a procedural change to the Special Use Permit application submittal requirements to require that applicants provide an expanded utility plan with each application. Such a procedure would require an applicant to show proposed placement of all utilities on- and off-site, including upgraded lines. From this information, we believe that the accompanying effect on neighboring properties could be determined and taken into account as part of the development review process. This change would allow interested persons the opportunity to present evidence regarding whether a project and its proposed Utility Plan meet the four findings

required by the Special Use Permit (including, for example, whether it is “designed to maintain the value of contiguous property”).

It is possible to contract with an electrical engineering consultant to review the Development Ordinance text, propose changes, and discuss these changes with the Town and Duke Energy officials, as requested by Mr. Capowski. However, if the Council were to implement the above submittal requirement change to the Special Use Permit process, we believe that there would be no need to take such a step. We believe an expanded utility plan would detail the effect on nearby property.

Referral to Technology Committee

Mr. Capowski suggested sending the appropriate Development Ordinance text to the Technology Committee for review and suggestions.

Manager’s Comment: We referred the relevant Development Ordinance section and the March 25 materials to the Technology Committee for comment. At the Technology Committee’s June 18 meeting, the Committee:

- Concluded that the Committee has insufficient expertise in the area of power distribution to render a technical judgment on the issue. General consensus was that it is not a feasibility issue, but one of trade-offs between aesthetics and cost.
- Concluded that this item relates to a broader issue that should be addressed in the Development Ordinance by a qualified consultant. The specific issue is how to address easements with current language so that all of our utility right-of-way needs, including fiber optic lines and future innovations, are addressed.
- Endorsed Mr. Capowski’s idea that a consultant with knowledge of power distribution review the language of the Town’s Development Ordinance.

RECOMMENDATION

We believe that the Special Use Permit application process could be amended to provide more information about utility distribution lines so that their subsequent impact on other property can be evaluated. Adoption of the attached resolution would expand the Special Use Permit application submittal requirements to further describe the current Utility Plan requirement and require identification of all proposed utilities on- and off-site, as well as upgrades, and the nature of any proposed improvements (above ground and underground). This would allow interested persons the opportunity to present evidence regarding whether a project and its proposed Utility Plan meet the four findings required by the Special Use Permit (including, for example, whether it is “designed to maintain the value of contiguous property”).

Furthermore, we recommend that the Development Ordinance consultant be directed to include language in the Third Draft of the Development Ordinance that would adjust the three-phase line provision to require that three-phase lines be provided underground unless it is demonstrated that the burial is not appropriate as it relates to the extent of the development proposed and when Duke Energy agrees to the burial. Burial by the developer would be required subject to these

conditions: (1) there is a rational nexus between the impact of the proposed development and the proposed utility requirement; (2) the costs of placing the utilities underground is roughly proportional to the impacts of the development on the community; (3) placing the utility underground does not violate any provisions of the electrical code or other relevant safety standard; and (4) the developer's having the legal right to do so if the lines are off-site.

ATTACHMENTS

1. Excerpt of March 25, 2002 Council Meeting Minutes (p. 7).
2. March 25, 2002 Petition from Joe Capowski (p. 8).
3. March 25, 2002 Agenda #5b (p. 11).
4. Area Map, Cattani Property (p. 17).
5. February 25, 2002 Petition from Kyle and Dana Cattani (p. 18).
6. April 15, 2002 Response from Scott Gardner, Duke Power (p. 20).
7. May 13 Email from Joe Capowski (p. 25).

A RESOLUTION EXPANDING THE SPECIAL USE PERMIT SUBMITTAL REQUIREMENTS TO INCLUDE AN EXPANDED DESCRIPTION OF THE CURRENT UTILITY PLAN AND DIRECTING THE DEVELOPMENT ORDINANCE CONSULTANT TO CONSIDER LANGUAGE IN THE THIRD DRAFT OF THE DEVELOPMENT ORDINANCE THAT WOULD ADJUST THE THREE-PHASE LINE PROVISION TO REQUIRE THAT THREE-PHASE POWER DISTRIBUTION LINES BE BURIED UNDER CERTAIN CONDITIONS (2002-06-24/R-6)

WHEREAS, the current process for Special Use Permit or Special Use Permit Modification applications does not adequately identify plans for off-site utility expansions and upgrades; and

WHEREAS, an expanded description of the current Utility Plan submittal requirement would provide needed information about the proposed placement of utility lines;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council hereby amends the Special Use Permit and Special Use Permit Modification application submittal requirements to include an expanded description of the current Utility Plan requirement and require identification of all proposed utilities, on- and off-site, as well as upgrades, and the nature of the utility proposal (above or underground).

BE IT FURTHER RESOLVED that the Council directs the Development Ordinance consultant to consider language in the Third Draft of the Development Ordinance that would adjust the three-phase line provision to require that three-phase lines be provided underground unless it is demonstrated that the burial is not appropriate as it relates to the extent of the development proposed and when Duke Energy agrees to the burial.

BE IT FURTHER RESOLVED that burial of three-phase lines by the developer would be required subject to these conditions: (1) there is a rational nexus between the impact of the proposed development and the proposed utility requirement; (2) the costs of placing the utilities underground is roughly proportional to the impacts of the development on the community; (3) placing the utility underground does not violate any provisions of the electrical code or other relevant safety standard; and (4) the developer's having the legal right to do so if the lines are off-site.

This the 24th day of June, 2002.

ATTACHMENT 1

From March 25, 2002 Minutes

Kyle Cattani: Petition to consider modification of Development Ordinance.

Mr. Cattani pointed out that the Town is much more visually attractive in areas where utility lines are buried. He noted that developers are not required to bury these lines but that many of them choose to do so because it looks better. Mr. Cattani explained that the opportunity is open for developers to run lines across their neighbors' properties rather than absorbing the added expense of burying them. He said that Duke Power had installed three-phase power lines through an existing easement within the confines of his property in order to provide service to Carol Woods.

Mr. Cattani pointed out that this "eyesore" is directly visible from his kitchen window. He said that herbicides had been used which are hazardous to his children. He reported that Duke Power and Carol Woods representatives had described burying the lines as "technically unfeasible," even though they do bury them on Carol Woods' property. Mr. Cattani petitioned the Town Council to consider the following modification to the Development Ordinance (July 2000) 14.10:

All utility lines, including three-phase electric power distribution lines but excluding lines used only to transmit electricity between generating stations, shall be placed underground. And all surface disruptions required for installation shall be rehabilitated to the original or an improved condition.

Mr. Cattani also petitioned the Council to withhold occupancy approval to Carol Woods' new development until the damage to his property has been addressed.

Electrical engineer and former Council Member Joe Capowski supported Mr. Cattani's statement, adding that the technical arguments made in a letter from Duke Power "fallacious." Mr. Capowski explained that electricity can be delivered at any voltage and with any number of phases. The danger, he said, comes from voltage. He remarked that Duke Power would only do more if some governmental body requires that. Mr. Capowski recommended that the Town employ someone to represent it and its citizens in these matters. He also suggested that the Town amend the new Development Ordinance to reflect the technical and economic reality of power distribution. Moreover, Mr. Capowski suggested sending the power graph of the Development Ordinance to the Technology Committee for review and suggestions.

Carol Woods Director of Facilities Jim Cole stated that Carol Woods had no choice in how it was served, since that was off their property and off the development plans. He said that Carol Woods had no intention of offending or harming anyone, but had no control of over how Duke Power runs its lines. Mr. Cole argued that withholding Certificate of Occupancy permits would be an unreasonable request by the Council.

COUNCIL MEMBER JIM WARD MOVED, SECONDED BY COUNCIL MEMBER BILL STROM, TO REFER THIS ITEM TO THE MANAGER AND THE TECHNOLOGY COMMITTEE, AND TO REFER OTHER ITEMS REGARDING THE DEVELOPMENT

ORDINANCE TO THE CONSULTANT. THE MOTION WAS ADOPTED UNANIMOUSLY (8-0).