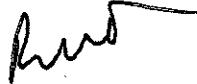


STAFF REPORT

TO: Mayor and City Council

DATE: 3/25/08

FROM: Robert W. Oast, Jr., City Attorney



SUBJECT: Downtown Development Moratorium Discussion

Summary Statement: Information on moratorium

Review and Analysis: The agenda for the March 25, 2008, meeting of City Council includes an item for discussion of a moratorium on certain downtown development projects.

While not used frequently, development moratoria have been used in various contexts across the country. Development moratoria have also been used in North Carolina, but issues regarding the process for adoption and the scope and duration of those moratoria were the subject of litigation. In 2005, the N.C. General Assembly amended the planning enabling statutes to provide for moratoria. This amendment essentially codified the case law on this topic. A copy of the statute, N.C.G.S. 160A-381(e), is attached and is largely self-explanatory.

If Council decides to proceed with a moratorium, the scope and duration of it, as well as the conditions necessitating its adoption, must be clearly identified. Unless the moratorium is in response to an emergency and is of very limited duration, a public hearing is required. The notice requirements for the public hearing vary depending on the duration of the moratorium.

If adopted, the moratorium would only apply prospectively. The effectiveness of a moratorium as to certain types of development approvals varies depending on the nature of the permit or approval. In general, however, projects for which permits have been issued, or for which completed applications have been submitted, would not be affected by a moratorium. The moratorium must also specify the steps that the City proposes to take to address the conditions leading to the adoption.

Pros and Cons: This item is on Council's agenda for discussion. If Council decides to proceed with a moratorium, staff will evaluate the specific proposal.

Recommendation: If Council decides to proceed with a moratorium, the parameters of the moratorium (duration, scope, conditions, etc.) should be identified.

(e) As provided in this subsection, cities may adopt temporary moratoria on any city development approval required by law. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the governing board shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 160A-364. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 160A-417 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 160A-385.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the city prior to the call for public hearing to adopt the moratorium. Any preliminary subdivision plat accepted for review by the city prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

- (1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the city and why those alternative courses of action were not deemed adequate.
- (2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.
- (3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.
- (4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the city during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the city shall have taken all reasonable and feasible steps proposed to be taken by the city in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension.

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the city shall have the burden of showing compliance with the procedural requirements of this subsection.

TITLE: Public Hearing on a Draft Ordinance that Establishes a Six-Month Development Moratorium in Carrboro's Northern Study Area

Issue of vested rights. A development moratorium cannot affect the consideration and due process of already accepted applications. However, it does not protect any projects from the effect of subsequent changes in regulations (i.e. either to the text or map of the Land Use Ordinance). Exceptions to development moratoria do not provide any vested rights to the outcome of the development review process, only to the right for that process to continue. If a community's plan or policy review and implementation process reaches the finish line before the development project, any application can be held to the new rules. The Carrboro Land Use Ordinance provides for applicants a means of requesting relief from changes that have been made while development review has been underway. The permit-issuing authority has the authority to decide whether or not to grant any deviation in these types of circumstances based on information that is provided regarding the extent to which an applicant has made substantial expenditures in reliance on the existing regulations.

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the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension.

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BOARD OF ALDERMEN

ITEM NO. (3)

AGENDA ITEM ABSTRACT

MEETING DATE: March 27, 2007

TITLE: Public Hearing on a Draft Ordinance that Establishes a Six-Month Development Moratorium in Carrboro's Northern Study Area

DEPARTMENT: PLANNING	PUBLIC HEARING: YES X NO
ATTACHMENTS: A. Resolution finding consistency with adopted policy/plan B. Resolution finding inconsistency with adopted policy/plan C. Draft ordinance and map D. Resolutions #134, #138 E. Orange County memo F. Section 2.4 Joint Planning Agreement G. Board Comments and Recommendations	FOR INFORMATION CONTACT: Patricia McGuire – 918-7327 Mike Brough – 929-3905

PURPOSE

It is necessary for the Board of Aldermen to receive public comment before acting on an ordinance that will amend the text of Carrboro's Land use Ordinance by temporarily suspending its applicability for rezoning and special use and conditional use permit applications in the Northern Study Area (NSA).

INFORMATION

Background information on this request may be found on the Town's website at http://www.townofcarrboro.org/BoA/Agendas/2007/02_06_2007_D2.pdf. The Board of Aldermen has also embarked upon a process to review the implementation of the Facilitated Small Area Plan for Carrboro's Northern Study Area, as specified in Resolution #134 and #138 (*Attachment D*). A review committee was established on March 6th; the first meeting of the group was held on March 15th. Community fora on this matter are scheduled to take place on April 14 and June 16.

Description of the draft ordinance

See attached (*Attachment C*). As required by North Carolina General Statute 160A-381 (g), the ordinance establishing a development moratorium for Carrboro's NSA must specify the need, purpose, time frame, applicability, and expected accomplishments. The draft ordinance includes these required features, describes the requirements under the Joint Planning Agreement and also notes those projects or approvals that will not be subject to the moratorium. Pending and recently approved development applications are noted below. The status of these projects in relation to the moratorium is noted.

	Type	Concept Plan Review	Concept Plan Approval/SUP or CUP Application	Subject to Moratorium
Tallyho AIS	Residential	Underway	No/No	No ¹
Litchfield AIS	Residential	Yes	Yes/No	No ¹
Claremont II AIS	Residential	Yes	Yes/Yes	No
Carolina Commons	Residential	Yes	No/No	No ¹
Carolina North	Details not available	No	No/No	Yes
Twin Creeks Park	Recreational	No	No/No	No ²
Won Buddhism Center on Old NC 86	Community	No	NA/No	No ²
Ballentine AIS	Residential	Yes	Yes/Yes	No
Jones Property AIS	Residential	Yes	Yes/Yes	No
Elementary #10	Educational	NA	Yes/Yes(approved)	No
Claremont I AIS	Residential	Yes	Yes/Yes(approved)	No

¹ As drafted, concept plan review can continue.

² As drafted, moratorium applies to residential projects only.

Issue of vested rights. A development moratorium cannot affect the consideration and due process of already accepted applications. However, it does not protect any projects from the effect of subsequent changes in regulations (i.e. either to the text or map of the Land Use Ordinance). Exceptions to development moratoria do not provide any vested rights to the outcome of the development review process, only to the right for that process to continue. If a community's plan or policy review and implementation process reaches the finish line before the development project, any application can be held to the new rules. The Carrboro Land Use Ordinance provides for applicants a means of requesting relief from changes that have been made while development review has been underway. The permit-issuing authority has the authority to decide whether or not to grant any deviation in these types of circumstances based on information that is provided regarding the extent to which an applicant has made substantial expenditures in reliance on the existing regulations.

Issue of effective dates. A substantial portion of the NSA is located with the Transition Areas portion of the Joint Planning Area as identified in the Joint Planning Agreement (JPA) (see map, *Attachment C-2*). The JPA allows the enactment of a moratorium, initially for no more than six months in duration (*Attachments E and F*). The moratorium may be extended one time for more than six months following the same procedures. With respect to Carrboro's Transition Areas, the moratorium can not be effective until adopted by the Town and approved by Orange County following a public hearing conducted by the Town of Carrboro. A joint public hearing is not required. The Board of County Commissioners (BOCC) has decided to receive public comment at the April 26th Joint Planning public hearing. The BOCC has indicated that it will make a decision regarding approval, subject of course to any action the Board of Aldermen has previously taken, on April 26 or later.

The component jurisdictions and decision-making authority in the NSA are summarized in the table below.

	Controlling Instrument	Time frame	Adoption/ Approval	Total Area /% NSA	Available Area (under- or undeveloped)
NSA – Carrboro (ETJ and Town Limits)	NC General Statutes	Reasonable	Board of Aldermen	1,412/37 percent	595
NSA – Orange County	Joint Planning Agreement	6 months; max 6 mo-extension	Board of Aldermen/BOCC	2,375/63 percent	613

Benefits and limitations of a moratorium. The Board of Aldermen has launched a review process that is aggressive and time-limited. Many prospective applicants are likely to consider this a de-facto moratorium. Applicants for at least two projects have accelerated submittals of conditional use permit plans and one concept plan submittal was accelerated so that project review can continue. It would be somewhat rare for large projects such as the ones submitted that are so early in the review phase to reach the terminus of the development review process during the 6-month NSAPIR review period. At that point, the risk of having committed funds and energy to a project that could be out of compliance with land use regulations would be considerably heightened. A relatively short moratorium makes clear that the community does not wish to expend its energy on the review of such applications, nor does it wish property owners and development permit applicants to expend their time or funds in such a fashion.

Any moratorium has the potential for slowing down the submittal, approval, construction, and occupancy of new development projects. As such, the community accepts a risk that some developers will decide to pursue projects in other locations, where a development moratorium is not in effect.

Recommendations and comments. The Board of Aldermen referred the draft ordinance on the moratorium to six advisory boards and Orange County. Any action taken by these boards is summarized below.

Board/Committee	Action
Planning Board	Recommended approval, with modification
Appearance Commission	Selected NSAPIRC representative. Otherwise, no comment
Environmental Advisory Board	Recommended approval, with clarification
Recreation and Parks Commission	No comment; lack of quorum
Transportation Advisory Board	
Northern Transition Area Advisory Committee	Declined to comment
Orange County Board of County Commissioners	Will receive public comment on April 26 th and take action afterwards

Copies of recommendations and comments are provided (*Attachment G*).

Action Options

1. Take no action; rely on review process to proceed post-haste. Review process establishes de-facto moratorium and folks wait out the brief review period before finalizing the submittal of new applications under modified land use regulations. Development

community accepts risk for proceeding with development review of projects that may be out of compliance with land use regulations if the review process results in changes prior to public hearing on projects.

2. Adopt draft ordinance as drafted. Town accepts responsibility for slow-down or loss of development applications during and subsequent to the development moratorium. Based on the existing design and development activity, the moratorium may have only a small effect on possible submittals.
3. Modify language in relation to advisory board recommendations and/or other comments or issues, and adopt. Possible effects are similar to those described under option 2.

FISCAL IMPACT

Published notice costs for this hearing have totaled \$498.

STAFF RECOMMENDATION

The staff recommends that the Board of Aldermen consider 1) adoption of the resolutions finding that the ordinance establishing a six-month moratorium is either consistent or inconsistent with adopted policy and adoption or rejection of the ordinance establishing a six-month moratorium on rezonings and certain permits for residential development for the Northern Study Area (*Attachments A, B, and C*), as is desired.

Downtown Commission/Downtown Design Review

Projects Reviewed by the DTC in 2006

- Capital Center/82 Patton Avenue (redesign and renovation of a seven story office building) *formal review*
- Zona Lofts at 150/162 Coxe Avenue (new construction of 150+residential units) *formal review*
- Pioneer Building Plaza (new construction of mixed use at Broadway and Marcellus) *conditions review; on account of formal review from October 2005*
- 37 Hiawassee expansion (flexible standards for new construction of residential building) *formal review- continued until plans finalized*
- Broadway Mixed Use Phase II (new construction of mixed use at Elizabeth and Starnes) *flexible standards review*
- Ravenscroft (new construction of four residential buildings at 60 Ravenscroft Drive) *informal review* – plans have changed and were reviewed again 2008
- Buncombe County Parking Deck on College Street (new construction of 550+ space garage) *formal review*

Projects Reviewed by the DTC in 2007

- College Street Office Building – redesign of office building on northwest corner of College Street and Woodfin Place
- Pack Square Pavilion – *Southeast corner of College and Market Streets, visitors' center for the new Pack Square Park.*
- The Ellington- GPI project on Biltmore, hotel and condos
- Zona Lofts- redesign of project
- Spare Change for Real Change Lockboxes
- Hotel Indigo – former Chamber of Commerce site
- Zona Village – Buxton Avenue mixed use

2008 reviewed

- Parkside
- Ravenscroft

Possible/Upcoming-

- Mt. Zion area redevelopment
- Buncombe County Parking Deck on Coxe Avenue
- FIRC redevelopment of Haywood Hotel and Atrium area
- City Owned Property Initiative (Eagle Market likely)

MEMORANDUM

TO: Gary Jackson, City Manager

DATE: 3-7-08

FROM: Sasha Vrtunski, AICP

SUBJECT: Update on Downtown Master Plan process

I wanted to provide you with an update on the Downtown Master Plan process. Presently we are in negotiations with Goody Clancy. I hope to have a final contract for the City Attorney's review next week.

The current plan is to have the consultants come the first week of April for meetings with individual stakeholders, which will include City Council and city staff. The team would return to Asheville in late April for a large public meeting. Staff is working with the Downtown Commission to form an advisory committee that will serve as a sounding board for the consultant team and ensure diverse input into the planning process. Please contact me if you have any questions or concerns.