

ACTION REQUEST FORM

DATE: September 19, 2007
TO: The Honorable Mayor and City Council
FROM: A. Paul Norby, FAICP, Director of Planning

COUNCIL ACTION REQUEST:

Request for Public Hearing on Zoning Text Amendment proposed by City-County Planning Staff

SUMMARY OF INFORMATION:

Zoning Text Amendment proposed by City-County Planning Staff to amend Chapter C, Environmental Ordinance, Article III - Salem Lake Watershed Protection, of the *Unified Development Ordinances* to amend the Specific Provisions related to Conservation Easements for Paired-Parcels (UDO-181).

PLANNING BOARD ACTION:

MOTION ON PETITION: APPROVAL
FOR: UNANIMOUS
AGAINST: NONE
SITE PLAN ACTION: NOT REQUIRED

STAFF REPORT

DOCKET # UDO-181

STAFF: Margaret Bessette

REQUEST

This UDO text amendment is proposed by City-County Planning Board staff to amend Salem Lake Watershed Regulations, Chapter C, Article III of the *Unified Development Ordinances*. The text amendment would incorporate language allowing the elected body to terminate all or part of a conservation easements if the easement is no longer required under a paired-parcel development approval.

BACKGROUND

The UDO was amended in the spring of 2006 to allow density averaging for noncontiguous paired-parcels in the Salem Lake Watershed. A paired-parcel development includes a parcel to be developed (the *developed parcel*) and a parcel to be left as open space (the *undeveloped parcel*). Under the Ordinance, the undeveloped parcel must remain in a vegetated or natural state and be placed under a permanent conservation easement granted to a governmental unit or a land conservation organization. The paired-parcel development is reviewed and approved by the Planning Board under the Planning Board Review process. Acceptance of the conservation easement is approved by the governmental unit granted the easement.

The term “permanent” was included in the ordinance, based on language in the State model ordinance. However, when the Ordinance was being drafted and adopted, Planning staff discussed with the Winston-Salem Forsyth County School System that the conservation easement could be terminated if no longer required as part of the paired-parcel approval. The School System has placed modular units at schools in the Salem Lake Watershed with the intention that they will remove the units when new schools are built. When they remove the modular units, they will seek to have the paired-parcel development approval revised and the conservation easement terminated.

The City Attorney reviewed the Ordinance language in the spring of 2007 and determined that termination of the conservation easement could only occur by formal action of the elected body that was granted the easement and further, that the Ordinance as currently written did not allow the elected body to consider such termination.

ANALYSIS

This text amendment incorporates language to allow a property owner to request, and the elected body to approve, termination of all or part of a conservation easement if the easement is no longer required by the City-County Planning Board as part of a paired-parcel development approval. Revision of the paired-parcel development approval to no longer require the conservation easement could occur under a variety of circumstances: the property

owner/developer could remove built upon area from the developed parcel; engineered stormwater management devices could be placed on the developed site, increasing the allowable built upon area; and/or the built upon area or other regulations could change.

If built upon area has been removed, the property owner must provide certification from a licensed professional engineer, soil scientist or land architect that the permeability of the soil on which the built upon area was located has been restored to pre-development conditions.

The proposed language, “the elected body shall terminate”, makes the termination of the conservation easement by the elected body compulsory if the City-County Planning Board modifies the paired parcel approval to no longer require the easement and the appropriate certification of permeability restoration has been provided. Staff feels that it is fair and appropriate to terminate the conservation easement when the specific public purpose for which it was required is no longer in place.

RECOMMENDATION

APPROVAL

PUBLIC HEARING

FOR: None

AGAINST: None

WORK SESSION

MOTION: Clarence Lambe moved approval of the zoning text amendment.

SECOND: Wesley Curtis

VOTE:

FOR: Jerry Clark, Wesley Curtis, Carol Eickmeyer, Arnold King, Arthur King, Clarence Lambe, Lynne Mitchell, Brenda Smith

AGAINST: None

EXCUSED: None

A. Paul Norby, FAICP
Director of Planning

UDO-181
AN ORDINANCE AMENDING
THE *UNIFIED DEVELOPMENT ORDINANCES*
REGARDING TERMINATION OF CONSERVATIONS
UNDER THE SALEM LAKE PAIRED PARCEL PROVISIONS

Be it ordained by the City Council of the City of Winston-Salem, North Carolina, that the *Unified Development Ordinances* is hereby amended as follows:

Section 1. “Chapter C, Environmental Ordinance, Article III - Salem Lake Watershed Protection is hereby amended as follows:

3-5 DEVELOPMENT OPTIONS

3-5.5 PAIRED-PARCEL AVERAGED-DENSITY DEVELOPMENT

(C) Review and Approval Process

(4) Conservation Easement Required

- (a)** The undeveloped parcel(s) or portion(s) thereof shall remain in a vegetated or natural state and be subject to a ~~permanent~~ conservation easement granted under G.S. 121-35 to the governmental unit or a land conservation organization. If an easement is granted to the governmental unit, the property owner shall retain responsibility for ongoing maintenance of the undeveloped property.
- (b)** If the Planning Board revises or rescinds the paired-parcel approval so as to no longer require all or a portion of the conservation easement as part of the paired-parcel development, the grantor or current property owner may request that the elected body in whose jurisdiction the undeveloped parcel of the parcel pair is located terminate all or part of the easement. The elected body shall terminate all or part of the easement if the grantor or current property owner provides certification by a North Carolina licensed professional engineer, soil scientist or landscape architect, and the elected body finds, that the built upon area allowed under the paired-parcel approval has been removed and that the permeability of the soil on which the built upon area was located has been restored to pre-development conditions.

Section 2. This ordinance shall become effective following adoption by the jurisdiction and approval by the Water Quality Committee of the Environmental Management Commission.