

ACTION REQUEST FORM

DATE: April 19, 2006
TO: The Honorable Mayor and City Council
FROM: A. Paul Norby, AICP, Director of Planning

COUNCIL ACTION REQUEST:

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

SUMMARY OF INFORMATION:

Zoning Text Amendment proposed by Planning Staff to amend Chapters C - Environmental Ordinance, Article III - Salem Lake Watershed *Unified Development Ordinances* to allow density averaging between paired parcels for the purposes of calculating impervious coverage (UDO-158).

PLANNING BOARD ACTION:

MOTION ON PETITION: APPROVAL
FOR: JERRY CLARK, WESLEY CURTIS, CAROL EICKMEYER,
ARNOLD KING, ARTHUR KING, CLARENCE LAMBE,
LYNNE MITCHELL, PAUL MULLICAN
AGAINST: BRENDA SMITH
SITE PLAN ACTION: NOT REQUIRED

STAFF REPORT

DOCKET #: UDO-158

STAFF: Margaret Bessette

REQUEST

UDO Text amendment proposed by City-County staff to amend Chapter C—Environmental Ordinance, Article III—Salem Lake Watershed Protection to allow density averaging for noncontiguous paired-parcels.

BACKGROUND

Watershed Regulations: In the early 1990s, the State of North Carolina established minimum water supply watersheds regulations and required local governments to adopt ordinances with land use provisions at least as stringent as the State minimum regulations. The State allows local governments some flexibility in their ordinances as long as the local ordinances have standards that are at least as stringent as the State minimum requirements. The State regulations have been modified since the mid-1990s and now include a number of provisions that are optional for local governments. Local governments can decide whether or not to include these optional provisions and have some flexibility in deciding how to implement them. Optional provisions include (but are not limited to): higher density development with storm water management (currently allowed in the Salem Lake Watershed); limited areas of intense development (enacted locally as the SIDA provisions); and, density averaging on noncontiguous paired-parcels.

Density averaging involves the use of two noncontiguous parcels and is based on the idea that the development plans for a pair of parcels can be submitted together and treated as a single project for purposes of the watershed regulations. The paired-parcel provision works somewhat like a transfer of developments rights (sometimes called a TDR), although the density is averaged between the sites, not truly transferred from one to another. The amount of allowable development on the developed parcel is the amount of development that would be permitted on the parcels if they were contiguous and developed together under the chosen development option--either the low density option or high density/storm water management option. Built upon area on the developed parcel cannot exceed 70%.

If a local government decides to allow density averaging of noncontiguous parcels, they must modify their ordinance to meet or exceed the minimum criteria established by the Water Quality Committee (WQC) of the NC Environmental Management Commission, submit their ordinance for review and receive permission from the WQC prior to implementation.

See examples below for illustration of how the paired-parcel provisions would work in the Salem Lake Watershed.

Current Request: UDO-158 would allow averaged-density paired-parcel developments in Winston-Salem and Forsyth County's jurisdictions in the Salem Lake Watershed. The proposed provisions are based on the Minimum Criteria for Density Averaging developed by State and on

the City of Hickory's paired-parcel provisions. Important features of the proposed process include:

- Developers can submit a paired-parcel development proposal which includes two noncontiguous parcels located in the Salem Lake Watershed to City-County Planning for review and approval. Applications must include a site plan and other requested information to allow the staff and Planning Board to determine if the development conforms to the requirements of the Ordinance.
- The proposal must include a parcel to be developed (the *developed parcel*) and a parcel to be left as open space (the *undeveloped parcel*). The proposal can include use for residential, nonresidential or a combination, subject to other UDO regulations. The sites do not have to have the same zoning and the use of the developed parcel does not have to be allowed on the undeveloped parcel. For example, the owner of a site zoned for business could pair the parcel with a parcel zoned for residential use and develop all the allowable coverage on the commercially zoned site.
- The parcels must be located so as preserve open space in more sensitive areas of the watershed, especially closer to the reservoir. A parcel within the Critical Area (extending approximately ½ mile from the reservoir) cannot be the developed parcel. If one parcel of the pair is located in outside the Critical Area in the Reservoir Protection Area (extending approximately 1 mile from the reservoir) and one is in the Balance of the Watershed, the parcel in the Reservoir Protection Area must be the undeveloped parcel.
- The developed parcel must be designed to minimize water quality impacts. The provisions include specific design objectives related to storm water runoff and impervious area. Storm water quality management devices (typically wet detention ponds) are only required when the percent of impervious coverage averaged between the parcels exceeds the low density options requirements.
- The undeveloped parcel must remain in a vegetated or natural state and be placed under a permanent conservation easement.
- Review and approval of the paired-parcel development is processed as a Planning Board Review. The proposal is first reviewed by staff who will make a recommendation to the Planning Board. The Planning Board can approve the paired-parcel development only if they find that that the proposal and site design conform with adopted land use plans and the intent and requirement of the Watershed Ordinance. As with other development reviews, significant changes can only occur with Planning Board approval of amendment to the site plan.

Below are examples using the paired-parcel provisions for sites in the Salem Lake Watershed:

Example A:

A developer owns two vacant 10 acre parcels, one located approximately ½ mile from the reservoir; the other located approximately 2 miles from the reservoir. Under the low density option, he would be able to develop 12% of the close in parcel (1.2 acres of impervious area) and 24% (2.4 acres of impervious area) of the outer parcel, a total of 3.6 acres of impervious area. If approved as an averaged-density paired-parcel development, he would be able to develop all 3.6 acres of impervious cover on the outer parcel and protect the more environmentally sensitive parcel as undeveloped open space. If he were developing under the high density option where storm water quality management is required, he would be able

to develop 30% (3 acres) of each site if considered separately. If approved as a paired-parcel development, he would be able to develop the full 6 acres on the outer parcel, leaving the inner parcel as protected open space.

Example B:

A business owner owns two 10 acre parcels: one is a vacant 10 acre parcel, located approximately ½ mile from the reservoir; the other is located approximately 2 miles from the reservoir and is the location of his business with 3.1 acres (31%) of impervious area. He would like to expand his business, but can't (unless granted a SIDA) since the site already has over 24% and 30% impervious coverage, the maximums allowed under the low and high density options, respectively. Under the low density option, his allowable coverage is 12% of the close in parcel (1.2 acres of impervious area) and 24% (2.4 acres of impervious area) of the outer parcel, a total of 3.6 total acres. If approved as an averaged-density paired-parcel development, he would be able to protect the more environmentally sensitive site as undeveloped open space and increase his coverage on the outer parcel by .5 acres, up to 3.6 acres of coverage. If he were developing under the high density option requiring storm water quality management, his allowable coverage is 30% (3 acres) on each site separately. If approved as a paired-parcel development, he would be able to develop a total of 6 acres of coverage, allowing him to increase his coverage on the outer parcel by 2.9 acres while leaving the parcel nearest the reservoir as open space.

Example C:

A business owner has a business on 10 acres with 6.5 acres of existing impervious cover located approximately 2 miles from the reservoir. He'd like to expand his business, but can't (unless granted a SIDA) since the site already has over 24% and 30% impervious coverage, the maximums allowed under the low and high density options, respectively. Under the paired-parcel provision, the most that he could add would be 21,780 square feet of impervious area, bringing him up to the maximum 70% coverage on the developed parcel. Developing under the low density option (12% coverage on the close in parcel and 24% on the outer parcel) and using the paired-parcel provision, he would have to pair his developed parcel with an undeveloped parcel of at least 38 acres in the Reservoir Protection Area or a more environmentally sensitive parcel of at least 19 acres in the Balance of the Watershed. If he develops under the high density option using storm water management (30% development on both sites), he could pair with a parcel of at least 13 acres in either the Reservoir Protection Area or the Balance of the Watershed.

ANALYSIS

The paired-parcel provisions included in UDO-158 would provide water quality and growth management benefits to the community and flexibility to land developers. The proposed approval process includes safeguards and standards to assure that paired-parcel developments protect water quality and are in the public interest.

The paired parcel provisions do not increase the amount of development that can occur in the watershed—only where that development occurs. The provisions require that the undeveloped parcel of the parcel pair be located in a more environmentally sensitive area of the watershed

than the developed parcel; therefore, the provisions can benefit water quality by permanently protecting property in more sensitive areas, such as the Critical Area and the Reservoir Protection Area, as permanent vegetated open space.

Currently, if developers want to expand or build in the watershed and cannot do so on their existing sites due to coverage limitations, they can acquire additional contiguous property to be included in their overall density or built upon area calculation. However, adjacent land is not always vacant or available. The paired-parcel provisions allow developers flexibility in where they acquire vacant land to be included in their watershed calculations. An example is an existing commercial area where there is no vacant land and all sites are developed beyond the 12 to 30% coverage allowed under the Salem Lake Watershed Ordinance. Because these are often small sites and expansions add only minimally to the tax base, they are unlikely to qualify for a SIDA. Under the paired parcel provisions, the business owner could acquire a vacant site closer to the reservoir and expand development on his existing site. In this situation, the paired-parcel provision provides both a growth management benefit by allowing a business to expand in an already developed area and a water quality benefit by protecting a more environmentally sensitive site as permanent open space.

Consistent with State minimum requirements, storm water quality management devices (typically wet detention ponds) are only required under the proposed paired-parcel provisions when the amount of impervious coverage averaged between the parcels exceeds the low density options requirements (12% in the Reservoir Protection Area and 24% in the Balance of the Watershed). It is possible that amount of impervious coverage on the developed parcel could be high--up to 70%--without on-site storm water quality management being required under the watershed regulations. Staff considered recommending on-site storm water quality management under other circumstances, such as when coverage on the developed parcel exceeds a certain percentage or area. Unfortunately, deciding when storm water management devices should be required is complex and somewhat arbitrary. Staff is not comfortable recommending a specific percentage or area threshold and believes the potential negative impacts of not requiring on-site storm water controls are compensated by the protection of large tracts of environmentally sensitive land close to the reservoir. If storm water quality management devices are used on developed site, the required size of the undeveloped parcel is significantly reduced, decreasing the area of the permanently protected undeveloped parcel. Further, while on-site storm water quality management devices are not always required, all sites using the paired-parcel provisions must incorporate best management practices to reduce negative storm water impacts including: minimizing impervious surfaces; locating development away from surface waters and drainageways; minimizing concentrated storm water flow; and maximizing sheet flow through vegetated areas.

It is important to recognize that the paired-parcel provisions do not transfer allowable development from the undeveloped site to the developed site, but rather average the allowable density between the sites. For vacant sites, the net effect is a transfer, since all the allowable cover from the undeveloped parcel can be used on the developed site. However, it doesn't work as a simple transfer for sites with existing coverage since the Salem Lake Ordinance does not exempt existing development from the impervious coverage calculations. If there is existing impervious coverage on the developed parcel exceeding what is otherwise allowed under the

Ordinance, the property owner must first use the land area of the undeveloped parcel to compensate for the overage on the developed parcel. The result is that to increase coverage on an already highly developed parcel, an owner has to pair with a comparatively large parcel as illustrated in Example C above, where the land owner had to protect 13 to 38 acres as permanent open space to expand his site coverage by ½ acre. Further, the provisions cannot be used for developed parcels with more than 70% coverage. Together, these factors limit how extensively the paired-parcel provisions will be used. The paired parcel provisions will most likely be used for developments that don't qualify for a SIDA because of size or land use and/or where an owner already owns an appropriately located vacant parcel.

The review and approval process proposed in UDO-158 includes safeguards and standards to assure that the paired-parcel development is in the public interest, appropriately located, and designed to minimize negative impacts on the environment. As proposed, paired-parcel developments would be reviewed and approved by the Planning Board under the Planning Board Review process. To approve a paired-parcel development, the Planning Board must find that the proposal is consistent with adopted land use plans and meets the intent and requirements of the Ordinance. The Planning Board can deny paired parcel projects that could have a negative water quality or environmental impact or are not in the public interest.

The paired-parcel provisions could be adopted for all regulated watersheds in Forsyth County. For primarily administrative reasons, however, staff is only recommending adoption for the Salem Lake Watershed at this time. If the paired parcel provisions work as staff believes they will, providing benefits to the community and flexibility to developers without administrative difficulties, staff will recommend extending the provisions to other regulated watershed areas.

RECOMMENDATION

APPROVAL

PUBLIC HEARING

FOR:

Gene Miller, Winston-Salem/Forsyth County Schools, P. O. Box 2513, Winston-Salem, NC 27102

- We have a problem with impervious soil limits at two of our schools in this watershed, Sedge Garden and Hall-Woodward. We've exceeded our limits already there.
- However, we have 88 acres of land near Salem Lake that has nothing built on it.
- Even though the sites are not contiguous, if they are in the same watershed, they can be paired together for calculations.
- This is a temporary situation because we have plans if one bond referendum passed in November, there are at least two new schools which will serve this area and alleviate overcrowding at the Sedge Garden and Hall-Woodward schools.
- However, we have to have a place to put more students in August.
- We pledge to you that we will not build anything on the paired parcel until we remove the two units at these two existing schools.

AGAINST: None

WORK SESSION

During discussion by the Planning Board, the following points were made:

1. The un-built-upon parcel is closer to the reservoir.
2. To accomplish specifically what Dr. Miller said, if this amendment passes, they would bring back a site plan with a legal restriction on the paired parcel where it could not be built upon without coming back through this process asking that the parcel be un-paired.
3. The Board discussed storm-water management and erosion control.
4. Brenda Smith expressed concern that someone might use this option to avoid doing stormwater control. Mr. Norby noted that the site design requirements in the proposed ordinance would be in effect. They include sensitivity to stormwater impacts, etc., and follow the State guidelines for paired parcels as well as the approach Hickory used.
5. The Board discussed putting a cap on the amount of impervious surface coverage allowed on the developed parcel of the pair.

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

SECOND: Jerry Clark

VOTE:

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

AGAINST: Brenda Smith

EXCUSED: None

A. Paul Norby, AICP
Director of Planning

UDO-158
AN ORDINANCE AMENDING
CHAPTER C ENVIRONMENTAL ORDINANCE OF
THE *UNIFIED DEVELOPMENT ORDINANCES*
REGARDING DENSITY AVERAGING USING PAIRED PARCELS
IN THE SALEM LAKE WATERSHED

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

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

3-1 AUTHORITY AND GENERAL PROVISIONS

3-1.6 DEFINITIONS AND WORD INTERPRETATION

(B) List

CRITICAL AREA. The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portion of the watershed. The Critical Area extends approximately one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridgeline of the watershed (whichever comes first). Major landmarks such highways or property lines can be used to delineate the outer boundary of the critical area when these landmarks were immediately adjacent to the appropriate outer boundary of one-half mile. The Critical Area of the Salem Lake Watershed was delineated as of July 1, 1993, was formally submitted to the State of North Carolina and is shown on the adopted Salem Lake Watershed map. In the Salem Lake Watershed, the Critical Area is a subarea of the Reservoir Protection Area, an area within approximately one mile of the normal pool elevation where more stringent protection regulations apply than in the Balance of the Watershed.

DEVELOPED PARCEL. Any parcel of a parcel pair that, under an approval granted under this Article, may be developed to a development density or intensity that exceeds the maximum development density or intensity that would apply to the parcel if the paired-parcel averaged-density development option were not available.

PAIRED-PARCEL AVERAGED-DENSITY DEVELOPMENT. A development proposal that includes a parcel pair meeting the development standards of this Article that qualifies for local development approval under the density-averaging provision of 15A NCAC 2B .0104(u).

NOTE: Text to be added is indicated with an underscore. Text to be deleted is shown with a ~~strike through~~.

PARCEL PAIR. Two noncontiguous parcels of land under the same or separate ownership or two contiguous parcels of land under separate ownership for which development plans have been submitted in tandem so as to qualify for paired-parcel averaged-density development approval under this Article.

UNDEVELOPED PARCEL. The parcel in a parcel pair that is not the developed parcel.

3-5 DEVELOPMENT OPTIONS

3-5.1 DEVELOPMENT OPTIONS

All subdivisions of land and development in the Salem Lake Watershed shall meet either the low density option, the stormwater quality management option, ~~or the special intense development allocation provisions of this Article, or the paired-parcel averaged-density provision in combination with the low density or storm water quality management option of this Article.~~

3-5.5 PAIRED-PARCEL AVERAGED-DENSITY DEVELOPMENT

(A) General Description. Paired-parcel averaged-density involves the use of two noncontiguous parcels and is based on the idea that the development plans for a pair of parcels can be submitted together and treated as a single development project for the purpose of these watershed regulations. The amount of development allowed for the paired parcels taken in tandem cannot exceed the amount of development that would be allowed if the parcels were developed and reviewed separately for compliance with the provisions of this Article.

(B) General Requirements

(1) Watershed Development. The development proposal for the parcel pair shall be consistent adopted plans and with the orderly and planned distribution of development throughout the watershed.

(2) Density/Built Upon Area. Overall density of the paired-parcel averaged-density development, calculated either by dwelling units per acre or built upon area, shall not exceed the density that would be allowed if the parcels were developed separately. In no case shall the built upon area on either parcel exceed seventy percent (70%).

(3) Permitted Uses. The paired parcels in a paired-parcel averaged-density development may include or be developed for single-family or multi-family residential development or non-residential development.

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- (4) **Location.** The developed parcel and the undeveloped parcel shall be located so as to preserve open space in more sensitive areas of the watershed such as the Critical Area and the Reservoir Protection Area. The parcel pair shall be located in the same water supply watershed, preferably in the same drainage area of the watershed. A parcel pair may include land located in the Critical Area, the Reservoir Protection Area or in the Balance of the Watershed. Both parcels cannot be located in the Critical Area. If one of the parcels is located in the Critical Area, it must be the undeveloped parcel. If one of the parcels is located in the Reservoir Protection Area outside the Critical Area and one is located in the Balance of the Watershed, the parcel in the Reservoir Protection Area shall not be developed beyond those densities otherwise allowed in the Reservoir Protection Area provisions of this Article.
- (5) **Watershed Variances.** No parcel for which a watershed variance has been granted or would be required may be included as part of a parcel pair.

(C) Review and Approval Process

- (1) **Application.** Parcel pairs being submitted for approval under this provision shall be submitted for development approval as a single unitary proposal. An application for approval of a paired-parcel averaged-density development shall be submitted to the Planning Board and shall include a site plan for both parcels in conformance with Section B.7. Only the owner(s) of both the paired parcels may submit an application for approval.
- (2) **Planning Board Review and Approval.** Approval of paired-parcel averaged-density application and site plan shall be obtained from the Planning Board in accordance with the requirements in Section B.6-1.3. The Planning Board shall review the project to ensure that both parcels considered together meet the standards of this Article and that potential buyers have notice of how the watershed regulations were applied to the parcel pair. If an approval is granted, no change in the development proposal authorized for either parcel shall be made except by a revision of the application and amendment of the site plan.
- (3) **Findings.** When approving a paired-parcel development, the Planning Board shall make written findings supported by appropriate calculations and documentation that the paired-parcel averaged-density development plan as a whole conforms to the intent and requirements of this Article and that the proposed agreement assures protection of the public interest and achievement of the objectives of this Article

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- (4) **Conservation Easement Required.** The undeveloped parcel(s) or portion(s) thereof shall remain in a vegetated or natural state and be placed in 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.
- (5) **Recordation.** The conservation easement shall be recorded in the deed for the parcel to which it applies. The paired-parcel averaged-density development approval shall be recorded in the deed for each of the parcels in the parcel pair. Both the easement and the approval shall be noted on the subdivision plat or site plan that applies to each of the parcels.
- (6) **Documentation Submitted to NC Division of Water Quality.** Following approval of a paired-parcel averaged-density development, one copy of the approval shall be forwarded to the Local Government Assistance Unit of the NC Division of Water Quality. Included with the approval shall be the site plan, registered plats for both properties, a description of both properties, and documentation reflecting the development restrictions to the parcel pair that will remain undeveloped. The applicant shall be responsible for recording the required documents and providing documentation and materials to Planning staff for submission to the State.

(D) Site Design Requirements

- (1) **Built Upon Areas.** Sufficient information shall be submitted with the site plan so that it may be determined that the parcels are designed to:
- (a) Minimize stormwater runoff impact to the receiving waters by minimizing concentrated stormwater flow;
 - (b) Maximize the use of sheet flow through vegetated areas;
 - (c) Minimize impervious surface areas; and
 - (d) Locate development away from surface waters and drainage ways to the maximum extent practicable.
- (2) **Undeveloped Areas.** The undeveloped parcel(s) or portion(s) thereof shall remain in a vegetated or natural state.
- (3) **Stormwater Runoff**
- (a) Stormwater runoff from a paired-parcel averaged-density development that meets the low density option development

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requirements shall be transported from development by vegetated conveyances to the maximum extent practicable.

(b) Stormwater runoff from paired-parcel averaged-density developments which meet the stormwater management (high density) option or SIDA requirements shall be controlled on the parcel(s) where the higher density development is occurring in accordance with the criteria specified in Stormwater Management requirements of Section C.3-5.3 of this Article.

(4) Stream Buffers. Buffers shall at least meet the appropriate minimum water supply watershed protection requirements for Stream Buffers as required in Section C.3-7 of this Article on both parcels in the parcel pair according to the density of development occurring on each parcel.

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

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