REQUEST

UDO text amendment proposed by the Winston-Salem City Council to amend Section 4, “Major Subdivisions” of Chapter D, Subdivision Regulations. The amendment proposes to clarify the circumstances under which existing streets may connect to proposed new subdivision streets. The amendment also requires the temporary posting of signs at the end of all existing public streets adjoining proposed new subdivisions to notify adjoining property owners of pending subdivision review. Further, the amendment proposes to post a permanent sign at the ends of all approved new stub streets to inform future residents that the stub street will eventually become a through street.

BACKGROUND

Recently, a couple of Planned Residential Development (PRD)/subdivisions were approved which connected to long established existing subdivision streets. One of these subdivisions was approved with only one vehicular access point off an existing residential street. Although the new subdivision was approved with one additional stub street connection to adjacent undeveloped property, no other points of vehicular access were viable due to topographic constraints and established lots surrounding the subject property. Planning staff routinely seeks to provide as many vehicular connections as possible to minimize the traffic impacts on a single street. However, under these circumstances the subdivision could only be served at the outset by a single, existing public street.

Because of these situations, the Winston-Salem City Council has requested changes to the current Subdivision Regulations to better inform nearby property owners of a pending subdivision review. Notification signs would be placed at the ends of existing streets proposed to serve as vehicular access to a new subdivision.

This UDO amendment also proposes the posting of permanent signs at the ends of all new stub streets to inform future residents that the stub street has been designated as a future through street.

The Council also wishes to clarify the circumstances under which existing streets may connect to proposed new subdivision streets. In all cases existing streets would need to be a minimum of eighteen (18) feet wide in order to be connected. Additionally, the Planning Board may deny access to an existing street altogether if the Director of Transportation determines that additional traffic volumes would pose unacceptable safety or operational problems.

As delegated by the Elected Body, subdivisions are currently governed under the Subdivision Regulations section, Chapter D, of the UDO. According to this delegated authority, subdivision regulations are themselves, approved, amended, and administered by the City-County Planning Board. Such regulations confer the right of property owners/developers to subdivide their property in accordance with minimum lot size and dimensional requirements of the underlying zoning district and other development standards specified in the UDO.
Additionally, other conditions of subdivision approval are typically required by the North Carolina and City Departments of Transportation, Fire, Engineering, and other State and local regulatory agencies through a coordinated interdepartmental staff review process. As part of the interdepartmental review, proposed subdivisions are scrutinized for compliance with various regulations and technical requirements. For example, turn lanes, pavement widening and other improvements may be required to accommodate additional traffic volumes and minimize potentially adverse impacts on existing development and vehicular traffic. Subdivisions which meet all the requirements of the Subdivision Regulations, as well as those of other agencies, are then presented to the City-County Planning Board for final review and approval. Unlike zoning decisions, which must be approved by the Elected Body through a specified public hearing process, the Planning Board is the final approving authority for subdivisions. Because the subdivision is being reviewed under existing zoning and established subdivision regulations, approval is a matter of right and there is no public hearing involved.

In its review, the Planning Board may consider additional requirements, but is generally limited in its authority as specified in the Subdivision Regulations, Chapter D, of the UDO. Specifically the UDO states the Planning Board’s authority [Section 1. (I)] as follows:

The Planning Board is the administering authority for any regulations contained in the Subdivision Regulations. These provisions shall be considered the minimum requirements for the protection of the public health, safety, and welfare, and convenience. The Planning Board reserves the right to modify or extend these regulations as may be deemed necessary to provide reasonable service to the public. If, however, the owner or owner’s agent can demonstrate to the satisfaction of the Planning Board that, because of particular conditions pertaining to the land, the literal enforcement of these regulations would exact undue hardship, then the Planning Board may permit such variations from the literal interpretation of these regulations as may be deemed reasonable.

Based on this authority the Planning Board must approve a subdivision request under existing zoning, if the proposed subdivision meets all of the minimum requirements of the Subdivision Regulations and the requirements of other State and local regulatory authorities.

ANALYSIS

This proposed text amendment essentially consists of two sections. The first section amplifies current subdivision language allowing the Planning Board additional reasons to not connect a new subdivision to an existing street based on technical transportation operational factors. The second section proposes new temporary and permanent sign notification requirements for properties contiguous to connecting subdivision streets.

With regard to the engineered capacity of existing streets to serve new subdivisions, the amendment requires the pavement width of any existing public street serving a new subdivision be a minimum of eighteen (18) feet. If not, the street would not have to be connected or, alternatively, the streets could be improved either by the developer or the City to meet the minimum eighteen foot wide pavement standard. Additionally, the City Director of Transportation must determine whether or not existing streets can accommodate anticipated increases in traffic volumes. A street connection could be exempted by the Planning Board if the Director of Transportation determines that a
proposed new connection would exceed the traffic-carrying capacity of receiving streets or nearby intersections. Current subdivision language which provides exceptions to street connections due to topographic hardships or other practical limitations on street extensions is retained.

Pertaining to public notification, the text amendment would require temporary signs, similar to zoning notification signs, be posted at the ends of all existing public streets proposed to connect to a new subdivision. Said signs would advise contiguous land owners of a pending subdivision review and provide the telephone number of the Planning offices. The purpose of such notification would be to provide citizens with an opportunity to learn more about a proposed subdivision and have questions answered by knowledgeable staff prior to the approval. In this context, such notification would provide an educational benefit to existing neighbors, but would not change the subdivision review process or open the Planning Board discussion to a public hearing process. Staff anticipates the City will post and remove the signs in a manner similar to zoning notification with the subdivision petitioner paying the costs.

In addition to temporary sign notification, the text amendment also proposes permanent signs be posted at the ends of all stub street connections in new subdivisions. Such signs are intended to notify new property owners of the purpose of stub streets to connect into adjacent, undeveloped properties at some unspecified time in the future. The intent of such signs is to minimize any misunderstanding about the function of that street as a through street in the future. In this way property owners would be given plenty of advance notice of future street extensions. Staff notes that this permanent sign posting provision would apply only to new stub streets in new subdivisions and would not be retroactively applied to existing developments. Staff anticipates that the developer will bear the initial expense and obligation of placing such signs. The City would likely be responsible for replacing signs if they are altered or removed after installation.

From a survey of other major North Carolina municipalities, none currently requires permanent sign notification at the ends of public streets. One alternative measure could be to require a clarifying note on approved subdivision plats which would specify the purpose of stub streets to connect to future undeveloped property. In this way prospective buyers of real estate will be notified through the buying attorney’s title search and due diligence process. Planning staff believes such language would serve the main purpose of stub street notification and minimize the potential confusion which may result from the unauthorized removal of such signs once installed.

CONCLUSION

The Mayor and City Council requested this amendment to address the perception that the subdivision approval process is something done outside the public eye and for which the public does not have a reasonable ability to be informed. The amendment has been drafted by staff to address the Council’s concerns with input from the Public Works Department and staff from the Homebuilders and Realtors Associations. It has also been circulated in draft form to the City Council and County Commissioners. The proposal does not change the actual approval process, which remains a decision by the Planning Board as to whether the subdivision complies with established zoning and subdivision regulations. However, the additional means of notification is likely to generate more interest and inquiries about subdivisions along with the potential for misunderstanding by citizens concerning the relative lack of discretion the staff and Planning Board has on these types of approvals. This amendment also broadens the circumstances under which an existing street may not connect to a proposed new subdivision to include certain traffic operational factors.
PUBLIC HEARING - June 9, 2005

Glenn Simmons presented the staff report. Paul Norby added information and his recommendation based on his observations of conversations about this situation among City Council and the Mayor. He noted that there are basically three types of issues in this amendment. The first is the technical traffic issues. The second is the types of signs for new subdivisions. Having a notation on the plat is probably the better and more permanent solution than a sign which can disappear over time. The third issue is the temporary signs. They would not be saying "Come to the Planning Board meeting on such-and-such date and tell us what you think." They would be saying basically, "There has been a proposed plat filed under existing zoning. If you would like more information, call Planning staff at 727-2548." Dara Folan suggested making the sign a different color. Paul Norby: If what I'm suggesting is still not acceptable to the Planning Board, another option would be to only put the temporary signs up when a Planned Residential Development (PRD) is planned. PRDs used to be approved by the elected body and, the way the UDO reads, there is a slight bit more discretion on approval of PRDs. Whichever choice you make, there would not be a meeting date on the sign. It would simply refer people to Planning staff for more information.

FOR: None

AGAINST:

Glenn Cobb, Governmental Affairs Director for Home Builders Association and Realtors Association, 195 Executive Park Blvd., Winston-Salem, NC
• We've worked a lot on this and have made good progress. What Mr. Norby is saying reflects where we are also which is that the technical portion is fine.
• For new developments coming in, putting a notation on the plat makes a lot of sense.
• Temporary signs is a tough call since they could raise a false sense of security.
• We like the fact that subdivisions are handled at this level. It's beneficial to our members.
• Realtors are required when they're working with a client to discuss road issues, school issues, etc.

WORK SESSION

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

Clarence Lambe: If you buy a tract of land, create a subdivision, and connect to a street or a stub street in a former subdivision, you can be required to improve that street that someone else owns (it's a public street in someone else's subdivision), is that correct? Glenn Simmons: Yes, that's right. There aren't that many streets that are less than 18 feet and if they are less than that, they really should be widened to 18 feet. Clarence Lambe: That's different from the way it is now, correct? Glenn Simmons: That's correct. Clarence Lambe: So you are imposing the potential for Planning staff to require a developer to go and upgrade a street that the developer does not own at whatever cost. I think it could catch a developer. It could sneak up on a developer because streets are $300 a foot now with storm water and sidewalks and all that stuff. But you could spend $100 a foot on your streets.
Glenn Simmons: A good example is a subdivision that was approved adjacent to Wyandotte on the south side of town off Clemmons Village Road. Wyandotte was really one of those roads that was substandard, like 16' wide if I recall. There was concern about making that connection. So what this Board did was to require the street connection be made to Wyandotte, with a barricade erected at Wyandotte. If Wyandotte is ever improved, the barricade will come down.

The Board discussed whether this connection would be mandatory or compulsory.

David Reed: The current plan actually requires the developer to hook up to anything. That's where we ran into the problem on Wyandotte. This language actually acknowledges that there are some streets that may be too narrow. The City may want to widen them or the developer may want to. Paul Norby pointed out that the language reads "where developer improves streets" rather than requiring the developer to improve street.

Glenn Simmons: If the only practical connection into a subdivision is substandard, the developer should be required to improve the road to minimum standards. However, if there are other accesses, it may be that connection is not as critical.

Clarence Lambe: The only time I would be concerned about it is infill where you have a vacant parcel but you're never going to walk into a street that tiny in an infill project, or are you?

Jerry Clark: Staff just said there are not that many streets in the City of Winston-Salem that are substandard. I think the streets out there near my house are 16' wide, but when Chrysson Brothers built that thing on the corner, they put one of those break-away gates in there. Our concern was that the streets weren't developed enough for more traffic. I don't think the UDO can always account for every possibility and I think that's where the staff comes in and this Board and the Council saying we like it or we don't like it.

Arnold King: I don't interpret it that the developer has to do that.

David Reed: Right now the requirements say that "any developments proposed adjacent to a recorded but unbuilt stub street shall construct a stub street to the nearest public street inside the adjacent development." There's language in here that I think when you were working on the Wyandotte case, we thought you might have been making a motion contrary to your Subdivision Regulations where we said "everything has to be hooked up". We knew then that the City doesn't necessarily want 16' roads hooked up. This new language is actually giving you an out.

MOTION: Dara Folan moved to split the vote into two pieces (Section One and Two) and that the Board recommend approval of Section One (technical street connectivity requirements) of the zoning text amendment.
SECOND: Paul Mullican
VOTE:
    FOR: Clark, Eickmeyer, Folan, King, Lambe, Mullican, Smith
    AGAINST: None
    EXCUSED: None
MOTION: Dara Folan moved that temporary signs be posted at the end of all existing public streets adjoining proposed new subdivisions to notify adjoining property owners that they may connect. What I'm saying is that when we're getting ready to have a hearing and it involves a possible connection to a street, we put up a temporary sign that is of a different color than the normal hearing sign that doesn't mention anything about the hearing but just notes that there's a chance that this street could be connected and that if you have questions, please call the staff at this number where they'll be happy to answer your questions.

MOTION FAILED for lack of a second.

Brenda Smith: Would that be for subdivision and PRDs or just subdivisions? Dara Folan: I would go for anything. In terms of the second thing, I would not do any permanent signs because I think that would be really confusing and would lead to people thinking because they don't have a sign they have a right to have it not connect. For that, I think notification on plats would be the way to go.

Glenn Simmons: That fifth line down, we would substitute for "upon construction of a new subdivision", something like, "A notation proclaiming the purpose of stub streets to connect to adjacent undeveloped property to inform residents that the street has been designated as a through street."

David Reed: It could be placed at each stub street rather than just one notation.

Glenn Simmons: I think the purpose is for the realtors and attorneys to see it and pass it on to their client.

Glynis Jordan: Assuming this amendment passes today, could the Realtors Association distribute this information? Glenn Cobb, Representative for Home Builders and Realtors Associations: We are trying to do some of these things now and this would be included.

Arnold King: I'm inclined to suggest that you draft new language here and come back in 30 days. I'd like for the Home Builders and Realtors to have an opportunity to speak about the final wording since we're going to be adding something to the plat. My concern is that you're really not providing information to the average homeowner.

Dara Folan: Let's have them do the temporary language and then let us look at it.

Paul Norby: The general gist of it is to go to the first sentence which starts, "Temporary signs..." and instead of "with the proposed new subdivision", would add "and directing inquiries to the Planning Board office." In the last sentence, saying something like "Upon construction of a new subdivision a notation shall be placed prominently on the plat to inform residents that this street has been designated as a through-street."

MOTION: Dara Folan moved to continue consideration of Section Two for one month to give staff time to come back with revised language and to circulate it to interested parties.
SECOND: Jerry Clark
FOR: Clark, Eickmeyer, Folan, King, Lambe, Mullican, Smith
AGAINST: None
EXCUSED: None
DRAFT UDO-138
AN ORDINANCE AMENDING CHAPTER D
OF THE UNIFIED DEVELOPMENT ORDINANCES REGARDING
SUBDIVISION NOTIFICATION AND MINIMUM CONNECTING STREET
REQUIREMENTS

Be it ordained by ________________, North Carolina that the Unified Development Ordinances (UDO) is hereby amended as follows:

Section 1. Chapter D – Subdivision Regulations, Section 4 MAJOR SUBDIVISIONS is hereby amended by inserting the following under section 4 (B)(1)(f):

All subdivisions shall be designed to have interconnecting streets to adjoining developed and undeveloped properties outside the subdivision for a consistent development pattern. Interconnecting streets to adjacent public streets shall be required only where such adjacent streets have a minimum pavement width of eighteen (18) feet, or where the developer or the jurisdictional entity improves said streets to a minimum width of eighteen (18) feet. If a new subdivision would potentially connect to a street less than eighteen (18) feet in width, the Planning Board will consider technical input prior to deciding whether a connection is required. The technical input would include recommendations from the Director of Transportation concerning whether the additional traffic would create a safety or operational problem on the existing street system or nearby intersections. Additionally, a street connection shall not be required if the Director of Transportation determines that the connection would result in the traffic-carrying capacity of the street being exceeded. Associated additional traffic alone is not a criterion for disallowing said connections. A street connection is not required where a planned or funded roadway would result in a severed connection in the future, or where a connected street would not serve a practical value due to an existing transportation facility (limited access highway or railroad) which would prevent the continuation of the street. In cases where major streams or other physical barriers must be crossed to provide for interconnecting streets exemptions from this regulation shall be based on the length, costs, and construction difficulties of connecting streets and shall be decided by the Planning Board (F, W)/ Elected Body (K, C, L, and WA)

Section 2. Chapter D – Subdivision Regulations, Section 4 MAJOR SUBDIVISIONS is hereby amended by adding to the end of section 4 (C) a new subsection (9) as follows:

Temporary signs shall be posted at the end of all existing public streets adjoining a proposed new subdivision to notify adjacent property owners that said public streets may connect to an extended street system and directing inquiries to the Planning Board Office. Said sign(s) shall be posted by the city a minimum of fifteen (15) days prior to the Planning Board meeting. Upon construction of a new subdivision, a notation shall be placed prominently on the plat to inform residents that indicated stub street connections have been designated as a “through street”.

NOTE: Items to be deleted are indicated with a strikeout; items to be added are indicated with an underscore.
Note: the following shows unrevised Section 2 language as previously presented to Planning Board at the June 9, 2005 Planning Board meeting.

Temporary signs shall be posted at the end of all existing public streets adjoining a proposed new subdivision to notify adjacent property owners that said public streets may connect to an extended street system associated with a proposed new subdivision. Said sign(s) shall be posted by the City a minimum of fifteen (15) days prior to the Planning Board meeting. Upon construction of a new subdivision, a permanent sign shall be posted at the end of all approved new stub streets to inform residents that the street has been designated as a through street.

Section 3. This ordinance shall become effective upon adoption.