

## ADDED / ~~DELETED~~

### ARTICLE XV. AMENDMENTS

#### Section 230 Amendments in General

- 1) Amendments to the text of this chapter or to the growth management map may be made in accordance with the provisions of this Article.
- 2) As provided in G.S. 160A-385(b), amendments, modifications, supplements, repeal or other changes in land use regulations and restrictions and development boundaries shall not be applicable or enforceable without consent of the owner with regard to building and uses for which either
  - (a) a building permit has been issued pursuant to G.S. 160A-417 prior to the enactment of the ordinance making the change or changes as long as the permit remains valid and unexpired pursuant to G.S. 160A-418 and unrevoked pursuant to G.S. 160A-422 or
  - (b) a vested right has been established pursuant to G.S. 160A-385.1 and the provisions of Section 237 (Vested Right) of this ordinance and such vested right remains valid and unexpired.
- 3) The administrator shall not accept an application for an amendment that is not substantially different from an application for an amendment that has been denied on the same property more than once in a twelve-month period without special approval by the Town Commissioners. The twelve-month period shall commence on the date an amendment request is denied by the Town Commissioners. If an amendment request has been recommended for denial ~~denied~~ by the Planning Board and withdrawn by the applicant prior to final action by the Town Commissioners, the twelve-month period shall be deemed to have commenced on the date of the denial recommendation by the Planning Board. ~~The dimensional increase or decrease of an area sought to be changed by an amendment request shall not negate this rule. Where an amendment has been applied for by a community group, charitable, or governmental organization, the Town Commissioners, or the Planning Board and was denied or withdrawn prior to final action, application by an individual property owner will be accepted within the twelve-month period without Town Commissioners approval.~~ Special approval of the Town Commissioners may be granted following a recommendation from the Planning Board, for any of the following grounds:
  - (a) Materially changed conditions;
  - (b) Clerical error was the basis for the previous development district designation;
  - (c) Newly discovered evidence of adverse impact of the current development district designation which by due diligence could not have been discovered in time for the earlier hearing; or

- (d) Substantially changed amendment request.

### **Section 231 Initiation of Amendments**

- 1) Whenever a request to amend this chapter is initiated by the Town Commissioners, the Planning Board, or the Town administration, in consultation with the Town Attorney, shall draft an appropriate ordinance and set a date for a public hearing.
- 2) Any other person may also petition the Town Commissioners to amend this ordinance. The petition shall be filed with the administrator and shall include, among the information deemed relevant by the administrator:
  - (a) The name, address, and phone number of the applicant;
  - (b) A legal description and a scaled map of the land affected by the amendment if a change in development district classification is proposed; and
  - (c) A description of the proposed map change or a summary of the specific objective of any proposed change in the text of this chapter.
- 3) Completed Ppetitions, ~~as determined by the administrator,~~ for amendments shall be submitted to the administrator fifteen (15) days or more prior to the date of a regularly scheduled Planning Board meeting. ~~public hearing at which the petition will be reviewed.~~ The Town Commissioners, at their next regularly scheduled meeting following submission of the petition, shall schedule a public hearing concerning the petition.

### **Section 232 Planning Board Consideration of Proposed Amendments**

- 1) The Planning Board shall, within thirty five (35) days of its first appearance on the Planning Board's agenda, render a recommendation for approval or denial of the petition to the Town Commissioners. ~~After the public hearing on a proposed amendment is set, the proposed amendment shall be referred to the Planning Board for its consideration.~~
- 2) The Planning Board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan or long range plan that has been adopted and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Town Commissioners ~~governing board~~ that addresses plan consistency and other matters as deemed appropriate by the Planning Board. A comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not

preclude consideration or approval of the proposed amendment by the Town Commissioners governing board.

- 3) Whenever the Planning Board is called upon to make a recommendation concerning a growth management map amendment, the administrator shall post on or near the subject property one or more notices that are sufficiently conspicuous in terms of size, location and content to provide reasonably adequate notice to potentially interested persons of the matter that will appear on the board's agenda at a specified date and time. Such notice(s) shall be posted at least seven (7) days prior to the meeting at which the matter is to be considered.
- 4) The Planning Board shall submit its recommendation in writing to the Town Board of Commissioners ~~at or before the public hearing on the amendment~~. If no written report is received from the Planning Board within thirty five (350) days of its first appearance on the Planning Board's agenda ~~referral of the amendment to that board~~, the Town Commissioners governing board may proceed in its consideration of the amendment without the Planning Board report. The Town Commissioners ~~are governing board~~ is not bound by the recommendations, if any, of the Planning Board.

### **Section 233 Hearing Required; Notice**

- 1) No ordinance that amends any of the provisions of this chapter may be adopted until a public hearing has been held on such ordinance.
- 2) The administrator shall publish a notice of the public hearing on any ordinance that amends the provisions of this chapter once a week for two successive weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten (10) days nor more than twenty-five (25) days before the date fixed for the hearing. In computing this period, the date of publication shall not be counted but the date of the hearing shall be counted.
- 3) With respect to map amendments, the administrator shall mail written notice of the public hearing to the recorded owners for tax purposes of all properties whose development classification are changed by the proposed amendment as well as the owners of all properties which are within 150 feet of the property rezoned by the amendment.
- 4) The first class mail notice required under subsection (3) of this section shall not be required if the map amendment directly affects more than 50 properties, owned by a total of at least 50 different property owners, and the Town elects to use the expanded published notice provided for in this subsection. In this instance, the Town may elect to either make the mailed notice provided for in subsection (3) of this section or may as an alternative elect to publish notice of the hearing as required by G.S. 160A-364, but provided that each advertisement shall not be less than one-half of a newsletter page in size. The advertisement shall only be

effective for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property shall be notified according to the provisions of subsection (3) of this section.

- 5) The public notice to the newspaper and property owners required by this section shall:
  - (a) State the date, time, and place of the public hearing;
  - (b) Summarize the nature and character of the proposed change;
  - (c) State that the full text of the amendment can be obtained from the administrator; and
  - (d) State that substantial changes in the proposed amendment may be made following the public hearing.
- 6) The person or persons mailing notices to adjoining property owners, as defined in G.S. 160A-384, shall certify to the Town Commissioners that fact.
- 7) When a growth management map amendment is proposed, the administrator shall prominently post a notice of public hearing on the site proposed for reclassification or on an adjacent public street of highway right-of-way. When multiple parcels are included with the proposed map amendment, a posting on each individual parcel is not required, but the city shall post sufficient notices to provide reasonable notice to interested persons.

### **Section 234 Town Commissioners' Action on Amendments**

- 1) After receiving a recommendation from the Planning Board on a proposed amendment or after thirty five (35) days from its first appearance on the Planning Board's agenda, the Town Commissioners may proceed to vote on the proposed ordinance amendment, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.
- 2) The Town Commissioners may ~~shall~~ await the recommendations of the Planning Board before taking action on a proposed amendment, but the Town Commissioners are not bound by any recommendations of the Planning Board that are before it at the time it takes action on a proposed amendment.
- 3) The Town Commissioners shall ~~are required to~~ take final action on an amendment within ninety five (95) 65 days of the first meeting of the Town Commissioners ~~board~~ to consider the application, ~~since inordinate delays can result in the applicant incurring unnecessary costs~~ unless the applicant and Town

Commissioners agree in writing to an extension. No more than two (2) 30-day extensions shall be granted. This provision need not apply to an amendment initiated by the Town itself. Failure of the Town Commissioners to render a decision within ninety five (95) days of the first meeting of the Town Commissioners to consider the application or to communicate a decision to the applicant within fifteen (15) days thereafter shall be deemed an approval of the petition as presented.

- 4) Voting on amendments to this chapter shall proceed in the same manner as other ordinances, subject to Section 236 (Protests to Development District Changes).
- 5) Prior to adopting or rejecting any growth management amendment, the Town Board of Commissioners shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.
- 6) A Town Commissioner shall not vote on recommendations regarding any growth management map or text amendment where the outcome of the matter under consideration is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the Town Commissioner.

### **Section 235 Ultimate Issue Before Town Commissioners on Amendments**

- 1) In deciding whether to adopt a proposed amendment to this chapter, the central issue before the Town Commissioners is whether the proposed amendment advances the public health, safety or welfare. All other issues are irrelevant, and all information related to other issues at the public hearing may be declared irrelevant by the Mayor and excluded. When considering proposed map amendments:
  - (a) The Town Commissioners shall not consider any representations made by the petitioner that, if the change is granted, the property in question will be used for only one of the possible range of uses permitted in the requested classification. Rather, the Town Commissioners shall consider whether the entire range of permitted uses in the requested classification is more appropriate than the range of uses in the existing classification.
  - (b) The Town Commissioners shall not regard the advantages or disadvantages to the individual requesting the change, but shall consider the impact of the proposed change on the public at large.

### **Section 236 Protests to Development District Changes**

- 1) If a petition opposing a change in the development district classification of any property is filed in accordance with the provisions of this section, then the proposed amendment may be adopted only by a favorable vote of four-fifths of the Town Commissioners membership. For the purposes of this subsection, vacant positions on the council and members who are excused from voting shall not be considered 'members of the council' for calculation of the requisite supermajority. In accordance with G.S. 160A-385(a), provisions concerning protests shall not be applicable to any amendment which initially regulates property added to the territorial coverage of the ordinance as a result of annexation or otherwise.
- 2) To invoke the four-fifths vote requirement, the petition must:
  - (a) Be signed by the owners of either (i) twenty percent (20%) or more of the area included in the proposed change; or (ii) five percent (5%) of a 100-foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be reclassified. A street right-of-way shall not be considered in computing the 100-foot buffer area as long as that street right-of-way is 100 feet wide or less. When less than an entire parcel is subject to the proposed growth management map amendment, the 100-foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine the 'owners' of potentially qualifying areas.
  - (b) Be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment.
  - (c) Be received by the administrator in sufficient time to allow the Town at least two normal working days before the date established for a public hearing on the proposed amendment to determine the sufficiency and accuracy of the petition.
- 3) A person who has signed a protest may withdraw his or her name from the petition at any time prior to the vote on the proposed growth management amendment. Only those protest petitions that meet the qualifying standards set forth in G.S. 160A-385 at the time of the vote on the growth management amendment shall trigger the supermajority voting requirement.
- 4) The foregoing provisions concerning protests shall not be applicable to any amendment which initially classifies property added to the territorial coverage of the ordinance as a result of annexation or otherwise.

## **Section 237 Vested Right**

- 1) Requests to establish vested rights according to NCGS §160A-385.1 shall provide the information required for a special use permit request and shall follow the amendment procedure outlined in this Article.
- 2) Vested rights may be terminated in any of the following ways:
  - (a) The landowner agrees, in writing, to relinquish the vested right;
  - (b) After notice and hearing the Town Commissioners determine that there are natural or manmade hazards that would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific development plan;
  - (c) Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant fees incurred after approval by the Town, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property, which is caused by such action;
  - (d) Upon findings by the Town Commissioners, after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval of the site specific development plan;
  - (e) Upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the approval authority may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and hearing; or
  - (f) At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

**Sections 238 and 239 Reserved**