



## ATTACHMENT D:

### PLANNING COMMISSION COMMENTS SEPTEMBER 11, 2018

#### **Case TC1800006 (Private Streets)**

**AL-TURK** – I voted against approval. This is a relatively minor amendment to the UDO. It would allow private streets in single-family subdivisions outside of city limits but within the county jurisdiction. While I think the consequences of this are likely to be minimal, I was ultimately not convinced by planning staff that we know what those consequences are. Allowing subdivisions to maintain their own roads may, from a financial perspective, make sense for the county and state, but, as Commissioner Baker pointed out, what happens if the subdivision is no longer able to maintain the streets? Not knowing more about how often this happens or what the financial and logistical consequences of this would be made me vote against this amendment.

**BAKER** – I voted against the text amendment request. The proposed text amendment (TC1800006), which was initiated by a private developer, would suddenly permit private streets in all single-family subdivisions within the County jurisdiction (not in City limits). The applicant proposed this amendment to address a specific site; however, it appears to me that there may be more appropriate site-specific solutions for the applicant without modifying development provisions that apply to the entire County jurisdiction.

The following is a list of reasons why I voted against this proposed amendment:

- Private streets are just that: Private. What is usually a public space is privatized. Private streets can be exclusive in nature, which means certain members of the community could potentially be excluded from them. One of the justifications listed in the text amendment application reads: "Private Streets are allowed to have gated access." There is a large body of literature in the planning field that discusses the socio-economic impacts of gated communities.
- The HOAs that maintain private streets can potentially fail. When HOAs have failed in other communities, local governments may have eventually become burdened with the costs of taking over ownership and maintenance of the street.
- Unsuspecting or uninformed future homebuyers on a private street may find themselves unexpectedly responsible for paying fees for street maintenance, in addition to property taxes.
- As Durham grows, it is my understanding that if private streets are allowed in the County and outside of City limits, the City of Durham may eventually (10-50 years from now) find itself annexing developments that include private streets.
- It was not clear to me that this proposed amendment would solve any problems, other than that of the developer who applied for the amendment.
- Private streets are already permitted in a number of other more limited circumstances that, in my opinion, are more appropriate.

(Because this was my first Planning Commission meeting and I had little time between taking the oath and attending this meeting, I want to note that there was not ample time for me to ask questions and resolve concerns with planning staff--who are the technical experts on this case--prior to the meeting. Staff does exceptional work and may have answers to the concerns that I have listed above.)

**BRINE** – This proposed text amendment would add a fifth circumstance in which private residential streets would be allowed. This amendment would be effective only in Durham County outside of the City limits. The downside is that the proposed amendment proposes a solution that would affect the entire County to solve a site-specific problem for a developer (the applicant). An alternative solution to the site-specific problem is PDR zoning, which in this case might be difficult and time-consuming to do since the site in question is already under development. Another potential problem is that the onus for maintaining the private streets would fall on the HOA in any neighborhood in which this amendment could be applied. If the HOA fails, then the NC DOT would be asked to take over street maintenance. A driving force for this proposal is that NC DOT (undoubtedly due to limited funds) is very slow when it comes to maintaining residential streets in the county. If an HOA can maintain the streets, the neighborhood is not dependent upon NC DOT. That is the upside to the proposed amendment. I did not see that it would be a bad thing to give the proposed text amendment a chance. Therefore I voted to support it.

**BUZBY** – While there were valid concerns raised by some of my fellow Planning Commissioners I believe the staff have vetted this proposal and we should avoid unintended consequences.

**DURKIN** – I voted against the motion in favor of this text amendment because a project specific application (i.e. a PDR) is more appropriate, as the request for the text amendment was project-specific.

**HORNBUCKLE** – Staff states the board can change some on case by case if needed.

**HYMAN** – Voted no; another option was more feasible.

**JOHNSON** – There appears to be an alternative “solution/remedy” to the issue at hand that would allow for a site-specific outcome, rather than an ordinance change. I am inclined to support a site-specific solution, understanding that there’s a “time to solve issue” element at play.

**KENCHEN** – I vote to approve. Staff and JCCPC has reviewed this and agree that it makes sense. I agree. I do have concerns, but believe this is a reasonable change.

**MILLER** – The Board of County Commissioners should not approve this proposed change to the UDO as it pertains to private streets in the county’s zoning jurisdiction.

Under the current provisions of the UDO, private streets serving single family residential subdivisions are allowed only under limited circumstances. These include subdivisions with six or fewer single family or duplex lots, multifamily developments, development plan projects, and conservation subdivisions (which must include a development plan). Put another way, we do not allow private streets in subdivisions developed under standard single family residential zones (zones with R, RS, and RU prefixes) except in cases where the number of lots is six or less or in cases where the subdivision is regulated by a development plan. The current rule obtains for the entire county, regardless of city or county jurisdiction. The developer in the proposed case now asks to change the UDO to permit private

streets in all single family zones without regard to lot number and without a development plan. The proposed rule change would obtain only in the county jurisdiction.

The developer who has requested the change is concerned about one phase in an on-going residential development that straddles the Durham-Chatham county line. The project in question is a very high-end single family project with a number of phases in Chatham County and a number of phases in Durham County. Chatham County rules permit private streets in the phases of the development located in Chatham County. In the Durham County phases of the development, private streets are allowed in all of the development's phases except one because those phases are in a conservation subdivision. The single phase which is located in Durham County, but not in a conservation subdivision may not have private streets because it has more than six lots. Streets in this phase must be built to NCDOT standards and accepted by DOT for state maintenance.

The developer would prefer to have a uniform system of privately maintained streets running through all phases of the project in Durham and Chatham Counties. This is understandable. Changing the rules for all of the property in the county zoning jurisdiction to obtain this objective, however, is neither appropriate nor necessary. There is no hardship or emergency in this case. There is no issue of whether the single Durham County phase will have roads. The NCDOT has not declined to accept or maintain the streets in the subject phase. The real issues in this case are privacy, uniformity, and control – issue which are all very property-specific. For this project, the developer would prefer not to have a mixture of public and private streets maintained by a combination of public (state) and private (HOA) entities. Instead of asking for a county-wide rule change, the developer could have asked for a rezoning of the subject phase to make it subject to the conservation subdivision governing the rest of the project in Durham County or he could have asked for a stand-alone PDR or other development plan rezoning. Admittedly, this might be more difficult than asking for the text change in that it would require coordination of such a rezoning among the several persons who own lots in the subject phase. But surely this could not be very much more difficult than it must already be to organize HOA approval for the future maintenance of the subdivision's streets once they switch from public to private maintenance. In either case, consultation with and approval of the owners will be required.

Given our planning policies that favor connectivity of public rights of way through developments of all kinds and our recent experience with developers abandoning residential street systems during the 2008-2010 recession, the county government should be loath to encourage any expansion of private streets in its jurisdiction. The planning staff points out that the proposed change may not have a very wide practical application inasmuch as the unavailability of public utilities considerably dampens new subdivision development in the county's jurisdiction. That which does occur usually happens in connection with a d-plan rezoning and a petition for annexation into the city's jurisdiction. Even so, I think it is bad legislative policy to change the zoning rules which apply to everyone to obtain a benefit for a single person or parcel. To obtain my support for a text change, the proponent must convince me that the change will promote the general good and welfare in addition to whatever benefit it may confer upon the proponent. In this case, there is no real argument for the proposed change outside the bounds of the developer's project at the southern limit of the county. Further, I generally oppose expanding those places in the UDO which have one rule for the city's jurisdiction and another rule for the county unless there is a compelling reason for the difference. Our planning policies and rules are supposed to be uniform. Here that compelling reason is absent.

Because there is no strong reason for making a county-wide rule change and because there is a property-specific alternative to obtain the developer's objective, the county should not approve this change to the text of the UDO.

**WILLIAMS** - I believe that making this a private street for this subdivision and development in return holding residents accountable.