



ATTACHMENT C:

PLANNING COMMISSION COMMENTS NOVEMBER 12, 2019

Case TC1900006 (Omnibus Changes 14)

The Planning Commission, with a vote of 12-0, finds that the ordinance request is consistent with the adopted *Comprehensive Plan*. The Commission believes the request is reasonable and in the public interest and recommends approval based on comments received at the public hearing and the information in the staff report.

BUZBY – I vote to approve.

HYMAN – Voted yes to the text amendment changes which were reviewed by both the City and County Attorney's offices; therefore, a favorable recommendation for both the City Council and the County Commissioners is hereby advised.

KENCHEN – I vote to approve. These are very good revisions.

MILLER - The city council should approve these text changes to the UDO with the following changes:

Part 2, 3.2.4G 1 and 2 – These provisions concern what happens to applications which are not completed and state that after a period of time such incomplete applications are to be "withdrawn." Since withdrawal is something the applicant does, not the planning department, it would be better to say that an incomplete application is "deemed withdrawn" when the applicant does not complete it within the allotted time. Further, the provisions concerning having to start over after such a withdrawal should be stated in the conditional, not the imperative. As proposed it says "A new application shall be required...." It should actually say that a new application will be required if the applicant wishes to pursue the matter for which the incomplete, withdrawn application was submitted. If the applicant is content to let the matter drop with the withdrawal, then the rule should not still require a new application which is what the proposed language does.

Part 3, 5.3.3F 1 and 2, 5.3.3J 1 and 2, and 5.3.3K 2 – The proposed change from "may" to "can" in these sections is incorrect as a matter of legislative drafting. The issue is one of permissibility, "may," as opposed to ability, "can." The larger issue is one of the apparent discretion given to staff to approve or disapprove the expansions contemplated in these rules. Under NC law, the only discretionary relief from zoning rules allowed comes in the form of variances and use permits issued by a board of adjustment. Even then, the discretion allowed is severely constrained by standards. Here staff is purportedly given the ability to approve an expansion administratively – outside the actual use permit process. This is not permissible under law. Even if it were allowed, substantive due process considerations concerning the standards by which the administrative decision is to be guided and measured are lacking. Also, procedural due process concerning the rights of affected neighbors are also lacking.

