

Date: May 15, 2015

To: Planning Commission, Mary Jane Nirdlinger, Gene Poveromo

From: Amy Ryan

Re: Report on Status of Planning Commission Comments to Obey Creek Development Agreement Draft

Deborah Fulghieri and I, representing the Planning Commission, met with Mary Jane Nirdlinger on May 11 to see where we are with the comments that the commission sent to staff and Council last month. Mary Jane confirmed that our red-lined development agreement document (3/20 version) and design guidelines document (3/19) were both e-mailed to Council last week.

Here's a list of the commission comments we discussed at the meeting and their current status (we did not discuss issues that we referred directly to Council, or the general recommendations we forwarded for the 4/30 joint advisory board meeting). Note that the article reference numbers are from the 4/30 revision of the agreement.

Document reference	Planning Commission comment	Staff response
2.16, Definition of median income	Current wording not a good definition.	Staff will change to the HUD definition of Area Median Income
4.9.b.6, CDC review	Should specify that the CDC has at least two regularly scheduled meetings to consider an application for a Development Agreement Compliance Permit (CP).	Staff anticipates that the current 75-day review should allow for applications to appear before the CDC twice, but they will add specific language to make this intent clear.
4.10.1, Major modifications	Requested additional items that would trigger major modifications.	1. Changes in connectivity – staff commented that a major modification requirement might be too stringent, given the flexibility needed to accommodate site conditions during construction. They prefer to strengthen the wording in the bike and ped section instead. ¹

¹ This still doesn't get to substantive changes in the proposed road system that could affect traffic flow – for instance, the closing of the east end of the Sumac Road extension and turning it into a stair/plaza area.

		<p>2. Stormwater management system – we discussed that there is no stormwater plan yet, which creates difficulty in determining what a modification is. The town is requiring such a plan before construction begins.²</p> <p>3. Affordable housing – staff will add language making changes to this section a major modification.</p> <p>4. Design guidelines – staff will work on wording so that “substantial” changes trigger a major modification.</p>
4.10.c Manager’s option to bring minor modifications before Council	Suggested that small issues might be more appropriately directed to the Planning Commission.	Staff feels that Council would have an interest in reviewing such items and prefers to keep wording as is.
4.13.c Right to Cure	Should there be provision for fines for breach of the agreement or specific remedies given?	Staff has added language that says “Nothing in this Agreement shall limit the Town’s authority to pursue other remedies as allowed by law.” Staff will ask the Town Attorney about other language regarding fines, etc.
4.28 Termination	Why is the developer allowed to terminate the agreement unilaterally?	Staff noted that the town has no authority to compel development (for instance, someone can receive a SUP but elect not to execute it).
5.1.c Scale of development and uses permitted	We don’t find any specific land use tables in the design guidelines or the development agreement. The LUMO text for the DA-1 zoning does have a generic table of allowed uses; should the development agreement document include a table of specific uses developed from that generic table?	Staff prefers to leave the table in the ordinance; it’s incorporated by reference (the items with P or A would be allowed per the terms of the DA). If there’s a specific use the PC is concerned about, the Planning Commission should share that concern with Council.
5.2.b.7 Conversion of affordable units for sale	If rental affordable units convert to for-sale units, should the developer be allowed to propose a payment in lieu instead of supplying the units? Should such a proposal for a PIL trigger a major modification?	Staff responded that the inclusionary zoning ordinance would apply here and specifies the rules for payments in lieu; will review. ³
5.2.b.7 Conversion of affordable units for sale	Half of the current affordable rental units will be made available at the 60-80% income level. If converted to ownership, the inclusionary zoning ordinance will apply, would that mean that the units will only have to be affordable at the 80% level?	Staff will make Council aware of the issue; staff confirmed that the inclusionary zoning ordinance does have units at both 65% and 80%, so that may address this concern sufficiently.

² Once that plan is filed, should we require that substantive changes trigger a major modification? I think that is the Planning Commission’s interest here.

³ We’re overriding other ordinances with the DA; would it be possible to make the PIL option not by right, but subject to review as a major modification?

5.2.b.9 Loss of vouchers/subsidies	The affordable housing agreement specifies that rental units available at the 60-80% income level should be rented for no more than 30% of total household income. This article allows voucher units to rent at the Fair Market Rent if the voucher programs are no longer available.	Staff will review.
5.3 Stormwater	The Planning Commission had endorsed the recommendations of Kimberly Brewer for changes to this section. What is their status?	Kimberly has been meeting with Stormwater and Planning staff to review and suggest amendments to the section text. Staff commented that “after discussions between staff, KB and the other technical folks, much of the intent (if not always the exact wording proposed by KB) was included in the latest draft.”
5.3 Stormwater	We requested that the only stormwater facilities allowed in the Wilson Preserve be for the management of the water from improvements within the Preserve itself.	The 4.30 revision contains language in section 5.12.3.vii listing “Stormwater management associated with approved uses in the Preserve” as an allowable use in the Preserve. Section 5.3.f also speaks to this concern.
5.3.a Stormwater management and Wilson Preserve	Stormwater from the developed area west of Wilson Creek should all be managed in the developed area.	A new section 5.3.f says: “All stormwater runoff from the Developed Property will be detained and treated prior to entering or crossing the RCD Managed Zone or Stream Zone. No stormwater from the west side of Wilson Creek will be diverted to the Wilson Creek Preserve Restoration Area for treatment.”
5.4.c Traffic impact study	The current document gives the developer a maximum trip generation amount as a daily maximum. Because peak traffic numbers and/or performance criteria more accurately reflect the functioning of the system, there should be wording added to limit traffic generation at peak times or according to performance.	Staff will discuss with Kumar how this could be accomplished.
5.4.c.3 Subsequent traffic updates	The developer is required to do a traffic impact study if the traffic impact analysis for a new development phase estimates that they will exceed the daily maximum vehicle trips by 1,000. Why is this not triggered when they reach the maximum itself?	<p>Staff responded that this was the formula used in the Glen Lennox development agreement. They feel that having a rigid maximum does not recognize the inherent inaccuracy in any model of this type.</p> <p>Staff commented that the general intent of this section is to have the developer report on estimated traffic impacts yearly and to then do actual traffic studies, according to town protocols, if it looks like they will exceed their allowed maximum. Will explore ways to make this clearer in the text.</p>

5.4.3 Transit improvements	The \$0.02 transit contribution continues for the life of the agreement. Should that be changed to 99 years, the same time frame as the affordable housing contribution?	This would be a Council matter.
5.7 Public schools	Are properties under a development agreement subject to SAPFO? If SAPFO is updated, will the new regulations apply, or will the property be grandfathered to the regulations in effect at signing?	SAPFO will apply. Because it is a county ordinance, the town cannot grandfather the development to current regulations; the rules that are in place at the time a Compliance Permit is obtained will apply.
5.7 Public schools	The Planning Commission had recommended that the annual report include student generation figures to date and suggested that if those generation figures exceeded a certain benchmark the developer should pay an additional student impact fee to the County.	Staff commented: "We feel this is a schools issue handled through the SAFPO and their ongoing evaluation/adjustments of their model."
5.9 Open spaces and parks	The agreement should require that park and recreation land indicated in Exhibit E remain as that use in perpetuity.	Staff has added a section 5.9.b: "Designated parks shall remain parks and not be developed for other uses."
5.10 Greenways and sidepaths	Need language to obligate the Owners Association to reimburse the town for emergency repairs.	Staff has added language to 5.10.f: "The Town shall have the right to make emergency repairs <u>and charge the cost of those repairs to the Developer Owner or Representative . . .</u> " (new language underlined). Similar language has been added to section 5.12, Wilson Creek Preserve. ⁴
5.10.d Greenway maintenance and Master Owners Association	Concern that no provision has been made for what happens if the Master Owners Association becomes insolvent and can no longer maintain the development infrastructure.	Staff responded that text to address this issue has been added to the 5/18 document revision.
5.11 Bike and Pedestrian Bridge	We recommended clarifying language specifying that if the west side of 15-501 is developed, the adjacent property share maintenance costs of the bridge, not all costs.	Staff commented that the language was deliberately left ambiguous; if development on the west side of 15-501 happens soon after the bridge is built, it would seem fair that the western property share in construction costs.

⁴ Are there other sections where this would apply (ped bridge, for example, or stormwater system)? Should this stipulation be handled in a different section to cover all town work in areas maintained by the developer or owners association?

5.12 Wilson Creek Preserve	Requested that language be strengthened to insure preservation of this area as conservation land in perpetuity.	Such text was added to section 5.8.c.1: "Wilson Creek Preserve, which contains the Restored Quarry, shall be preserved in perpetuity through a deed dedication to the Town of Chapel Hill for preservation and recreation and consideration of additional conservation measures by the Town of Chapel Hill upon receipt of said deed."
5.12 Wilson Creek Preserve approved uses	Recommend that community gardens be removed as an acceptable use.	Done.
5.19.d Neighboring Lands, Compatibility Buffers	Recommended increasing the notification distance to property owners within 1000 feet instead of 200 feet.	Staff will consider this in their next cycle of document revisions.