Town of Pittsboro, North Carolina

O-140-15

AN ORDINANCE PROVIDING STANDARDS AND PROCEDURES FOR CONSIDERATION AND ADOPTION OF DEVELOPMENT AGREEMENTS FOR THE TOWN OF PITTSBORO

WHEREAS, North Carolina General Statute N.C.G.S. 160A-400.22 authorizes municipalities to enter into agreements with developers governing the development of parcels of land within their jurisdiction; and

WHEREAS, the Town of Pittsboro finds and determines that it is in the best interest of its citizens to be able to consider such agreements in the appropriate circumstances;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF PITTSBORO that the Ordinance attached hereto as Exhibit A and incorporated herein by reference be, and it hereby is, approved and adopted.

Adopted this the 28th day of September, 2015.

TOWN OF PITTSBORO

By: _____
Mayor

ATTEST:

_____
Clerk

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Exhibit A: Standards and Procedures for Consideration and Adoption of Development Agreements for the Town of Pittsboro

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ARTICLE 1: PURPOSE AND AUTHORITY

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Section 1. Short Title and Authority

(1) This ordinance shall be known and may be cited as the "Town of Pittsboro Development Agreement Ordinance."

(2) The Board of Commissioners is hereby authorized to consider and enter into agreements governing the development of land within the Town of Pittsboro land use jurisdiction with any person having a legal or equitable interest in said real property pursuant to the authority of North Carolina General Statute N.C.G.S. 160A-400.22, provided that such agreement is consistent with the provisions of the Town of Pittsboro comprehensive plan and land development regulations. Nothing in this Ordinance shall obligate the Town to enter into development agreements, and such agreements shall be entered into only at the request of the developer.

Section 2. Purpose

(1) This Ordinance is intended to implement and be consistent with the comprehensive plan of the Town.

(2) The objective of this ordinance is accomplished by authorizing development agreements in which a developer and the Town of Pittsboro may ensure the adequacy of public facilities and encourage sound capital improvement planning while providing certainty in the process of obtaining development approval and reducing the economic costs of development by providing greater regulatory certainty.

(3) The purpose of this Ordinance is to establish standards and procedures for entering into Development Agreements for long-term, large-scale developments with the following statements of intent:

A. Large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources.

B. Such large-scale developments often create potential community impacts and potential opportunities that are difficult or impossible to accommodate within traditional zoning processes.

C. Because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development.

D. Because of their scale and duration, such large-scale projects involve substantial commitments of private capital by private developers, which private developers are unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development.

E. Because of their size and duration, such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing the impacts on the surrounding areas.

F. To better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments. O-143-15

G. In negotiating for such developments, the intent of the Town is to remain consistent with the adopted plans, policies, and goals of the Town as they relate to land use and capital improvements

ARTICLE 2: DEFINITIONS

Section 2.1 General Provisions

Except as otherwise provided herein, all words shall have the customary dictionary meaning. The following shall also apply:

- The present tense includes the future tense.
- The singular number includes the plural and the plural includes the singular.
- The masculine gender includes the feminine and neuter genders.
- The word "lot" includes "plot" or "parcel".
- The word "building" includes "structure".
- The words "shall" and "will" are always mandatory.
- The word "used" or "occupied" as applied to any land or building shall include the words "intended, arranged, or designed to be used or occupied".

Section 2.2 Specific Definitions

When used in this Ordinance, the following words and phrases shall have the meaning given in this section:

Town: The Town of Pittsboro, North Carolina.

Comprehensive plan: The comprehensive plan includes land use ordinances and plans, small area plans, neighborhood plans, transportation plan, capital improvement plans, official maps, and any other plans regarding land use and development that have been officially adopted by the Town governing board.

Board of Commissioners: The Board of Commissioners of the Town of Pittsboro, North Carolina.

Developer: A person, including a governmental agency or redevelopment authority, who intends to undertake any development and who has a legal or equitable interest in the property to be developed.

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Development: The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels. "Development", as designated in a law or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, "development" refers to the planning for or the act of developing or to the result of development. Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activity, is not development. Reference to particular operations is not intended to limit the generality of this term.

Development permit: A building permit, zoning permit, subdivision approval, conditional use permit, variance, or any other official action of local government having the effect of permitting the development of property.

Governing Body: The Board of Commissioners of the Town of Pittsboro, North Carolina.

Land development regulations: Ordinances and regulations enacted by the Town or its authorized agencies and departments for the regulation of any aspect of development including zoning, subdivision, or any other land use development ordinances.

Laws: All ordinances, resolutions, regulations, comprehensive plans, land development regulations, policies, and rules adopted by a local government affecting the development of property, and include laws governing permitted uses of the property, density, design, and improvements.

Local government: The Town of Pittsboro or any other entity established by law that that exercises regulatory authority over and grants development permits for land development or which provides public facilities.

Local planning board: The Town of Pittsboro Planning Board established pursuant to N.C.G.S. 160A-361.

Person: An individual, corporation, business or land trust, estate, trust, partnership, association, two or more persons having joint common interest, State or other governmental agency, or any legal entity.

Property: All real property subject to land-use regulation by a local government and includes any improvements or structures customarily regarded as a part of real property.

Public facilities: Major capital improvements, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational, and health systems and other facilities.

ARTICLE 3: JURISDICTION & APPLICABILITY

Section 3.1 Jurisdiction

The Town of Pittsboro may consider requests to participate in development agreements for any development within the land use jurisdiction of the Town or adjoining jurisdictions in which the development impacts the communities or natural resources of the Town.

Section 3.2 Applicability
For consideration of the Town to participate in development agreements, the following criteria shall be met.

(1) Scale of Development
The property in question must be developable property of any size, including property that is subject to an executed brownfields agreement pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes.

(2) Duration of Development
The duration of a development agreement shall not exceed a reasonable term as specified in the agreement.

(3) Social and Capital Value of Development
The estimated appraised value of the development (including all real property) at build out shall equal or exceed $20,000,000.00 or will demonstrate that the proposed development will significantly enhance opportunities for very-low income or special populations, protect natural resources, or preserve critical watersheds within the Town.

(4) Impact on Capital Improvements
The development shall demonstrate the impact on existing and future Public Facilities.

ARTICLE 4: DEVELOPMENT AGREEMENT REQUIREMENTS

Section 4.1 General Provisions
The Town of Pittsboro may enter into a development agreement with a developer, subject to the requirements of this Article and the procedures set forth in Article 5. In entering into such an agreement, the Town may not exercise any authority or make any commitment not authorized by general or local act and may not impose any tax or fee not authorized by otherwise applicable law. If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the development agreement.

Section 4.2 Minimum Requirements
A development agreement shall at a minimum include all of the following:

(1) A legal description of the property subject to the agreement and the names of its legal and equitable property owners.

(2) The duration of the agreement. However, the parties are not precluded from entering into subsequent development agreements that may extend the original duration period.

(3) The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.

(4) A description of public facilities that will service the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development.

(5) A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property.

(6) A description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing their permitting requirements, conditions, terms, or restrictions.

(7) A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens.

(8) A description, where appropriate, of any provisions for the preservation and restoration of historic structures.

(9) An indemnification and "hold harmless" clause whereby the developer/property owner holds the Town and its agents harmless from liability for damages, injury or death, which may arise from the direct or indirect operations of the owner, developers, contractors and subcontractors, which are related to the project.

Section 4.3 Development Schedule Required
A development agreement may provide that the entire development or any phase of it be commenced or completed within a specified period of time. The development agreement must provide a development schedule, including commencement dates and interim completion dates at no greater than five (5) year intervals; provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement but must be judged based upon the totality of the circumstances.

The developer may request a subsequent modification in the dates as set forth in the agreement.

Section 4.4 Other Requirements
In the event that the development agreement provides that the Town shall provide certain public facilities, the development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development (such as meeting defined completion percentages or other performance standards). The development agreement may include other defined performance standards to be met by the developer. The development agreement may contain other matters not inconsistent with law.

ARTICLE 5: DEVELOPMENT AGREEMENT PROCEDURES

Section 5.1 Approval Process
Please see the following Steps for the Development Agreement approval process:

Step 1. Pre-application meeting

The applicant shall participate in a pre-application meeting in order to identify areas of concern for the Town and the applicant. It is the responsibility of the Town Manager to coordinate this

meeting. The pre-application meeting shall occur prior to filing an application for a development agreement. The following departments or agencies may be represented at this meeting:

- Town Manager
- Planning
- Public Works
- Engineering
- Police
- Emergency Management
- Parks & Recreation
- Economic Development
- Fire
- Any other department and or agency that provides infrastructure or regulates development of property.

Additionally, the Town shall notify Chatham County and the Chatham County Board of Education of the proposed development agreement and invite participation.

Step 2. Applicant files completed application and fee

A. The Board of Commissioners may adopt in its Schedule of Fees an application fee sufficient to cover the costs of the legal and technical review, public hearing, and advertisements for the Development Agreement.

B. An application form for Development Agreements shall be available at the Planning Department.

C. A completed Development Agreement application shall include the following:

1. A survey and legal description of the property and the tax parcel number(s) of the property;

2. A signed affidavit by the property owner of record or other person having proprietary interest in the property authorizing the Development Agreement application;

3. A written description of the proposed development and statement of objectives and reasons for the request;

4. A copy of the proposed preliminary subdivision plan, site plan, phasing plan, or conceptual plan;

5. An application for rezoning (if applicable);

6. A draft development agreement that meets the requirements of Article 4;

7. Any other information required to provide a complete understanding of the proposed Development Agreement.

D. The application information required in (C) above shall include 15 hard copies and digital versions in an acceptable word processing format and PDF format.

Step 3. Staff Review

Town staff and such third-party consultants as the Town determines are reasonably necessary shall evaluate the application and may recommend acceptance, changes, or rejection of the contents of the agreement to the Board. The applicant may modify or amend the application in accordance with the recommendation without paying an additional filing fee.

Step 4. Town and Developer Negotiations

Town staff and such third-party consultants as the Town determines are reasonably necessary will negotiate with the developer on the details of the proposed development agreement.

Step 5. Public Hearing

Before approving and entering into a development agreement by ordinance, the Town shall conduct a public hearing on the proposed agreement as by law provided.

Step 6. Notice of Public Hearing

Notification for the public hearing shall follow the procedure set forth in N.C.G.S. 160A-364 for ordinance adoption or amendment.

The notice of public hearing must specify the following:

- Location of the property subject to the development agreement
- Development uses proposed on the property
- A place where a copy of the proposed development agreement can be obtained

Step 7. Board of Commissioners Action

Following the public hearing, the Board may negotiate directly with the developer. A simple majority vote of the Board of Commissioners shall be required for approval. No member of the Board of Commissioners may vote on a development agreement if it is reasonably likely that the agreement or development would have a direct, substantial, and readily identifiable financial impact on the member that is distinct from any financial impact on general citizens of the Town.

Step 8. Town files Development Agreement with Register of Deeds

Within 14 days after approving and entering into a development agreement, the Town shall record the agreement with the Chatham County Register of Deeds. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

Section 5.2 Periodic Review

During any period of time in which a development permit is active, the Town shall review the development at least once every 12 months for compliance with the agreement. The Town shall notify the developer in writing of its findings if, in the discretion of the Town Manager, or designee, a breach of the agreement has occurred. The developer must be required to demonstrate good faith compliance with the terms of the development agreement. If the Town finds and determines that the developer has committed a material breach of the terms or conditions of the agreement, the Town shall serve notice in writing, within a reasonable time after the periodic review, upon the developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the developer a reasonable time in which to cure the material breach. If the developer fails to cure the material breach within the time given, then the local government unilaterally may terminate or modify the development agreement. The notice of termination or modification may be appealed to the Town of Pittsboro Board of Adjustment in the manner provided by N.C.G.S. 160A-388(b1) within 30 days of such notice. An appeal stays all proceedings in furtherance of the action appealed from, unless the Planning Director, Town Manager, or designee certifies to the Town of Pittsboro Board of Adjustment, after notice of appeal has been filed, that the situation would cause imminent peril, to life or property.

Section 5.3 Amendments to Agreement and Jurisdiction

A development agreement may be amended or canceled only by mutual consent of the parties to the agreement or by their successors in interest. Major modification of the agreement shall follow the same procedures as required for initial approval of a Development Agreement. With the mutual consent of the other parties to the agreement, the Planning Director may approve minor modifications of the Development Agreement, without following the same procedures as required for initial approval of the agreement. Before doing so, the Planning Director shall make written findings that the proposed minor modifications would not significantly change the use, intensity, or design of the development, would be consistent with the purposes and goals of the agreement, would comply with this Ordinance, and would not adversely affect the public health, safety, or general welfare. Except as otherwise provided, any development agreement entered into and approved by the Town or other local government jurisdiction before the effective date of a change of jurisdiction shall be valid for the duration of the agreement, or eight (8) years from the effective date of the change in jurisdiction, whichever is earlier. The parties to the development agreement and the local government assuming jurisdiction have the same rights and obligations with respect to each other regarding matters addressed in the development agreement as if the property had remained in the previous jurisdiction. The Town may modify or suspend the provisions of the development agreement if the Town determines that the failure to do so would place the residents of the territory subject to the development agreement, or the residents of the local government, or both, in a condition dangerous to their health or safety, or both.

ARTICLE 6: LEGAL PROVISIONS

Section 6.1 Repeal of Conflicting Ordinances

All ordinances or parts thereof of the Town of Pittsboro conflicting or inconsistent with the provisions of this Ordinance are hereby repealed.

Section 6.2 Severability

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If any section, part of a section, paragraph, sentence, clause, phrase, or word of this Ordinance is for any reason held or declared to be unconstitutional, inoperative or void, such holdings shall not affect the remaining portion of this Ordinance and it shall be construed to have been the legislative intent to pass the Ordinance without such unconstitutional, invalid or inoperative part therein, and the remainder of this Ordinance after the exclusion of such part or parts shall be deemed to be held valid as if such part or parts had not been included therein, or if this Ordinance or any of the provisions thereof shall be held inapplicable to any person, group of persons, property, kind of property, circumstances, or set of circumstances, such holdings shall not affect the applicability thereof to any other person, property or circumstances.

Section 6.3 Relationship of Agreement to other Regulations

This Ordinance does not preclude or supersede rights and obligations established pursuant to other laws regarding building permits, site-specific development plans, phased development plans or other provisions of law. A development agreement shall not exempt the property owner or developer from compliance with the State Building Code or State or local housing codes that are not part of the Town's planning, zoning, or subdivision regulations.

Unless the development agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a development agreement are those in force at the time of execution of the agreement.

Except for grounds specified in N.C.G.S. 160A-385.1(e) the Town may not apply subsequently adopted ordinances or development policies to a development that is subject to a development agreement. In the event that state or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the local government may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the development agreement, by ordinance after notice and a hearing.

This Ordinance does not abrogate any rights preserved by NCGS 160A-385 or NCGS 160A-385.1 or that may vest pursuant to common law or otherwise in the absence of a development agreement.

Section 6.4 Approval of Debt

In the event that any of the obligations of the Town in the development agreement constitute debt, the Town shall comply, at the time of the obligation to incur the debt and before the debt becomes enforceable against the Town, with any applicable constitutional and statutory procedures for the approval of this debt. The agreement shall be signed by the Town Attorney, Finance Director, and Town Manager.

Section 6.5 Effective Date

The provisions of this Ordinance shall become effective immediately upon adoption in accordance with the laws of the State of North Carolina.