

MEMORANDUM

TO: Mayor and Board of Commissioners

FROM: Bryan Gruesbeck, Town Manager

SUBJECT: Request from Pittsboro Place Partners, LLC for Extension of Water and Wastewater Capacity Allocation and Extension of MUPD Zoning and Approved Plan for Pittsboro Place

DATE: January 26, 2015

Background: During your November 24, 2014 meeting you briefly discussed a request from Pittsboro Place Partners (hereafter “PPP”) to extend the Mixed Use Planned Development (MUPD) Zoning Classification that was originally granted by the Town in 2007. You may also recall that PPP requested a five (5) year extension of the 15,000 GPD water and wastewater capacity they acquired in 2005. I have attached my memo from that meeting which discusses the history of the zoning classification and the water and wastewater capacity, as well as separate options for the zoning and wastewater capacity.

During the time following the November 24, 2014 Board meeting, PPP forwarded an updated request. These documents are also attached. They include

- Letter from Grey Styers dated August 29, 2014 (actually sent on 12/23/14) which describes PPP’s updated request. This letter contains the following attachments:
 - Pittsboro Place MUPD and Water Sewer Extension Request
 - Letter from Income Properties dated December 19, 2014, which appears to describe potential development opportunities on the PPP site.
 - Pittsboro Place – Summary of Past Development Efforts on the PPP site.
 - Draft language to amend Section 5.6.10 of the Pittsboro Zoning Ordinance.

PPP is submitting a revised request to extend their MUPD zoning and their water and waste water capacity. As discussed in my 11/24/14 memo, extension of the MUPD zoning is currently allowable for a period of one (1) year under our existing zoning. However, PPP is suggesting a text amendment to Section 5.6.10 that would allow the Board to consider an extension of MUPD zoning for three (3) years. This draft language is attached to their correspondence, as noted above.

PPP is also revising their previous water and wastewater capacity extension to a length not to exceed (3) years. In this scenario, PPP is offering to secure 15,000 GPD of capacity for 12 months. If this capacity were unused, on the 13th month capacity would be reduced to 10,000 GPD for the remaining two (2) years.

Bill Jackson and Grey Styers will be attending the meeting on January 26, 2015 to present their concerns and answer any questions you have.

Again, please feel free to refer to my attached 11/24/14 memo for a description of the history and a preliminary discussion of options. An updated list of options could be described as follows:

Zoning

1. Allow PPP MUPD Zoning to expire.
2. Extend PPP MUPD Zoning for a period not to exceed one (1) year.
3. Consider a text amendment to Section 5.6.10 to extend the duration of the MUPD to a period not to exceed three (3) years.

Water and Waste Water Capacity

1. Allow the 15,000 GPD to expire
2. Extend the 15,000 GPD for a period not to exceed one (1) year.
3. Extend the 15,000 GPD for a period not to exceed three (3) years upon prepayment of a portion of the Capital Recovery Fees.
4. Extend the 15,000 GPD for a period of one (1) year. If unused at the conclusion of the first year, allocated water and wastewater capacity would be reduced to 10,000 GPD for a period not to exceed two (2) additional years.

Action Requested: Discussion and consideration of options to extend or expire MUPD Zoning and Wastewater Capacity to Pittsboro Place Partners, LLC. Provide direction to Staff as appropriate.

MEMORANDUM

TO: Mayor and Board of Commissioners

FROM: Bryan Gruesbeck, Town Manager

SUBJECT: Request from Pittsboro Place Partners, LLC for Extension of Water and Wastewater Capacity Allocation and Extension of MUPD Zoning and Approved Plan for Pittsboro Place

DATE: November 24, 2014

Background: Pittsboro Place Partners 1, LLC is requesting an extension of five (5) years of the Mixed Use Planned Development (MUPD) Zoning classification, as granted by the Town of Pittsboro in 2007. They are also requesting an extension of five (5) years for water and wastewater treatment capacity allocation that they acquired in 2005. I have broken the explanation of their request and additional background into two parts. Later, I briefly discuss options:

Zoning: In 2007, Pittsboro Place Partners 1, LLC received approval from the Town of Pittsboro to rezone approximately 71.9 acres of property located at 516 Industrial Drive to Mixed Use Planned Development (see graphic on page 3). Approval was granted for three (3) years. However, the North Carolina General Assembly allowed an extension of three (3) years with a local option for an additional year of extension due to the poor economy in 2008 (The North Carolina Permit Act – (hereafter, “Permit Act”). As a result, the Pittsboro Place MUPD zoning was in effect until October 8, 2013. However, the Town of Pittsboro granted an additional year as allowed by the Permit Act, which extended the expiration date to October 8, 2014. The request is timely because it was made before the expiration date.

Water and Wastewater Allocation: Pittsboro Place Partners 1, LLC received 15,000 gallons per day (GPD) of water and wastewater capacity in 2005 through a transfer from the Dixie Restaurant Equipment Company, Inc. (who later transferred their interest Pittsboro Professional Center). Prior to this transfer, the Town of Pittsboro made the original water and wastewater capacity allocation to John Blair in 2001 for 23,000 GPD. John Blair paid a capital recovery fee in the amount of \$16,682.50 for a three (3) year period. Any unused capacity was to revert back to the Town of Pittsboro. In 2003, John Blair sold his property purportedly his allocation rights to Pittsboro Fire Department. In 2005, the Town of Pittsboro ratified the 2003 assignment of John Blair’s allocation rights to the Pittsboro Fire Department. Later that year, the Pittsboro Fire Department transferred the property as well as the water and wastewater capacity to Dixie Restaurant. Later in 2005, the Town of Pittsboro agreed to the transfer of 15,000 GPD to Pittsboro Partners, with 5,000 GPD remaining with Dixie Restaurant. In 2008, the contract with Pittsboro Place was amended to extend the time of development to October 8, 2010. The Permit Act further extended the agreement to the current date.

Zoning Options: Pittsboro Place Partners 1, LLC is requesting an extension of the MUPD zoning classification for an additional five (5) years. However, the Town's ability to extend a request for an MUPD zoning classification is limited by the Section 5.6.10 of the Zoning Ordinance:

5.6.10 Expiration

The approval of the adopting ordinance for a Mixed Use Planned Development (MUPD) zone district designation and the MUPD Plan shall be null and void unless construction of required improvements is commenced and diligently pursued to completion, and a site plan or subdivision plan is submitted for at least the initial phase of the MUPD Plan within three years after the date of approval of the MUPD Plan. Such time period will not be extended with transfer of ownership. Upon written request, one extension of time may be granted by the Town Board for a period not to exceed one year for good cause shown. No request for an extension shall be considered unless a written request is submitted to the Zoning Officer no later than 30 calendar days prior to the date the MUPD plan is to expire. The approval shall be deemed extended until the Town Board has acted upon the request for extension. Failure to submit an application for an extension within time limits established by this Section shall render the adopting ordinance for a MUPD zone district designation.

Therefore, it appears if the Town of Pittsboro Board of Commissioners wants to extend the MUPD Zoning Ordinance, it may do so - but only for a period "not to exceed one year." Alternatively, the Board could allow the MUPD Zoning Ordinance to expire. Upon expiration, the zoning would revert to M-2 (Industrial) and C-2 (Highway Commercial) from its current MUPD.

The Town of Pittsboro Board of Commissioners has the following options:

- 1) Extend MUPD Zoning for the subject property for a period not to exceed one (1) year.
- 2) Allow MUPD Zoning to expire.

Water and Wastewater Allocation Capacity Options: Pittsboro Place Partners 1, LLC is requesting an extension of their 15,000 GPD water and wastewater allocation for an additional five (5) years. The Town of Pittsboro Board of Commissioners could decide to extend the allocation for the full five (5) years, a portion of the five years, or allow the extension to expire.

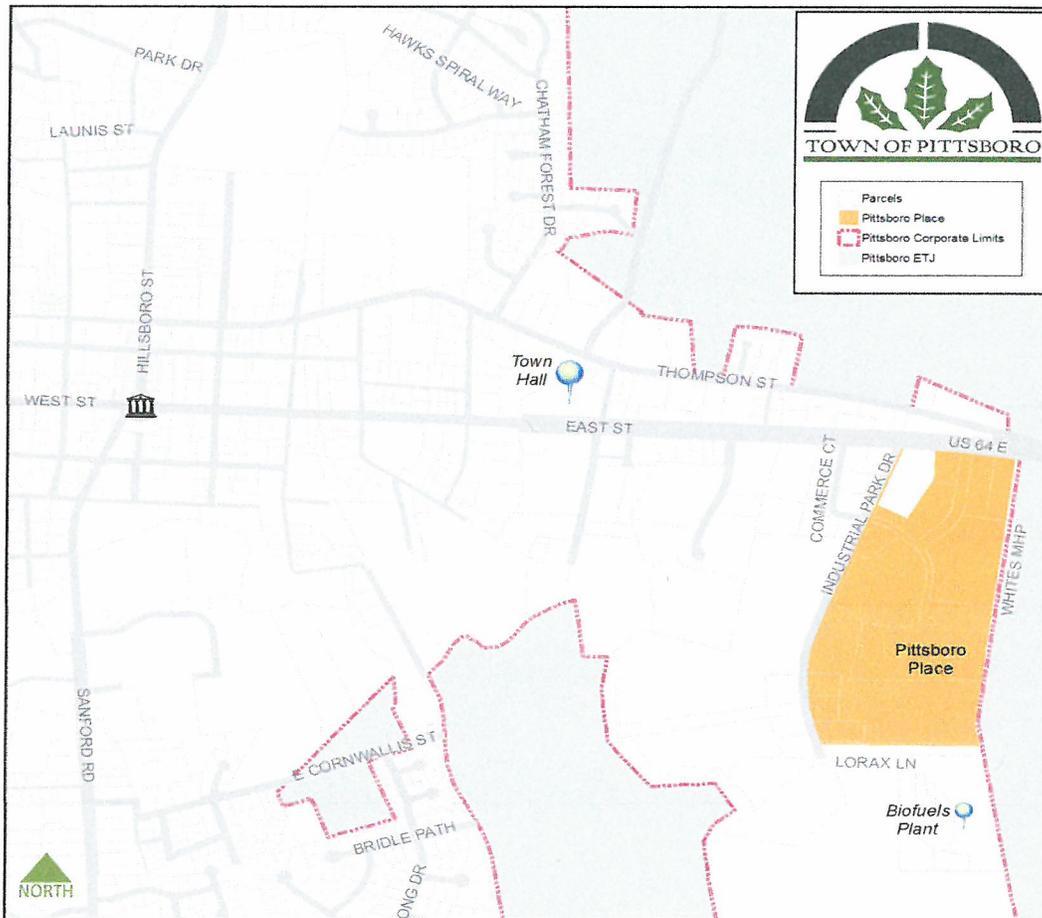
The Town of Pittsboro Board of Commissioners should also consider the cost of the Capital Recovery fees and Access Fees. Typically, these fees are paid upon approval of a site plan. The Town of Pittsboro received \$16,682.50 for in Capital Recovery fees in 2001. The FY 2014-2015 Budget Ordinance provides for fees that are considerably higher. While there is no category for MUPD in the ordinance, the most comparable rate at C-2 would incur a cost of \$539,250 (71.9 acres multiplied by a rate of \$7,500 per acre for water and sewer). Access Fees would total \$256,500 (at 15,000 GPD). If the Town of Pittsboro Board of Commissioners decides to extend water and wastewater capacity allocation, it should apply the current Access and Capital Recovery Fees.

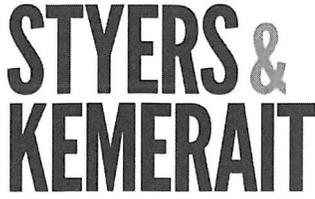
There is an existing ordinance that allows for reservation of capacity by the prepayment of Capital Recovery Fees (Chapter 25, Article VIII). The maximum term in the ordinance is three (3) years. Any capacity not contributed to the Town system within that term reverts to the Town. In 2011, the Town adopted an administrative policy regarding allocation of capacity. The policy provides that a developer has one (1) year from final approval to have a project “substantially underway” (1.3). If satisfactory progress is not underway, the town can rescind the allocation after notice to the developer (2.4). The Town of Pittsboro Board of Commissioners may rescind or grant an extension of capacity under this policy for a period of not more than six (6) months.

The Town of Pittsboro Board of Commissioners has the following options:

- 1) Extend 15,000 GPD of Water and Wastewater Capacity Allocation for a period not to exceed one (1) year.
- 2) Extend 15,000 GPD of Water and Wastewater Capacity Allocation for a period not to exceed three (3) years upon prepayment of a portion of the Capital Recovery Fees.
- 3) Allow the 15,000 GPD of Water and Wastewater Capacity Allocation to expire.

Action Requested: Discussion and consideration of the options to extend MUPD Zoning and Water and Wastewater Allocation Capacity to Pittsboro Place Partners 1, LLC. Provide direction to Staff as appropriate.





attorneys+counselors@law

1101 Haynes Street, Suite 101
Raleigh, North Carolina 27604
919.600.6270

StyersKemerait.com

gstyers@StyersKemerait.com
919.600.6273

August 29, 2014

Mr. Bryan Gruesbeck, Town Manager
Town of Pittsboro
PO Box 759
Pittsboro, NC 27312

*Re: Pittsboro Place Partners;
Request for Extension of Water and Wastewater Treatment
Capacity Allocation and MUPD Zoning Approval;
Supplemental Information*

Dear Mr. Gruesbeck:

To follow-up our last conversation regarding the above-referenced requests by Pittsboro Place Partners, please find enclosed several documents that further clarify, provide additional justification for, and constitute a minor modification of, the original requests contained in my letters dated August 29, 2014.

Specifically, enclosed is a summary of the request and future plans for the property and of the prospect of a grocery store on the property that Mr. Jackson was contacted about last week. A letter from Mr. Bill Hicks about that grocery store prospect is also enclosed. The last enclosure is a summary of some of the history of Mr. Jackson's efforts to develop this property.

As we discussed during our conversation, we are also requesting a text amendment to Section 5.6.10, that we believe would only apply to this property and that would expressly allow the City Council to grant an extension of the MUPD zoning classification for three years.

As noted in the request, Mr. Jackson is seeking an extension of his existing water and sewer capacity for twelve months, with the opportunity to seek a second extension of 10,000 GPD for an additional twenty-four months. This extension is necessary for the possible development of a grocery store on the property.

As we discussed, we appreciate your providing this information to the Commissioners, along with the Staff recommendation, prior to its consideration of the requests. We would be glad to discuss with you any questions that you might have about any of this information any further suggestions that you have regarding how we should proceed or how our requests may be more aligned with the policy goals of the Town.

M. Gray Styers, Jr.

Karen M. Kemerait

Mr. Bryan Gruesbeck
December 23, 2014
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We understand that the next meeting of the Board of Commissioners will be on January 12, 2015. We would be available to meet with you in person or talk by conference call, during the week prior to that meeting, if you wanted to schedule this item for consideration on January 12. Just let us know. If you would like more time for us to discuss the text amendment and modified requests in more detail, we would have no objection to the requests being held over and considered at the January 26 meeting of the Commissioners.

We hope that you find the enclosed information to be helpful and look forward hearing from you.

Very truly yours and wishing you and yours a Joyous Holiday Season,

A handwritten signature in cursive script, appearing to read "Gray Styers".

M. Gray Styers, Jr.

Enclosures

Cc: Mr. Bill Jackson (w/out enclosures)
Paul S. Messick, Jr. Esq., Town Attorney (w/ enclosures)

Pittsboro Place MUPD and Water/Sewer Extension Request

The real estate market is now clearly beginning to improve in the Town of Pittsboro after our recent severe real estate recession. Last week we received a very significant inquiry relating to a possible new 50,000 sf food store for the Town of Pittsboro. I have attached a letter from Bill Hicks, a Raleigh-based shopping center developer, explaining the grocery store tenant interest.

We have also received two significant inquiries relating to possible outparcel uses in the last 90 days. It has always been our intention to do several outparcel transactions and at least one grocery store transaction in order to pay off most of the acquisition loan on our property.

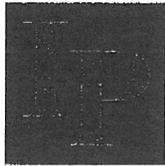
We have prepared and are suggesting a text amendment that, as proposed, would only apply to our property and would allow the Town Council to extend our current zoning approval for up to 3 years. A copy of that text amendment is enclosed. Our pending request is for a 5-year extension, but, as we have discussed with Mr. Gruesbeck, we believe that we could move forward within 3 years and would appreciate the Commissioner's approve of a 3-year extension, per the proposed ordinance text amendment.

In addition, we previously purchased a 15,000 GPD sewer capacity allocation which we are requesting be extended for a period of 12 months, with a further extension of 10,000 GPD for an additional 24 months. The availability of this water and sewer capacity is necessary for the continued marketing of the project to retail tenants.

We believe this to be a reasonable accommodation based on the unusual circumstances of the recent downturn and the current improvements to the real estate market. We hope you appreciate that we would have real difficulty receiving approval for this possible food store tenant without water and sewer capacity and the proper zoning in place. We are happy to make ourselves available to answer any questions you may have.

We have always enjoyed a cordial relationship with the Pittsboro Town Council and the attached historical summary states that we declined a Wal-Mart transaction before the downturn based on a clear preference communicated by the council members at that time, even though we could accommodate them in our approved site plan.

For the reasons explained in Mr. Styers' two letters dated August 29 and as further elaborated here and in the enclosed documents, we appreciate your consideration on this request, which we believe is in the best interest of not only Pittsboro Place, but of the entire Town as well.



INCOME PROPERTIES OF RALEIGH, INC.

1049 DRESSER COURT
RALEIGH, NC 27609-7323

PHONE 919-782-4798
FAX 919-782-8297
WEBSITE www.incprop.com

Bill Jackson
Manager
Pittsboro Place Partners I, III, IV LLC
6405 Westgate Road Suite 115
Raleigh, NC 27617

December 19, 2014

Dear Bill,

Thank you so much for meeting with me on Wednesday of this week. As I recall it has been at least three or four years since you and I discussed your property in Pittsboro.

I am pleased to let you know that I am representing three serious grocery store anchors seeking to take a look at the Pittsboro market. All of these anchors are active in North Carolina and each of them would expect to build a grocery store of approximately 50,000 square feet. It appears to me that your site immediately behind State Employees Credit Union will represent a very good opportunity for them.

My office has begun preparation of a market analysis of the Pittsboro market and I hope to have additional conversations with all three tenants in the next month or two. I believe there is a very good chance that there is already adequate business in the town of Pittsboro to justify at least one of these anchors moving forward.

It also seems clear to me that the Pittsboro market is on the edge of major residential development and I believe this will be further encouragement for grocery store anchors. Although it is challenging to predict the speed of decision making with major retail anchors, I can tell you that my recent experience has been that we are frequently able to receive approval in four to twelve months.

Your site is very well located with respect to the existing demographics in the town of Pittsboro and even if we were unable to get a commitment within 12 months, I would be very surprised if we did not have a commitment from one of these anchors within the next 36 months.

Please feel free to share this letter with the Pittsboro Town Council. I am happy to answer any questions they might have.

Best regards,

Yours truly,

Bill Hicks

Pittsboro Place Summary of Past Development Efforts

There have been at least two new mayors and a number of different Town Councils since we purchased this property approximately 7 years ago. Because some of the current council may not be familiar with all of this history of this transaction, we thought that it was important to summarize a number of historical events and explain why, in light of this history, the requested extensions are justified and appropriate for good policy reasons.

1. We purchased the initial portion of the Pittsboro Place property (approximately 60 acres) after we arranged for the purchase of transfer of water and sewer allocation from another property. The Town of Pittsboro originally assigned the water and sewer allocation to another property in order to benefit the local volunteer fire department.
2. We would not have purchased the original 60 acre tract without being assured of enough water and sewer allocation to be able to develop enough of our property to pay off our loan.
3. Based on having significant water and sewer allocation, we made decisions to purchase an additional 140 acres. We then spent nearly \$500,000 completing an approval for a large mixed use project on the first property.
4. We have always operated with a spirit of cooperation and good will with the Town of Pittsboro, and when we were approached by Wal-Mart to become an anchor tenant in our project, the some members of the then-Town Council signaled that they strongly preferred not to have Wal-Mart as a tenant in our project. We decided not to do business with Wal-Mart, even though the financial benefits of the transaction for us would have been considerable.
5. We have consistently and diligently been marketing the property for purchases/tenants who would be a good fit for the approved MUPD plan and the Pittsboro economy and quality of life. Practically speaking, it was impossible for anybody to predict the greatest real estate recession since the Great Depression, lasting more than five years from which we are still recovering. It seems that it would be very unfair to lose the water and sewer allocation under economic circumstances completely outside of our or the Town's ability to predict or negotiate about.

5.6.10 Expiration

The approval of the adopting ordinance for a Mixed Use Planned Development (MUPD) zone district designation and the MUPD Plan shall be null and void unless construction of required improvements is commenced and diligently pursued to completion, and a site plan or subdivision plan is submitted for at least the initial phase of the MUPD Plan within three years after the date of approval of the MUPD Plan. Such time period will not be extended with transfer of ownership. Upon written request, one extension of time may be granted by the Town Board for a period not to exceed one year for good cause shown, unless the duration of the MUPD had been extended by North Carolina Session Laws 2009-406 and 2010-177, in which case, one extension of time may be granted by the Town Board for a period not to exceed three (3) years for good cause shown. No request for an extension shall be considered unless a written request is submitted to the Zoning Officer no later than 30 calendar days prior to the date the MUPD Plan is to expire. The approval shall be deemed extended until the Town Board has acted upon the request for extension. Failure to submit an application for an application for an extension within the time limits established by this Section shall render the adopting ordinance for a MUPD zone district designation and the MUPD Plan null and void, and the land shall automatically revert back to its prior zone district designation.