

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.

