

Charlotte Tweaks its Rezoning Process

by Collin Brown and Laura Simmons

On May 15, 2008, the Charlotte-Mecklenburg Planning Commission implemented new policies related to the rezoning process. There were no monumental changes, but Petitioners should be aware of the modifications in order to avoid unnecessary delays.

- An application must be deemed complete by staff before the application will be scheduled for a public hearing. This change will end the practice of filing incomplete, "place-holder" applications, in order to reserve a spot on the public hearing agenda before the application quota is met.
- If the proposed zoning boundary does not align with an existing property line, a metes and bounds description is required in order to accurately map the new zoning boundary.
- Conditional zoning applications must be accompanied by 30 site plans, up from the 25 previously required.
- Revised site plans must be submitted by noon, four weeks prior to the public hearing.
- Once the revised plan deadline has passed, staff will not accept additional site plan changes prior to the public hearing.
- Revised site plans may be submitted after the public hearing and must be filed by noon on the Friday following the public hearing.

Post Construction Storm Water Ordinance Takes Effect

By Bailey Patrick and Collin Brown

Charlotte's long awaited, often lamented, Post Construction Controls Ordinance ("PCCO") goes into effect July 1, 2008. These regulations aim to improve water quality by requiring increased stream buffers, on-site BMP's and enhanced detention measures. Similar regulations have been in place in Mecklenburg County and the surrounding Mecklenburg towns for several months and their impact on development costs has been significant.

In recent years, Charlotte has sought to impose many of the PCCO requirements on new development through the conditional rezoning process. However, after July 1, these regulations will apply to all new development in Charlotte unless the project qualifies for one of several exemptions contained in the PCCO. Therefore, property owners and developers, especially those with conditionally zoned property, should consult with an expert in order to determine whether projects may be exempt from the PCCO.

New regulations usually require new administration and enforcement regimes and the PCCO is no different. The PCCO will be interpreted and enforced by the Storm Water Administrator. Appeals from interpretations of the Storm Water Administrator and variances from the requirements of the PCCO will be heard and decided by the Storm Water Advisory Committee. These hearings are quasi-judicial in nature

In This Issue:

- Charlotte Tweaks its Rezoning Process
- Post Construction Storm Water Ordinance Takes Effect
- Union County Comprehensive Plan Update
- From Fringe to Focal Point: The "Green" Building Trend Continues

Attorneys and Paralegal Join Land Use and Zoning

Collin Brown (Associate): Collin has been representing clients in land use matters in Charlotte and throughout western North Carolina since 2003. He has handled residential, commercial and industrial re-zonings for a variety of clients. Collin also regularly represents property owners and developers with regard to zoning interpretations and appeals, variance requests, subdivision issues, ABC permits, sign ordinance issues, annexation matters, right-of-way abandonment's and a variety of other regulatory concerns. Collin believes that it is important to understand the implications of "green" development practices and was the first North Carolina attorney to earn the LEED accreditation. He is a graduate of Ole Miss, Georgia State University School of Policy of Studies and Wake Forest School of Law.

Michael Birch (Associate): Michael focuses his practice on land use regulation and zoning issues. Michael represents developers and property owners through the entitlement process and with land use litigation matters that may arise during a project. He is a graduate of Hampden-Sydney College and Cumberland School of Law, Samford University. Michael also received his Master of Public Administration with a concentration in Community Planning and Development from the University of Alabama at Birmingham.

Sherry Grady (Paralegal): Sherry has over ten years of experience in the legal industry; both in corporate and real estate. Sherry is a council member of the legal assistants division of the N.C. Bar Association, and is a board member of the Raleigh-Wake Paralegal Association.

and the decisions of the Storm Water Advisory Committee may be appealed to Superior Court upon a writ of certiorari.

Kennedy Covington's land use attorneys are well versed in ordinance interpretation and quasi-judicial practice and will continue to monitor issues related to the enforcement of this new ordinance.

Union County Comprehensive Plan Update

by Laura Simmons

Union County is in the process of updating its Land Use Plan. A Steering Committee is supervising the process and has identified key issues affecting the County including:

- the County's high growth rate and need for additional job base,
- preservation of rural character and open space,
- water and sewer capacity,
- school capacity and the need for new schools,
- environmental protection,
- the alignment of the planned Monroe Bypass,
- affordable housing needs, and
- whether to pursue extension of Charlotte transit into the County.

The Steering Committee has drafted a preliminary set of goals including:

- Encourage development and expansion of new and existing businesses and industries by offering a progressive atmosphere for enterprises that will diversify the local economy and expand the tax base.
- Identify areas best suited for economic development and make land use and infrastructure decisions to encourage development in those areas.
- Protect areas for continued agricultural and forestry use.
- Discourage development that results in the excessive reduction of farmland, open space, and wooded areas.
- Provide and maintain accessible public utility systems capable of accommodating and helping to direct future growth. Explore construction of additional County wastewater treatment capacity.
- Explore mechanisms to allocate and reserve water/sewer capacity for future economic development uses.
- Encourage development of a supply of housing that can accommodate diverse incomes and needs.
- Identify a corridor for possible future rail service in the central and northwestern parts of the County.
- Identify on the Land Use Plan those areas that are best suited for economic development land uses, those areas that are environmentally sensitive and those areas where agricultural uses are to be protected.

Specific recommendations for future land uses throughout the County are anticipated in July. A public hearing on the proposed Land Use Plan is anticipated to occur in the Fall.

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From Fringe to Focal Point: The "Green" Building Trend Continues

by Charlotte Mitchell and Collin Brown

A paradigm shift is occurring within the development community toward "green" and sustainable practices. Industry publications, conferences and popular media are full of accounts of how developers can and are producing more environmentally-friendly high-performance "green" buildings. "Green" and "sustainable" development have become agenda mainstays for groups such as the Urban Land Institute ("ULI"), National Association of Industrial and Office Properties ("NAIOP"), and International Council of Shopping Centers ("ICSC").

A variety of factors are driving this shift, the most notable of which are: 1) the emergence of global climate change as a mainstream policy concern; 2) rising energy prices and concerns over energy independence; 3) scarcity of resources (of particular concern for us here in NC is the water shortage); 4) mounting proof that green building does not cost significantly more; and 5) in many locations around the country, tenant demand.

Understanding the environmental impact of buildings is critical when considering the paradigm shift. The construction, operation, and maintenance of buildings require significant amounts of energy, water, and materials, and generate large quantities of waste, air pollution and water pollution. In fact, the United States Environmental Protection Agency estimates that buildings (both residential and commercial) account for:

- 39% of total energy use in the United States;
- 12% of the total water consumption in the United States;
- 68% of total electricity consumption in the United States; and
- 38% of the carbon dioxide emissions in the United States.¹

These numbers suggest that there are significant gains to be made in efforts to address resource use and efficiency through the changing of our building principles and practices. "Green" building practices seek to maximize the environmental and economic performance of a building through energy efficiency, water savings, waste reduction, site selection and materials selection. "Green" buildings are also associated with economic benefits such as: decreased operating costs; increased market advantage; and favorable financing and insurance terms.

Against this backdrop, this article discusses the emergence of "green" building in North Carolina. Specifically, the discussion which follows: 1) provides an overview of the U.S. Green Building Council's Leadership in Energy and Environmental Design ("LEED") program, considered to be the national gold standard "green" building benchmark; 2) explores current regulatory developments related to LEED and "green" building practices generally; and 3) forecasts additional developments in the "green" building movement.

Leadership in Energy and Environmental Design - The U.S. Green Building Council (the "USGBC") is a consortium of government agencies, non-profit organizations, and professional service firms devoted to encouraging "green" building and development. Its mission is to "to transform the way buildings and communities are designed, built and operated, enabling an environmentally and socially responsible, healthy, and prosperous environment that improves the quality of life."²

Just under a decade ago, the USGBC developed LEED. A rating tool for "green" building design and construction intended to provide measurable results for building owners and occupants, LEED incorporates strategies for sustainable site development, water savings, energy efficiency, materials and resources selection, and improved indoor environmental quality. Since being introduced to the marketplace in 2000, LEED has become the nationally recognized benchmark for the design, construction and operation of "green" buildings.

Generally speaking, LEED employs a checklist approach, where green building strategies, sustainable site development, water savings, energy efficiency, materials and resources selection, and indoor environmental quality are organized into credits. A developer can pick and choose which of the strategies to incorporate into the project. Each credit is assigned a specific point-value (usually 1 point). The objective is to achieve a minimum number of points in order to earn certification of the project. The number of points the project earns determines the level of LEED certification the project receives – in other words, varying levels of certification depend on the number of points earned by the project. LEED certification is available in four progressive levels: certified, silver, gold and platinum.

Currently there are multiple LEED rating systems applicable to various types of projects, including LEED for New Construction, LEED for Core & Shell, LEED for Commercial Interiors and LEED for Existing Buildings. LEED for New Construction is designed for general commercial and institutional projects, including office buildings, high-rise residential buildings, government buildings, recreational facilities, manufacturing plants and laboratories. LEED for Core & Shell is oriented toward designers, builders, developers and new building owners who want to address sustainable design for new core and shell construction. Core and shell covers base building elements such as structure, envelope and the HVAC system. The LEED for Core & Shell Rating System acknowledges the limitations of developers in a speculatively developed building and encourages the implementation of green design and construction practices in areas over which the developer has control. LEED for Commercial Interiors is the green benchmark for the tenant improvement market.

Despite increasing acceptance in the commercial development sector, the LEED process has been subject to criticism. Specifically, cost associated with certification appears to be the chief complaint. While application fees are nominal in the context of overall project costs, compiling and documenting the information required for certification can impose significant burdens. In fact, in some cases, the documentation associated with certification can run in excess of \$100,000. While some economic analysis of LEED suggests that there is no significant cost premium for green buildings as compared to non-green buildings, there is evidence to suggest that there are increased costs associated with achieving LEED certification, and that the extent of the increase depends on the level of certification sought.³

¹ <http://www.epa.gov/greenbuilding/pubs/whybuild.htm>.

² <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=124>.

³ Andrew J. Nelson, *The Greening of U.S. Investment Real Estate –Market Fundamentals, Prospects and Opportunities*, 2007, available at https://www.rreef.com/GLO_en/bin/SO_57_Greening_of_US_Investment_RE.pdf.

Regulatory Developments - Government's greatest influence over "green" building is through its regulatory powers, directly, by mandating how and the standards to which buildings are constructed, and indirectly, by affecting the costs of development and/or ownership. Local governments across the country are beginning to address the issue of "green" building in earnest and have enacted policies mandating or encouraging green buildings, which fall into three general categories:

- Requirements that all new publicly-funded construction or renovations achieve a minimum LEED or other green certification;
- Planning incentives, such as density bonuses or expedited permitting for projects achieving specified environmental standards, such as LEED certification; and
- Financial incentives, such as grants or reduced taxes, for projects achieving specified environmental standards, such as LEED certification.

In North Carolina, the recently ratified Session Law 2007-381 and Session Law 2007-241, authorize local governments to rebate building permit fees and offer development incentives for LEED certified and other "green" projects. Specifically, Session Law 2007-381 authorizes local governments to provide building permit fee reductions and rebates if buildings are constructed or renovated using design principles that conform to LEED certification or Green Globes certification. Session Law 2007-241—which is of limited applicability to the cities of Asheville, Charlotte and Wilmington and to the Towns of Carrboro and Chapel Hill—authorizes local governments to adopt ordinances to grant development incentives, such as density bonuses, if the developer agrees to construct new development or reconstruct existing development in a manner that makes a significant contribution to the reduction of energy consumption.

Further, a new development of which to be aware, is that effective January 2008, Mecklenburg County will provide building permit fee rebates for LEED certified projects.

Forecasting Additional Developments - With energy costs increasingly on the rise, impending greenhouse gas emissions limits, growing industry experience and familiarity with the LEED process indicate that the momentum around the "green" building movement continues. Financial institutions and insurance companies are increasingly offering favorable terms for projects with a "green" component. Tenant and investor demand for "green" buildings continues to grow. We expect that as this momentum continues, the incentives that governments now provide for going green will be increasingly replaced by mandates and penalties for those projects that do not involve a "green" component. Kennedy Covington attorneys will continue to monitor this trend and associated regulatory developments in North Carolina and will keep you informed as the "green" building movement continues to be refined.

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This bulletin is published as a service to clients and others interested in real estate development, land use and zoning issues. The information provided herein is general in nature and should not be relied upon as legal advice as to specific factual situations. Listed below are members of our land use and zoning practice group.

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