



Planning Commission Work Session:

Rewriting Our Rules – A Land Use Management Ordinance (LUMO) Update

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Planning Commission Meeting Date: March 19, 2024

Overview

During the March 19, 2024, work session, staff will provide updates and seek Planning Commission's input on the following:

1. Economic Constraints
2. Community Benefits
3. Design Standards

1. Economic Constraints

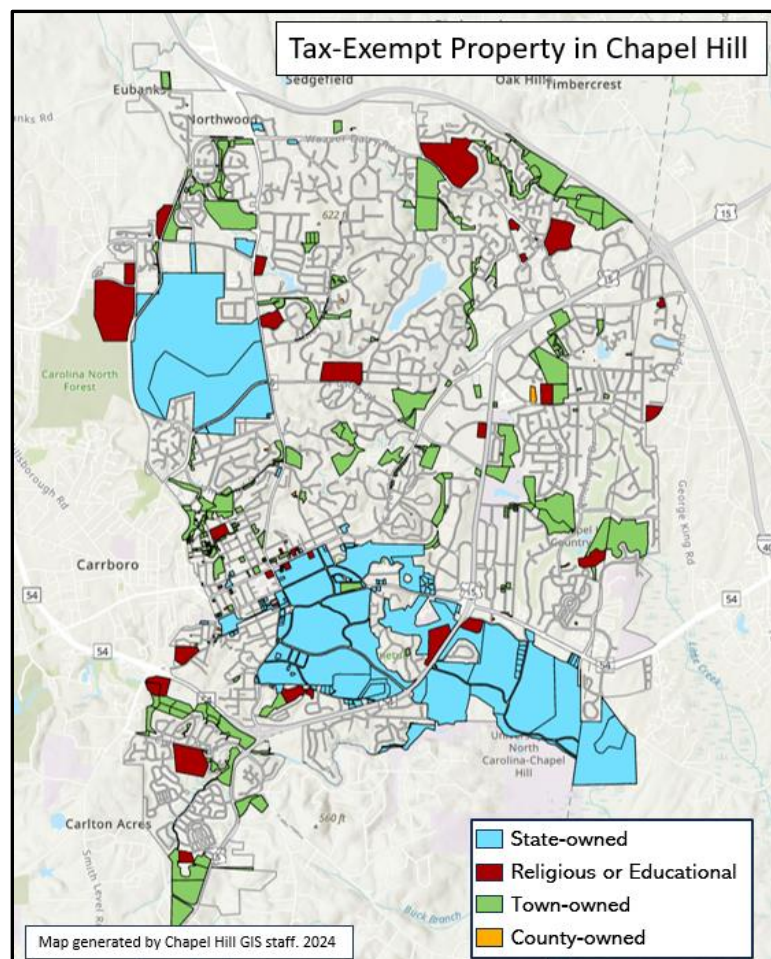
This section identifies two major economic constraints that Chapel Hill should factor into its land use planning:

- (1) a high percentage of non-taxable land
- (2) a heavy reliance on property taxes generated by residential uses

Approximately **38 percent of land in Chapel Hill is non-taxable**. As a result, the remaining taxable land is under greater pressure to provide enough property tax revenue to support the Town's needs.

According to the Orange County Tax Assessor's Office, **residential uses - not including multifamily developments - made up 66 percent of the Town's property tax collections in 2023**. Municipalities typically aim to have no more than 60 percent of tax revenues from residential collections.

Combined, these factors underscore the need for more diverse development (including commercial, multifamily residential, and mixed-use) to move the Town towards a more typical and sustainable tax base.



2. Community Benefits

This section considers whether **regulation** or **negotiation** will be the most viable option for the Town to secure various community benefits. A common understanding of how to achieve these benefits will help to inform future discussions over the type and scale of development that can be allowed by-right.

New development can provide an array of community benefits that take on very different forms. Broadly speaking, these community benefits can include:

1. the use of the development itself (e.g., housing, retail space, or parks);
2. the way the development is designed or operated (e.g., providing affordable housing, using energy efficient building designs, or constructing multiuse paths); and
3. other supplemental benefits provided by the developer (e.g., dedication of greenways or large-scale conservation of environmentally sensitive lands).

Strategic and predictable use of the Town's zoning authority can deliver some of these community benefits by allowing development that is responsive to market demands and consistent with the Town's Comprehensive Plan. However, the Town's zoning authority is limited. It oftentimes cannot require developers to provide other community benefits.

For the last several years, the Town has relied on conditional zonings to secure these other community benefits. Conditional zoning gives the Town broad – *but not unlimited* – authority to negotiate with developers over conditions that go above and beyond LUMO requirements. Because conditional zoning is still a relatively new tool in North Carolina, the full scope of local governments' authority to negotiate conditions is not entirely clear. As [explained by the UNC School of Government](#)ⁱ, "considerable legal care is warranted" in regards to novel conditions that are not expressly authorized by state law.

Incentivizing is also an option for achieving many community benefits but should be used sparingly. Valid code-based incentives should create legitimate and meaningful choices for developers. They should not operate as mandates by another name. In practice, code-based incentives nudge developers towards a desired outcome by relaxing some substantive or procedural requirements. As a result, the Town has a limited number of code-based incentives it can deploy.

Although this memo focuses on land use regulation and the development review process as tools for securing community benefits, these are only some of the tools available to the Town. Direct capital investments by the Town as well as Town-initiated programs and policies are also vital tools that should always be considered.

This section addresses community benefits that are either commonly included in conditional zoning approvals or represent recurring interests expressed by Council:

- A. Affordable Commercial Space
- B. Affordable Housing Units
- C. Land Conservation
- D. Greenways/Multiuse Paths
- E. Electric Vehicle Infrastructure
- F. Energy Efficiency

A. Affordable Commercial Space

<p style="text-align: center;">Complete Community Elements:</p> <p>Affordable commercial space could directly support the following elements of a Complete Community:</p> <ul style="list-style-type: none">• Food/markets• Services to support innovation and entrepreneurialism• Local independent retailers• Social innovation/non-profit incubators
<p style="text-align: center;">Limited Viable Options:</p> <p>Requiring affordable commercial space falls outside the zoning authority of local governments. Staff are not aware of any North Carolina municipalities that require developments to provide affordable commercial space.</p> <p>Although the Town can encourage developers to lease retail spaces at below market rates, it should not make this an expectation for new development.</p> <p>Long term monitoring and enforcement of commitments to provide affordable commercial space will likely be extremely challenging. There are no agreed upon definitions of affordable commercial space or standards for determining who should receive access to it.</p>
<p style="text-align: center;">Examples from Recent Conditional Zonings:</p> <p><u>101 East Rosemaryⁱⁱ</u>: The developer agreed to provide at least 1,500 square feet of retail space at a rental rate between 50 and 65 percent of the market rate for retail property in downtown Chapel Hill. The space must be available at the reduced rental rate for at least 10 years.</p> <p><u>Chapel Hill Life Sciences Center ("Longfellow")ⁱⁱⁱ</u>: The developer agreed to share annual reports on its efforts to lease ground floor spaces at below market rates.</p>

B. Affordable Housing Units

<p style="text-align: center;">Complete Community Elements:</p> <p>Affordable housing units provided in new development could directly support the following elements of a Complete Community:</p> <ul style="list-style-type: none">• New affordable housing models• Housing diversity• Access to homeownership
<p style="text-align: center;">Viable Options:</p> <p>Negotiate: As the Affordable Housing and Community Connections Department <u>recently reported^{iv}</u>, Town Council's ability to negotiate during the conditional zoning process continues to deliver sizable commitments for new affordable housing.</p>

Affordable Units Approved by Council

163 units in FY 2023

236 units in FY 2024

Over the last five years, approximately **12% of rental units** and **13% of for-sale units** in market-rate developments approved by Council were affordable.

Incentivize: Incentives in the revised LUMO may be able to secure affordable housing units even in developments that do not need approval from Town Council. [Earlier analysis](#)^v conducted by the LUMO consultant team confirmed that a density bonus alone is not enough to incentivize developers to provide affordable housing. The consultant team is conducting further analysis to determine if additional code-based incentives can be added to a density bonus. Town staff will present the results of this analysis as it is available.

Typical Requests for New Development:

The Town routinely requests that roughly 15% of units in new developments are affordable. As summarized below, requests regarding the household income levels served by these affordable units vary depending on whether the units are for-sale or for-rent.

Unit Type	Target Income Levels
For-rent	60% AMI or below
For-sale	At least half of units at 65% AMI or below. Remainder of units at 80% AMI or below

C. Land Conservation

Complete Community Elements:

Land conservation could directly support the following elements of a Complete Community:

- Access to parks and green space
- Mature tree canopy
- Natural landscapes, waterways, and features

Viable Options:

Negotiate: Large-scale land conservation is most likely to occur through negotiation. Negotiating for land conservation allows the Town to find tailored solutions. In the examples below, each project had a unique set of practical constraints and environmental assets. As a result, the details of how land will be preserved for each project are highly site-specific.

The Natural Areas Map currently being developed by Town staff can inform future land conservation efforts. The map could be used to identify land that is particularly well-suited to conservation and help the Town understand when requests for land conservation should take priority over other potential community benefits.

Attempts to mandate land conservation could lead to broader use of state protections of so-called "forestry activities." State law prohibits local governments from interfering with timber harvests that meet certain criteria defined by the state. At most, local governments can delay issuance of development approvals for 3-5 years after the completion of a state-sanctioned timber harvest.

Examples from Recent Conditional Zonings:

[UNC Health Eastowne^{vi}](#): Roughly 20 contiguous acres of the UNC Health Eastowne campus is environmentally sensitive. UNC Health agreed to place 12 acres into a perpetual conservation easement and committed not to develop the remaining 8 acres until the final phase of its buildout.

[Chapel Hill Crossings^{vii}](#): The developer has agreed to preserve about 2 acres of undisturbed forest on their site.

[South Creek^{viii}](#): When applying for a conditional zoning, the developer excluded roughly 80 acres of land they own adjacent to their project site. The conditional zoning approval then included a commitment from the developer to make a good faith effort to preserve the undeveloped land.

D. Construction or Dedication of Greenways and Multiuse Paths

Complete Community Elements:

New developments that construct and/or dedicate greenways or multiuse paths could directly support the following elements of a Complete Community:

- Everywhere to everywhere greenways
- Walkable
- Watersheds as pedestrian and cycling connectors

Viable Options:

Mandate Connections in Public Right-of-Way: The Town currently requires that new developments provide sidewalks along their street frontages. The Town could consider strengthening this requirement in the LUMO by calling for multiuse paths instead of traditional sidewalks in certain areas of Town. Priority areas could include locations that would contribute to building out the Everywhere-to-Everywhere Greenways network identified in the Complete Community Strategy.

Similarly, the Town could consider requiring new developments to include pedestrian connections to existing or planned greenways and could impose minimum standards for such connections. However, if these pedestrian connections are built outside of the public right-of-way, the Town cannot force a property owner to make them publicly accessible.

<p>Negotiate Connections on Private Property: When greenways, multiuse paths, or other pedestrian connections are built outside of the right-of-way, the Town should consider incentivizing or negotiating with developers to secure public right-of-way or access easements.</p>
<p style="text-align: center;">Examples from Recent Conditional Zonings:</p> <p><u>Stanat's Place</u>^{ix}: The developer agreed to provide land or an easement for a 4-foot-wide mulch trail that would begin on their property, cross through neighboring private land, and connect to the Weaver Dairy Extension. The condition was dependent on the Town acquiring an easement or land from the neighboring property. To date, the Town has not been able to acquire the necessary easement or land.</p> <p><u>Barbee Chapel Apartments</u>^x: The developer agreed to provide a multiuse path along their entire street frontage, all within public right-of-way.</p> <p><u>Meridian Lakeview (formerly "Gateway")</u>^{xi}: The developer agreed to provide a greenway connecting Red Roof Inn Drive and Old Chapel Hill Road. The greenway will primarily be built within existing public right-of-way and new right-of-way required to expand public roads. Portions of the greenway will be built entirely on private land.</p>

E. Electric Vehicle Infrastructure

<p style="text-align: center;">Complete Community Elements:</p> <p>Electric vehicle infrastructure could directly support the following element of a Complete Community:</p> <ul style="list-style-type: none"> • Mitigate climate risks: green infrastructure
<p style="text-align: center;">Viable Options:</p> <p>Mandate: Mandates for electric vehicle ("EV") chargers and EV-ready parking spaces are beginning to appear in municipal development ordinances in North Carolina. For example, Charlotte's recently adopted <u>Unified Development Ordinance</u>^{xii} requires EV-ready parking spaces and EV chargers for multifamily developments, mixed-use developments, hotels, and standalone parking decks/lots.</p> <p>Staff can consider incorporating EV-related requirements into the new LUMO's parking standards. The requirements should balance current needs (e.g., new "day 1" EV chargers that are installed and available when a development opens) and long-term planning (e.g., requiring electrical infrastructure that makes it easier to meet growing demand over time).</p>

Town Requests for New Development:

In a June 2023 [resolution^{xiii}](#), the Town Council formalized its expectations for EV infrastructure in new conditional zoning projects. As summarized below, the resolution sets different expectations based on the type of development.

Development Type	Parking Thresholds	Requested EV Infrastructure
Single Family Detached Single Family Attached (e.g., townhomes)	No minimum threshold	Each unit with on-site parking shall be provided with a minimum of 1 EVSE-Ready Space
Multi-Family Dwellings (including mixed use)	5 spaces or more	Each unit with on-site parking shall be provided with a minimum of 1 EVSE-Capable space
Non-residential	10 spaces or more	5% EVSE Installed 25% EVSE Ready

Recent conditional zoning approvals granted by the Town have all included some level of commitment regarding EV chargers and EV-ready parking spaces (i.e., capable of supporting EV chargers with little to no additional infrastructure). Developers typically agree to provide EV chargers for 2% to 5% of their parking spaces and to make 20% to 25% EV-ready.

F. Energy Efficiency

Complete Community Elements:

At a minimum, energy efficient development could directly support the following element of a Complete Community:

- Mitigate climate risks: green infrastructure

Viable Options:

Negotiate: Local governments in North Carolina are not allowed to impose energy efficiency requirements that are more stringent than state requirements.

Because there is no one-size-fits-all standard for energy efficiency and because building science is always improving, Town staff frequently work with developers to understand what types of energy efficiency and sustainability measures are most appropriate to include in their project.

Town Requests for New Development:

Town Council's June 2023 [resolution^{xiv}](#) includes multiple energy efficiency measures that developers are expected to incorporate into their projects.

Developers often agree to implement energy efficiency measures such as all-electric buildings and increased energy efficiency relative to ENERGY STAR, ASHRAE or a similar energy standard that is updated over time.

3. Design Standards

At the March 19, 2024 work session, staff will introduce Planning Commission to a working document called the "Typology Resource Guide." Staff are sharing the document early to provide Planning Commission time to review it prior to a more in-depth discussion on design scheduled for the April work session.

The document identifies a wide variety of building types that may be proposed in Chapel Hill and explores best practices related to their design. The document is intended to serve as a jumping off point for further discussion about updated design/dimensional standards in the new LUMO.

Using resources like this document, the new LUMO is intended to move towards a more context-based set of design/dimensional standards. Many current zoning codes apply a combination of district-wide standards and standards that apply only to specific building types. For example, zoning codes in Raleigh or Charlotte may say that even within the same zoning district, townhomes are subject to a different height limit than multifamily buildings or that office buildings are subject to different design/dimension requirements than civic buildings. This type of regulation allows municipalities to take a more contextual approach that supports the sort of mixed-use districts or nodes envisioned under the Complete Community Strategy.

Attachments

1. Appendix A: Prior Council Meetings and Materials
2. Policy Discussions and Outreach Schedule
3. Engagement and Communications Report
4. Typology Resource Guide

Appendix A: Prior Council Meetings and Materials

February 21, 2024 – [Work Session^{xv}](#)

- [Meeting Recording^{xvi}](#) (Discussion begins at 03:25)
- Recommended documents to review:
 - [Staff Memo^{xvii}](#)

January 17, 2024 – [Work Session^{xviii}](#)

- [Meeting Recording^{xix}](#) (Discussion begins at 49:05)
- Recommended documents to review:
 - [Staff Memo^{xx}](#)

November 13, 2023 – [Work Session^{xxi}](#)

- [Meeting Recording^{xxii}](#) (Discussion begins at 05:45)
- Recommended documents to review:
 - [Staff Memo^{xxiii}](#)
 - [Draft Zoning District Proposal^{xxiv}](#)
 - [Briefing Book: Feasibility of Density Bonuses to Support Community Benefits^{xxv}](#)

October 18, 2023 – [Work Session^{xxvi}](#)

- [Meeting Recording^{xxvii}](#) (Discussion begins at 04:36)
- Recommended documents to review:
 - [Staff Memo^{xxviii}](#)

June 21, 2023 – [Information Item^{xxix}](#)

- Recommended documents to review:
 - [Summary Report^{xxx}](#)
 - [Plan Alignment Memo^{xxxi}](#)
 - [LUMO Audit Report^{xxxii}](#)

REFERENCES

ⁱ <https://canons.sog.unc.edu/2021/11/what-conditions-can-be-included-in-conditional-zoning/>

ⁱⁱ <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=6178829&GUID=C11FE56E-5FA7-4C40-862E-60E6F4E3ACAB&Options=&Search=>

ⁱⁱⁱ <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=6427011&GUID=B8DEA47A-A954-47F7-8EDD-B2E026EBCCC3&Options=&Search=>

^{iv} <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=6507671&GUID=6B1A5DBC-A836-4287-A507-35FFA9EB355C&Options=&Search=>

^v <https://chapelhill.legistar.com/LegislationDetail.aspx?ID=6411208&GUID=7E0011D5-461C-405E-9B6E-85812D1146CC&Options=&Search=>

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