

**06-16-2021 Town Council Meeting
Responses to Council Questions**

ITEM #4: Authorize the Town Manager to Negotiate and Execute a Construction Contract for the Rosemary Parking Deck Project

*****NOTE: This item was pulled from the Consent Agenda and will be a discussion item on the June 21, 2021 meeting agenda.*****

Council Question:

Has UNC agreed to the revised increased price?

Staff Response:

Staff had a conversation with a representative of UNC last week to discuss the general changes in price. UNC felt they would like to share it and discuss with their staff, but felt the changes reflected what they are also seeing in the market. We have shared the Purchase and Sale Agreement with UNC for formal consideration this week and hope that we can see it endorsed in a short period of time.

Council Question:

The resolution states “the Guaranteed Maximum Price for the construction contract is a portion of that overall project budget.” What other costs are not included in the GMP?

Staff Response:

The Overall Project Budget (39\$M) includes the construction contract amount (covered by the GMP), soft costs including architectural and engineering fees, a contingency, and the Development/Construction Management Fee.

Council Question:

Has staff discussed renegotiating the management fee paid to Grubb Properties so that it is not inflated by rising materials prices?

Grubb Response:

The initial development budget from last July had a fee of \$1,156,00 based upon the 4% fee per the EDA. This is a customary arrangement, and one which we felt was fair given our fronting of all development costs to date, together with management of the entitlement, design, and permitting process. Of course, this contemplates Grubb seeing the project through completion and delivery to the Town. The current budget based on final design requirements and cost escalations has increased this fee to the \$1,413,000 amount discussed with Council.

06-16-2021 Town Council Meeting Responses to Council Questions

Grubb would propose the following:

Stipulated Fee Amount: \$1,156,000

Terms: 1/2 due upon closing of financing and the remaining paid over 12 months in equal installments.

Grubb would receive 10% of any savings achieved on the project, capped at the current fee calculation of \$1,412,000.

We feel that this represents a fair outcome and alignment of interest as we move into the execution phase of the project. We value our relationship with the Town, and look forward to a great outcome for the Town and community on this important project.

Council Question:

As we discussed at the Wed's meeting, key documents as listed on the Economic Development Agreement remain missing (third party evaluation on the fairness of the contract, listing of obtained permits etc). Our current cost and financial projection numbers deviate significantly from the most recent (Dec 2020) opinion from the Walkers Consulting on our website.

[Opinion of Probable Construction Costs - Walker Engineering¹](#)
[Projections for parking demand and financial - Walker Consulting²](#)

Staff Response:

The Economic Development Agreement requires that certain documents be received by the Town prior to a specific date (extended to June 21, 2021 by subsequent agreement), including:

- 1. A construction contract between Samet and the Town that states a guaranteed maximum price;*
- 2. Written approval from Walker Consulting to the Town as to the fairness of the stated maximum price; and*
- 3. A letter from Samet or a project architect confirming that all major regulatory permits that are conditions to the start of construction are in hand, including approval of plans from the North Carolina Department of Insurance (DOI).*

The staff has a draft construction contract and final signature requires the Council's authorization for the Town Manager to negotiate and execute the contract (now scheduled for June 21, 2021). Walker Consulting has received all the materials requested to prepare their

¹ <https://www.townofchapelhill.org/home/showpublisheddocument/47625/637429533341600000>

² <https://www.townofchapelhill.org/home/showpublisheddocument/47641/637431074589700000>

06-16-2021 Town Council Meeting Responses to Council Questions

statement, which we expect to receive within a week. The DOI permit has been issued and the Town is in final stages of issuing the Town permit.

The Town is on track to have the documents listed in the Economic Development Agreement in hand prior to June 21, 2021. Closing is currently scheduled for June 23, 2021.

06-16-2021 Town Council Meeting Responses to Council Questions

ITEM #6: Review Draft Orange Countywide Racial Equity Plan Framework

Council Question:

What is the status of the Town's own Racial Equity toolkit that the Council requested at its January work session to be worked on to apply to Council decision-making?

Staff Response:

The draft review tool is included in the Draft Orange Countywide Racial Equity Plan on page 49 of the Council packet. Applying the review tool requires research, data collection and collaborative community engagement. We recommend that the Council work with the Diversity, Equity, and Inclusion Officer to select decisions that the tool would be used with.

Council Question:

Which people (positions) in this coalition have been working together on the Orange County Racial Equity Plan?

Staff Response:

The GARE team leads are listed below, by municipality:

- *Annette Moore, Orange County, Director, Human Rights and Relations*
- *Nancy Coston, Orange County, Director, Department of Health and Human Services*
- *Anita Jones-McNair, Town of Carrboro, Director, Parks and Recreation*
- *Jenifer Della Valle, Town of Hillsborough, Assistant to the Town Manager/Deputy Budget Director*
- *Haley Bizzell, Town of Hillsborough, Interim Director, Human Resources*
- *Rae Buckley, Town of Chapel Hill, Director, Organizational and Strategic Initiatives*
- *Sarah Vinas, Town of Chapel Hill, Assistant Director, Housing and Community*

Council Question:

To what extent were community partners involved in the creation of this Plan? If so, which ones?

Staff Response:

Staff held a Public Comment Period and an Information Session on the Racial Equity Framework and sent the draft to community stakeholders across housing, economic development, human services and community development organizations. The responses received from this outreach included:

06-16-2021 Town Council Meeting Responses to Council Questions

- *The Community wanted to be involved in developing a racial equity plan;*
- *The Community thought we must reach out to marginalized communities; and*
- *The Community believed we must get schools involved in our Plan.*

Council Question:

Who were on each of the five multi-jurisdictional subcommittees?

Staff Response:

Please see list of employees below:

Racial Equity Index Subcommittee

- *Nancy Coston, Orange County*
- *Diogenes DeLosSantos, Orange County*
- *Lindsey Shewmaker, Orange County*
- *Juliet Sheridan, Orange County*
- *Annette Moore, Orange County*
- *Julie Eckenrode, Town of Carrboro*
- *Rae Buckley, Town of Chapel Hill*
- *Sarah Vinas, Town of Chapel Hill*

Community Engagement Subcommittee:

- *Melvyn Blackwell, Orange County*
- *Sarah Pickhardt, Orange County*
- *Rachel Raper, Orange County*
- *Jim Walker, Town of Carrboro*
- *Catherine Lazorko, Town of Carrboro*
- *Catherine Wright, Town of Hillsborough*
- *Sarah Vinas, Town of Chapel Hill*
- *Rae Buckley, Town of Chapel Hill*

Racial Equity Review Tool Subcommittee:

- *Brennan Bouma, Orange County*
- *Robert Williams, Orange County*
- *Anita Jones-McNair, Town of Carrboro*
- *Stephanie Trueblood, Town of Hillsborough,*
- *Sarah Vinas, Town of Chapel Hill*
- *Rae Buckley, Town of Chapel Hill*

06-16-2021 Town Council Meeting Responses to Council Questions

Training Subcommittee:

- *Brenda Bartholomew, Orange County*
- *Desmond Frierson, Orange County*
- *Erica Bryant, Orange County*
- *Tom Clark, Town of Chapel Hill*
- *Allie Hansen, Town of Carrboro*
- *Jenifer Della Valle, Town of Hillsborough*
- *Haley Bizzell, Town of Hillsborough*

Evaluation and Accountability Subcommittee:

- *Eli Valsing, Town of Hillsborough*
- *Patricia McGuire, Town of Carrboro*
- *Shannon Bailey, Town of Chapel Hill*
- *Jennifer Galassi, Orange County*
- *Quintana Stewart, Orange County*

Council Question:

Will any funding be necessary to the implement this countywide racial equity plan? If so, how much?

Staff Response:

The cost of implementing the Countywide Racial Equity Plan is currently the staff time related to the project. For example, the Council authorized the hiring of a Diversity, Equity and Inclusion Officer who will assume responsibility for this project and provide strategic leadership for the Town's DEI projects. Following the County-wide Racial Equity Plan, the next step is that each municipality will create individual goals and action plans. A discussion of funding will be involved in that process.

Council Question:

Will our new DEI officer, Ms. Weeks, be on board in time to share her thoughts on the framework with Council before we forward comments to the county?

Staff Response:

The new Diversity Equity and Inclusion Officer will start employment with the Town on June 21. Ms. Weeks will assume leadership of the project and be prepared to offer her thoughts when the draft returns to the Council in the fall.

06-16-2021 Town Council Meeting Responses to Council Questions

ITEM #8: Consider an Application for Conditional Zoning - Aura Development, 1000 Martin Luther King Jr. Blvd. from Residential-1 (R-1) to Office/Institutional-3 (OI-3)

Council Question:

For Q1 storm water, the NCDOT pipe has certain capacity to handle certain discharge rate of storm water. When the discharge goes beyond that rate, it runoff from the property and causes urban flooding. Have we done the calculation of the discharge rate from the AURA property to make sure that it does not exceed the pipe capacity for a 100-y storm?

Staff Response:

The applicant has not conducted a downstream analysis beyond the property line to assess the pipe capacity or the stream channel capacity south of their site. The applicant has agreed to conduct the analysis after the conditional zoning approval when construction-ready drawings are submitted. Staff will evaluate the submission by the applicant at that time. A stipulation requiring the analysis of the downstream culvert during zoning compliance permit application will be included in the final conditional zoning stipulation. It is at the discretion of Council to requests the analysis at this time and subsequently an upsize of the pipe if warranted.

Council Question:

Is there ongoing negotiation with the Rummel property owner to make sure that the missing ped/bike path is built when the Auto/multimodal path comes online? I really don't think that having kids/people cross Estes TWICE to access the schools from Aura/bus stops is safe/feasible at all.

Staff Response:

This property frontage was not included in the bid package for the Estes Drive Connectivity Project due to a variety of circumstances including trouble negotiating, timeline for development, and threat of federal funds being rescinded. Town staff made the decision to remove the Rummel property from the Estes Drive Connectivity Project design in order to move forward with the rest of the Town's project.

06-16-2021 Town Council Meeting Responses to Council Questions

Council Question:

Similar safety concerns goes to the traffic light at the Aura/Somerset intersection on Estes. The Town will need to engage in active coordination/negotiation with Aura/Somerset/YMCA to find a traffic solution for that intersection and bring NCDOT onboard. Without that, it's just not safe to bring the mix of ped/bike with increased car traffic in that section of Estes.

Staff Response:

Town staff will work with NCDOT and adjoining property owners to ensure the safety of all users.

Council Question:

Also, what is the relationship between the stormwater control device on the proposed Aura site and the culvert that is across the street by the Farrar property (803 N. Estes Drive)?

Staff Response:

The Town's Estes Drive Connectivity Project will be replacing the culvert at this location with a larger culvert.

Council Question:

Regarding the traffic side, how likely is it that we could secure a traffic light at Somerset and Estes prior to or with the vote on the Aura proposal?

Staff Response:

Staff is continuing to work with NCDOT regarding the traffic signal. Staff may have additional information by the Council meeting.

Council Question:

Would there be a right-in, right out only entrance on the Estes side of the proposed Aura site?

Staff Response:

No. NCDOT have indicated that they will approve full access on Estes Dr at the Aura site entrance.

06-16-2021 Town Council Meeting

Responses to Council Questions

Council Question:

Is there anything our staff needs to address, in terms of potential impacts of Aura, from a geological standpoint? I had forwarded an email from a constituent on May 22nd who asserted the Aura proposed site is the highest point in town and that there would be geological implications for an underground reservoir. I'd like some verification of this.

Staff Response:

The applicant would need to provide geotechnical testing and design the underground detention to withstand buoyancy forces to keep the detention anchored.

Council Question:

I acknowledge this may be something I missed from an earlier presentation, but I was wondering if the traffic engineer team had considered any scenarios, in which there is a connection between Estes and the Y or else, another road connection between Estes and Martin Luther King Jr. Blvd. Would such a connection help with traffic?

Staff Response:

Sensitivity analysis using the Town-wide Traffic Model included a road connection opposite to Somerset Drive between Estes Dr and Martin Luther King Jr Blvd. Results of the model indicated that the new road is expected to improve traffic circulation.

Council Question:

On page 74, the new condition/stipulation calls for the applicant to conduct an analysis that demonstrates that the culvert is adequate for the anticipated flow. If the culvert is not, what would then occur. Is the applicant obliged to pay for an upgrade?

Staff Response:

Since the last responses were prepared, staff has learned that this NCDOT culvert is to be replaced with a larger culvert as part of the Estes Drive Connectivity Project. NCDOT requires that culvert be sized to convey the 50-year storm event. There is no regulatory authority in LUMO to require an applicant to conduct work outside of their property (i.e. upsizing the culvert) which would require encroachment agreements with NCDOT and potentially private property owners unless the Council has negotiated for that scope of work during a Conditional Zoning approval.

Council Question:

Our stormwater staff has said that the applicant's plans will have to conform with the Town's stormwater regulations and that it currently appears that they do so. Is the staff confident that the applicant's plans will ensure that the surrounding properties will experience no adverse

06-16-2021 Town Council Meeting

Responses to Council Questions

impacts from the project? Is it possible that the measures put in place by the applicant will improve conditions for any surrounding properties?

Staff Response:

The Town's stormwater requirements ensure that the existing conditions will be sustained with respect to peak flows off the site. Based on the proposed grading for the project, the site area draining to the Somerset/Huntington neighborhoods will decrease from 3% to 1.5% of the site area. This area will likely receive less runoff. Conversely, the site area draining downstream will increase from 78% to 98% of the site area. The proposed underground detention will control the rate of discharge but the total volume of runoff leaving the site will increase post-development. The downstream properties adjacent to the stream will witness flow for longer durations. The impact on the stream and its capacity to contain the runoff has not been evaluated.

Council Question:

Given that the new bike/ped infrastructure project terminates at Somerset Dr. and that no plan for developing the so-called Rummel property has yet been submitted to the Town, it is possible that when the Aura is completed there will be a gap in the new bike/ped infrastructure on the North side of Estes Dr. for the length of the Rummel property. Might that pose a safety concern and how can that be dealt with?

Staff Response:

The property frontage was not included in the bid package for the Estes Drive Connectivity Project due to a variety of circumstances including difficulties negotiating the required right-of-way and easements, timeline for development, and threat of federal funds being rescinded. Town staff made the decision to remove the Rummel property from the Estes Drive Connectivity Project design in order to move forward with the rest of the Town's project. We recognize the concern and believe with the proposed Rectangular Rapid Flashing Beacon (RRFB) crosswalks at the Estes Drive and Somerset Drive intersection and at Estes Drive and the Aura driveway, the conditions may not be desirable but there will be safe passage.

Council Question:

Does the applicant propose to manage the qualification/vetting of residents for the affordable rental apartments themselves? Would it be possible to use one of local affordable rental providers to manage this?

Applicant Response:

Affordable rentals must be managed by our property management. These are floating, indistinguishable and built simultaneously. That is only possible with a single management company.

06-16-2021 Town Council Meeting Responses to Council Questions

Council Question:

Is it likely/possible that construction of the Town's bike/ped project and the Aura will occur simultaneously? If so, how will traffic, safety, and the like be managed?

Staff Response:

It is likely that there will be some overlap between these projects if Aura is approved, and Aura's construction management plan will need to be compatible with the Town's construction management plan to ensure safety and traffic flow. The Estes Drive Connectivity Project will come first, with initial construction work expected to begin in August and estimated to last 15-18 months. Town staff have worked together with public safety, transit and the school district to create a construction management plan for Estes Drive that includes pedestrian access, public safety access, and consistent traffic patterns. If approved, Aura would need to submit a construction management plan with their final plans that takes the Town project's construction phasing into account.

The Town's project will construct the improvements on the north side of the road and then the south side, maintaining an eastbound one-way pattern for the majority of the time. The improvements at the MLK/Estes intersection occur in phase 3 of the project, though the exact timing is not known at this time. The schedule will be clearer when we have the pre-construction meeting in July.

Council Question:

Packet states: A full traffic signal be constructed by the Town if traffic signal is warranted and approved by NCDOT. Remaining funds required for traffic signal design and construction to be provided by others. A payment-in-lieu is provided by the developer proportional to the proposed traffic generated by the development as compared with the pre-COVID-19 traffic volumes for adjusted for 2020

- a. Could you please clarify who the "by others" are?
- b. Could you please clarify what costs the Town would be responsible for and how the PIL amount is determined - elaborating on the above? What is stated here is not completely clear to me.

Staff Response:

The term "by others" would be other developments or other funding sources.

The Town would be responsible for a substantial amount of the cost. The Aura developer would provide a proportional share of the cost based on the traffic generated by the development.

06-16-2021 Town Council Meeting

Responses to Council Questions

Council Question:

If I understand correctly, NCDOT is responsible for maintaining the existing culvert located near Aura's eastern property line. Can staff share whether, in their professional opinion, DOT has in the past kept up with the maintenance required to ensure it is functioning as intended?

Staff Response:

We have no information about the NCDOT maintenance schedule or their prioritization for infrastructure improvements.

Council Question:

Please request that the applicant agree to allow an affordable housing provider to manage the affordable rentals and also agree to a stipulation that they will accept housing vouchers.

Applicant Response:

Affordable rentals must be managed by our property management. These are floating, indistinguishable and built simultaneously. That is only possible with a single management company.

Staff Response:

The applicant has not agreed to accepting housing vouchers.

Council Question:

I appreciate the description of how use of green infrastructure can augment traditional stormwater controls. Could you please provide a list of the green infrastructure approaches the applicant is proposing to incorporate to augment the other larger controls?

Staff Response:

Stipulation #29 will hold the applicant responsible to constructing a minimum of 3,600 sq. ft. of pervious pavement and 2,200 sq. ft. of bioretention.

Council Question:

I continue to be concerned about the gap in the multiuse path along the Rummel property - I understand the reasons why this portion was not included in the plan, but what can we do about the safety concerns posed for kids walking and biking to school? Would the Aura and Town timelines match up so that the work on the south side of Estes would be complete by the time Aura opens?

Staff Response:

There will be RRFBs at the intersection with Somerset and the Aura site drive (if approved), which would allow for safe passage for children going to school. It is not ideal, but it is better than what is out there now. Staff expects the Estes Drive Connectivity Project to be fully

06-16-2021 Town Council Meeting Responses to Council Questions

operational by the time Aura would open. The construction is expected to start this August and is estimated to take 15-18 months. The south side improvements are included in Phase III of the Estes construction plan, so they would be in place before the end of even that project. The pedestrian refuge islands for the RRFBs at Caswell and Somerset are the last things to be constructed, but would still fall under the 15-18 month timeframe.

Council Question:

If DOT does not agree to a stoplight at Somerset, could we re-look at the plan for a parallel street connecting to Somerset as proposed in Central West? What are the pros and cons of that plan?

Staff Response:

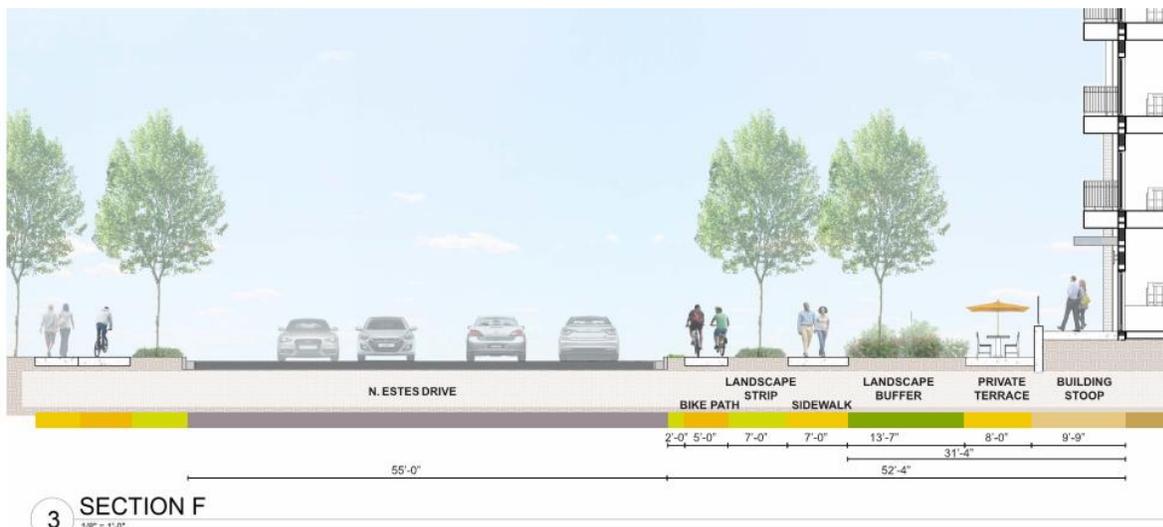
The Revised Ordinance A for the Aura development includes a cross-access easement to connect the Aura property with the Rummel property to the east. It is possible that in the future the two properties are connected. The connection would not occur until the Rummel project was developed. Staff could use the town-wide model to determine impacts of that connection.

Council Question:

What has been the applicant’s response to town staff recommendations that the applicant’s proposal be revised to include 8-foot wide sidewalks?

Staff Response:

The applicant has indicated that they are receptive to widening the sidewalk to 8 feet along the Estes Drive frontage by reducing the width of the adjoining landscape strip from 7 feet to 6 feet. Town staff recommends the applicant’s proposal be revised to include eight (8) foot sidewalks, instead of seven (7) foot sidewalks.



06-16-2021 Town Council Meeting Responses to Council Questions

Council Question:

Under which stipulation is the applicant's commitment to add at least one of the additional above ground measures that Council suggested, and also fully manage the 50-year storm event?

Staff Response:

Stipulation #29 will hold the applicant responsible to constructing a minimum of 3,600 sq. ft. of pervious pavement and 2,200 sq. ft. of bioretention. There is no stipulation at present for management of storm events beyond those in the Town's regulations. Staff is recommending the following changes to Stipulation #29:

Stormwater Improvements: The applicant shall incorporate low impact development (LID) stormwater control measures (SCMs) including pervious surfaces and bioretention to improve the stormwater quality and increase retention. A minimum of 3,600 sq. ft. of pervious pavement and 2,200 sq. ft. of bioretention shall be constructed on-site in accordance with the design requirements in the NCDEQ Stormwater Design Manual. The LID SCMs shall be incorporated into the construction plans and Stormwater Impact Statement submitted for the Final Plan Zoning Compliance Permit. The LID SCMs shall be installed in accordance with the approved construction plans, Stormwater Impact Statement, and Zoning Compliance Permit conditions of approval.

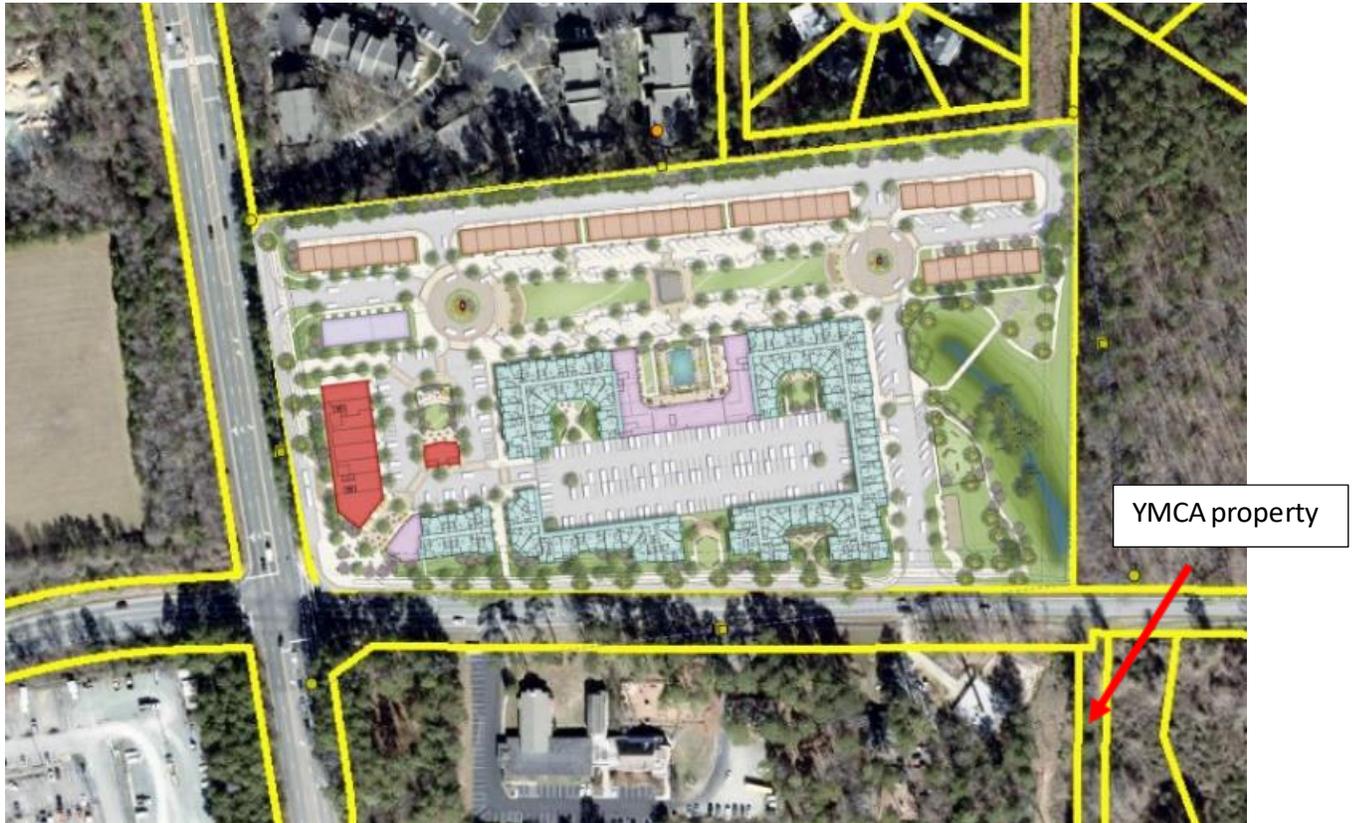
Council Question:

Is the Aura entrance aligned with the proposed new YMCA entrance?

Staff Response:

The image below shows the Aura entrance would be off-set from the YMCA entrance. The YMCA property is east of the eastern edge of the Aura property (across from the Resource Conservation District).

**06-16-2021 Town Council Meeting
Responses to Council Questions**



Council Question:

From my understanding, there would be a gap in the bike/ped improvements where the Rummel property is until that parcel is redeveloped. Does this pose a safety concern?

Staff Response:

The property frontage was not included in the bid package for the Estes Drive Connectivity Project due to a variety of circumstances including difficulties negotiating the required right-of-way and easements, timeline for development, and threat of federal funds being rescinded. Town staff made the decision to remove the Rummel property from the Estes Drive Connectivity Project design in order to move forward with the rest of the Town's project. We recognize the concern and believe with the proposed RRFB crosswalks at the Estes Drive and Somerset Drive intersection and at Estes Drive and the Aura driveway, the conditions may not be desirable but there will be safe passage.

06-16-2021 Town Council Meeting Responses to Council Questions

Council Question:

Is Stormwater staff comfortable with the applicant not doing a downstream analysis until the ZCP stage? Is this the normal process?

Staff Response:

The applicant has to demonstrate that the peak flows in the post-development are not greater than the pre-development peak flows. If the existing infrastructure that conveys the flows is functioning, conducting a downstream analysis during the ZCP stage is acceptable. If the existing downstream infrastructure is not sized correctly for the current flows, it is a challenging situation. There is no regulatory authority in LUMO to require an applicant to conduct work outside of their property which would require encroachment agreements unless the Council has negotiated for that scope of work during a Conditional Zoning approval.

Council Question:

Is the applicant going to manage the affordable rentals? Would they be open to allowing one of our local AH agencies manage those?

Applicant Response:

Affordable rentals must be managed by our property management. These are floating, indistinguishable and built simultaneously. That is only possible with a single management company.

Council Question:

Would the applicant consider making the apartments age-restricted (21+)?

Applicant Response:

We positively are not able to do this. We are not student housing developers and we have never built a purpose-built student housing development. Our unit mix is 65% one bedrooms and over 30% two bedrooms and that is not a mix a student housing developer would use.

Council Question:

Why does stipulation 17 (page 100) ask for vehicle travel lanes on Estes to be widened from 10 to 11 feet?

Staff Response:

Chapel Hill Transit and NCDOT both generally require 11-foot lanes. Because the Town project did not acquire right-of-way from the "Aura" property, there was not roadway available to make the lanes the appropriate widths when adding the additional left turn lane. This has always been an agreement between Town staff, NCDOT, and the Aura developers.

06-16-2021 Town Council Meeting Responses to Council Questions

Council Question:

Stipulation 26 (page 101) allows the developer to make a payment in lieu instead of providing the required recreation space on-site. Does the developer intend to use the payment in lieu option?

Applicant Response:

We have almost 4 acres of recreation space on 15 acres including multiple parks, dog parks and improved/unimproved areas. Applicant has asked for the payment to be waived as we exceed the requirements but that has not been accepted.

Council Question:

Stipulation 18 (page 100) calls for a 2-foot planting strip between the curb and bike lane. Can anything other than grass be planted here?

Staff Response:

A two-foot strip would be sufficient for ground covers including liriopse or mondo grass to name a couple. The largest concern for plant material (not grass) in the public ROW is salt treatment. In winter weather events salt and brine treatments are detrimental to plant material. Grass can normally tolerate those conditions better than an ornamental grass or shrub.

Council Question:

Will the 6-foot planting strip be sufficient to grow a healthy canopy tree? Has the applicant agreed to measures, like Silva Cells, to ensure that they will thrive in this narrower landscape strip?

Applicant Response:

We will consider silva cells as part of a list of options –we are aligned in wanting healthy trees!

Staff Response:

A six-foot strip is sufficient provided that a good amended soil and root access is provided for growth. Unfortunately looking at a surface level dimension does not paint the picture needed for tree survival. The only town directive for soil minimum is found in the Town's Design Guidelines, so we'll use that as a jumping off point. In that section of the parking standards, the minimum amount of surface soil (in square feet) that a tree should be planted in is mentioned. Two-hundred (200) square feet is required w/ minimum dimensions being 20' x 10'. However this standard leaves out a more important concept, soil volume (length, width and depth). In other words, square footage does not yield the depth of amended soil that a tree should have access to in order not just to survive, but thrive. Landscape industry standards generally suggest approx. 1,000 cubic feet of soil for large trees. These types of directives are generally applied to

06-16-2021 Town Council Meeting Responses to Council Questions

street trees or trees in planters on structural slabs where soil volume is not at a premium. Given this standard, minimum square footage dimensions are not as important as volume. If overall volume is provided for (for example an amended soil panel) then even street trees planted in a 3' wide landscape verge (or island) can survive and thrive.

These standards would decrease based on the sizes of the tree. Other municipalities require access to approx. 400 cubic feet of soil for small to medium trees. Another factor to consider is the type of soil being provided. 1,000 sf of compacted sub-grade would not be as desirable as 800 sf of amended soil which would include organic matter to assist in aeration, water movement and growth.

06-16-2021 Town Council Meeting Responses to Council Questions

ITEM #9: Continued Public Hearing: Land Use Management Ordinance Text Amendments - Proposed Changes to Articles 3, 4, 6, and Appendix A Related to Short-Term Rentals

Council Question:

Assuming the passage of the changes from item 7 on our agenda, will the multi-family dedicated STR limits proposed in the new regulations also apply to Blue Hill?

Staff Response:

Yes, our intent is that the STR ordinance's multi-family provisions will also address STRs in Blue Hill.

Council Question:

Who will have responsibility for administering and enforcing the new STR regulations? Planning; Permitting and Inspections; or some combination?

Staff Response:

Planning and Development Services staff are working together to determine how best to manage administering STR permits. Code Enforcement will work with these teams to enforce the new STR regulations.

Council Question:

Will compliance be proactive or complaint driven?

Staff Response:

Code Enforcement is currently complaint based. There are not sufficient staff or software resources at this time for the Town to be proactive on enforcing the STR ordinance.

Council Question:

What additional resources, if any, will be required for administration and enforcement? Are they budgeted?

Staff Response:

Staff will bring an amendment to the adopted FY 2022 fee schedule to Council at the time of Council's action on the STR ordinance. This annual permit fee would fund the additional staff time of reviewing the permits and any necessary enforcement. While the Town does not currently own STR enforcement software, any future decision to purchase this software will aid

06-16-2021 Town Council Meeting Responses to Council Questions

staff in enforcement. We do not have the staff capacity to create a STR hotline or conduct other proactive enforcement, which would be possible with the STR software.

Council Question:

I understood majority of Council did not feel requiring a Designated Responsible Party to be available to respond on-site within two (2) hours was needed and that we were going with availability by phone.

Staff Response:

Yes, we heard from Council that the designated responsible party should not be required to respond on-site. We have modified the language to require that the designated responsible party be available to respond within two hours to address any STR issue. They may respond via email or phone, rather than in-person, if necessary.

Council Question:

No more than three (3) vehicles parked on- or off-street associated with STR use seems overly restrictive. Don't our current parking regulations address parking for STRs too?

Staff Response:

The LUMO does not currently provide parking requirements for STRs. As proposed, the STR ordinance's parking requirements mirror the requirements for a home occupation. The home occupation use limits parking to "no more than three vehicles parked at any time on- or off-street for non-residential purposes..." Additionally, staff has required that the existing underlying use, such as a duplex, meet the current parking requirements outlined in LUMO 5.9.

Council Question:

What is the reasoning behind the proposed minimum rental age of 21 years of age?

Staff Response:

Staff had heard from STR operators that 18 years of age was appropriate; however, there was consensus at the last Council meeting of modifying this age to 21 years. Many STR ordinances propose 21 years of age as a minimum rental age.

06-16-2021 Town Council Meeting Responses to Council Questions

Council Question:

I understood the mayor and some Council members were interested in how we could collect data and existing STRs before determining what happens if they are out of compliance. I am unclear about how non-conforming use comes into play here - could you explain?

Staff Response:

The Council has expressed interest in creating a pilot program to regulate STRs. Zoning regulation of STRs is done by way of enacted ordinances. Once enacted, these ordinances are in place until formally amended through the same legislative process. Any existing STRs that meet the new STR regulations will be in compliance and issued a STR permit. Those existing STRs that do not meet the new ordinance requirements are not legal uses and shall cease operations 18 months after the ordinance is adopted. Should the Council choose to make future adjustments to the STR ordinance as more information is made available, the process may create legal nonconformities--uses that no longer meet the code requirements, but were established legally and may continue to operate.

Council Question:

Which historic districts have nonresidential zoning districts?

Staff Response:

The Franklin-Rosemary Historic District includes some commercial uses along Franklin and Henderson Streets as well as a few non-residential uses further east on Franklin Street that include the Chapel of the Cross at 304 E. Franklin Street, UNC Chapel Hill Arts & Sciences Foundation at 523 E. Franklin Street, and Brooks Hall at 200 S. Boundary Street. The Cameron-McCauley Historic District includes far more non-residential uses clustered along S. Columbia Street and E. Cameron Avenue.

Council Question:

The technical term is not “grandfathering” but for those homes in residential zoning districts that were used as dedicated STRs prior to Council consideration of this proposed ordinance, was an option explored for creating an exception for homes used as dedicated STRs prior to a certain year, such as 2019? Would such an exception be legally sound?

Staff Response:

Yes, staff has considered adding a provision that existing dedicated STRs in residential districts established by a specific date could remain in operation; however, staff found that this is not legally sound. Currently, STRs are only permitted as Home Occupations, Tourist Homes, or (Blue Hill only) Overnight Lodging. Staff found that the Town would be showing preferential treatment for an illegal use by allowing existing dedicated STRs to remain in operation in

06-16-2021 Town Council Meeting Responses to Council Questions

defiance of the new ordinance. Because these are not legally established uses, we do not use the term “grandfathering”.

Current, legal-operating Tourist Homes and Overnight Lodgings may continue to operate under those use categories following adoption of this ordinance. Those STRs unable to meet the STR ordinance provisions may be able to come into compliance with the LUMO should they be able to meet the existing requirements of a Tourist Home or Overnight Lodging.

Council Question:

In the draft text amendment under 6.27.4 under “permitting,” it indicates the Manager may consider a grace period. Is the grace period something that would be determined at the Town Manager’s discretion on a case-by-case basis or would there be a standard grace period that would be published somehow?

Staff Response:

Yes, the Town Manager may consider establishing a grace period for accepting annual STR permit renewals. Staff would work on developing a policy to define the grace period so that all applicants are treated fairly.

Council Question:

For the sake of consistency, I would recommend inserting the word “Town” in-between “The” and “Manager” under 6.27.4(b) of the draft text amendment, because there are other places in the draft text amendment, where “Town Manager” is specified.

Staff Response:

Staff can update the draft ordinance to reflect this before the June 23, 2021 meeting.

Council Question:

Has the Board of Adjustment been made aware of its proposed role with respect to short-term rental permits and potential appeals of the denials of said permits since the public hearing in May?

Staff Response:

Staff has not spoken to the BOA about serving as an appeal body for denied STR permits; however, the BOA is the appeal body for all staff decisions.

06-16-2021 Town Council Meeting Responses to Council Questions

Council Question:

Can we include the WX and WR zoning districts in the list of places where dedicated STRs are permitted (TC-1, OI-1, etc.), so that any dedicated rentals in Blue Hill will fall under the same regulations as other dedicated STRs, including limits on number of units per building?

Staff Response:

Because Blue Hill is a separate part of the code and Section 3.8 doesn't apply to Blue Hill, adding Blue Hill uses to 3.8 is potentially challenged for enforcement and amendments. If the goal is to restrict the number of dedicated STRs in Blue Hill, it would be better to add that to the Blue Hill portion of the code.