

# *Assessment of the Plan Review Process*

February 2012



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## 1. INTRODUCTION

During March of 2011, the Town of Matthews asked that Solutions for Local Government, Inc. conduct an objective assessment of the Town's existing Plan Review process. While the scope of this effort was to include an internal review of the Town's relevant Department's staff activities related to the process, and graphically map the process itself, it also involved two (2) meetings with representatives of the development community and one meeting with Town Commissioners. The purpose of these meetings was to solicit comments and facilitate discussion with participants regarding the processes in place and to determine whether issues of concern previously suggested or expressed specifically to Town officials had merit; and if in fact changes needed to be made with or within the process itself.

Simply stated, the "plan review process" refers to the procedures and included work steps necessary to receive approval and the accompanying permits to develop property within the Town of Matthews.

### Planning as a Municipal Function

According to the publication "Municipal Government in North Carolina"<sup>1</sup>; the term *Community Planning* describes a process by which a community or municipality;

1. Determines its goals and objectives.
2. Chooses a combination of actions and programs for achieving those goals.
3. Carries out its plans and programs in a systematic manner.
4. Evaluates its successes and makes necessary adjustments.

It goes on to state that, "for most North Carolina municipalities, community planning means *land use and development planning* which, in turn, is an application of the planning process to all public and private activities that affect the use and development of land, growth, and the character of the community".

While there are many programs and activities that fall under the community planning "umbrella", in the context of this study the processes reviewed included the *Zoning Plan Review Process* and the *Subdivision Plan Review process*.

### Zoning

North Carolina General Statute (NCGS 160A-381) states that *for the purpose of promoting health, safety, morals, or the general welfare of the community, any city may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, the location and use of buildings, structures and land.*

Essentially, zoning may be used to:<sup>2</sup>

- Ensure that the community's land uses are properly situated in relation to one another.
- Ensure that adequate land and space are available for various types of development.
- Ensure that the location and density of development are consistent with the government's ability to provide the area with streets, utilities, fire protection, access to recreation spaces, etc.
- Set minimum design standards so that new development reflects aesthetic values, is of appropriate scale, and helps protect privacy.

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<sup>1</sup> Municipal Government in North Carolina; Lawrence, David M. and Wicker, Warren Jake; Institute of Government; University of North Carolina at Chapel Hill

<sup>2</sup> Ibid

In the case of the *Zoning Plan Review Process* then, the applicant (developer) is seeking to change or modify the existing conditions that apply to a property or structure that lies within a specifically designated zoning district or, seek a change in the designation of the zoning itself. It is important to note that a required step in the Zoning Plan Review Process is a Public Hearing of the applicant's request and plans for the subject property. Attendees at this meeting include the Town Commissioners, the Planning Board, Planning Department staff, the Applicant, and of course the public.

### **Subdivision**

For community planning and regulatory purposes, the term *subdivision* refers to the process wherein a tract of land is split into smaller parcels, lots, or building sites that may individually be sold or developed or both.

Subsequently, subdivision ordinances are based on the premise that the division of land will generally signal that the land will soon be developed and used more intensively than it was before it was subdivided; i.e. the purchasers of the subdivided tracts will make more demands on the municipality for facilities and services.

The municipality in this case has the opportunity to review the design of the resultant lots or tracts to insure that the developer provides streets, utilities and other public improvements that will be required to serve the needs of those who purchase the subdivided land.

In the case of the *Subdivision Plan Review Process*, the design of the site and what is proposed to go on the site are reviewed. In this instance there is no public hearing required as in the Zoning process because for the most part, the process and requirements that must be met leading up to final plat (site plan) approval is defined.

## **2. PROCESS MAPPING**

The study's first phase involved the analysis and subsequent mapping of two processes; the Subdivision Plan Review Process and the Zoning Plan Review Process. This effort was important for several reasons:

- Neither process had been documented graphically in a manner which simultaneously illustrated time-task requirements as well as the sequence of developer and staff responsibilities.
- The process of developing the maps themselves provided significant opportunities for the consultant to interact with the Town's Planning and Public Works staff that was intimately familiar with the various procedures, as well as nuances involved in each process and the basis for the time frames currently in place.
- The maps, particularly when printed at a large scale, provided visual focal points for discussions and a basis of understanding that would be necessary during the second phase of the study that would involve meetings and further detailed discussion of the processes with the Town Board and with developers.

Planning and Public Works Department personnel not only provided input and instruction regarding the processes studied but also spent considerable time reviewing (and re-reviewing) initial sketches and various drafts leading up to those illustrated in the pages that follow. Note that in order to remain consistent with the format of this document the maps that follow are quite small, however, they may be viewed electronically and enlarged as needed utilizing the enclosed CD.

[Zoning Plan Review Process Map Here]

[Subdivision Plan Review Process Map Here]

### 3. THE ISSUES

The purpose of this phase was to invite and offer representatives of the Development Community and later Town Board members an opportunity to identify and speak to any specific issues of concern and to share their personal experiences in working through either Plan Review Process as they were each currently configured and illustrated.

The format for each meeting was generally the same. Each Group was presented with the same opening question: *“What can the staff and/or Town do, to make the process better?”*

Notes were taken during each meeting and the comments and suggestions provided by each group were recorded. They have been shared with meeting participants, the Staff, and Town Board members and are included in the Appendix of this document.

#### **Developer Comments**

In response to invitations sent out by the Town, a total of 17 individuals participated in two separate meetings to discuss the Town’s Plan Review Process. Large scale versions of the referenced process maps were posted on the wall of the meeting room during both meetings and the consultant openly took notes of the comments offered on a large easel mounted pad that all could view. Participants were told that the notes would be shared with the Town Council and Town staff members.

- What was very clear from the outset of both meetings was that the participants in attendance were not pleased with the current (Plan Review) process.
- What was equally clear was that in almost 60% of the comments recorded, the focus of the participant’s frustration was the Town Board;
  - “If they don’t see what they want they don’t approve it”.
  - “The board has no sensitivity whatsoever as to the dates we have to work with, the months of work that has preceded the final decision and the investment we have made”.
  - “Waiting until the night the Board is to make the decision, which the staff and Planning Board have already endorsed, and asking us to come back in 30 days with an “add-on”.
- What was noteworthy as well was that, unlike similar projects in which the consultant has been involved, there was virtually no criticism-professionally or personally-of Town staff involved in the plan review process.

#### **Town Board Member Comments**

All seven members of the Town Board were present for the meeting. Again, as with the developer meetings, large scale versions of the referenced process maps were posted on the wall of the meeting room and the consultant openly took notes of the comments offered on a large easel mounted pad that all could view. Members were told that the comments would be shared with Town staff and included in the report document. Their comments included:

- The Board would like better guidance from Town staff with regards to what would be acceptable to staff and to the Board.

- The staff has had but one way to follow in the past, that may or may not have served them, us, or the development community as well as it could have . . . this Board is different.
- The developers need to become more involved with the people involved in the process, earlier and more often.

Following the discussion, the comments from each of the previous developer meetings were distributed. And, although as stated, the comments were quite negative towards the Board, the only comment the members took exception to and discussed had to do with the criticism that the Town Board did not pay attention to the Planning Board's recommendations. The members could remember but one instance in the two years it had been together, that they contradicted the Planning Board's recommendation.

### **Issues Summary**

Time spent with Town staff, representatives of the development community, and the members of the Town Board offered nearly as many opinions and concerns, and the relating of experiences with the Plan Review processes as there were individuals offering them. Once all were considered and studied, however, the three (3) most substantive issues included the following:

#### ***Issue 1. Clarity of the Plan Review Process and its requirements***

- We want very much to understand what we have to do to get to "yes" . . . but it keeps changing.
- When working with the staff you have a process, when you get to the Town Board you have the "wild west".
- We never know what to expect.
- If the developer knows what to expect, whether pro or con, they can plan accordingly and can proceed accordingly.

An irony here is that while these comments support the issue as stated, extended discussions began to evolve towards "not knowing what to expect", or the "unpredictability" of the "process"; the origin of both being the concerns expressed in Issue #2 regarding "project add-ons". None the less, the importance of getting off to a solid start, the Town staff understanding the scope of the developer's project, and the developer understanding clearly the process and its requirements is important enough to warrant identification of this issue as such.

#### ***Issue 2. Last Minute Project Add-Ons***

Numerous frustrations voiced during the developer meetings focused on this issue. It occurs during the Zoning Plan Review Process. And, in fact appears to be no less frustrating and eventually time consuming for the staff, particularly since in some instances the change is requested on the night the Town Board is scheduled to announce their decision that would allow (or not) the developer to proceed with the work.

Currently, from the date the developers application is accepted by Town staff until the date of the Board's scheduled "decision night" meeting can require anywhere from 45-100 days. During which time the developer has met with Town staff to discuss the comments and recommendations that have resulted from their reviews of the application; the developer has met with the neighborhood/adjoining property owners to present the project and receive comments; the developer has participated in a

scheduled and advertised formal Public Hearing, attended by Planning Board members, the Town Board members, and the Town staff, and, the Planning Board has convened to review the final application package and make a recommendation to the Town Board for approval or disapproval of the application at their next meeting; i.e. “decision night”.

The Zoning Plan Review Process map indicates that currently, the Town Board, on decision night, can;

- Approve the request,
- Deny the request, or
- Grant the applicant (developer) an extension (30 days is typical) to address the additional requirement the Board member(s) would like added to the plan presented.

Examples noted included but were not limited to a sidewalk, site fencing, or an aesthetic change regarding color, facade details, and eave heights.

### ***Issue 3. Time***

If ever the statement “time is money” were applicable it would be to the developer. Developers invest considerable sums of money and time to an endeavor that is most often speculative in nature. Often too, they cannot begin to appreciate a return on that investment until their project is complete or nearly so. Before they can begin the project itself they must prepare drawings, site plans, application forms and other materials for the Town to review, perhaps adjust, and ultimately approve.

In the Zoning Plan Review Process, the time frame currently varies from 54-98 days for the time it will require of the Town to address the steps in the process that it is responsible for.

In the Subdivision Plan Review process, the time frame will vary from 44-88 days.

In the Zoning process, there is also a significant variation in the interval between *Application Acceptance* by the Town and the *Public Hearing* by as much as 30 days depending upon whether the request involves a change of conditions or a more involved change of the zoning district designation.

In both the Zoning and the Subdivision process however, the difference in the number of days from application to approval for which the Town is responsible, is also impacted by the fact that the Planning Board meets once per month and the Town Board meets twice per month. So depending on when the application is presented to either body for approval the developer will find themselves waiting for as little as one (1) week to as long as three (3) weeks between each major public meeting dealing with their application.

Of course the developer has responsibilities to address in either process that the Town does not control and which will also impact the final duration of the plan review process. In short, efforts to reduce the duration of the plan review process, without threatening the integrity of the process itself, would be welcomed by the development community and, in all likelihood would save Town staff time as well.

## 4. MAJOR RECOMMENDATIONS

### ***The Issue: Clarity of the Plan Review Process and its Requirements***

#### ***Topic: Preliminary Meeting with Applicant***

The first activity or step in each of the plan review processes diagramed is “Preliminary Meeting with Applicant”. At present this meeting is voluntary on the part of the applicant. Its purpose is to offer an opportunity for the developer/applicant and the Town staff to become familiar not only with one another but also with each other’s roles, responsibilities and priorities in terms of the concept and scope of the applicant’s zoning or subdivision proposal. The applicant’s proposal, at least conceptually, can be presented to the staff and the plan review process leading up to final project approval can be presented and explained to the applicant. As well, additional discussions can include but certainly would not be limited to:

- Conditional zoning legislation specific to Matthews
- The updated UDO document; i.e. at least the pertinent chapters
- Specific requirements to be expected in future phases of the approval process
- Expectations and recommendations regarding information to be submitted
- Preferred methods for maintaining communications; responding to questions, etc.

A clear understanding of the Developer’s plan concept and the Town’s requirements and expectations from the get-go would certainly be the best way to start any project. As stated in one of the Developer meetings; *“If the developer knows what to expect, whether pro or con, they can plan and proceed accordingly”*.

The Uniform Development Ordinance (UDO) provides the basis for that understanding, including relevant definitions and the specific requirements relative both the zoning and the subdivision application and permitting process. The UDO, however, will not be able to address every concern that may be identified or expressed by a Town Board member.

The key to the staff being able to share with the developer, during this meeting, what some of these expectations are or very well may be, will be *their* understanding of what the Town Board members expectations are, and have been expressed to them, as beyond that which the UDO stipulates are requirements.

And, assuming the Planning Board, the Town Board, and the staff communicate regularly, and are on the same page with regards to the expectations expressed, an effective and informative first meeting will go a long way towards accomplishing an appropriate level of consistency in the process.

#### **Recommendation #1: Make the Preliminary Meeting a Requirement.**

### **The Issue: Last Minute Project Add-Ons**

#### ***Topic: Town Board Decision Process***

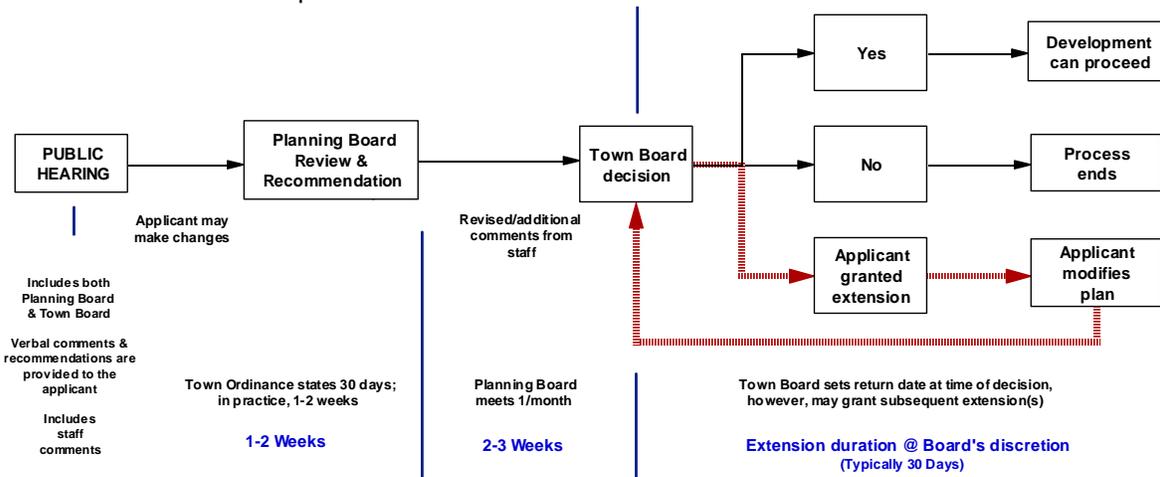
Examples of “changes in direction” or otherwise unexpected Board requests for a change or changes to previously submitted plans occurring on “decision night” were noted; i.e. the night of the Board Meeting in which a zoning decision *was* scheduled to be made. Granted, the Town Board may request such

changes; and granted, the developer will receive an extension of time to allow him/her to make those changes.

However, previously having had the opportunity to participate in the Public Hearing, receive and review submitted project documents, as well as staff and Planning Board comments and recommendations, these changes by the Board and at this time, add time and costs to the developers project that:

- Were not expected up to this point and,
- Could have been addressed earlier in the Plan Review process

The diagram that follows illustrates the referenced steps in the Zoning Process leading up to the Town Board Decision. The red line indicates the decision-time loop that is created, *and often repeated*, when one of these “add-ons” is requested.



If, for whatever reason, a developer’s submittal and accompanying presentation during the scheduled Public Hearing generates significant questions that are in turn apt to require the developer to make significant changes to that submittal, it would make sense to “continue” that Public Hearing to another date and allow the developer the opportunity to make those changes and present the project again, *with the changes*, in a (continued) Public Hearing before it goes to the Planning Board for its official review and the forwarding of its formal recommendation to the Town Board, which must by ordinance occur *within 30 days of the “close” of the Public Hearing*.

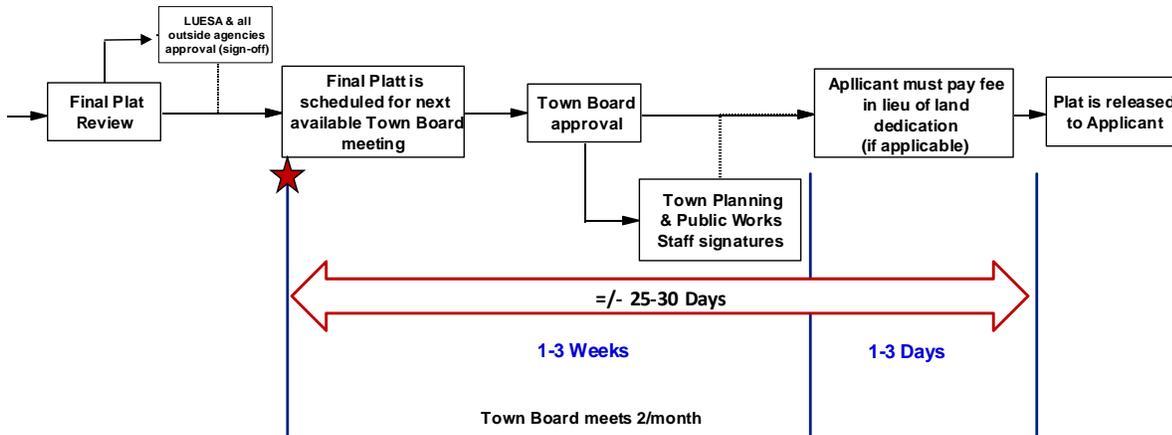
What is submitted to the Planning Board for its official review then should not be substantially different from what was presented at the continued Public Hearing. Since the Town Board members were in attendance at each Public Hearing and took the time to focus on the plans submitted and the changes made, and in turn were able to share any remaining concerns and comments prior to the Planning Board’s formal review and recommendation to them-the “decision night” meeting could be much more an approval process than a further review of the plan proposed; the goal being to reduce substantially the last minute and unexpected add-ons.

**Recommendation #2:** a) Address the protocols necessary to enable the continuation of Public Hearings when necessary to deal more appropriately with zoning petitions that require significant changes; and b) Town Board members should be prepared to question the developer and/or staff, address their concerns, and any requests for additions to the submitted plans during the Public Hearing, so that staff and the Planning Board are aware of them and can respond accordingly prior to the scheduled “decision night”.

**The Issue: Time**

Topic: Staff Approval Authority

The principal example cited with regards to this issue is the approval of the Final Plat in the Subdivision Review Process. The red star in this illustration is the point at which, for all intents and purposes, the Final Plat has already been approved and signed off on by the various agencies required to review it and do so. In that the Subdivision Review Process is not a subjective process and the rules for design are documented, upwards of 25-30 days could be saved with authorized staff approval at this point.



Of course the action taken and all supporting documentation/approvals would then be provided to the Board.

**Recommendation #3: Authorize staff to approve and sign Final Plat document.**

**5. CONSULTANT COMMENTS & OBSERVATIONS**

There is a significant disconnect between the members of the development community that participated in the referenced meetings and the Town Board; not individuals per se but certainly “The Board” as an entity.

Many of the most vehemently discussed issues, based on developer experiences, and considering the duration of most development projects, may not have occurred during the current Town Board’s tenure as they have only been together two years; yet again, some have and recently.

As noted, developer comments were generally quite negative and directed principally towards the Town Board, however, for the most part offered little with regards to specific recommendations for change.

A comment from the developer meetings suggested that, *“The Commissioners must weigh in sooner in the process . . . at least with staff”*. In turn, the meeting with Town Council members provided the comment that *“(The developers) need to become more involved with the people involved in the process . . . earlier and more often”*; i.e. the staff. Both statements are correct.

Serious discussions took place during the developer meetings with regards to the Town Board’s authority; i.e. *“the Board clearly oversteps their authority”*, their *“actions and expectations (should be questioned) versus what is legal”*. NCGS 160A-381, cited earlier was used as the basis for this argument,

however, while the statute states a “zoning ordinance may regulate and restrict . . .”, following which were listed seven characteristics, *does not* limit what that ordinance or the Town Board *may also* regulate or restrict. Furthermore, significant academic research (also cited earlier) indicates that the Town Board, in zoning matters, may pretty much regulate or restrict anything they want if they feel that it is in the best interest of the Town of Matthews, over which they have jurisdiction.

### Connectivity

In this context, the term “connectivity” refers to the relationships that exist between parcels of property, roads, and infrastructure systems, and the adjacencies that they each share. Connectivity considers what exists, and the impact that new development will have on the land and systems that are or will be affected.

Numerous complaints came out of the developer meetings that had to do with the Town Board “not appreciating what the developer was dealing with”, that they “didn’t care that the developer had a lot of money tied up in his project”, and that they “was being unreasonable in requesting that additional work be done (in the developer’s words) to accommodate someone else’s pet project or petty concern”.

What the developer must understand is that the Town Board and particularly the Town’s staff, with whom the developers deal, must be particularly vigilant as to the impact that any single project will have on adjacent, already existing development or potential future land uses and development.

This concept can be illustrated utilizing the two diagrams that follow. Diagram ‘A’ represents a hypothetical yet conceivably realistic situation within the Town of Matthews. The white area outlined in red is a 12 acre parcel that has been proposed for development. Water and sewer connections are available to the proposed site and primary and secondary street access is available from at least one major highway. At this point, the developer’s immediate concerns and expectations are to complete design drawings, submit them to the Town, get them approved, begin construction, complete construction, sell the units and/or space built, and collect the money due him that has resulted from his hard work and substantial investment. As the developer sees it, these expectations, if completed within the letter of the Town’s prescribed plan review process and in compliance with all existing ordinances, is both reasonable and appropriate.

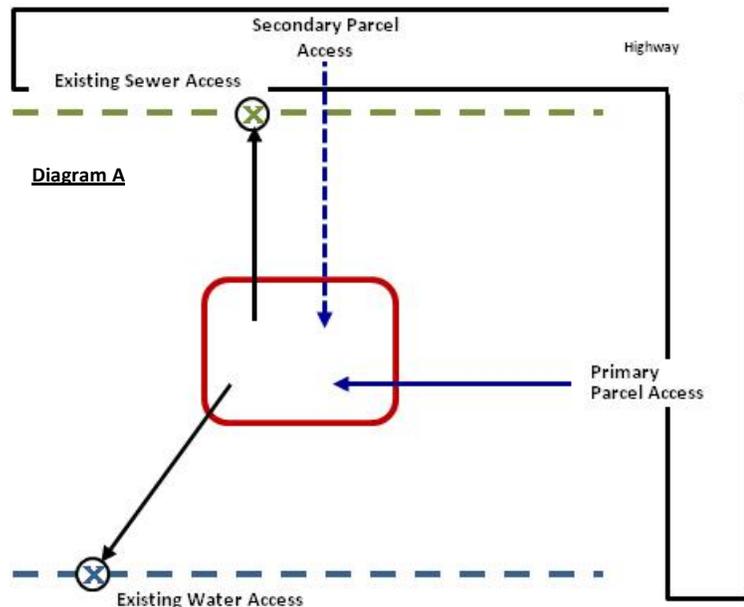


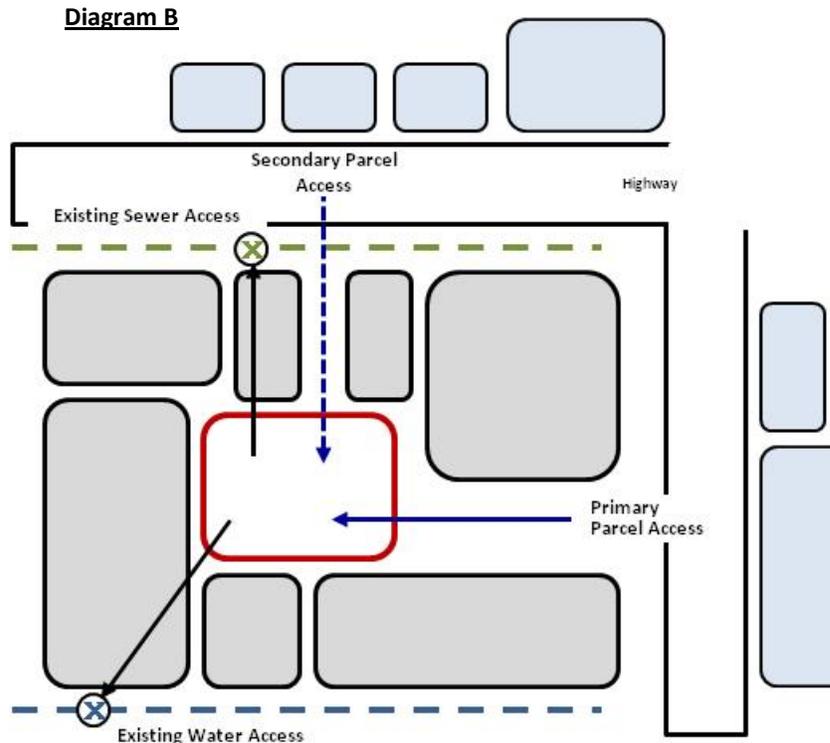
Diagram ‘B’ that follows represents the “big picture” to which the Town staff involved with the project must remain attentive. In fact, their jobs demand as much. And, although the developer is anxious get moving with the project, Town staff must assess the impact of the proposed development on the areas already developed (in gray). Road usage, sewer capacity, water pressures, storm water runoff, and

accessibility of emergency vehicles are but a few of the considerations that must be addressed. In other words, to the Town a great deal more must be taken into consideration than a single project.

Also, the staff must take into account what the *future* may hold for property adjacent to and nearby this project that has yet to be developed (illustrated in blue). The completion of the current project could very well impact or restrict future uses of nearby property.

Ultimately;

- The developer must maintain a single project focus if he expects to benefit from his work and investment.
- The Town staff must remain attentive to the big picture as their first responsibility is to the Town, its citizens, and its future.



Each must make an effort to understand the context within which the other “lives” if the working relationship is going to be effective.

#### ▪ **REPORT SUMMARY**

- The Plan Review Process currently utilized by the Town of Matthews is not “broken”.
- The existing time frames of both the Zoning and the Subdivision Plan Review processes are neither unusual nor excessive for a jurisdiction the size of Matthews with its location adjacent to a major metropolitan area.
- Development is very important to the Town of Matthews; for all intents and purposes it is vital to the Town’s growth and future.
- The Town Board, through its Planning Board and staff is, by statute, the ultimate manager of that development.
- Developers become frustrated with what to them seem petty or less than significant issues that slow down their process and the work that must be done on that which represents *to them* the “big picture” and much more important to them; *their project*; which, if one stops to consider what is involved to bring a significant development project to fruition, is understandable.

- There are steps in the current process that, if modified, could reduce the time frames cited.
- There are also steps in the current process that, if modified, could address the expressed concerns of the developers, the staff, and the Town Board.
- The Unified Development Ordinance (UDO) is currently undergoing its first major revision in 30 years; upon its completion and publication, it will take a while for the development community to become familiar with the changes.
- The UDO is a very detailed and comprehensive document.
- Subsequently, planning staff will need to anticipate that additional time will need to be spent with perspective developers/applicants to explain and interpret the “new” UDO and its changes.

### **The Issue of Vision**

The Town’s website includes the following with regards to the Unified Development Ordinance (UDO):

*The purpose of a Unified Development ordinance is to rewrite the Zoning Ordinance consistent with Matthew's "Our Town, Our Vision" and other community expectations and then fold in all of the other land use regulations into one straightforward document.*

During the second developer meeting a comment that was made and recorded stated the following with regards to Matthews:

*There is a lack of community vision; instead there are a lot of individual personal visions.*

The reference in the UDO purpose statement above to, “Our Town, Our Vision” is in fact the Town of Matthews **Vision for the Future**. The development of the Vision document included literally hundreds of the Town’s residents in addition to the Town’s elected officials and employees. It is comprised of 12 different subject sub-topics and, interestingly is written in the words of someone commenting from 15 years in the future on the status of the Town as it then exists and has changed over the years. The publication itself, in its entirety, reflects a superb effort and an equally superb resultant document.

Subject topic number 8; a “Firm and Fair Growth and Development Process”; is reflective of current efforts witnessed and discussed with Town staff and Council members. As well, other subject topics included in the document, as written, clearly reflect the results of the Town having implemented and ably enforced over the years the statement as written (see below). Is the process perfect yet? Of course not; in fact it is more likely that a “perfect” Plan Review Process; i.e. read *land use planning and development process*; will never exist-at least for long. It is more important that the process continuously evolve, as change and the dynamics that characterize Matthews as a Town evolve.

### **Vision #8, from “Our Town, Our Vision”:**

The town government of Matthews has continued to advance a firm and fair process for managing growth and development. Through its land use plan and development ordinances, the Town has set clear policies and standards to assure quality development. The Town enforces these standards diligently and consistently. The Town’s development review process emphasizes effective communication and consensus among all parties, including the Town Council, the Planning Board, the Town staff, the developer, other Town advisory boards, and the public. The Town requires that necessary infrastructure, including especially adequate roads, schools, open space and greenways, sidewalks, and drainage, must be in place prior to the occupancy of the new development it serves.

## 7. APPENDIX

### **Meeting Notes**

- Developer Meeting #1-27 September 2011
- Developer Meeting #2-29 September 2011
- Town Council Meeting-14 November 2011

### **NCGS 160A-381 Grant of Power; Part 3. Zoning**

### **Summary Document; Town of Matthews Conditional Zoning Authority**

**Developer Meeting #1**  
**27 September 2011**

Number Present: 7

SA Comments: The room was perfect for this size group. Everyone participated willingly and often in the discussion(s). The Process Maps were useful for reference and everyone was pleased they had been put together but did not feel the need to scrutinize them. It took no time at all to get everyone talking, and while everyone had stories and experiences of their own, there was a clear consensus as to what their major concerns and suggestions included. The comments that follow were as received, copied and viewed by those present. Any comments that I added for clarification or context are in (parentheses).

“What could the staff and/or Town do better?”

- Pay attention to staff recommendations & decisions.
- They (the Board) are not paying attention to the Planning Board.
- If the Developer knows what to expect, whether pro or con, they can plan accordingly and proceed accordingly.
- They never know what to expect (from the Town Board).
- (Unlike other jurisdictions; i.e. Charlotte/Mecklenburg) the staff cannot tell them with any certainty what to expect as they have had their legs cut out from under them (so many times) they are timid/tentative (not in their work but in trying to help the developer understand what will be expected of them).
- (The Town) must overcome unpredictability.
- It is not a difficult process, it is an unpredictable process.
- Petty interests and personal preferences take precedent over a sound process and potentially considerable economic & social benefits that could result.
- The Commissioners must weigh in sooner in the process . . . . at least with staff.
- The Planning Board members are competent and involved yet their (the Planning Board) recommendations carry no weight.
- Economic conditions have changed; the future will not be as easy as the past; Attention Board: “you have an opportunity; (with this process) use it”.
- Recommendation made:(applauded by all) to appoint a Town Board member to the Planning Board as permanent sitting liaison (to give the Planning Board more weight and provide a “champion” per se on the Town Board).

- Planning Board meetings are public but the Town Board members never come; (the more they know or could get to know and understand, and the sooner they know it, the less unpredictable they and their decisions-would be).
- The Town's reputation in this regard is clearly one of being difficult.

S4LGF/sja

**Developer Meeting #2**  
**29 September 2011**

Number Present: 9

SA Comments: Again, the room worked great for this size group. And, again, everyone participated willingly and often in the discussion(s). Greater use was made of the Process Maps this time, most often to point out where in the process they were experiencing the most frustrating or significant delays. The comments that follow are noted as they were received and recorded in front of the group. Any comments that I added for clarification or context are in (parentheses).

“What could the staff and/or Town do better?”

- The reputation of the Town of Matthews on the street is that it is not developer friendly.
- The Town is not receptive to change.
- (When working with staff you have a process), when you get to the Town Council you have the Wild West.
- We want very much to understand what it is we have to do to get to a “yes” . . . . but it keeps changing.
- The board clearly over steps their authority and yet the attorney is in every meeting and never says a thing.
- The biggest problem Matthews has can be solved with an election.
- Staff gives explanations but can only try to explain Board’s reactions.
- (The Board) illustrates no sensitivity whatsoever to the dates, purchase contracts, deadlines, etc. that we have riding on their decision . . . . or failure to make a decision.
- The Town must consider (the common practice elsewhere of) “staff approval” vs. yet another 30 day cycle (waiting for a decision).
- No one (staff, Manager, attorney) ever says to the Board (member(s), we appreciate your opinion but . . . . you have no authority in that regard (for example to question color, material, or even design in many instances).
- “What else can we get with this project”? as an attitude of the Board that = extortion; the favorable vote of the Board for our (Liberty project example was cited) project depends on our spending thousands of dollars and often weeks of time providing “extras” many times unrelated to the specific project itself.
- The staff goes by their rules; i.e. ordinances-but the Board is (apparently) not bound by them. If WiFi were available in the building during meetings there are times we could address questions with documented statutes, codes, etc.

- There is a “scarcity” mindset (among the Board) . . . . that we are running out of land; it’s called “change”; re-development, re-zoning.
- There is a lack of a community vision; instead there are a lot of individual personal visions.
- (Question arose as to whether a NC Statute expressly states) the Town cannot control aesthetic design unless it is has to do with an historical building.
- Need cut off dates; 1 for the Planning Board, and no more than 2 for the Town Board; with deadlines....if project meets rules/ordinance requirements and a decision is not given by a certain date it should be automatically approved.
- UDO is prescription vs. performance; the more minutia the less creativity.
- Regulations regarding zoning that are ignored or violated-the Attorney needs to respond.
- Land use (is defined) yet they often will not approve because they are not seeing what they want . . . . regardless of whether or not what they want has anything to do with land use.
- Land-Use Plan is now being redone-who is driving the bus?

(Major issue summary)

- Town Board-their authority; actions & expectations vs. what is legal
- Add-ons-surprises, extortion
- Planning Board-what is its purpose
  - ✓ Qualifications of members
  - ✓ Opinions vs. knowledge based
  - ✓ It has no authority & Town ignores recommendations

S4LGF/sja

## Matthews Town Council Discussion 14 November 2011

Number Present: 7

SA Comments: Meeting began at 5:30 with introduction from the Mayor. All seven (7) Council members were present. Everyone participated in the discussions. Although the comments that follow are few, they are as received, copied and viewed by those present. Any comments that I added for clarification or context are in (parentheses). The meeting ended just before 7:00 pm.

Prior to the open discussion we provided an overview of the process that had been ongoing since mid-summer; plan review process mapping, time with staff, and developer meetings. Developer meeting notes and comments previously recorded were distributed to the members prior to the end of the meeting.

Initial Question: "What could the staff and/or Town do better?"

- (We) would like better guidance from staff with regards to what would be acceptable, to staff (and) to the Board.
- Staff has had but one way to follow in the past (that may not always have served them, us, or the developer community as well as it could have) . . . . *this* Board is different.
- It's not the way it has always been.
- The UDO provides guidelines
- Last Land-Use revision 6-7 years ago.
- UDO-this is first overall revision in 30 years.
- (The developers) need to become more involved with the people involved in the process . . . . earlier and more often.
- Developers-if they want to be part of this community-(they need to) listen, pay attention, and ask questions.
- (Following distribution and review of the Developer Meeting comments), the comment that most puzzled the members was that they (the Council) "did not pay attention to the Planning Board's recommendations" and thus were "unpredictable". In discussion that followed members could remember only one time that they contradicted the Planning Board's recommendation. (It was suggested that) It would be interesting if staff could pull the minutes and/or voting records of this Council and the current Planning Board to see what the real numbers look like.

S4LG/sja

## North Carolina General Statutes re: Zoning

### Part 3. Zoning.

#### § 160A-381. Grant of power.

(a) For the purpose of promoting health, safety, morals, or the general welfare of the community, any city may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, the location and use of buildings, structures and land. The ordinance may provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

(b) Expired.

(b1) These regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained, provided no change in permitted uses may be authorized by variance.

(c) The regulations may also provide that the board of adjustment, the planning board, or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. When deciding special use permits or conditional use permits, the city council or planning board shall follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the city council or planning board to issue such permits. For the purposes of this section, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite majority. Every such decision of the city council or planning board shall be subject to review of the superior court in the nature of certiorari in accordance with G.S. 160A-388.

Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities.

(d) A city council member shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. Members of appointed boards providing advice to the city council shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(e) As provided in this subsection, cities may adopt temporary moratoria on any city development approval required by law, except for the purpose of developing and adopting new or amended plans or ordinances as to residential uses. The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Except in cases of imminent and substantial threat to public health or safety, before adopting an ordinance imposing a development moratorium with a duration of 60 days or any shorter period, the governing board shall hold a public hearing and shall publish a notice of the hearing in a newspaper having general circulation in the area not less than seven days before the date set for the hearing. A development moratorium with a duration of 61 days or longer, and any extension of a moratorium so that the total duration is 61 days or longer, is subject to the notice and hearing requirements of G.S. 160A-364. Absent an imminent threat to public health or safety, a development moratorium adopted pursuant to this section shall not apply to any project for which a valid building permit issued pursuant to G.S. 160A-417 is outstanding, to any project for which a conditional use permit application or special use permit application has been accepted, to development set forth in a site-specific or phased development plan approved pursuant to G.S. 160A-385.1, to development for which substantial expenditures have already been made in good faith reliance on a prior valid administrative or quasi-judicial permit or approval, or to preliminary or final subdivision plats that have been accepted for review by the city prior to the call for public hearing to adopt the moratorium. Any

preliminary subdivision plat accepted for review by the city prior to the call for public hearing, if subsequently approved, shall be allowed to proceed to final plat approval without being subject to the moratorium.

Any ordinance establishing a development moratorium must expressly include at the time of adoption each of the following:

- (1) A clear statement of the problems or conditions necessitating the moratorium and what courses of action, alternative to a moratorium, were considered by the city and why those alternative courses of action were not deemed adequate.
- (2) A clear statement of the development approvals subject to the moratorium and how a moratorium on those approvals will address the problems or conditions leading to imposition of the moratorium.
- (3) An express date for termination of the moratorium and a statement setting forth why that duration is reasonably necessary to address the problems or conditions leading to imposition of the moratorium.
- (4) A clear statement of the actions, and the schedule for those actions, proposed to be taken by the city during the duration of the moratorium to address the problems or conditions leading to imposition of the moratorium.

No moratorium may be subsequently renewed or extended for any additional period unless the city shall have taken all reasonable and feasible steps proposed to be taken by the city in its ordinance establishing the moratorium to address the problems or conditions leading to imposition of the moratorium and unless new facts and conditions warrant an extension. Any ordinance renewing or extending a development moratorium must expressly include, at the time of adoption, the findings set forth in subdivisions (1) through (4) of this subsection, including what new facts or conditions warrant the extension.

Any person aggrieved by the imposition of a moratorium on development approvals required by law may apply to the appropriate division of the General Court of Justice for an order enjoining the enforcement of the moratorium, and the court shall have jurisdiction to issue that order. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in those actions shall be accorded priority by the trial and appellate courts. In any such action, the city shall have the burden of showing compliance with the procedural requirements of this subsection.

(f) In order to encourage construction that uses sustainable design principles and to improve energy efficiency in buildings, a city may charge reduced building permit fees or provide partial rebates of building permit fees for buildings that are constructed or renovated using design principles that conform to or exceed one or more of the following certifications or ratings:

- (1) Leadership in Energy and Environmental Design (LEED) certification or higher rating under certification standards adopted by the U.S. Green Building Council.
- (2) A One Globe or higher rating under the Green Globes program standards adopted by the Green Building Initiative.
- (3) A certification or rating by another nationally recognized certification or rating system that is equivalent or greater than those listed in subdivisions (1) and (2) of this subsection. (1923, c. 250, s. 1; C.S., s. 2776(r); 1967, c. 1208, s. 1; 1971, c. 698, s. 1; 1981, c. 891, s. 5; 1985, c. 442, s. 1; 1987, c. 747, s. 11; 1995, c. 357, s. 1; 2005-426, s. 5(a); 2007-381, s. 2; 2011-286, s. 2.)

# Matthews NC

## Conditional Zoning Since 1984

### **Historical Background:**

The City of Charlotte and Mecklenburg County were granted local legislative authority to adopt “Conditional Zoning” in 1973, and Matthews received the same authority in 1981. The process that developed as a result of these General Assembly actions was a single, “legislative” decision on zoning cases, to include both the change in zoning district classification and adoption of a specific site plan and written notes. The three jurisdictions continued to use this special process, without any real legal challenges, for a couple decades. During that time, each jurisdiction refined how they individually handled the steps involved from submission to final decision.

The significance of a single “legislative” decision is that one elected Board looks at both the overall question of whether the proposed zoning district designation is a good fit for the particular site, and also at the specific build-out plans for that site, and makes a determination on the zoning question on the entire package. Typically, a zoning petitioner will provide a site plan and a series of written notes that they voluntarily agree they will allow to become part of any final zoning approval. So, often a “conditional” zoning decision will include a change from one zoning district to another for a specific site plan layout that has a limited number of potential uses, sign restrictions, and other clearly spelled out provisions which are unique to that site.

### **Types of Conditional Zoning Districts:**

There are two groups of “conditional” zoning districts. One group are the “parallel conditional districts”. These districts match what we now refer to as “straight” zoning districts, with the usual specific dimensional minimums, allowed list of uses, and various other typical regulations. Like most communities, Matthews has some single-family districts, and an example would be the R-12 classification, which calls for 12,000 sq ft of lot area and 50' front setback. To convert R-12 to a parallel conditional district R-12(CD), all the underlying standards of the “straight” district will apply, and then further voluntary, more restrictive provisions, such as a site plan, limits on uses, etc. are added. The minimum requirements of the corresponding “straight” district must always be followed -- conditions can only be greater than, or more restrictive than the parallel straight district.

The second group of conditional districts are those that can only be requested as a conditional zoning review. In Matthews, this would be the B-1SCD Shopping Center district or the R-VS Residential Varied Styles district. Neither have a corresponding “straight” classification, and both automatically require a detailed site plan submission.

## **The Matthews Conditional Zoning Process:**

1) A complete zoning petition is submitted to the Planning Department at least 10 days prior to the first Monday of Month #1, including:

- \* completely filled out application form (property description, owner(s) signatures, list of adjacent property owners, probable schedule of key dates)
- \* boundary survey of the subject site
- \* site plan drawing of property, showing proposed layout of buildings, driveways, interior circulation, dumpster pad, storm water detention, required landscape buffer areas, freestanding sign locations, any dedication of wider road right-of-way, etc.
- \* traffic study, if proposal meets threshold requirements
- \* listing of any written conditions voluntarily being submitted, such as a restricted list of potential uses, description of minimum dwelling sizes, percentage of certain architectural materials to be used on structures, reduction of sign sizes, etc.
- \* addressed envelopes to all adjacent property owners with a full copy of the completed application inside, unsealed, ready to be mailed

2) The petition is formally accepted by Matthews Board of Commissioners at their regular meeting on the second Monday of Month #1, at which time the public hearing date is set. Petitions that seek to make changes to previously approved Conditional zoning actions or text amendments will generally be set for the second Monday of Month #2, while requests for new designation as a Conditional zoning will have a public hearing date the second Monday of Month #3. The purpose of the extra month is to allow adequate time for staff from the various agencies to complete their review and make comments.

3) Planning Department staff sends site plan drawings to other Town, County, and State divisions for their review and comments, and meets with Petitioners to discuss; Planning staff will review revisions from the Petitioners in preparation for public hearing

4) The Town will mail the required zoning notice to adjacent property owners (which has been provided by the applicant at time of initial submission, and amended if necessary) at least 14 days prior to the scheduled public hearing date. Petitioners must also schedule and separately notify surrounding owners of a “neighborhood” meeting, which must take place prior to the public hearing. This neighborhood meeting allows interested residents, businesses, etc., to hear the proposed changes and discuss the project directly with the Petitioners prior to the first presentation before a public body. All this takes place during Months #1 and 2.

5) Public hearing is held the second Monday of Month #2 or #3, when the Petitioner makes a full presentation about their request in front of the joint session of Town Board of Commissioners and Town Planning Board. All interested parties are given opportunity to speak in favor or opposition at the hearing. Any questions raised that cannot be answered immediately are requested to be provided to Planning Board at their meeting.

6) Planning Board reviews information provided and comments/perceptions from the public hearing at their regular meeting the fourth Tuesday of the same month as the public hearing. New information, particularly responses to unanswered questions from the hearing, may be provided at this time, but there is not a new presentation or open “public hearing” for citizen comments. Planning Board weighs the information and opinions provided, adds their own insights, and makes a recommendation on the petition to a) approve as presented/amended; b) deny as presented/amended; or c) approve with further changes as are agreeable to the Petitioner during Planning Board meeting discussion.

7) Following the public hearing, members of the Board of Commissioners and the Planning Board may discuss the proposal and state their individual concerns with the Petitioners, staff, members of the community, or anyone else. They may at this point also identify how they intend to vote, if they choose.

8) The petition is brought up for a final vote by Matthews Board of Commissioners at the second Monday of the month following the public hearing (Month #3 or #4). Town Board, in a single vote, can a) approve as presented/amended; b) deny as presented/amended; or c) approve with further changes as agreed to by the Petitioner at the meeting. They may also decide to defer action in order to allow the Petitioner time to explore the feasibility of additional conditions. The Board of Commissioners cannot add a condition unless it is acceptable to the Petitioner.

## **Pros and Cons:**

Matthews began using the Conditional zoning process when the community was just beginning to have a development frenzy take place. Matthews Commissioners took the position that they wanted high quality development, and they were willing to spend considerable amount of time poring over zoning details, sitting in long Council meetings, and meeting with Petitioners for one-on-one presentations, all in order to be sure they understood what was being proposed was what they each felt was appropriate for Matthews. This time commitment has been strongly reaffirmed by every individual who has been elected to the Board over the past two-plus decades.

### *Pros from Elected Officials' Standpoint:*

\* You will learn exactly what is proposed for the site -- anticipated use(s), building sizes, number of parking spaces, amount of traffic that will be generated, possibly the exterior building materials, location/design of freestanding and attached signs, driveway locations, any proposed tree save areas and storm water detention/grading changes, etc.

\* You can ask for many specific, unique conditions for the site, based on your own understanding of the location, area traffic, surrounding residents' opinions, etc. and they can

become commitments as long as the Petitioner agrees to add them as voluntary conditions

- \* You can allow a specific development on a site that requires a zoning district that otherwise would likely not be acceptable there (ie. a large child day care facility which must utilize Business zoning can be allowed adjacent to a church and single-family neighborhood, although a big box store would not be appropriate at that site)

#### Cons from Elected Officials' Standpoint:

- \* This is a time-consuming process, both during regular Council meetings, and on your own time while preparing for meetings

- \* Petitioners and surrounding residents may all insist on contacting you to give you their opinions on details of the proposal individually

- \* You will be seen by the public as responsible for being aware of everything that results if the project gets approved, even if your Board did not include any conditions on specific criteria

- \* Any conditions you favor that may be discussed, in or out of a public setting, that do not get clearly written as a zoning condition cannot be subsequently required of the developer

#### Pros from Staff Standpoint:

- \* You get a complete picture of what is being proposed -- what it does to the zoning map and what it can be expected to do to surrounding existing land uses, whether or not it will be complementary to what is already there or what land use plans call for

- \* Staff can work with Petitioners on details of the proposal -- site plan drawing and written notes -- to get them consistent with past Council policies and similar recent actions (ie., if Council had a similar request eight months ago, and these are the conditions that made it something Council was willing to approve)

- \* All subsequent approvals for subdivision, landscape screening, grading permits, building permits, etc., all must match the approved zoning site plan, which Planning staff is already familiar with

#### Cons from Staff Standpoint:

- \* Some Petitioners are so intent of getting their message across to the elected officials, they do not keep staff in the loop, especially regarding possible revisions or conditions only discussed one-on-one with a Council member. The ideas of these conditions may be the pivotal aspect of one or more Council member's decision to approve, yet if they are not clearly written/drawn on final plans, then they can not be enforced later

- \* Some Petitioners do not provide accurate or timely submissions, making it difficult for staff to do a full review and report to Council

#### Pros from the Citizens Standpoint:

- \* Adjacent or area residents and property owners can see more detail, early in the process, of what may occur on nearby land than with traditional zoning

- \* Adjacent owners are required to be given the opportunity to see plans prior to the formal public hearing, so they can give their support, concerns, or opposition to the Petitioner early in the process. Petitioners should be more willing to make changes to their plans before any formal presentations before the elected body

\* Citizens can come and express their opinions about a conditional zoning, and their concerns can be used as the elected Board's reason for approving or denying a zoning action. Unlike a CUP or SUP, the Council can use citizen opinion as a basis for their decision

*Cons from the Citizens Standpoint:*

\* Because some Petitioners spend considerable time one-on-one with elected Board members, there can be the perception that developers have their "ear" to a greater degree than citizens do

\* Because site plan drawings and conditional notes often change during the process of a rezoning action, citizens may not be as aware of the most current set of criteria being reviewed

*Pros from the Petitioners Standpoint:*

\* When a developer already knows what he plans to build, there is little added cost or time when providing added documentation like site plans and written notes

\* The opportunity to pursue each elected officials' endorsement based on each one's specific "hot buttons" can garner a majority vote for approval. For example, one Council member may need to be shown that traffic will not be adversely impacted, while another needs to be given extra detail on the architectural details of this and surrounding buildings

*Cons from the Petitioners Standpoint:*

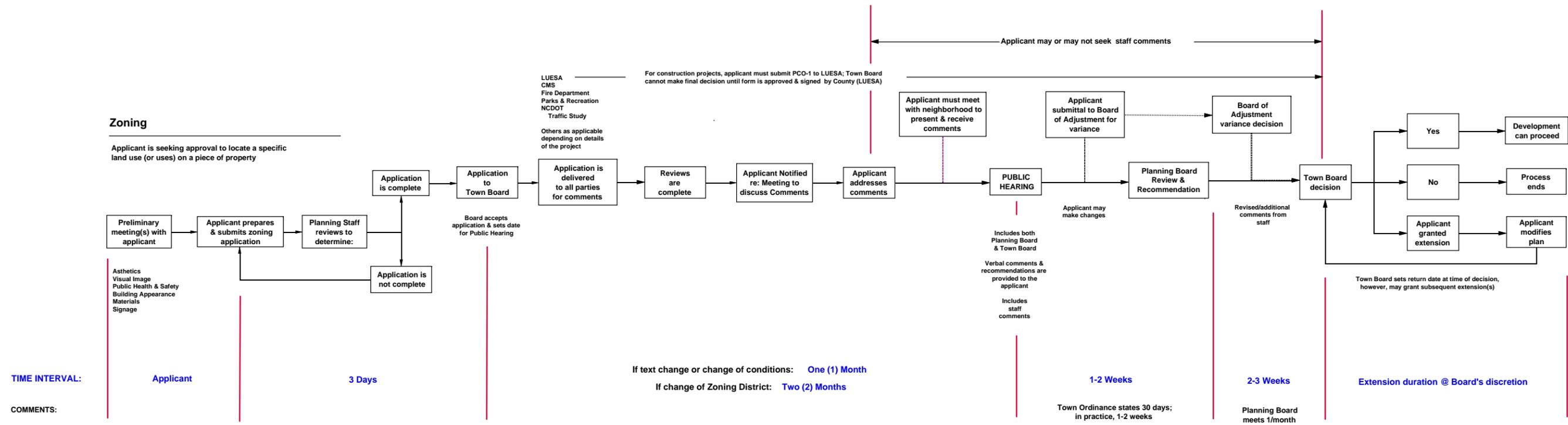
\* Petitioners have to spend more time and money in developing site specific details without any assurance they will get zoning approval

\* This process does not work well to get zoning district approval -- such as from residential to commercial -- when there is no specific construction plan yet in place

\* The time and financial cost to develop and revise site plan drawings and to make written commitments that may not be particularly pleasing to the developer result in either the Petitioner agreeing to actions he has no firm intention to implement, or delays the start of the process in order to get the architectural or engineering design to a further level

**Full zoning text, petition form, and date schedule can be found on the Town's website at [www.matthewsnc.com](http://www.matthewsnc.com).**

**For more information, please contact Kathi Ingrish, Planning Director, at 704/847-4411 x 236, or at [kingrish@matthewsnc.com](mailto:kingrish@matthewsnc.com).**



Town of Matthews, North Carolina  
ASSESSMENT OF THE PLAN REVIEW PROCESS

Subdivision

Standards exist-not a subjective process; level of detail required of civil engineer is defined

