

### **...Title**

Vote on a request to approve a legislative request by the Planning Department to consider amendments to the Chatham County Flood Damage Prevention Ordinance required by the Chapter 160D Statutory update.

### **...Abstract**

#### **Action Requested:**

Vote on a request to approve a legislative request by the Planning Department to consider amendments to the Chatham County Flood Damage Prevention Ordinance required by the Chapter 160D Statutory update.

#### **Introduction and Background:**

Chapter 160D consolidates, reorganizes, and modernizes the state's planning and development statutes and repeals the existing statutes that have been collected and merged into the new 160D.

In early 2019 when 160D was being considered there were several bills relating to repeals and replacements of existing statutes. The Senate Judiciary committee merged Chapter 160D (S.422) with a set of statutory amendments proposed by the Homebuilders Association (S.355). The merger was based on the idea that neither bill should be enacted without the other. The Combined bill known as S.L. 2019-111 was signed by the governor in July Ordinances 2019. That combined bill was the basis for all the materials used by the School of Government to educate local governments on the changes that would need to be made to local land use regulations. The bill had two parts. Part one was S.355 the Home Builders Association bill and part 2 was 160D. Part 1 contained much of the new vested rights and permit choice changes. It was understood that part 1 would need to be merged into part 2 prior to Local Government land use regulations being repealed or amended. The General Statutes Commission was tasked with integrating both bills with the General Assembly passing a new bill in early to mid 2020. The effective date of the law was January 1st 2021.

Planning staff attended a comprehensive workshop in late 2019 to learn about the many statutory updates. At that time the School of Government had created a book and lots of materials based on 2019-111, with the understanding that the materials they were supplying to local governments could and most likely would change in 2020.

S.L 2020-25 was signed by the Governor on June 19th 2020. The law was effective on that day. This law consolidated all the previous bills into one law containing the 160D statutory amendments. Although the new 160D law was effective immediately local governments were given until July 1st 2021 to make required amendments and updates. The extension was based on the changes to the consolidated bill and the COVID 19 Pandemic response.

## **Discussion and Analysis:**

**Planning Staff requested a public hearing at the October 2020 Board of Commissioners Meeting. The Public Hearing was held on November 16th 2020. Planning Staff gave a slideshow presentation presenting the changes to the Zoning, Subdivision, Watershed Protection, and Flood Damage Prevention Ordinances.**

Section 5 of the Zoning Ordinance, Conditional Zoning Districts, had language added to require that conditions must be consented to in writing by petitioner, and property may be placed in a conditional zoning district only in response to a petition by the owners of all property included. There is also new language related to community meetings and mailed notice, as well as a reconfirmation that any district modifications that do not change the use or density of the overall development can be approved administratively. These changes are good examples of procedural rather than major policy changes. The planning department already did these things, the language has just been updated to conform with state statutes.

Section 6, Official Maps Adopted-Districts Boundaries Established, has a new section: 6.2 Incorporation by reference. This added language gives the county the ability to incorporate flood insurance rate maps, watershed boundary maps, or maps officially adopted or promulgated by state and federal agencies to be incorporated by reference. Section 7, Definitions, has many more added and amended definitions. Planning staff discussed three important new definitions at the public hearing. The Map Repository definition is directly related to the new section on incorporating maps by reference. The definition for Quasi-Judicial Decision is important because the ordinance did not have a definition for this before and this new definition conforms to the statutory updates; there is also a new section specifically focusing on Quasi-Judicial procedures. The definition for Special Use Permit is replacing the definition for Conditional Use Permits. That Section is now called Special Use Permits.

Section 8 has new language added for Conflicts of Interest standards for administrative staff. Section 10.13, the Table of Uses, has a significant amount of edits that change CUP to SUP. The permitted uses are not changing, just the term.

Section 17 is now called Special Use Permits. It has some new language regarding administrative approval for minor modifications, but the most significant change is the addition of 17.10 Quasi-Judicial Procedure. The Zoning Ordinance had a process for Quasi-Judicial procedure before, but this new section conforms with the statutory changes and puts all the process and procedure into one section. Section 18 Board of Adjustment just has some new language added regarding mailed notice in the subsection on Appeal Procedure.

Section 19 Amendment to the Zoning Ordinance has new language restricting third party down zoning, as well as updates related to consistency statements. For instance, if the Board makes a decision that is not consistent with the comprehensive plan the

zoning amendment shall have the effect of also amending the comp plan. Additionally, a plan amendment and zoning amendment can be considered concurrently. Also, the new language clarifies what happens if the Board of Commissioners fails to adopt a consistency statement. The requirement for a plan consistency statement may also be met by a clear indication in the minutes that at the time of action on the amendment the board was aware and considered the planning board recommendation. Section 19 also has a new section and expanded language regarding vested rights and permit choice.

The expanded Vested Rights section has more information about duration of vesting, multi-phased developments, and the process for claiming a vested right. There is also a new section devoted to Site Specific Vesting Plans. This separate section comes from the updated 160D bill that the governor signed in June. In previous iterations, all vested rights language had been in one lengthy and cumbersome section. Now, most of the information is the same, but split into two sections. Planning staff thought it best that the Zoning Ordinance should follow the format of the state statutes. Site Specific Vesting Plans have to be used for a specific parcel or parcels. The plan can be a planned unit development plan, a subdivision plat, a preliminary or general development plan, special use permit, conditional district zoning plan, or any other land use approval that may be used by the county. The vested rights are not personal rights and run with the properties.

Sections 20 and 21 have new language in various subsections relating to the administration of enforcement and violations. The Subdivision ordinances had less but still meaningful changes related to 160D and some updates and housekeeping changes added as well.

The definition for Lot Area(usable) had some language added that you can see in the redline attachments. Most of the 160D changes came in Section 3 relating to performance guarantees. The duration of the performance guarantee shall initially be one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the date the bond is issued unless the developer determines that the scope of work necessitates a longer duration. This language is a change to procedure but does not necessarily affect how we issue performance guarantees. There is also some new language regarding the release of guarantees and legal responsibilities.

There are also some changes to the flood damage prevention ordinance that come from 160D Statutory Updates. There is new language regarding incorporating maps by reference and automatically updating Flood Insurance Rate Maps.

Planning staff received guidance from the NCDPS regarding the changes to the Flood Damage Prevention Ordinance and made the necessary amendments.

The Planning board received a presentation from staff at the January 5<sup>th</sup> meeting. Some planning board members had questions about the new vested rights language and how

that would affect current and future permit and development approvals. Staff explained that the updated language was reflecting the current statutes on vested rights, and that in theory, developers have already had access to these vested right protections.

The planning board decided to break up the motions into sections relating to the specific ordinance being amended. The first motion was regarding the Zoning Ordinance updates. The motion passed unanimously. There was some discussion among the planning board regarding the consistency statement, and it was decided to remove Goal 1 from the consistency statement. The amended consistency statement was approved unanimously. The motions related to the subdivisions and flood damage prevention ordinance changes also passed unanimously.

**How does this relate to the Comprehensive Plan:**

**The request to amend the Zoning Ordinance is consistent with the Comprehensive Plan of Chatham County, Plan Chatham, by supporting Goal 3: Promote a compact growth pattern by developing in and near existing towns, communities, and in designated, well planned, walkable, mixed-use centers.**

**Recommendation:**

**The Planning Board** by a unanimous vote (8-0), and planning staff recommend the approval of this ordinance updating the Chatham County Flood Damage Prevention Ordinance.