

LANCASTER COUNTY

APPLICATION TO AMEND OR CHANGE THE TEXT OR MAP OF THE LANCASTER COUNTY UNIFIED DEVELOPMENT ORDINANCE

Do Not Write In This Box
Application# PDD-26 Date 4-16-15 Paid
2015-8 Amendment

- 1. The application is for amendment to the: (check one)
[] District Boundary Map (fill in all items #2,3,4,5,6,7,&9 only)
[X] Ordinance Text (fill in items # 8 & 9 only)
2. Give either exact address or tax map reference to property for which a district boundary change is requested:
3. How is this property presently designated on the map?
4. How is the property presently being used?
5. What new designation or map change do you purpose for this property?
6. What new use do you propose for the property?

EXPLAIN UNDER ITEM #9 WHY THIS AREA SHOULD BE REDESIGNATED OR CHANGED.

- 7. Does the applicant own the property proposed for this change? [] YES [] NO If no, give the name and address of the property owner and attach notarized letter from property owner:

- 8. If this involves a change in the Ordinance text, what section or sections will be affected?
Section 4.01A. of Ordinance 960

- 9. Explanation of and reasons for proposed change: Delays in Recordation of PDD-26
(attach another page if additional space is needed)

10. Applicant's can request a 5 minute PowerPoint presentation at County Council to be given during the ordinance reading time and at 1st reading only. You will be allowed 5 slides or less. This information must be given to the Clerk to Council by the Friday prior to the Monday Council meeting. Please check the appropriate box to indicate whether or not you will be giving a PowerPoint presentation. [] YES [] NO

NOTE: It is understood by the undersigned that while this application will be carefully reviewed and considered, the burden of proving the need for the proposed amendment rests with the applicant.

APPLICANT'S NAME (PRINT)
UHF Development Group LLC

ADDRESS:
227 E. Front St.
New Bern NC 28560

Phone:
252-670-9370 (cell)

[Signature]
SIGNATURE

Agenda Item Summary

Ordinance # / Resolution#: 2015-1346 and 960
Contact Person / Sponsor: John Weaver 
Department: County Attorney
Date Requested to be on Agenda: April 16, 2015
Committee: Administration Committee

Issue for Consideration: Whether or not it is appropriate and in the best interest of Lancaster County for Council to consider an amendment to Section 4.01 of Ordinance No. 960 so as to permit the Developer, UHF Development Group, LLC, to pay the One Million (\$1,000,000.00) Dollar fee on a "per house" basis rather than on a lump sum basis as required in the original Development Agreement?

Points to Consider: On April 13, 2015, Council gave 1st reading to Ordinance 2015-1346, an ordinance that had its beginning in December, 2008 through the passage of Ordinance 959. The purpose of Ordinance 2015-1346 is to finalize, at last, the errors, disputes and differences that have existed on and off for more than six (6) years. Assuming that the new, replacement ordinances passes, the Developer's request relating to this Item Summary becomes relevant.

The Developer presented the Administrator and the County Attorney with a Summary Sheet on March 24, 2015 wherein was detailed both a timeline of the delays in the final resolution of Ordinance 959 and the alleged damages that the Developer has experienced as a result of the delay. The Developer may or may not have a claim as a result of the delay; but in either event, it appears clear that the errors and delays were in no way created by the actions of the Developer. There has been no express or implied threat of litigation; and, in fact, the Developer is emphatic in his assertion that such a course is an action of last resort. But, nevertheless, the cost to the developer as detailed in the Summary Sheet, if provable, is substantial.

Funding and Liability Factors: Pursuant to the Development Agreement, the Developer was to pay in lump sum fashion a fee of One Million (\$1,000,000.00) Dollars at the time of the issuing of the first building permit or July 1, 2018, whichever occurred first. The Development Agreement permits a maximum of eight hundred ten (810) building permits in the PDD. On average, the cost per building permit is approximately \$1,235.00.

Council Options: Council can reject the Developer's request and withhold any and all building permits until the total fee is paid in full. Alternatively, the Council can accept the Developer's proposal or find common ground in reaching a resolution that is established somewhere in the middle. Any change in the Development Agreement will need to be by agreement and not solely by the unilateral decision of either party.

Any agreement reached will require a 3 Reading amendment to the original Development Agreement as approved in Ordinance No. 960.

Recommendation: A compromise by Council so as to avoid the potential expense of protracted litigation would be in the best interest of Lancaster County.

FILED
OFFICE OF CLERK
OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

ORDINANCE NO. 250 AM 11-57

CLERK OF COURT
LANCASTER, SC

AN ORDINANCE

APPROVING THE DEVELOPMENT AGREEMENT BETWEEN UHF DEVELOPMENT GROUP, LLC AND LANCASTER COUNTY RELATING TO THE COLLINS ROAD SITE DEVELOPMENT AND AUTHORIZING CERTAIN COUNTY OFFICIALS TO EXECUTE AND DELIVER THE DEVELOPMENT AGREEMENT.

BE IT ORDAINED BY THE COUNCIL OF LANCASTER COUNTY, SOUTH CAROLINA:

Section 1. The Council finds and determines that:

(a) Lancaster County is authorized by the South Carolina Local Government Development Agreement Act, codified as S.C. Code Ann. §§ 6-31-10 to -160 (2004)(the "Act"), and by the Development Agreement Ordinance for Lancaster County, South Carolina, Ordinance No. 563 (the "Ordinance"), to enter into development agreements with developers;

(b) UHF Development Group, LLC seeks to enter into a development agreement with Lancaster County relating to the Collins Road Site development; and

(c) the Act and Ordinance require a development agreement to be approved by the county governing body by the adoption of an ordinance.

Section 2. A. The Council Chair and Council Secretary are individually authorized, empowered and directed to execute, acknowledge and deliver a Development Agreement between UHF Development Group, LLC and Lancaster County relating to the Collins Road Site development (the "Development Agreement") in the name and on behalf of Lancaster County. The form of the Development Agreement is attached hereto as Exhibit A and all terms, provisions and conditions of the Development Agreement are incorporated herein by reference as if the Development Agreement were set out in this ordinance in its entirety. By adoption of this ordinance, the Lancaster County Council approves the Development Agreement and all of its terms, provisions and conditions. The Development Agreement is to be in substantially the form as attached to this ordinance and hereby approved, or with such minor changes therein as shall be approved by the officials of Lancaster County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of the Development Agreement attached to this ordinance. Prior to the execution of the Development Agreement, the parties to it may be changed to reflect the current legal and equitable owners of the property and their respective obligations under the Development Agreement.

B. The Council Chair and Council Secretary are authorized to execute and deliver any related instruments, documents, certificates and other papers as are necessary to effect the delivery of the Development Agreement. The Council and its duly elected or appointed officers and any other County official are authorized to take any and all further action as may be necessary to effectuate the purposes of this ordinance.

Section 3. If any section, subsection or clause of this ordinance is held to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

Section 4. To the extent this ordinance contains provisions that conflict with provisions contained elsewhere in the Lancaster County Code or other County ordinances, the provisions contained in this ordinance supersede all other provisions and this ordinance is controlling.

Section 5. This ordinance is effective upon third reading.

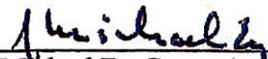
AND IT IS SO ORDAINED THIS 1st DAY OF DECEMBER, 2008.

LANCASTER COUNTY, SOUTH CAROLINA

By: 
Rudy L. Carter
Chair, County Council


Wesley Grier
Secretary, County Council

Approved as to form:


J. Michael Ey, County Attorney

Attest:


Christopher S. Karres
Deputy Clerk to County Council

Planning Commission Public Hearing:	October 21, 2008
Council Public Hearing:	November 3, 2008
1 st reading:	October 27, 2008 (title only) PASSED 7-0
2 nd reading:	November 24, 2008 PASSED 7-0
3 rd reading:	December 1, 2008 PASSED 7-0

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STATE OF SOUTH CAROLINA) DEVELOPMENT AGREEMENT
)
COUNTY OF LANCASTER) COLLINS ROAD SITE

This DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of the 1st day of December, 2008 ("Effective Date"), by and between UHF DEVELOPMENT GROUP, LLC ("Developer"), a North Carolina Limited Liability Company, and the COUNTY OF LANCASTER (the "County"), a body politic and corporate, a political subdivision of the State of South Carolina.

RECITALS

WHEREAS, Developer is developing certain real property, consisting of four hundred eleven (411) acres, more or less, located in the County and known as the Collins Road Site development and zoned Planned Development District (PDD-26).

WHEREAS, Developer and County have determined that it is in the best interests of the County and Developer to enter into this Agreement to set forth the terms and conditions of the development in order to more fully protect the Developer's development rights, thereby providing certainty and predictability to the Developer of those rights and providing certainty and predictability to the County on the scope and terms of the development.

WHEREAS, the Developer desires to obtain from the County in connection with the development, and the County is willing to provide, assurances: (1) that the property will be appropriately zoned for the duration of this Agreement; (2) that upon receipt of its development and construction permits it may proceed with the planned development and construction; and (3) that the development rights will be vested for the duration of this Agreement.

WHEREAS, in connection with the proposed development, Developer and County recognize that the scope and term of the planned development under this Agreement accomplish

DEDICATIONS AND FEES AND RELATED AGREEMENTS

Section 4.01. Purpose of Article. The Parties understand and agree that Development of the Property imposes certain burdens and costs on the County, including those for certain services and infrastructure improvements. Eventually, ad valorem taxes collected from the property may meet or exceed the burdens and costs placed upon the County, but certain initial costs and capital expenditures are now required that are not to be funded by any increase in taxes paid by existing residents of the County. The purpose of this article is to identify the matters agreed upon to be provided by the Developer to mitigate such burdens and costs.

Section 4.01A. Payment to Lancaster County. (A) Developer agrees to pay County one million dollars (\$1,000,000.00) the earlier of either July 1, 2018 or the time when the application is filed for a building permit for the first residential dwelling unit to be built in the development.

(B) Payment of the amount provided in Section 4.01A.(A) entitles the Developer to receive not more than eight hundred and ten (810) building permits for constructing residential dwelling units on the Property and as set forth in Ordinance No. 959. At the time of payment of the amount provided in Section 4.01A.(A), the County shall provide to the Developer a document indicating the Developer: (i) has paid the amount; (ii) is entitled to a specified number of building permits for residential dwelling units for the Property; (iii) will receive building permits upon meeting all ordinary requirements for the issuance of building permits including, but not limited to, any then applicable county-wide building, housing, electrical, plumbing, and gas codes adopted by County Council; (iv) will receive the building permits notwithstanding any applicable moratorium, limit on the issuance of building permits, or any other restriction on development rights in effect at the time of application or time of issuance for the building permit; and (v) that the County considers the issuance of the document entitling the Developer to building permits pursuant to this Section 4.01A.(B) to be a "building permit" as used in Section 13.6.2.6.5 of the UDO, as added to the UDO by Ordinance No. 673, and relating to vesting of construction projects.

(C) Developer acknowledges and agrees that the expenditure and use of the monies received by the County from the payment provided in Section 4.01A.(A) is at the sole discretion of the County Council.

Section 4.02. Payment of Costs. Upon submission of appropriate documentation of the expenditure, Developer agrees to reimburse the County, not later than May 31, 2009, for the County's reasonable unreimbursed actual costs related to this Agreement. The foregoing cost reimbursement is capped at ten thousand dollars (\$10,000) and is limited to County payments to third-party vendors and service providers that have not been otherwise reimbursed from the fee paid by Developer pursuant to Section 10 of Ordinance No. 663.

~~Section 4.03. Other Charges or Fees.~~ (A) ~~Nothing in this Agreement shall be construed as relieving Developer from the payment of any fees or charges in effect at the time of collection as may be assessed by entities other than the County.~~

(B) Developer is subject to the payment of any and all present or future fees enacted by the County that are of County-wide application and that relate to the County's costs of

March 24, 2015

John L. Weaver

Lancaster County Attorney

Post Office Box 1809

Lancaster, South Carolina 29721

Summary of Mistakes and Delays for PDD-26

- 12/1/2008** Lancaster County Council 3rd Reading and Approval of PDD-26 (Ordinance 959) and Development Agreement (Ordinance 960).
- 1/29/2009** Development Agreement Recorded, PDD-26 was NOT recorded by Lancaster County.
- 5/29/2012** Due to UHF Development, LLC agreeing to convey land to Lancaster County Water and Sewer District along Collins Road to provide sewer for the Publix Shopping Center, it was determined Lancaster County had not recorded PDD-26.
- 8/27/2012** Lancaster County recorded PDD-26 (Ordinance 959) through a Scrivener's Error. It will later be found that Lancaster County recorded the wrong version of PDD-26.
- 1/16/2014** Based on Pulte's submittal and review at the January 2014 Planning Commission Workshop for Queensbridge providing a 40 disturbed buffer along Gary Holland's Property Line, it was determined that the wrong version of PDD-26 had been recorded. The correct version provides for a 40 foot undisturbed buffer along Mr. Holland's property line only.
- 1/21/14** Lancaster County Planning Commission conditionally approve Pulte's plan by requiring a 50 foot undisturbed buffer along both Mr. Holland's and his neighbors property line. This condition was inconsistent with the 40 foot undisturbed buffer that was agreed to by all parties in PDD-26.
- 4/18/14** Pulte files lawsuit against Lancaster County Planning Commission to appeal the Planning Commission Condition of a 50 foot undisturbed buffer for Mr. Holland and his neighbor with a goal of providing a 40 foot undisturbed for Mr. Holland only as provided for in PDD-26 Version 2.
- 6/30/2014** Pulte lawsuit withdrawn after UHF Development, LLC intervenes between Pulte, Mr. Holland and his neighbor and agrees to absorb certain additional costs Pulte will incur to provide Mr. Holland and his neighbor a 50 foot undisturbed buffer.
- 1/20/2015** Michael Wren completes revisions to the improperly recorded PDD-26.
- 3/17/15** Lancaster County Planning Commission Approves 7-0 revised PDD-26.

The above mistakes have delayed the development of Queensbridge and an adjoining 234 unit apartment community 12 months and counting as of March 2015.

Summary of Financial Impacts

- 1. Re-design of site plan based on 50 foot undisturbed buffer improperly conditioned by Planning Commission of \$10,000.**
- 2. Retaining walls and increased site work to accommodate the above of \$150,000.**
- 3. UHF Development, LLC interest carry for 12 months of \$300,000.**
- 4. Water and sewer off-site construction cost increases of \$350,000.**
- 5. Pulte and UHF Development, LLC legal fees associated with the Planning Commission lawsuit of \$50,000.**
- 6. Construction costs increases for the above referenced apartment community of \$2,500,000.**
- 7. Ongoing travel and other expenses incurred by UHF Development, LLC for various meetings with engineers, county staff, planning board and county council meetings.**
- 8. Significant risk that the Pulte land purchase for Queensbridge may not close due to the delays and increased costs.**