

..TITLE

A vote by the Chatham County Board of Commissioners to adopt revisions to the Chatham County Subdivision Regulations.

..ABSTRACT

Action Requested:

A vote by the Chatham County Board of Commissioners to adopt revisions to the Chatham County Subdivision Regulations.

Introduction & Background:

In 2015 and 2017, the Legislature adopted new legislation narrowing local governments' ability to regulate zoning and subdivisions. In 2017, the Legislature also adopted new legislation which added another category of legal subdivision. The new pieces of legislation became effective October 1, 2015, July 1, 2017, and October 1, 2017, and have implications for the County's Subdivision Regulations.

In addition to the revisions needed due to changes in state law, Planning staff has also added some minor revisions that largely deal with improving process facilitation and language clarification.

On February 19th, 2018, the Chatham County Board of Commissioners held a Public Hearing to discuss revisions to the Chatham County Subdivision Regulations. No one spoke at the hearing, but one citizen submitted written comments against proposed changes to the maintenance guarantee portion of the Subdivision Regulations. The proposed amendment, which would eliminate maintenance guarantees for developers, was included by Planning staff because S.L. 2015-187 has already proscribed counties from requiring or allowing maintenance guarantees. Planning staff has not allowed maintenance guarantees since the law was passed by the General Assembly in 2015.

On March 6th, 2018, the Planning Board discussed this item, tabled a vote on it, and asked Planning staff to review whether S.L. 2015-90 removes the County's authority to require Environmental Impact Assessments to include "indirect or secondary impacts" of a project. The County Attorney's Office had initially recommended amending the Subdivision Regulations to remove the requirement of "indirect or secondary impacts" on the EIA, based on his interpretation of S.L. 2015-90. Following the March 6th meeting, Planning staff consulted with the County Attorney's Office and the legislation was reviewed again and it was reconfirmed that S.L. 2015-90 does remove the County's authority to require Environmental Impact Assessments to include "indirect or secondary impacts" of a project.

On April 3rd, 2018, the Planning Board discussed this item, tabled a vote on it, and asked Planning staff to review whether S.L. 2015-90 conflicted with federal provisions for addressing indirect and secondary impacts in an EIA. Planning Staff consulted the County Attorney's Office to determine if any such conflicts existed. The response included that "the General Assembly does control the authority of counties to require environmental statements by ordinance, and therefore can require that only direct impacts have to be discussed." However, he also stated that "if the project in question requires any kind of federal action and may have major impacts including indirect impacts, the County can weigh in as a commenting agency and urge the federal agency to require an EA /EIS and to consider the full range of indirect impacts and, for that matter, also cumulative impacts." As far as requiring indirect and cumulative impacts be shown on an EIA, however, it was concluded "that Chatham County is restricted to requiring only direct impacts in an environmental statement under its ordinance."

On May 1st, the Planning Board discussed this item and voted to recommend adoption of the revisions by a vote of 5-4. A minority report was issued, detailing the reasons for the minority vote against the adoption of the revisions. The minority shared concerns regarding the "elimination of the County's ability to request that Environmental Impact Assessments (EIAs) address secondary, indirect and cumulative impacts which is inconsistent with federal NEPA law that allows for consideration of these impacts (40 CFR §§1500-1508)", as well as "the change from 2 acres to 10 acres as the disturbance area that triggers an EIA." The minority has asked that the Board of Commissioners "seek a second opinion on this challenge to our right to self-governance." The minority report is included as an attachment on the county website.

Discussion & Analysis:

The aforementioned new pieces of legislation passed in 2015 and 2017 have implications for the County's current standards and practices. The main impacts of these legislative changes are listed in the attached table labeled "Table Attachment-Legislative Changes". Planning staff has also added some minor revisions that largely deal with improving process facilitation and language clarification. The staff recommended changes including requiring submittal of an application to the county for exempt surveys. The main impacts of these proposed changes are listed in the attached table labeled "Table Attachment #2-Planning Department Changes". The proposed amendments were presented to the Board of Commissioners during their January 16, 2018 meeting and scheduled for public hearing, which was held on February 19th.

How does this relate to the Comprehensive Plan:

Goal 4: Diversify the tax base and generate more high-quality, in-county jobs to reduce dependence on residential property taxes, create economic opportunity and reduce out-commuting.

Recommendation:

Planning staff and the Planning Board, by a 5-4 vote, recommends adoption of an Ordinance amending the Subdivision Regulations to incorporate the staff recommended and legislative amendments.