

## Why “Working It Out at the Incremental Plan Stage” on the “Knollwood Tract” PUD Zoning Application Is a Myth

*I have attempted in this paper to be as clear and brief as possible in explaining my position on a rezoning procedure. Asleep yet? I understand I may lose the reader after the first paragraph. That said, I feel I must carefully explain and provide multiple references. To me, it seems that the applicant, fellow Councilmembers, community members at large, and even the Pilot keep pushing this notion that the application’s Incremental Plan stage is where everything will get worked out and where any concerns can be addressed. I believe this to be incorrect and irresponsible.*

-Chris Smithson

According to the Town’s Unified Development Ordinance (UDO):

A Planned Unit Development District, hereinafter referred as the "PUD District", may be established to accommodate large-scale, master-planned, mixed-use developments that could not be accomplished through conventional zoning districts. One of the key elements of a successful PUD regulation is the ability to depart from established standards as a means of encouraging innovation, creativity and a higher level of quality. As such, development within a PUD District shall occur in accordance with unique conditions and standards established during the rezoning process that may vary from those contained within other sections of the UDO.

Most important for this paper is the last sentence in the quote: “development within a PUD District shall occur in accordance with unique conditions and standards established during the rezoning process.”

After a property has been rezoned to a PUD and thus all its unique development standards are set, the next step is for a developer to submit an Incremental Master Development Plan. This is the actual plan for development of the whole tract or a portion of it. Whereas the original PUD zoning process establishes a range and intensity of uses and other aspects of a development, the Incremental Plan is specifically what the developer intends on doing with details of specific uses, layouts, etc.

I have been asked about my faith in the Incremental Plan stage of the PUD development process. In the context of addressing any perceived shortcomings in the pre-approved standards of the zoning, I do not believe it is even legally an option to attempt.

I have faith that the Incremental Development Plan review process is capable of holding the applicant to the standards approved with the PUD rezoning. The Incremental Development Plan review is an administrative process and not intended or empowered to do anything other than verify technical compliance with previously approved conditions. Vesting (at least five years) of the development conditions takes place at the time of zoning- not at Incremental Review.

From Southern Pines Unified Development Ordinance Section 180.9 Planned Unit Development District (PUD):

The Incremental Master Development Plan shall allow the Administrator to ensure that the subject phase is in overall compliance with the approved Development Conditions, Land Use Plan and Conceptual Master Plan for the PUD District. Each Incremental Master Development Plan shall include sufficient information allowing the Administrator to properly evaluate such plan for compliance with the specific PUD.

As you can see here, the Incremental phase is more of a formality- merely a review to ensure that the development plans match up with the already-approved standards in the initial zoning approval.

This is exactly why the Incremental Plans don't go before the Planning Board for a recommendation and why there is no required public hearing on them. I was on the Council when we adopted the ordinance and clearly recall that because the Incremental Plan review was merely a review to ensure technical compliance with already-approved (and perhaps fought-over) parameters, there was no "need" to hold extra meetings, reviews, and hearings.

There was extensive discussion and agreement that the debate, if any, over the character of a PUD development would take place at the initial zoning and that the Incremental phase would not be an opportunity to start the argument all over again. In fact, the PUD ordinance itself, which was submitted several years ago by the same applicant initially required only administrative (staff) review of Incremental Plans. It was a concession on the applicant's part to allow any Council review at all. An independent review of the proposed PUD ordinance written by Clarion Associates in 2007 ("Review of Proposed Planned Unit Development Regulation" 1-16-2007) said of the approval process,

The proposed PUD regulation calls for the approval of the rezoning portion of the process by the Town Council as is required by the General Statutes, and administrative review of all subsequent Incremental Master Development Plans. Modern trends in zoning administration call for delegation of decision-making authority to professional staff members for these kinds of technical reviews (that are based on standards or approval criteria already established).

If the Council's role in the Incremental Plan approval process is approval of multiple "routine" items on its consent agenda ("All items listed below are considered routine and will be enacted by one motion and without discussion"-disclaimer on all Council regular business meeting agendas), how can the "process" address ANY concerns with the initial already-approved standards? Is the applicant, who helped write the Town's existing ordinance, now attempting to redefine the role of the Incremental Plan process? If so, we need to amend the ordinance first or include quite a bit of language in any approval.

From the Knollwood Tract PUD zoning application:

#### 2.4 Compliance

All development within the site **must adhere to the approved standards and conditions stated in this PUD document.** The conditions and requirements stated in this PUD that vary from the UDO shall supersede the UDO.

To “comply,” and thus earn approval, an Incremental plan need only adhere to the approved minimum standards in the initial PUD zoning.

From Southern Pines UDO Section 325 Ultimate Issue Before Council on Amendments:

Except for rezoning requests submitted in accordance with Section 327, the council shall not consider any representations made by the petitioner that, if the change is granted, the rezoned property will be used for only one of the possible range of uses permitted in the requested classification.

The law’s application in the case of a PUD zoning like this would say the applicant’s “intent” cannot legally be a consideration if the rezoning would allow for something different.

So yes, most of the specific development details will be included in the Incremental Plans. In the plan areas, we’ll learn specific lot layouts, specific numbers of units, location of infrastructure, and many other details. Staff deals with this type of task all the time while Council rarely does except with subdivision approvals. As far as staff is concerned, Incremental Plan approval will be very nearly the same as what they usually do except that instead of checking compliance with the UDO standards, they will be checking compliance with the “UDO of its own” PUD standards of the approved district. As a PUD zoning has a minimum of 5 years of vesting on its standards, there is no chance of changing anything until at least that time. In other words, approving a PUD zoning application means we are approving any outcome possible under the approved standards short of violating any public health and safety standards.

Finally, one may bring up the point that Incremental Plans are also supposed to be compared to the Conceptual Master Plan approved at the time of rezoning. Actually, I brought it up at the hearing. I agree that the ordinance says this, but I have great concerns about the application here. This is because the applicant has refused all requests to reflect much of the character of the Conceptual Master Plan in the development conditions of their application. It is a pretty drawing, but the standards delineated in black and white and not up for “artistic interpretation” do not back it up. I take this refusal, along with their statements that the Conceptual Master Plan is merely what they’d “like to see” as their feeling that the drawing is not the binding part of the application.

Of course, there may be many who are completely fine with anything possible under the application’s parameters. That’s OK. The danger here is in ignoring any concerns or reservations one has at the beginning in belief that “everything will be taken care of” after the fact at the Incremental Plan stage. It is just not how the process was designed.