



## Agenda Abstract

### BOARD OF COMMISSIONERS

Meeting Date:	Feb. 13, 2023
Department:	Utilities
Agenda Section:	Regular
Public hearing:	No
Date of public hearing:	NA

#### PRESENTER/INFORMATION CONTACT

Utilities Director, K. Marie Strandwitz, PE  
Planning and Economic Development Manager, Shannan Campbell, AICP, CZO  
Assistant Town Manager, Matt Efird

#### ITEM TO BE CONSIDERED

**Subject:** Provide overview and garner feedback regarding action on proposed Lawrence Road development

##### Attachments:

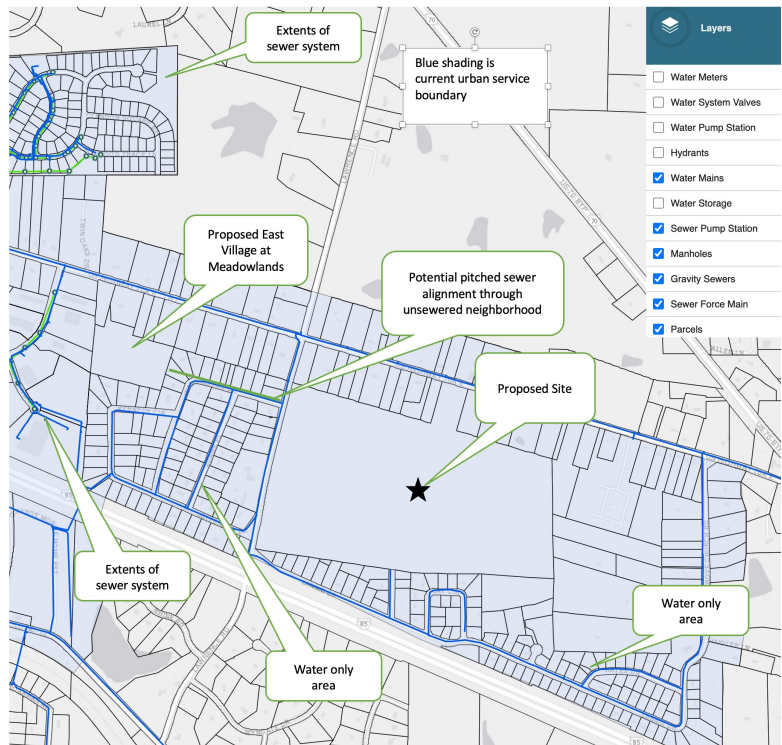
1. Proposed site plan
2. Preliminary E-mails with planning
3. Capacity reservation letters
4. Jan. 2022 courtesy review comments to County

##### Summary:

As early as September 2021, the planning staff was approached about development on a parcel near US70 and Lawrence Road. The planning staff responded with comments on the proposed development, which back then were primarily surrounding a proposed tennis club. In November 2021, proposed plans changed to include a charter school. In January 2022, this project was discussed in a presentation to the Board about annexation interests. Staff presented several points in the slides below at that time.

# Lawrence Road Annexation Interest

Area water & sewer map



## Lawrence Road Annexation Interest

### Key Utilities Considerations:

- Not included in the wastewater collection system hydraulic model
- Site would need a private pumping station
- Planned sewer route through one street in unsewered neighborhood
  - No plans to extend sewer to the entire neighborhood (availability and an equity a concern)
- Previously suggested to Board to reduce the service area boundary to Lawrence Road
- Area is part of Durham's Teer Quarry plan (watershed protection area)
- Still awaiting Comprehensive Sustainability plan recommendations
  - preserve capacity in Elizabeth Brady sewer basin for identified growth areas
  - minimize new extensions that will bring pressure to develop surrounding areas
- Utilities does not support this project at this time

### Key Planning Considerations:

- Parcel is non-contiguous to Town limits (satellite) and Town is limited in the total acreage permitted to annex of this type
- Parcel is disconnected from Town in terms of any pedestrian connectivity and access
- Future Land Use Plans calls for residential as predominant land use

In February 2022, a request was made to the town to reserve capacity for a future school on this parcel pursuant to a recent state statute regarding schools and capacity. NCGS 115C-521(i) requires a town to reserve capacity upon request from a school owner for two years, if available. In March 2022, the town issued a letter to reserve 7,200 gallons per day (gpd) for a charter school. This was anticipated to be The Expedition School, which planned to move from its existing location at Eno Mill. In November 2022, the town learned that in May 2022, The Expedition

School board had voted to drop the contract for the site. Neither the applicant nor the developer informed the town of this. Upon discovering this information, the town rescinded the capacity reservation in mid-November 2022.

In late-November 2022, a new capacity request was made for a different school for 6,000 gpd. This request is purportedly related to a recent charter school approval for the West Triangle High School. The requested capacity was reserved in January 2023, retroactive to the original request date of November 30, 2022, after the request met the terms of the statute (request must come from school owner). The town has currently reserved capacity of 6,000 gpd subject to any downstream improvements that may be necessary to support the project when it comes online. All capacity reservation letters are attached for reference.

Also in November 2022, a zoning atlas amendment request was made to the county requesting a change from R-1 (rural residential) to Master Plan Development – Conditional District, a much higher density use. The current proposed project is now two charter schools (upper and lower) and recreational facilities (see attached site plan). Only a portion of the site will be served by public sewer services with the rest by proposed septic per the site plan. The town was presented the request to comment upon in accordance with our County/town courtesy review agreement. In addition to the comments to the board in January 2022 and previously made to the applicant in 2021, additional comments (attached) that have been learned and considered over last year were added. These points were also discussed in a call with the County's Development Action Committee team. Key points conveyed or pondered by the staff include:

- The town has not reserved capacity for the proposed lower school, and it has not received any request for such as a charter application has not been submitted or approved by the school authority for a lower charter school in Orange County.
  - The applicant says this will be forthcoming. The new charter school application deadline is at the end of April. Approval of such would not be until December 2023 at the earliest. An accelerated school opening could be requested for FY24. Otherwise, it would be later, if approved at all.
  - "Capacity" is not defined in the statute as only plant capacity despite a comment in the reservation letter exhibit saying so. Capacity should include that at the water and sewer plant, the conveyance pipes, and pumping stations. When we provided the original capacity reservation back for The Expedition School, it was greater than what was requested the second time, so we did grant this. However, we may not have capacity for a second school. Several other projects are in the works such as Collins Ridge, Moren parcel and those anticipated around Waterstone such as full expansion of the hospital and Durham Tech. RTLTP is on the horizon as well. A detailed capacity analysis would need to be performed for additional capacity reservation.
    - The plan proposes septic fields for the recreational facilities, but it is unclear where a well would be provided. Mixing well/septic with public water and sewer on a parcel is unconventional. We have not reserved capacity for anything other than one school of 600 students with no cafeteria or gym.
    - Since reservation of the initial capacity for the high school, other out of town developments have continued to complete their concept plans that have previously been presented to the Board with favorable feedback (i.e., Capkov), that are contiguous and include more town benefit. As above, capacity in the Elizabeth Brady basin is not all realized. The Moren parcel for example is still undergoing development. Already the proposed uses are higher than we anticipated in the sewer modeling.
- The town does not have adequate fire flow to support this project. This means that the school would have to have onsite water storage and a fire system. While it is not in our purview to approve or deny such a

system, we do understand this is not desirable by the Fire Marshal or Fire Chief. The site would need to be placed on the fire department's tanker task force list and concerns have been expressed whether the onsite storage would be available or adequate due to other fire department experiences with onsite storage.

- It's possible that a very large tank would be necessary which may not be a suitable site for a school (if the tank is as large as one of the Town's, for example). There is a worksheet that can be completed to indicate necessary water supply for the site. We intend to request this from the applicant.
- The Fire Marshal has indicated that just putting the site on a tanker task force list alone is not a sole approvable reason.
- There remains concern over a public vs private sewer system and its path through unsewered areas in which the town has no immediate plans to provide sewer service.
- There remains a concern that this site is non-contiguous regarding annexation in an area that the town has not targeted for growth.
  - Although extending water and sewer requires a voluntary request for annexation, it is unclear if annexation is beneficial to the town. Charter schools do not pay property taxes. We are unclear about the ownership entity of the other proposed uses. At this point, annexation does not seem positive for the town because it is not clear about the ownership of the remainder of site and whether any taxes would be paid. NCGS 115C-521 regarding water and sewer services to charter schools indicate no contract for the erection of a school building can be made unless the site is owned in fee simple by the local board of education. The site currently is not owned by a local board of education and this matter is outstanding.
  - If the town granted annexation of this site prior to RTLP (which is expected and desired within five years of its construction), it would exceed its limit to grant a non-contiguous annexation to RTLP. A town's non-contiguous annexation acreage (in total, not just per project) cannot exceed ten percent of the size of the town's existing corporate limits. The RTLP project is a long-standing project where annexation is beneficial to the town.
  - At one point, and as proposed in the draft Comprehensive Sustainability Plan (Plan), staff mentioned to the board about eliminating the eastern service area "leg" from the water and sewer boundary area. The Plan, its draft imminent, will recommend areas to preserve, sustain and grow and suggests a shrunken service boundary.
  - If annexation is not beneficial, there is no need to extend sewer service to the site that would cause additional operation and maintenance needs for the town. Town code indicates the town is not obligated to extend water and sewer to out of town parcels. NCGS 115C-521(i) is unclear whether a reservation of capacity is a willingness to serve regardless of the method of extending public services to the site or related to development details. Staff would want this question answered before it went for final approval to the County.

#### **Financial impacts:**

While the developer will bear the cost of extending water and sewer for the project, if approvable, the project will certainly bring requests for new connections to such infrastructure, especially if the sewer is routed through only a portion of other offsite areas. With the needs and focus on taking care of what we have, the town has not planned and is not financially prepared to extend sewer service to other areas that lie in between this non-contiguous project and current sewer areas, which is within Meadowlands business park.

#### **Staff recommendation and comments:**

All the above notes indicate that staff has significant concerns as to whether this project is supportable or beneficial for the town from a planning and utilities perspective, including lesser points than outlined above (e.g., traffic, connectivity, stormwater). Despite relaying such concerns to the county and applicant, not reserving capacity for one of the proposed schools, and our belief that the rezoning request application lacks significant information, the county has pressed with a neighborhood meeting announcement for Feb. 15 and plans to follow with a public hearing in the coming months.

**Action requested:**

Provide feedback and determine if the Board would like to provide a formal written stance regarding the project for the County's public hearing on the proposed rezoning, which is scheduled for April at the earliest, and such comments will be included in the Board of County Commissioners agenda to decide if the project moves forward.