



Town of Southern Pines
Monday July 25, 2016, 3:00 PM,
Douglass Community Center, 1185 West Pennsylvania Avenue

Worksession Agenda

1. **Continuation of CU-01-16 Conditional Use Permit: Major Subdivision Application for a Multi-Family Residential Development to include 288 Apartments: Petitioner, Caviness & Cates Building and Development Company – Public Hearing Closed**
2. **Correction to Adopted Sewer Rate Ordinance – Adam Lindsay**
3. **CDBG Economic Development Project Amending the Capital Project Ordinance**
4. **Update on the Moore County Neighborhood Cats Southern Pines Project – Angela Zumwalt**
5. **Request to Discuss the Definition of a Family as Defined in the UDO; Petitioner, Town of Southern Pines Planning Department**

Work Session Agenda Item

To: Reagan Parsons, Town Manager

Via: Bart Nuckols, Planning Director

From: Chris Kennedy, Senior Planner

Subject: CU-01-16 Conditional Use Permit: Major Subdivision Application for a Multi-Family Residential Development to include 288 Apartments; Petitioner, Caviness & Cates Building and Development Company

Date: July 25, 2016

CU-01-16 Conditional Use Permit: Major Subdivision Application for a Multi-Family Residential Development to include 288 Apartments; Petitioner, Caviness & Cates Building and Development Company

On behalf of the petitioner Caviness & Cates Building and Development Company, Mr. Bob Koontz of Koontz Jones Design is requesting a development project that will require a Conditional Use Permit application for a multi-family residential development off of US Highway 1 North and NE Service Road. Per Section 4.10.8 of the Unified Development Ordinance, no multi-family development may include more than ten (10) dwelling units except pursuant to a Planned Development or Conditional Use Permit (CUP) approval. The proposed development consists of an apartment project to include two-hundred eighty-eight (288) dwelling units, thereby the proposal will require a CUP. The subject property is comprised of approximately 25.59 acres in the OS (Office Services) and RM-2 (Residential Multi-Family 2) zoning classifications. The property is identified by the following: PIN: 858214321933 (PARID: 00039174); PIN: 858217214672 (PARID: 00032830); and, PIN: 858217213440 (PARID: 00032829). Per the Moore County Tax records, the property owner(s) are listed as MLC Automotive LLC and the Town of Southern Pines.

Town Council Hearings:

The Town Council opened a quasi-judicial public hearing and received evidence from those in attendance regarding Conditional Use Permit application CU-01-16 at the May 10, 2016 Regular Business Meeting of the Town Council. The public hearing was continued to the May 23, 2016 Town Council Work Session, continued again to the June 14, 2016 Regular Business Meeting of the Town Council, and continued again to the July 12, 2016 Regular Business Meeting of the Town Council. Each hearing included presentations and the submittal of evidence from the petitioner and other persons for and against the project. At the July 12, 2016 Regular Business Meeting of the Town Council, after the presentations and the submittal of evidence were completed, the Town Council closed the public hearing. After closing the public hearing, the Town Council did not deliberate nor did the Town Council take any action on the application. The Town Council continued the meeting, not the public hearing, to the July 25, 2016 Town Council Work Session for deliberation and voting purposes.

Staff Comments:

- Any motion related to CU-01-16 should also address the approval, denial, or approval with conditions of Watershed Protection Permit WP-01-16. WP-01-16 does not require a separate public hearing but a formal motion needs to be made related to WP-01-16 in any approval or denial of CU-01-16.
- The proposed right-of-way abandonment for portions of N. Mechanic Street and W. Rhode Island Avenue are to be considered separately from the CU-01-16 application but the Town Council should be advised that CU-01-16 presumes the approval of the abandonment of these portions of right-of-way. As noted in the memorandum for the proposed right-of-way abandonment for portions of N. Mechanic Street and W. Rhode Island Avenue, should CU-01-16 be denied, Town staff would recommend to the Town Council that the proposed right-of-way abandonment also be denied.
- Among the findings of facts the Town Council is required to make with a Conditional Use Permit application, the Town Council shall state the application's compliance with the criteria set forth in UDO Section 2.20.5 (G) and UDO Section 2.21.7.
- Per Section 2.20.5 a Preliminary Plat must satisfy the following criteria: A Sketch Plat shall be required when an Applicant is applying for the subdivision of less than the entire, contiguous land area held in common ownership. *

2.20.5 (G) Criteria for a Preliminary Plat

The application is consistent with the approved Sketch Plat, if applicable. *Not applicable in this request

- (1) *The application is consistent with the approved Sketch Plat, if applicable.*
 - (2) *The application is consistent with the Comprehensive Plan, as well as any other adopted plans for streets, alleys, parks, playgrounds, and public utility facilities;*
 - (3) *The proposed subdivision complies with the UDO and applicable state and federal regulations;*
 - (4) *The proposed subdivision, including its Lot sizes, density, access, and circulation, is compatible with the existing and/or permissible zoning and future land use of adjacent property;*
 - (5) *The proposed subdivision will not have detrimental impacts on the safety or viability of permitted uses on adjacent properties; and*
 - (6) *The proposed public facilities are adequate to serve the normal and emergency demands of the proposed Development, and to provide for the efficient and timely extension to serve future Development.*
- Per Section 2.21.7 an Application for a Conditional Use Permit must satisfy the following criteria:

2.21.7 Criteria for a Conditional Use Permit

A Conditional Use is permitted only if the Applicant demonstrates that:

- (A) *The proposed conditional use shall comply with all regulations of the applicable zoning district and any applicable supplemental use regulations;*
- (B) *The proposed conditional use shall conform to the character of the neighborhood in which it is located and not injure the use and enjoyment of property in the immediate vicinity for the purposes already permitted;*
- (C) *Adequate public facilities shall be provided as set forth herein;*

- (D) *The proposed use shall not impede the orderly Development and improvement of surrounding property for uses permitted within the zoning district or substantially diminish or impair the property values within the neighborhood;*
- (E) *The establishment, maintenance, or operation of the proposed use shall not be detrimental to or endanger the public health, safety, comfort or general welfare; and,*
- (F) *The public interest and welfare supporting the proposed use shall be sufficient to outweigh individual interests that are adversely affected by the establishment of the proposed use.*

Attachments:

- GIS Vicinity Map
- Conceptual Plan
- Preliminary Plat
- CU-01-16 Exhibit List

Town Council Actions:

To either approve or deny the *Preliminary Plat*, the Town Council must make findings of fact and conclusions to the applicable standards. The Town Council shall first vote on whether the application is complete and whether the facts presented are relevant to the case. The Town Council shall then vote on whether the application complies with the criteria as set forth in Section 2.20.5(G) Criteria for a Preliminary Plat, Criteria 1-6. The Town Council may choose one of the following motions or any alternative they wish:

Finding of Fact #1

- 1) I move that as a finding of fact that the application is complete and that the facts submitted are relevant to the case, in that....

Or

- 2) I move that as a finding of fact the application is incomplete and/or that the facts submitted are not relevant to the case, in that.....

Finding of Fact #2

- 1) I move that as a finding of fact the application complies with Section 2.20.5(G) Criteria for a Preliminary Plat, Criteria 1-6, in that....

Or

- 2) I move that as a finding of fact the application does not comply with Section 2.20.5(G) Criteria for a Preliminary Plat, Criteria 1-6, in that....

The Town Council shall vote on whether the proposed *Preliminary Plat* is consistent with the *Comprehensive Long Range Plan* that has been adopted and any other officially adopted plan that is applicable. The Town Council could make one of the following motions for recommendations or any alternative they wish:

I move that:

1. The proposed *Preliminary Plat* is consistent with those documents that constitute the officially adopted land development plan and other applicable plans; or
2. The proposed *Preliminary Plat* is not consistent with those documents that constitute the officially adopted land development plan or other applicable plans, in that

I move to:

1. Approve the Preliminary Plat;
2. Deny the Preliminary Plat; OR
3. Approve the Preliminary Plat with the following additional conditions...

To either approve or deny a ***Conditional Use Permit*** application, the Town Council must make findings of fact and conclusions to the applicable standards. The Town Council shall first vote on whether the application is complete and whether the facts presented are relevant to the case. The Town Council shall then vote on whether the application complies with the criteria as set forth in Section 2.21.7 Criteria for a Conditional Use Permit, Criteria A-F. The Town Council may choose one of the following motions or any alternative they wish:

Finding of Fact #1

- 1) I move that as a finding of fact that the application is complete and that the facts submitted are relevant to the case.

Or

- 2) I move that as a finding of fact the application is incomplete and/or that the facts submitted are not relevant to the case, in that.....

Finding of Fact #2

- 1) I move that as a finding of fact the application complies with Section 2.21.7 Criteria for a Conditional Use Permit, Criteria A-F.

Or

- 2) I move that as a finding of fact the application does not comply with Section 2.21.7 Criteria for a Conditional Use Permit, Criteria A-F, in that....

The Town Council shall vote on whether the proposed ***Conditional Use Permit*** application is consistent with the ***Comprehensive Long Range Plan*** that has been adopted and any other officially adopted plan that is applicable. The Town Council could make one of the following motions for recommendations or any alternative they wish:

I move that:

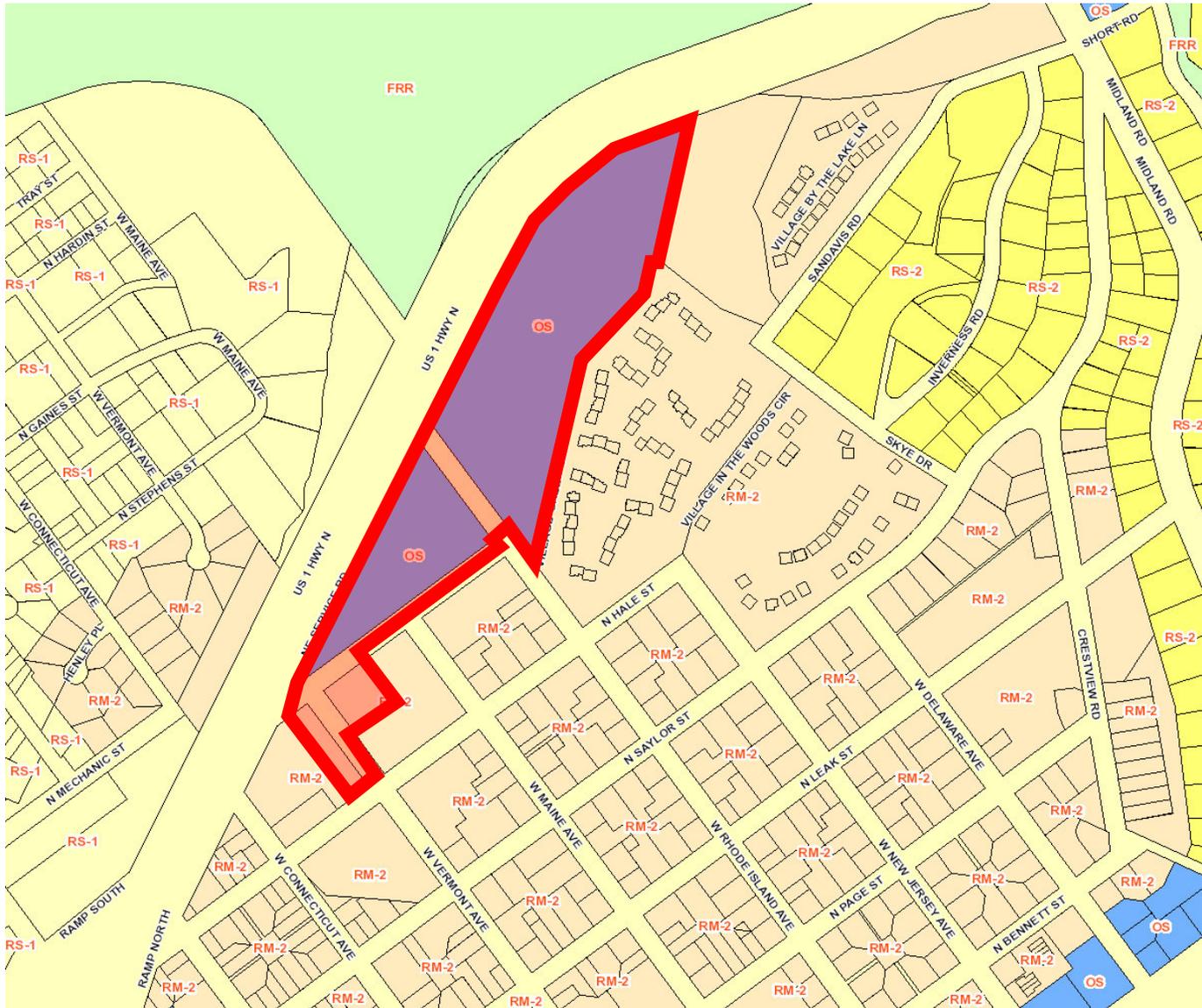
1. The proposed *Conditional Use Application* is consistent with those documents that constitute the officially adopted land development plan and other applicable plans; or
2. The proposed *Conditional Use Application* is not consistent with the documents that constitute the officially adopted land development plan or other applicable plans, in that

I move to:

1. Approve CU-01-16
2. Deny CU-01-16; OR
3. Approve CU-01-16 with the following additional conditions...

CU-01-16 – Proposed Multi-Family Development

This map was created by the Town of Southern Pines Planning Department. The Town of Southern Pines, its agents and employees make NO warranty as to the correctness or accuracy of the information set forth on this media whether expressed or implied, in fact or in law, including without limitation the implied warranties of merchantability and fitness for a particular use. Any resale of this data is strictly prohibited in accordance with North Carolina General Statute 132-10. Grid is based on North Carolina State Plane Coordinate System NAD83 (feet).



Conceptual Plan



CU-01-16 Exhibit List

- A. CUP Permit paperwork and 5/70 watershed tally sheet
- B. Criteria for the Preliminary Plat
- C. Explanation of compliance with CLRP
- D. The applicant's version of how they comply with the standards of the UDO
- E. Page 4-71 of the UDO
- F. Page 4-72 of the UDO
- G. US Department of the Interior Fish and Wildlife Service Letter
- H. Southern Pines Site Draft Apartment Market Analysis
- I. Bob Koontz slide presentation
- J. Chris Smithson slide presentation
- K. Letter from Luba Cehelska
- L. Proposed and Existing Sidewalks from Chris Kennedy
- M. Development Comparison Information
- N. MLC Automotive/Leith Tract Timeline
- O. Sale of Town Parcels 32829 and 32830 Timeline
- P. CU-01-16 Potential Public Services Impacts
- Q. Department of Public Works letter of response from Town Engineer Brent Lockamy
- R. Expert Witness backgrounds submitted by Mr. Reaves
- S. Neighborhood Meeting Report dated July 7, 2016 (location Bradford Village) submitted by Bob Koontz
- T.
 - 1. US 1 Residential Development TIA – Kimley-Horn
 - 2. Site Location handout – Kimley-Horn
- U. US Highway 1 Property Project Justification-Bob Koontz
- V. US 1 Property Handout – Bob Koontz
- W. Southern Pines Comprehensive Long-Range Plan Figure 4.6-Future Land Use Map – T.C. Morphis
- X. Regular Business Meeting Minutes of the Town of Southern Pines Town Council – July 12, 2016 typed testimony of Rick Fumea
- Y. Secondary Health data submitted by Graven Powers
- Z. Special Use Permits in NC Zoning – Greg Zywockinski
 - 1. Letter from Lt. Col. Allan Feek read into the record by Sarah Jane Harmon
 - 2. Southern Pines Conditional Use Permit RLUAC – Sarah Jane Harmon

Peggy,

Please let this serve as the communication to Council for the 7/25/16 Work Session.

On June 14, 2016 Council adopted an Ordinance amendment for Sewer rate changes to take effect in FY 16-17. This action was taken following discussion during the budget review period based on the 2% increase from Moore County to the Town which the Town, in turn, passed along. Everything else in the amendment including the table of Sewer Rates was correct with exception of the 4" In Town rate which was mistakenly keyed as \$50.60 instead of the correct \$51.60. Up until that time Council had seen the same table with the correct rates. Human error led to the mistake and we ask Council to **make and approve a motion to correct the June 14, 2016 adopted Amendment to Chapter 50, Water and Sewer Use, Appendix: Rates, Fees and Charges by allowing staff to simply replace the table in the adopted Ordinance amendment with the correct, and previously reviewed, version.**

There are very few 4" water meters (which is how the sewer rate is determined) so this rate applies to very few consumers.

Adam Lindsay

Assistant Town Manager

Town of Southern Pines

(910) 692-1983

www.southernpines.net

**AMENDMENT TO CHAPTER 50, WATER AND SEWER USE,
APPENDIX: RATES, FEES AND CHARGES
CODE OF ORDINANCES
TOWN OF SOUTHERN PINES**

BE IT ORDAINED by the Town Council of the Town of Southern Pines, North Carolina, in regular session assembled this **14** day of **June**, 2016 that Chapter 50, Water and Sewer Use, Appendix: Rates, Fees and Charges of the Code of Ordinances be amended as follows:

1. Change APPENDIX A: RATES, FEES AND CHARGES to adjusted fees as follows:

Section (B)(1)

- | | |
|---|---------|
| (a) To property within the town limits | \$5.24 |
| (b) To property outside the town limits | \$10.48 |

Section (B)(3) Table

Sewer Rates (no volume)	Fee	
	In Town	Out of Town
Meter Size		
3/4"	\$4.48	\$8.96
1"	\$5.84	\$11.68
1-1/2"	\$9.64	\$19.28
2"	\$15.00	\$30.00
3"	\$30.26	\$60.52
4"	\$51.60	\$103.20
6"	\$112.68	\$225.36
8"	\$198.16	\$396.32
Cost per 1000 gallons	\$5.24	\$10.48

This amendment shall become effective with the first full billing period after July 1, 2016.

Adopted this 14th day of June, 2016.

I certify that this ordinance was adopted by the Town Council of the Town of Southern Pines at its meeting of June, 14, 2016, as shown in the minutes of the Town Council for that date.

Clerk of the Town of Southern Pines

TOWN OF SOUTHERN PINES
CDBG ECONOMIC DEVELOPMENT PROJECT
AMENDING THE CAPITAL PROJECT ORDINANCE

BE IT ORDAINED, by the Town of Southern Pines Town Council, that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby amended:

Section 1: The project authorized includes public roadway improvements to serve the new Tyr Tactical facility in Southern Pines, North Carolina to be financed with grant funds from the NC Department of Commerce (CDBG Economic Development Grant) and local funds by the Town of Southern Pines.

Section 2: The officers of this unit are hereby directed to proceed with the capital project within the terms of the grant documents and the budget contained herein.

Section 3: The following additional amount is appropriated for the project:

Roadway	<u>\$107,915</u>
Total Additional Project Appropriation	<u>\$107,915</u>

Section 4: The following additional revenue is anticipated to be available to complete this project:

Developer's Contributions	<u>\$107,915</u>
Total Additional Project Revenue	<u>\$107,915</u>

Section 5: Copies of this capital project ordinance shall be furnished to the clerk to the Governing Board, and to the Finance Director for direction in carrying out this project.

I certify that this ordinance was adopted by the Town Council of the Town of Southern Pines at its meeting of March 10, 2015 as shown in the minutes of the Town Council for that date.

Peggy K. Smith, Town Clerk

Thank you Angela. I will place this request in the file and plan on seeing both of you on the 25th. Have a good evening.

Reagan

From: Angela Zumwalt [<mailto:angelazumwalt@earthlink.net>]

Sent: Tuesday, June 21, 2016 3:40 PM

To: Reagan Parsons

Cc: Tom Daniel

Subject: Confirming Moore County Neighborhood Cats SP project update on July 25th.

Hi, Reagan!

Tom and I have texted back and forth.

Just confirming that we will be at the Southern Pines Town Council Work Session at 3pm on **July 25th** to present an update on the Moore County Neighborhood Cats Southern Pines Project.

Thank you for your support and consideration.

Angela

Work Session Agenda Item

To: Reagan Parsons, Town Manager
Via: Bart Nuckols, Planning Director
From: Chris Kennedy, Senior Planner
Subject: Request to Discuss the Definition of a Family as Defined in the UDO; Petitioner, Town of Southern Pines Planning Department
Date: July 25, 2016

At the June Town Council Work Session, staff brought to the attention of the Town Council a request to revise the definition of family as currently defined in Chapter 9 of the Unified Development Ordinance (UDO). Family is defined in definition 33 of the UDO Chapter 9 as follows:

(33) Family: One or more persons living together as a single housekeeping unit.

After last month's Town Council Work Session discussion, the Town Council directed staff to research alternative language to be ultimately brought before the Planning Board and the Town Council utilizing the Ordinance Amendment application procedures in the UDO. Before an official application is filed, the Planning Department staff would like to discuss with the Town Council the options available for a revised definition. Staff has coordinated with our UDO consultant, Mr. Michael Lauer of Michael Lauer Planning to present some of the options and alternatives for crafting the language (see attached for memorandum from Michael Lauer Planning).

Attachments:

- Memo from Michael Lauer Planning

The Town Council may wish to take one of the following actions:

1. No action;
2. Allow the Planning Department staff to draft a proposed definition based upon the Town Council's direction and bring an application to the Planning Board and Town Council through the required Ordinance Amendment application processes as outlined in the Town of Southern Pines Unified Development Ordinance;
3. An action listed above with the following conditions...
4. Action not listed above...

Memo

To: Bart Nuckols
From: Michael Lauer
Date: July 19, 2016
Re: Housing Occupancy

This memo responds to your inquiry about alternative ways to address housing occupancy. Housing occupancy is addressed in a variety of ways to address distinct problems. The building code limits occupancy in residential and non-residential structures from a public health and safety perspective. In the past, some jurisdictions have used zoning ordinances to address morality concerns about unrelated people living together, but few jurisdictions retain these provisions due to the myriad of legitimate living arrangements in today's world. Occupancy limits in zoning ordinances today primarily target two circumstances:

1. To limit de facto boarding houses for lower income employees. These are not uncommon in communities that have low wage, low skill manufacturing jobs and/or large numbers of undocumented workers and a shortage of affordable housing options.
2. To limit occupancy of students in college towns. This is a problem where students outcompete the local workforce for affordable housing (e.g., 4-6 students typically can afford to pay more rent than a single parent or a household living off lower end service sector jobs. Students often create nuisances associated with young adults whose priorities and lifestyles are not consistent with those of their neighbors (e.g., hours of activity, noise, parking ...).

Building Codes. Most jurisdictions have adopted building codes that limit the number of residents in a dwelling based on the floor area of that dwelling. These numbers typically allow for greater occupancy than most people tolerate, so these codes are seldom invoked for situations other than houses that temporarily accommodate undocumented workers.

Limiting Family Size. A common strategy for each of the above situations is to adopt zoning limitations establishing the maximum number of unrelated individuals. These ordinances typically place no limit on the number of related individuals, but specify that no more than 3-5 unrelated individuals may live in the same household. Using this approach, the ordinance should define who is related. Most ordinances are limited to specifying relatives by blood or marriage, but some address foster children and other custodial relationships.

The greatest difficulty with this approach is enforcement. The code enforcement official must first make a determination of who is living in the dwelling. How should residents be counted when at least some residents are not present during normal working hours when investigations take place? Few leases specifically identify all tenants; most are signed by an individual who bears responsibility for rent payment. Is the partner who sleeps over most nights a resident or not? How long must a

visiting friend stay before transitioning from guest to resident? Once determining who is a resident, there is the question of ascertaining who is related. In most cases, it's relatively easy to determine who the owner or leaseholder is, but once this is accomplished, the code enforcement official is limited in the tools available to determine whether there are familial relationships between the owner/leaseholder and other residents.

Even if the code enforcement official is able to effectively count residents and determine that they meet the definition of a family, this strategy doesn't specifically address neighborhood concerns. A large family may be just as noisy, have just as many cars and create as much disturbance to the neighbors as a group of unrelated individuals.

Addressing Nuisances. A second, and not necessarily mutually exclusive approach is to address the negative impacts of excessive occupancy. Southern Pines has ordinance addressing a variety of nuisances, including parking in the front yard, excessive noise, junk and other impacts that typically disturb neighbors.

Nuisance ordinances offer several advantages over reliance on the number of related individuals in a dwelling. First, because they are enforced by the police, they can readily be applied during non-business hours when the code enforcement official is not working and the impacts are more likely to be evident. Second, by focusing on the impacts of the residents rather than the residents, this approach is more equitable to alternative living arrangements that may be compatible with single-family neighborhoods. Third, this approach more effectively mitigates the problems associated with excessive occupancy that are of greatest interest to the health, safety and welfare of the neighborhood.

Existing Provisions: The Town currently defines family as "*one or more persons living together as a single housekeeping unit.*" The term housekeeping unit is not defined, which means that the Planning Director or his designee must make the determination of what constitutes a housekeeping unit. This determination would need to be based on factors such as cooking, eating, cleaning, maintenance and other household practices, which are difficult to narrowly define. Rooming house and boarding house are separately defined as residential units where rooms are rented individually for short and long-term occupancy respectively.

Recommendations:

Since Southern Pines is not particularly vulnerable to issues associated with an excess of student housing or transient lodging of undocumented workers, there is little need to adopt limitations on household size based on the relationships of the occupants. Given the aging and incomes of the population, and the large size of some of the houses in Southern Pines, the Town is more likely to experience small groups of unrelated adults living together (e.g., two unmarried senior couples or an unmarried senior couple and a caretaker couple). There is a possibility that servicemen from Fort Bragg may live together in small groups, but Southern Pines lacks the cultural offerings that the rowdier servicemen are likely to seek. For these reasons, I recommend that the Town keep its current definition of family, which provides greater flexibility for alternative living arrangements and continue to rely on enforcement of nuisance laws to address problems between neighbors.

While I believe that the lack of a specificity of the term housekeeping unit provides greater leeway for the Town to evaluate circumstances on a case-by-case basis, if the Council wishes to define housekeeping unit, I suggest that the definition consider the following:

Housekeeping unit. *One or more people who share a single lease agreement or own a property together and have established ties and familiarity with each other. In making the determination, the Planning Director shall consider the following factors:*

- *The presence of on locks or deadbolts on any interior doors of the house;*
- *Changes in the residents over any 12-month period;*
- *Whether residents use different addresses for voter or other legal registration;*
- *Cooking and eating practices;*
- *Household maintenance and financial responsibilities; and*
- *Whether the unit is used for temporary, seasonal, convenient or economic reasons.*

I do not recommend that the Town incorporate the concept of related individuals in the definition of family, but if the Council wishes to do so, I suggest adding the following definitions:

Family. *One or more people living together as a single housekeeping unit, provided that no more than four (4) individuals who are not related are considered a family unless otherwise permitted by this UDO.*

Related People: *Related individuals include people who are related by blood, are married to each other or are in a substantially similar relationship, and children under their care.*