

**MINUTES
PLANNING BOARD
OCTOBER 7, 2015
REGULAR MEETING**

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MEMBERS PRESENT: Peter Hallenbeck (Chair), Cheeks Township Representative; Lydia Wegman-At-Large Chapel Hill Township (Vice Chair); Tony Blake, Bingham Township Representative; Paul Guthrie, At-Large Chapel Hill Township; Buddy Hartley, Little River Township Representative; Laura Nicholson, Eno Township Representative; Lisa Stuckey, Chapel Hill Township Representative; Maxecine Mitchell, At-Large Bingham Township; Herman Staats, At-Large, Cedar Grove Township; James Lea, Cedar Grove Township Representative; Andrea Rohrbacher, At-Large Chapel Hill Township;

MEMBERS ABSENT: None

STAFF PRESENT: Craig Benedict, Planning Director; Michael Harvey, Current Planning Supervisor; Perdita Holtz, Planning Systems Coordinator; Ashley Moncado, Special Projects Planner; Patrick Mallett, Planner II;

OTHERS PRESENT: Phil Koch, PE Earth Centric Engineering, Inc.; Tom Heffner, Developer Heffner Properties, Inc.;

AGENDA ITEM 1: CALL TO ORDER

AGENDA ITEM 2: INFORMATIONAL ITEMS

- a) Planning Calendar for October and November

AGENDA ITEM 3: APPROVAL OF MINUTES

- a) September 2, 2015 ORC Notes
- b) September 2, 2015 Regular Meeting

MOTION by Lisa Stuckey to approve the notes. Seconded by Tony Blake.

VOTE: UNANIMOUS

MOTION by Tony Blake to approve the minutes. Seconded by Lisa Stuckey.

VOTE: UNANIMOUS

AGENDA ITEM 4: CONSIDERATION OF ADDITIONS TO AGENDA

No changes to the agenda.

AGENDA ITEM 5: PUBLIC CHARGE

Introduction to the Public Charge

The Board of County Commissioners, under the authority of North Carolina General Statute, appoints the Orange County Planning Board (OCPB) to uphold the written land development laws of the County. The general purpose of OCPB is to guide and accomplish coordinated and harmonious development. OCPB shall do so in a manner which considers the present and future needs of its residents and business through efficient and responsive process that contributes to and promotes the health, safety, and welfare of the overall County. The OCPB will make every effort to uphold a vision of responsive governance and quality public services during our deliberations, decision, and recommendations.

Public Charge

53 The Planning Board pledges to the residents of Orange County its respect. The Board
54 asks its residents to conduct themselves in a respectful, courteous manner, both with the
55 Board and with fellow residents. At any time, should any member of the Board or any
56 resident fail to observe this public charge, the Chair will ask the offending member to
57 leave the meeting until that individual regains personal control. Should decorum fail to be
58 restored, the Chair will recess the meeting until such time that a genuine commitment to
59 this public charge is observed.
60

61 **AGENDA ITEM 6: CHAIR COMMENTS**

62
63 None
64

65 **AGENDA ITEM 7:** ZONING ATLAS AMENDMENT – To make a recommendation on a request to rezone an
66 approximately 9 acre parcel of property located at 4915 Hillsborough Road within the Eno
67 Township from Economic Development Eno Lower Intensity (EDE-1), Economic
68 Development Eno Higher Intensity (EDE-2), Lower Eno Protected Watershed Protection
69 Overlay District, and Major Transportation Corridor (MTC) Overlay District to Economic
70 Development Eno Higher Intensity (EDE-2), Lower Eno Protected Watershed Protection
71 Overlay District, and Major Transportation Corridor (MTC) Overlay District. This item was
72 heard at the September 8, 2015 quarterly public hearing.
73

74 **Presenter:** Michael Harvey, Current Planning Supervisor
75

76 Michael Harvey reviewed the abstract.
77

78 Michael Harvey: There were no comments made at the public hearing by the public. We have provided, on pages 13
79 and 14 of the abstract, answers to the two questions asked at the public hearing concerning land use buffers and site
80 plan approval. The Planning Director is recommending approval of the statement of consistency enclosed in
81 Attachment 2 and the ordinance amending the zoning atlas in Attachment 3. We are asking you to make a
82 recommendation on this petition which will be presented to the BOCC at their November 5 meeting.
83

84 Pete Hallenbeck: We have a statement of consistency to vote on. Do I have any motions to approve the statement of
85 consistency?
86

87 **MOTION** made by Tony Blake to recommend approval of the statement of consistency. Buddy Hartley seconded.

88 **VOTE:** Unanimous
89

90 **MOTION** made by James Lea to approve the ordinance of approval. Herman Staats seconded.

91 **VOTE:** Unanimous
92

93 **AGENDA ITEM 8: MAJOR SUBDIVISION PRELIMINARY PLAT:** To review and make a recommendation on a
94 Major Subdivision Preliminary Plat, Henderson Woods, located at the intersection on Erwin
95 Road and Whitfield Road in Chapel Hill Township. The Plat is consistent with the Concept
96 Plan Flexible Design Option reviewed and approved by the Planning Board in June 2015
97 The Plat shows 19 single-family residential lots on a 48 acre parcel of property with 21.51
98 acres (44.9% of the site) held in common open space.
99

100 **Presenter:** Patrick Mallett, Planner II
101

102 Patrick Mallett reviewed the abstract and presentation.
103

104 Tony Blake: On page 34, is that table looking at the perc sites on those lots?
105

106 Patrick Mallett: Yes the septic systems will all be contained on the lots; the wells may or may not. The goal is to have
107 every lot have an onsite septic and well. There are a few situations where that may not be the case.

108
109 Maxecine Mitchell: Will the access road from Erwin Road remain private? And will the landowners be able to use it?

110
111 Patrick Mallett: The access road is private and has access agreements with the existing property owners. The
112 easement will continue as it is currently aligned with the gravel road and will become a paved road with a gate that
113 will allow access for the property owners to continue use.

114
115 Lydia Wegman: Is there any comments from the neighbors we should be aware of?

116
117 Patrick Mallett: They have been resolved or were general questions regarding the nature of the request such as lot
118 size, density, rural buffer, and how does a cluster neighborhood work. There was one resident that had questions
119 about environmental sensitive areas so the applicant got the wetlands flagged and surveyed. The applicant is going
120 through the process for the wetlands permit with the state.

121
122 Paul Guthrie: I want to come back to septic and well. Looking at the preliminary sketch and the septic field areas and
123 wells, is everyone comfortable with the nature of the property and that there is sufficient separation to not overload
124 the groundwater areas around the wells?

125
126 Patrick Mallett: Based on the applicant's experience they are familiar with the soils in the area and lay of the land.
127 There has been enough due diligence to figure out where to have the well sites and the available suitable soils for the
128 septic.

129
130 Paul Guthrie: I assume that with the areas drawn on the site plan that there is sufficient area for a single family septic
131 system?

132
133 Patrick Mallett: Yes, for the system and repair.

134
135 Paul Guthrie: You said the pond is pretty shallow which suggests to me there is not such pristine water. I was
136 wondering if that was thought about in terms of the overall plan?

137
138 Patrick Mallett: The pond is shallow because of sedimentation. I would say the waters are pretty clear. Environmental
139 Health has their rules and regulations that will have to be met.

140
141 Pete Hallenbeck: The key concept here is that Environmental Health has looked at this and they are happy with the
142 well positions.

143
144 Patrick Mallett: Yes, they have.

145
146 James Lea: How many homes will share wells?

147
148 Patrick Mallett: Environmental Health limits you to two.

149
150 James Lea: What happens when we have a drought when you are sharing one well?

151
152 Tom Heffner: Typically the deep wells put in subdivisions today are not affected by droughts. They are deep enough
153 to provide an adequate flow. On any lot that has shared wells I would go ahead and drill the well before we sell the lot
154 to determine the capacity of the well. The last thing we would want to happen is to sell someone a lot and they don't
155 have water on it.

156
157 Tony Blake: Is there a well to be capped and a septic system to be abandoned?

158

159 Tom Heffner: Correct. The septic has already been abandoned and the well will be capped. Both of these are from an
160 existing home which will need to be removed.

161
162 **MOTION** made by Buddy Hartley to recommend approval of the preliminary plat. Lisa Stuckey seconded.

163 **VOTE:** Unanimous

164
165 **AGENDA ITEM 9:** **UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENT** - To make a recommendation
166 on government-initiated amendments to the text of the UDO to revise the existing public
167 hearing process for Comprehensive Plan-, UDO-, and Zoning Atlas-related
168 items/amendments. This item was heard at the September 8, 2015 quarterly public
169 hearing.

170
171 **Presenter:** Perdita Holtz, Planning Systems Coordinator

172
173 Perdita Holtz reviewed the abstract.

174
175 Perdita Holtz: As a result of questions asked at the public hearing by the BOCC and Planning Board there have been
176 a couple of changes made to the version presented at the public hearing. These changes are shown in orange text in
177 the agenda package.

178
179 Paul Guthrie: How are you going to legally document that you have mailed the notices?

180
181 Perdita Holtz: The person that does the mailings in the department does a certification of mailing. State statutes do
182 not require certified mail.

183
184 Perdita Holtz: The BOCC asked for the Planning Board to provide input on whether you think a quorum of Planning
185 Board members is necessary to hold a public hearing or if the proposal should stay as it is stating the Planning Board
186 is expected to attend the quarterly public hearing, but a quorum is not necessary in order to have the public hearing.

187
188 Pete Hallenbeck: What does everyone think about whether or not Planning Board members should be required to
189 attend? I am inclined to go around the room and allow everyone to comment.

190
191 Laura Nicholson: A quorum is important.

192
193 Pete Hallenbeck: When you say a quorum is important, that means you do want it to be a joint meeting where the
194 Planning Board members are required to be there and therefore you have to have a quorum.

195
196 Laura Nicholson: That is my opinion. I think if you have that and make it clear then it should not be a problem.

197
198 Maxecine Mitchell: I am sort of leaning both ways, but I feel sometimes rushed to make it to a meeting in order to not
199 hold it up or be the reason the meeting can't go forward. I would still come to the meetings because I agree they are
200 important for us to make decisions.

201
202 Buddy Hartley: I don't think a quorum is necessary.

203
204 Paul Guthrie: I'm torn. The quorum is probably a good idea for the educational benefit for this group. The reason I
205 support a quorum is because we need to be engaged in some of the items that come through. My other thought is we
206 need a better idea defining what a quorum is. If four people were legitimately ill, this could set back a whole process
207 for months. I would support a quorum, but would like some discussion with legal counsel how you calculate the
208 quorum if some event occurs.

209
210 James Lea: I personally do not think a quorum is necessary.

211

212 Herman Staats: I think documents can be written to indicate Planning Board members are expected to be there
213 without legally requiring a quorum. I think a quorum is not needed, but members are expected to be there.
214

215 Lisa Stuckey: I completely agree with Herman and I would direct our attention to page 97 of the materials where we
216 have our date, time, and location of regular meetings and Section 4 on page 96. I think quarterly public hearings
217 should be added as a section on page 96 and it be stated Planning Board members are encouraged to attend, but
218 not required.
219

220 Tony Blake: I agree with Laura. I think it should be a requirement if we are going to be bound by quasi-judicial
221 testimony and provide input to the decision makers then we should attend the meeting.
222

223 Andrea Rohrbacher: I feel that the Planning Board members are expected to attend, but I do not want to hold us to a
224 quorum. Part of that is based on Commissioner Jacobs saying that as long as you have a quorum at the start of the
225 meeting you are okay. I brought up the point that sometimes the meetings go on extremely long and people have to
226 leave due to other obligations and the County Attorney stated you can't take a vote if someone leaves if you require a
227 quorum. I do not want to see us in that position. I also think it's difficult for staff because we have had quorum
228 problems in the past. Should be expected to attend, but a quorum does not have to be present to hold the public
229 hearing.
230

231 Lydia Wegman: I support requiring a quorum, but that is linked to my view that I prefer having the Planning Board
232 make its recommendation after the Public Hearing. I still do not like having the Planning Board make its
233 recommendation before the public hearing. If the outcome is that the Planning Board makes its recommendation
234 before the public hearing then I am comfortable going with expected to attend not required to attend.
235

236 Pete Hallenbeck: My view is that I do not want to have a quorum because in the past there have been too many
237 times that the meeting was held up. I like the change requiring at least the chair or vice chair attend the public
238 hearing. I agree with the concept we should encourage members to come and put something in the policies and
239 procedures that members are required to attend at least two quarterly public hearings a year or be dismissed in order
240 to make it clear what their expectation is.
241

242 Pete Hallenbeck: Let's move on and deliberate on the amendments. I will open the floor to any comments anyone
243 has.
244

245 Laura Nicholson: I wanted to be clear about the mailings. Will it still be certified with 500 feet and regular mail for the
246 500 to 1000 feet?
247

248 Perdita Holtz: We are suggesting everyone get regular mail. Having to separate mailing list may be confusing in the
249 future.
250

251 Lydia Wegman: I am comfortable with first class mail, but would it be possible to put on the outside of the envelope
252 notice of public hearing so people are aware they are getting a notice from the county.
253

254 Pete Hallenbeck: Signs will still go up?
255

256 Perdita Holtz: Yes.
257

258 Lydia Wegman: I continue to be concerned about having the Planning Board make its recommendation before the
259 BOCC meeting. I think the recommendation should be made following the hearing so that the Planning Board can
260 hear all the evidence before making a recommendation.
261

262 Tony Blake: The thing that resonated with me was the intent to give the public the last word. It's difficult for us to go
263 after the public hearing and still have the public give the last word. But I share your concern that we are making a
264 recommendation before we have heard all the evidence.

265
266 Herman Staats: If I remember at our joint meeting the BOCC was saying that if there was a case that came up and
267 there was a lot of discussion or disagreement they had the opportunity to send it back to us for more discussion.
268
269 Perdita Holtz: The BOCC does have the discretion to send legislative items back to the Planning Board as needed.
270
271 Herman Staats: Is it possible that our recommendation to the BOCC was that we would like to defer our
272 recommendation to after the public hearing?
273
274 Perdita Holtz: Depending on what the recommendation is. The recommendation can be for the Planning Board to be
275 given an extended amount of time to consider the manner, but you can't say you have to send it back to us.
276
277 Pete Hallenbeck: Are there any other items in the proposal that people would like to discuss? If there aren't then the
278 next step here is to make a recommendation on the statement of consistency.
279
280 **MOTION** made by Lisa Stuckey to recommend approval of the statement of consistency. Buddy Hartley seconded.
281 **VOTE:** 9 – 2 (Tony Blake and Lydia Wegman opposed)
282
283 Tony Blake: If we are going to be part of the process and bound by the rules of quasi-judicial and ex parte
284 communication then we should be required to attend and that is the part that I find inconsistent.
285
286 Lydia Wegman: I feel that the Planning Board should be making its recommendation following the public hearing
287 because I am concerned with the Planning Board not hearing all the evidence that will go before the BOCC. I am
288 pleased to know the BOCC has the discretion to send something back to the Planning Board. In my perspective I
289 would prefer to have the guarantee for the opportunity of the Planning Board to consider an item after the public
290 hearing when I am confident all the evidence has been presented whereas I do not feel confident that is the case if
291 the Planning Board makes its recommendation prior to the BOCC meeting. Consistent with that my preference would
292 be if we continued to make our recommendation after the County Commissioners meeting that a quorum should be
293 required or the Board attest to hearing the BOCC public hearing so there is certification that the Planning Board is
294 knowledgeable about the evidence presented. The idea of having a preliminary Planning Board recommendation and
295 a subsequent or final Planning Board recommendation following the BOCC meeting is also one that makes sense to
296 me.
297
298 **MOTION** made by Lisa Stuckey to approve the amendment package on pages 62 to 98 with amendments to page 92
299 regarding the expectations of Planning Board members regarding the quarterly public hearing and adding notice of
300 the public hearing to the outside of the mailing envelopes. James Lea seconded.
301 **VOTE:** 9 – 2 (Tony Blake and Lydia Wegman opposed)
302
303 Tony Blake: Same reasons, I believe it should be a requirement to be at the quarterly public hearing if we are bound
304 by the process.
305
306 Lydia Wegman: Same concerns I expressed previously.
307
308 **AGENDA ITEM 10:** **UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENT** - To make a recommendation
309 on government-initiated amendments to the text of the UDO regarding recreational land
310 uses, including shooting ranges. This item was heard at the September 8, 2015 quarterly
311 public hearing.
312
313 **Presenter:** Michael Harvey, Current Planning Supervisor
314
315 Michael Harvey reviewed the abstract.
316

317 Michael Harvey: We have a standard in here that stipulates a discharged shell be directed into a backstop which
318 would consist of concrete, steel, wood, or combination. The concern is can any consideration be given to a property
319 owner who locates a shooting area in low lying area and takes advantage of topography to reduce to scope of
320 backstop. Since topography can be altered I am worried about relying on that as a means of guaranteeing a
321 reasonable backstop.

322
323 Herman Staats: I have a shooting range on my property with an earth backstop. The shooting range I have built on
324 my property does not meet the definition of suitable. I believe it is safe and I think some consideration should be
325 given to these other factors despite my own personal range. The other issue I have is that concrete and steel are not
326 ideal for a backstop if you have ricochet issues and there needs to be some consideration for that as well. Lastly, this
327 broadly specifies shooting activities and does not address shooting clay pigeons in the air.

328
329 Tony Blake: I agree. Steel is very dangerous.

330
331 Michael Harvey: What I am hearing from comments is if we could reconfigure the back stop standards and provide
332 distinction for skeet shooting?

333
334 Buddy Hartley: I think the earth backstop is obviously your best option.

335
336 Tony Blake: The Sherriff's letter seems to indicate that he has standards for backstops and for safe shooting and I
337 was wondering if it would be a good idea to coordinate with the Sheriff's Department.

338
339 Michael Harvey: The Sheriff does not have ordinance for stablishing regulations for a backstop. What they do is go
340 out and make a determination if the activity is safe, but they do not have specific standards. The Sherriff has
341 reviewed this. Also I would like to remind the Board the proposed text amendment indicates target shooting activities
342 are governed by the Ordinance. I would interpret that to mean skeet shooting as well.

343
344 Lisa Stuckey: Are there any state laws on this?

345
346 Michael Harvey: There are state laws, but they do not get specific to the construction of a backstop. There is
347 nebulous language in the general statutes, but not definite state law regulating the backstop.

348
349 Paul Guthrie: Are there any considerations on what type of weapons are being fired?

350
351 Michael Harvey: No. From a land use stand point we do not have the legal authority to tell people they cannot shoot a
352 certain weapon.

353
354 Herman Staats: This language on page 123 is the distinction of the times per month for shooting?

355
356 Michael Harvey: Yes on page 123 we added language with the direction of the County Attorney indicating that if you
357 are a property owner and are discharging your gun on your property three days or less a month that is not going to
358 be considered an activity that warrants you to build a backstop.

359
360 Lydia Wegman: For clarification, someone could go out on their property three times a month and target shoot all day
361 long?

362
363 Michael Harvey: Unfortunately, that is exactly what that means.

364
365 James Lea: And not only can they target shoot, but they can shoot any gun they want?

366
367 Michael Harvey: They can shoot any gun they want anyway, period.

368
369 Lydia Wegman: Does this exemption also exempt them from the hours of the day.

370
371 Michael Harvey: Yes because it would not be considered a shooting activity per this ordinance.
372
373 Lydia Wegman: That is why I am concerned because this seems overly broad as an exemption.
374
375 Lisa Stuckey: Do you have to keep the bullets on the property?
376
377 Michael Harvey: Yes.
378
379 Lisa Stuckey: The exemption that was added is kind of confusing. What exactly is exempted? For three days you can
380 shoot your bullets into your neighbor's yard?
381
382 Michael Harvey: We may need to add language that says all bullets must be kept on the property.
383
384 Michael Harvey continued review of abstract.
385
386 Michael Harvey: We are recommending that all rec facilities, private or public, have frontage on public roads. The
387 reason being you don't want a facility in the middle of nowhere on a private road and create hardship for neighbors
388 who maintain that road.
389
390 Paul Guthrie: As long as the use is on the same land it can be anywhere from one foot to five thousand feet from the
391 road?
392
393 Michael Harvey: The property has to have frontage and that's where access is going to have to be provided.
394
395 Michael Harvey: I am recommending to review the proposed standards based on comments received tonight
396 regarding the backstop and exemption and bring it back to you.
397
398 Pete Hallenbeck: I do not think we are going to be able to agree on a statement of consistency tonight.
399
400 **MOTION** made by Paul Guthrie to bring this item back to the November Planning Board meeting. Tony Blake
401 seconded.
402 **VOTE:** Unanimous
403
404 **AGENDA ITEM 11: COMMITTEE/ADVISORY BOARD REPORTS**
405 **A.** Board of Adjustment
406 None
407
408 **B.** Orange County Transportation
409 None
410
411 **AGENDA ITEM 12: ADJOURNMENT**
412
413 Motion to adjourn made by Lisa Stuckey.

Pete Hallenbeck, Chair