ORANGE COUNTY BOARD OF COMMISSIONERS

AGENDA

BOCC Regular Work Session
May 12, 2015
Meeting – 7:00 p.m.
Southern Human Services Center
2501 Homestead Road
Chapel Hill, NC

(7:00 – 7:50)	1.	Presentation on Orange County Partnership to End Homelessness 2015 Plan to End Homelessness
(7:50 – 8:40)	2.	Potential Revisions to the Existing Public Hearing Process
(8:40 – 9:20)	3.	Private Road and Access Standards
(9:20 – 9:40)	4.	Educational Facility Impact Fee Ordinance and Age-Restricted Housing
(9:40 – 10:00)	5.	Follow-up Discussion on Board Rules of Procedures - Petitions Process

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ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: May 12, 2015

Action Agenda Item No. 1

SUBJECT: Presentation on Orange County Partnership to End Homelessness 2015 Plan to End Homelessness

DEPARTMENT: Manager

PUBLIC HEARING: (Y/N) No

ATTACHMENT(S):

Orange County Partnership to End Homelessness 2015 Plan to End Homelessness

2015 Calculation of Unmet Need for Housing for People Experiencing Homelessness

INFORMATION CONTACT:
Jamie Rohe, 919-245-2496

PURPOSE: To receive information about the Orange County Partnership to End Homelessness (OCPEH) 2015 Plan to End Homelessness and the 2015 Calculation of Unmet Need for Housing for People Experiencing Homelessness.

BACKGROUND: The OCPEH is a coalition of housing and service providers, local government and community members working together to end and prevent homelessness in Orange County. The Partnership's Plan to End Homelessness is continually evolving to reflect evidence-based practices and changes in homelessness in the community.

The OCPEH 2015 Plan to End Homelessness incorporates the overarching goals of the Department of Housing and Urban Development's "Federal Strategic Plan to Prevent and End Homelessness":

1. Set a path to ending all types of homelessness;
2. Finish the job of ending chronic homelessness by 2017;
3. Prevent and end homelessness among veterans by 2016;
4. Prevent and end homelessness for families, youth and children by 2020.

All agencies that receive federal funding for homelessness programs are required to enter data into the national "Homeless Management Information System" (HMIS) database. North Carolina switched to a new HMIS administrator this year and staff anticipates that data quality and completeness will greatly improve. This will enable all involved not only to be able to understand the scale and nature of homelessness in the community, but also to use data to evaluate program performance and to inform funding decisions.

The OCPEH Plan to End Homelessness also incorporates federal indicators for ending and preventing homelessness – which will be measured more accurately with the improved data quality. The main indicators are:

1. Reduce the length of time people are homeless (target: fewer than 30 days);
2. Reduce returns to homelessness;
3. Reduce the overall number of persons who experience homelessness;
4. Increase job and income growth for persons who are homeless.

The Plan to End Homelessness is organized into the three substantive areas for ending homelessness:

- Housing
- Employment
- Services

The Calculation of Unmet Need for Housing for People Experiencing Homelessness is updated annually and helps the community understand what housing is needed to help people **ultimately resolve their homeless situation**. The goal is not to "manage" homelessness as has been done in the past, but to **end** homelessness by thoroughly assessing clients' needs and providing them with the types of housing and services they need to end their homelessness.

FINANCIAL IMPACT: There is no financial impact associated with receiving information about the Orange County Partnership to End Homelessness (OCPEH) 2015 Plan to End Homelessness and the 2015 Calculation of Unmet Need for Housing for People Experiencing Homelessness.

RECOMMENDATION(S): The Manager recommends that the Board receive information about the OCPEH 2015 Plan to End Homelessness and the 2015 Calculation of Unmet Need for Housing for People Experiencing Homelessness and provide comments and questions.

The mission of the OCPEH is to implement Orange County's Plan to End Homelessness.

Progress color key:	Not begun	Under-way	Done!

Goals	Strategies	Action Steps / Responsible Parties	Desired Outcomes (measurable where possible)	Priority / Due	Status / Notes
OCPEH overarching goals reflect those in HUD's "Opening Doors: Federal Strategic Plan to Prevent and End Homelessness 2010" :					
1. Set a path to ending all types of homelessness.	1. Achieve goals and strategies outlined in this Plan.			HIGH	
2. Finish the job of ending chronic homelessness by 2017.	2. Update this Plan annually (Leadership Team).	1. Define "ending homelessness" by reviewing HUD/other documents and collaborating with NCCEH. (Housing WG)		HIGH / 2017	
3. Prevent and end homelessness among Veterans by 2015.	3. Monitor progress quarterly (County Manager, Coordinator and elected officials).	2. Work with VA to measure progress toward ending Veteran homelessness and develop strategies to achieve goal.	Veteran homelessness ended in Orange County in 2015.	HIGH / 2015	Working with NCCEH, Durham VA, Veterans of America
4. Prevent and end homelessness for families, youth and children by 2020.	4. Use HMIS and Point-in-Time Count data to measure progress. 5. Adopt evidence-based practices.	3. Ask town mayors to join national Mayors' Challenge to End Veteran Homelessness?		HIGH / 2020	
OCPEH performance indicators mirror those of the federal 2009 Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act:					
1. Reduce the length of time people are homeless (target: fewer than 30 days).	1. Use HMIS to measure and track these data points.	1. Establish 2015 baseline data and track going forward.	1. Progress is achieved for each indicator.	HIGH	
2. Reduce returns to homelessness.	2. Achieve high-quality and complete data.	2. Work with HMIS administrator and NC Coalition to End Homelessness staff to improve data quality and track outcomes.			In progress
3. Reduce the overall number of persons who experience homelessness.	3. Review data quarterly.	3. Establish quantifiable goals. (Housing Workgroup)			
4. Increase job and income growth for persons who are homeless.	4. Use data to evaluate program performance and inform policy and funding decisions.				
5. Reduce numbers of people who become homeless for the first time.					
6. Other accomplishments related to reducing homelessness.					

Goals	Strategies	Action Steps / Responsible Parties	Desired Outcomes (measurable where possible)	Priority / Due	Status / Notes
HOUSING					
1. Increase affordable housing opportunities for people experiencing or at risk of homelessness including: Rapid Re-Housing capacity; Permanent Supportive Housing units; and rental units for households with incomes below 30% of Area Median Income.	1. Advocate for funding and policy positions at local government budget hearings and other public hearings/meetings.	1. Continue collaboration with OC Affordable Housing Coalition. 2. Advocate for potential OC and TOCH Bond funding to be used for AH. Advocate that TOH payment-in-lieu be used for AH. (Housing Workgroup)		HIGH / long-term	In progress, ongoing
	2. Increase RRH program budget to increase numbers of HHs served and case management capacity.	(Housing Workgroup)		HIGH / long-term	
	3. Increase number of PSH units.	(Housing Workgroup)		HIGH / long-term	
	4. Discuss "Housing is Healthcare" and "Housing First" principles with UNCH and explore investments in housing that would reduce hospital visits including PSH and respite care.	Dedicate a 2015 Leadership Team meeting to this topic (Housing Workgroup, Leadership Team)		HIGH / long-term	
	5. Advocate for changes to local government land use ordinances and zoning regulations to facilitate affordable housing development including infill, accessory apartments, tiny homes, etc.	Continue collaboration with Orange County Affordable Housing Coalition's (OCAHC) Government Policies subcommittee to develop proposal. (Housing Workgroup)		MEDIUM / 2015 and long-term	
	6. Explore the feasibility of creating small/tiny homes as a solution for increasing affordable housing opportunities.	1. Propose this as a research project to UNC City & Regional Planning students in fall 2015. (Housing Workgroup)		MEDIUM / long-term	
		2. Advocate for pilot project(s), collaborating with public schools, others.			
2. Increase the number of landlords that will rent to people experiencing or at risk of homelessness and participate in rental housing voucher/subsidy programs.	1. Partner with OC Housing Department to recruit landlords, focusing on local landlords.	Continue collaboration with OCAHC's Government Policies subcommittee to develop proposal. Develop our own? (Housing Workgroup)		HIGH / long-term	
	2. Advocate for Housing Resource Specialist position to be established within Orange County.	Develop proposal; meet with OC Housing and DSS Directors and County Manager. (Housing Workgroup)		HIGH / long-term	
3. Support the development of Orange County's 2015-2019 Consolidated Plan and Annual Action Plans that will identify unmet needs for affordable housing and effective strategies for increasing affordable housing.	Advocate for a high quality and inclusive process to develop the Con Plan and for effective ongoing use of the Plan to inform policy and funding decisions.	Participate in public hearings and relevant meetings. (Housing Workgroup)		HIGH / long-term	

Goals	Strategies	Action Steps / Responsible Parties	Desired Outcomes (measurable where possible)	Priority / Due	Status / Notes
4. Increase the number of TOCH public housing units and OC Housing Choice Vouchers available to people experiencing or at risk of homelessness.	Advocate to TOCH and OC to: a. Provide preferences for and possibly dedicate a certain number of units/vouchers for people experiencing homelessness; b. Reduce barriers to people with criminal histories; c. Align their policies as much as possible.	Meet with TOCH and OC managers and housing department heads/staff. Write letters to TOCH and OC advocating for these positions. (Housing Workgroup)		HIGH / long-term	
5. Implement a Coordinated Assessment (CA) system for people receiving housing and services in the homelessness system.	1. Use CoC Planning Grant funds to support implementation of CA system and OC Resources Database. 2. Pilot program with 6 agencies from 100,000 Homes Taskforce: IFC, HNH, DSS, VA, CTI, CEF; modify and improve over time.	(100,000 Homes Taskforce) Agencies will thoroughly and holistically assess clients' needs with a client-centered, relationship-based approach.		HIGH / long-term	
	3. People being discharged into homelessness from local public institutions will be referred to an agency that will administer the CA assessement.	Develop discharge planning agreements with UNC Hospital, OC Jail, Orange Corr. Center, Freedom House and OC DSS (Foster Care services) for clients being released into		MEDIUM / 2015-16	
EMPLOYMENT					
1. Strengthen the Job Partners Program.	1. Advocate for local funding. 2. Educate the community about Job Partners to encourage volunteers and employers to participate.	(Leadership Team) (Leadership Team)		MEDIUM / long-term MEDIUM / long-term	
	3. Support the Community Empowerment Fund (administers Job Partners) to create a client-centered, multi-service center.	(Leadership Team)		MEDIUM / 2015	
2. Expand transit system to help connect people to work opportunities.	4. Advocate for city(s) and/or county-wide Ban the Box ordinance. Advocate to local leaders.	Write letters and speak at public hearings.		MEDIUM / long-term	

Goals	Strategies	Action Steps / Responsible Parties	Desired Outcomes (measurable where possible)	Priority / Due	Status / Notes
SERVICES					
1. Increase SOAR worker/volunteer capacity.	1. Meet with UNCH representatives to discuss possibilities for hiring and training existing staff in SOAR.	(100,000 Homes Taskforce)		MEDIUM / long-term	
	2, Recruit volunteers and provide training.	(100,000 Homes Taskforce)		MEDIUM / long-term	
	3. Hold SOAR trainings locally and advertise broadly.	(100,000 Homes Taskforce)		MEDIUM / long-term	
2. Establish a Reentry Council and expand services to people exiting incarceration and others with criminal histories.	1. Continue to work with the TOCH PD and the OC Alternatives to Jail initiative to develop plan for creating a Reentry Council.	(Leadership Team)		MEDIUM / long-term	
3. Assure adequate case management is available to formerly homeless persons - particularly those with disabilities - to help them remain stably housed.	1. Expand the Support Circles Program.	(Leadership Team)		MEDIUM / long-term	
	2. Advocate for funding for case management and supportive services. Include this in the Consolidated Plan.	(100,000 Homes Taskforce)		MEDIUM / long-term	
4. Hold an annual Project Connect and work to increase positive impacts on clients.	1. Increase counseling by all providers instead of just representing their agencies.	(100,000 Homes Taskforce and Project Connect Steering Committee)		MEDIUM / long-term	
	2. Get input from 100,000 Homes Taskforce.	(100,000 Homes Taskforce)			
COMMUNICATION					
1. Improve the OCPEH website to be more inviting and useful.	1. Consider creating an independent website (not part of Orange County's).			MEDIUM / long-term	
	2. Include resources and meeting schedules.				
2. Publish Annual Report	1. Include data and other information about progress toward achieving goals in Work Plan.	(Leadership Team)		MEDIUM / 2016	
3. Hold Community Reads of books related to homelessness.	1. Choose book, schedule and other logistics.	(Leadership Team)		LOW / ongoing	

Orange County, NC Continuum of Care

2015 Calculation of Unmet Need for Housing for People Experiencing Homelessness

Based on people identified as homeless during the annual Point-in-Time Count, January 28, 2015

Methodology: *ask homeless street outreach workers and staff at agencies providing Emergency Shelter and Transitional Housing for people experiencing homelessness to estimate the percentage of their clients that need Emergency Shelter (ES), Transitional Housing (TH), Rapid Re-Housing (RRH), or Permanent Supportive Housing (PSH)* ***to ultimately resolve their homeless situation****.*

CURRENT NEED calculation for homeless shelter and permanent housing

Unsheltered Homeless: 20 people identified at PIT count (13 men, 7 women)
Matt Ballard and Mike Kelly, Housing for New Hope (homeless street outreach workers):

- Estimate **10%** need ES (20 x .10 = **2 ES beds**)
- Estimate **15%** need TH (20 x .15 = **3 TH beds**)
- Estimate **30%** need RRH (20 x .30 = **6 RRH beds**)
- Estimate **45%** need PSH (20 x .45 = **9 PSH beds**)

Staying in Emergency Shelter: 81 people identified at PIT count (68 men, 13 women)
Stephani Kilpatrick and Debra Vestal, IFC (residential services staff):

- Estimate **25%** need ES (81 x .25 = **20 ES beds**)
- Estimate **20%** need TH (81 x .20 = **16 TH beds**)
- Estimate **30%** need RRH (81 x .30 = **25 RRH beds**)
- Estimate **25%** need PSH (81 x .25 = **20 PSH beds**)

Staying in Transitional Housing: 28 people identified at PIT count (9 women, 19 children)
Stephani Kilpatrick and Debra Vestal, IFC:

- Estimate **10%** need TH (28 x .10 = **3 TH beds**)
- Estimate **65%** need RRH (28 x .65 = **18 RRH beds**)
- Estimate **25%** need PSH (28 x .25 = **7 PSH beds**)

UNMET NEED calculation for homeless shelter and permanent housing

Total estimated need for **Emergency Shelter** (from estimates above) = (2 + 20) = **22 ES beds**

- Current stock: Homestart = 14 beds (women); Community House = 50 beds (men); total = 64 ES beds
  - **Current unmet need** = (22 – 64) = **- 42** (**surplus of 42 beds**)
- When Community House closes = 0 beds for men
  - **Total unmet need for men and women** (after Community House closes) = (22 – 14) = **8 ES beds**
    - **Unmet need for men** = (68 men x .25) = 17 beds + 1 unsheltered = **18 ES beds for men**
    - **Current need for women** = (13 women x .25) = 3 beds + 1 unsheltered = 4 ES beds
      - **Unmet need for women =** (4 – 14) = **- 10 (surplus of 10 beds)**

Total estimated need for **Transitional Housing** (from estimates above) = (3 + 16 + 3) = **22 beds.** *Note: providers indicate that the greatest need for TH is among subpopulations including youth, people with mental illness and substance abusers.*

- Current stock: Homestart = 30 TH beds (for women and children)
  - **Current unmet need** = (22 – 30) = **- 8 (surplus of 8 TH beds)**
- New Community House = 52 beds (for men)
  - **Unmet need** = 22 – (30 + 52) = **- 60** (**surplus of 60 TH beds**)

Total estimated **unmet need** for **Rapid Re-Housing** (from estimates above) = (6 + 25 + 18) = **49 RRH beds**

Total estimated **unmet need** for **Permanent Supportive Housing** (from estimates above) = (9 + 20 + 7) – (7 unoccupied beds @ PTI Count) = (36 – 7) = **29 PSH beds**

ORANGE COUNTY
BOARD OF COMMISSIONERS
ACTION AGENDA ITEM ABSTRACT
Meeting Date: May 12, 2015

Action Agenda Item No. 2

SUBJECT: Potential Revisions to the Existing Public Hearing Process

DEPARTMENT: Planning and Inspections **PUBLIC HEARING: (Y/N)** No

ATTACHMENT(S):

A. Process Flow Charts Recommended by the Planning Board
B. Excerpt of September 8, 2014 Quarterly Public Hearing Minutes
C. Excerpt of November 6, 2014 BOCC Meeting Minutes
D. Excerpts of Planning Board Meeting Minutes – October 8, November 5, and December 3, 2014

INFORMATION CONTACT:

Perdita Holtz, Planner III, 919-245-2578
Craig Benedict, Director, 919-245-2592

PURPOSE: To discuss and give clear direction to staff on whether (and, if so, how) the existing public hearing process for Comprehensive Plan, Unified Development Ordinance, and Zoning Atlas matters should be revised.

BACKGROUND: This topic was heard at the September 8, 2014 Quarterly Public Hearing and additional background is available in the agenda materials: http://www.orangecountync.gov/September_8__2014.pdf with the minutes excerpt included in Attachment B of this abstract. The public hearing was adjourned to November 6, 2014 to allow time for staff and the Planning Board to consider the matter. The agenda materials for November 6 are available at: http://www.orangecountync.gov/November_6__2014.pdf and the minutes excerpt included in Attachment C. At the November 6 meeting, the BOCC received a progress report and closed the public hearing since it became evident that a new public hearing process would have to be started if changes to the existing public hearing process are desired.

The Planning Board extensively discussed this matter at its meetings on October 8, November 5, and December 3, 2014. Meeting Minutes excerpts for these meetings are included in Attachment D and agenda materials for Planning Board meetings are available at: http://orangecountync.gov/planning/planningboard.asp. The flow charts included in Attachment A depict the processes that capture the Planning Board discussion of what the processes should be for Legislative and Quasi-Judicial items if the existing process is changed.

Staff has recommended that there be two processes – one for legislative items and one for quasi-judicial (and those few instances where there is a mix of legislative and quasi-judicial components, such as with conditional use zoning districts) – and the Planning Board has

concurred with this recommendation since there are different legal requirements for the two types of reviews/approvals.

Remarks on Possible Review Processes

Legislative

The possible process for legislative items illustrated in Attachment A has several advantages over the existing process:

- Nearby property owners will be notified about proposed map amendments earlier than currently occurs through first class mailed notifications and posted signs for the Planning Board meeting, which would occur prior to the public hearing.
- The public could speak at both the Planning Board meeting and the later BOCC public hearing.
- A quorum of Planning Board members would no longer be required to hold a BOCC public hearing, but Planning Board members would be encouraged to attend the public hearings.
- The public hearing would be closed the night of the hearing and the BOCC could do one of the following:
    - Defer a decision to a later BOCC meeting date (items would no longer be listed on the public hearing portion of the later BOCC agenda and the public could make oral comments).
    - Refer an application back to the Planning Board for further review.
    - Make a decision at the conclusion of the hearing (this would allow the current process to move more quickly for items that are not particularly controversial).
- Because the requirement for written comments is removed and the public hearing is closed the night of the hearing, the hearing no longer would need to be continued to a date/certain so the awkward process of having items listed on the public hearing portion of the BOCC agenda, but with no additional comments accepted, would no longer occur.

Quasi-Judicial

Quasi-judicial matters differ from legislative items in that only sworn testimony from experts is supposed to be heard at the public hearing for quasi-judicial matters, which means that the opinions of typical residents (unless they are experts in a particular subject matter) is not supposed to be considered in the quasi-judicial decision. The Planning Board believes that it should be involved in making a recommendation to the BOCC on quasi-judicial matters and the flowchart in Attachment A reflects this. Some advantages of the possible process over the existing process include:

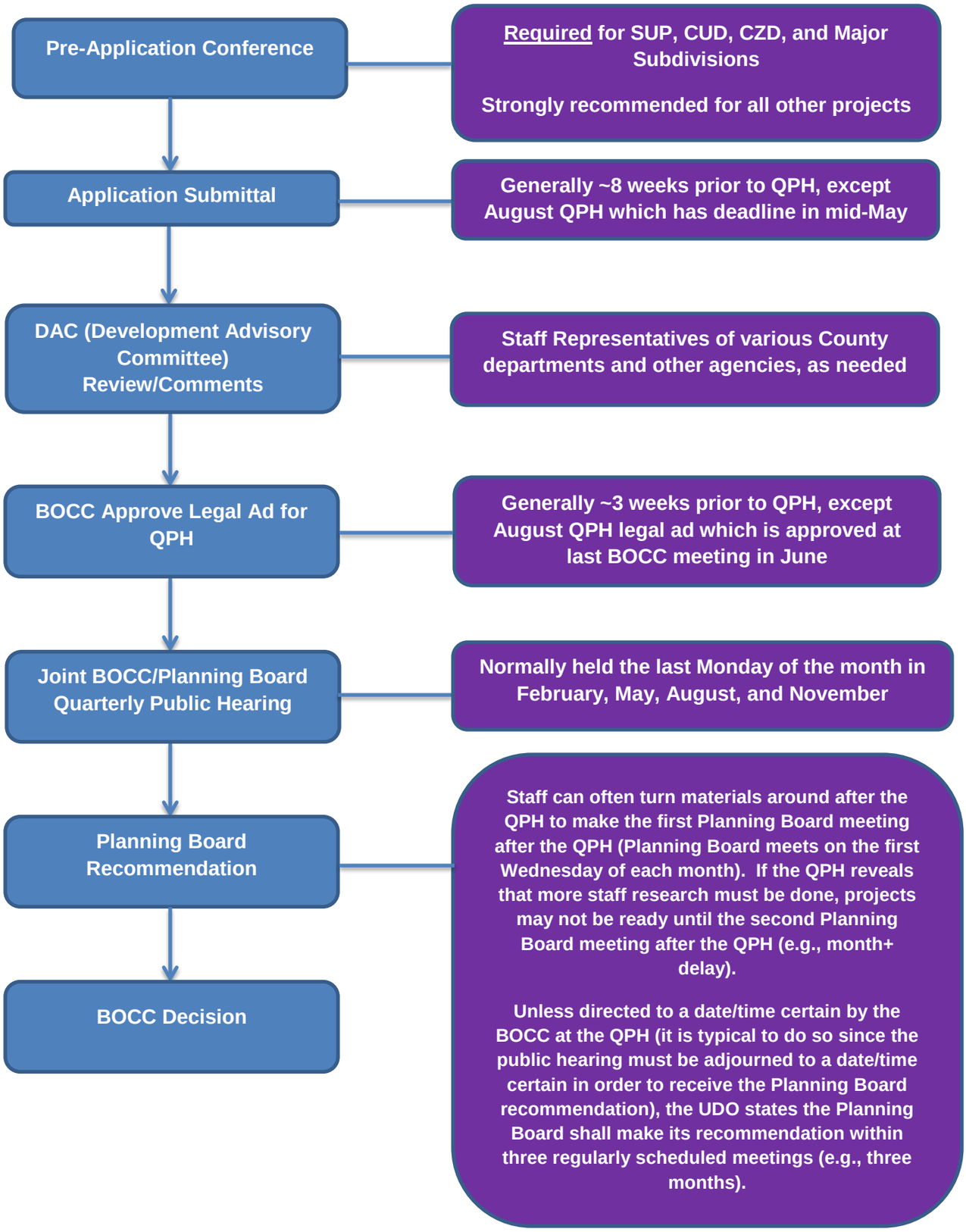
- The Planning Board meeting could be viewed as a “dry run” for the later BOCC public hearing and anyone would be able to address the Planning Board, although non-expert speakers would be informed that their comments could not be a basis for decision at the formal public hearing.
    - The discussion at the Planning Board meeting could highlight areas for interest for the BOCC to question expert witnesses about at the formal public hearing.
- A quorum of Planning Board members would no longer be required to hold a BOCC public hearing, but Planning Board members would be encouraged to attend the public hearings.
- The public hearing would be closed the night of the hearing and the BOCC could do one of the following:
    - Defer a decision to a later BOCC meeting date (would be necessary if additional information was requested by the BOCC at the public hearing).

- Refer an application back to the Planning Board for further review.
- Make a decision at the conclusion of the hearing (this would allow the current process to move more quickly for items that are not particularly controversial).

FINANCIAL IMPACT: There is no direct financial impact in discussing this matter and giving direction to staff. Existing staff will accomplish the necessary work associated with topic.

RECOMMENDATION(S): The Manager recommends the Board discuss whether the existing public hearing process should be revised and, if so, give clear direction to staff on the desired process.

Existing Review Process for non-County-initiated actions that require a BOCC public hearing



The timeframe from Application Submittal to BOCC Decision is similar for the Existing Process and Proposed Process (a minimum of 4-5 months). From a time perspective, the primary difference between the existing process and the proposed process is the greater number of application due dates per year. There are currently 4 due dates per year, which means that if someone is ready to apply and the application due date is still 2 months away, the application can be submitted but action towards a decision would be on hold for 2 months. If there were a more frequent application deadline and public hearing schedule, the process would be more efficient for some applicants.

In recent years, Orange County's timeframe from application deadline dates to decision compares favorably to most local governments in North Carolina. One of the main differences is that most other local governments have a monthly public hearing cycle rather than the quarterly public hearing cycle Orange County adheres to. Additionally, the practice of having the BOCC approve the legal ad for the public hearings adds additional time (approximately 3 weeks, much more for the August QPH) to the front-end of the schedule since the application deadline date must be early enough to place the legal ad approval item on a BOCC agenda prior to newspaper ad deadline dates.

Possible Review Process for Legislative Items

Pre-Application Conference

Required for rezonings to Conditional Zoning Districts. Strongly recommended for all other projects (e.g., text amendments, general use districts)

Application Submittal

The Planning Department intends to begin posting a list of applications received on its website so members of the public can be informed about projects early in the process.

DAC (Development Advisory Committee) Review/Comments

Staff Representatives of various County departments and other agencies, as needed

Mail Notifications (for map amendments only) via first class mail about the Planning Board meeting to adjacent/nearby property owners and post sign(s) on property

This is a proposed new step in the process to accommodate the ability of the Planning Board to hear from the public prior to making a recommendation and to involve the public in the process earlier.

Planning Board Meeting to Review Application / Make Recommendation *

The public could comment at the meeting where the Planning Board reviews legislative items (the existing requirement for written comments only would be removed). Planning Board action could be:

1. **Make a recommendation to the BOCC.**
2. **Make a preliminary recommendation to the BOCC with a request that if significant new information is presented at the public hearing, the BOCC will send the item back to the Planning Board for further review and a potential new recommendation.**

Publish Legal Ad / Mail Notifications for Public Hearing

The draft legal ad would no longer be a Consent Agenda item. It would be circulated via e-mail to BOCC members a few days prior to publication with the County Manager, Attorney, and Planning Director resolving any conflicting comments.

Quarterly Public Hearing (BOCC only) *

An increase in frequency is no longer being suggested. Staff recommends trying the new process for a period of time before potentially revisiting whether the frequency of public hearings for legislative items should be increased.

Planning Board members would be encouraged to attend but a quorum of members would not be necessary in order to hold the hearing.

The public hearing would be closed at the conclusion of the hearing. Written comments would no longer be the required method of making comments after the public hearing.

At the conclusion of the hearing, the BOCC could do the following:

1. **Defer a decision to a later BOCC meeting date (items would no longer be listed on the public hearing portion of the later BOCC agenda and the public could make oral comments).**
2. **Refer an application back to the Planning Board for further review.**
3. **Make a decision at the conclusion of the hearing.**

BOCC Decision *

* = Public could speak

Possible Review Process for Quasi-Judicial Items

Pre-Application Conference

Required for all Special Use Permit applications

Application Submittal & Posting *

The Planning Department intends to begin posting a list of applications received and deemed sufficient on its website so members of the public can be informed about projects early in the process. Staff also intends to produce and provide planning process brochures outlining how input is provided by the public and applicant.

DAC (Development Advisory Committee) Review/Comments

Staff Representatives of various County departments and other agencies, as needed

Neighborhood Information Meeting (minimum of 45 days prior to public hearing) *

Text amendment requiring this new step was adopted by the BOCC on 11/18/14.
Planning Board members will be encouraged to attend the Neighborhood Information Meeting (NIM). Attempts will be made to schedule the NIM the same evening as the regular Planning Board meetings so that Planning Board members can more easily attend the NIM. However, it might sometimes not be possible to hold both meetings on the same night due to timing requirements and because Ordinance Review Committee meetings needs to be held periodically as well.

Planning Board Meeting to Review Application / Make Recommendation *

The Planning Board meeting (which would be held on a date after the NIM but before the formal public hearing) could be a "dry run" for the public hearing. At this time, staff is suggesting that the public would be allowed to speak at the Planning Board meeting (e.g., "testimony" would not be required at the Planning Board meeting, but speakers would need to be informed that their comments would not be considered testimony and, therefore, could not be a basis for decision at the formal public hearing).

Publish Legal Ad / Mail Notifications for Public Hearing

The draft legal ad would no longer be a Consent Agenda item. It would be circulated via e-mail to BOCC members a few days prior to publication with the County Manager, Attorney, and Planning Director resolving any conflicting comments.

Quarterly Public Hearing (BOCC only) *

An increase in frequency for quasi-judicial items is no longer being suggested.

Planning Board members would be encouraged to attend but a quorum of members would not be necessary in order to hold the hearing.

Sworn testimony by experts (who are provided by the applicant or parties with standing) is necessary for quasi-judicial items. The public hearing should be closed at the conclusion of the hearing unless additional information has been requested. Additional information would need to either be in writing (if appropriate) or the hearing would be continued to a date/time certain for additional oral testimony.

At the conclusion of the hearing, the BOCC could do the following:

1. **Defer a decision to a later BOCC meeting date.**
2. **Refer an application back to the Planning Board for further review.**
3. **Make a decision at the conclusion of the hearing.**

BOCC Decision

* = public participates

APPROVED 10/7/2014

MINUTES
ORANGE COUNTY BOARD OF COMMISSIONERS
QUARTERLY PUBLIC HEARING
September 8, 2014
7:00 P.M.

The Orange County Board of Commissioners met with the Orange County Planning Board for a Quarterly Public Hearing on September 8, 2014 at 7:00 p.m. at the Whitted Building, in Hillsborough, N.C.

COUNTY COMMISSIONERS PRESENT: Chair Barry Jacobs and Commissioners Mark Dorosin, Alice M. Gordon, Earl McKee, Bernadette Pelissier, Renee Price and Penny Rich
COUNTY COMMISSIONERS ABSENT:
COUNTY ATTORNEY PRESENT: James Bryan (Staff Attorney)
COUNTY STAFF PRESENT: County Manager Bonnie Hammersley and Deputy Clerk to the Board David Hunt (All other staff members will be identified appropriately below)
PLANNING BOARD MEMBERS PRESENT: Chair Pete Hallenbeck and Planning Board members, Lisa Stuckey, Herman Staats, James Lea, Paul Guthrie, Tony Blake, Laura Nicholson, and Lydia Wegman
PLANNING BOARD MEMBERS ABSENT: Andrea Rohrbacher, Maxecine Mitchell, H.T. "Buddy" Hartley, Bryant Warren

A. OPENING REMARKS FROM THE CHAIR

Chair Jacobs called the meeting to order. He noted the following items at their places:
- White Sheets from Michael Harvey regarding item C-4
- Power Point slides for items C-1, C-2 and C-5

B. PUBLIC CHARGE

Chair Jacobs dispensed with the reading of the Public Charge.

C. PUBLIC HEARING ITEMS

1. **2030 Comprehensive Plan and Unified Development Ordinance (UDO) Text Amendments and Zoning Atlas Amendments** - To review government-initiated amendments to the text of the Comprehensive Plan and UDO and to the Zoning Atlas to establish two new zoning overlay districts in the Efland area.

Perdita Holtz presented the following PowerPoint slides:

Comprehensive Plan Text, Unified Development Ordinance Text, and Zoning Atlas Amendments for Two New Zoning Overlay Districts in the Efland Area
Quarterly Public Hearing
September 8, 2014
Item C.1

Process Background

- Former proposal heard at November 2012 quarterly public hearing
  - -Denied by BOCC in February 2013
  - -1 year waiting period required for a new application in cases of denial

5. **Unified Development Ordinance (UDO) Text Amendment** - To review government-initiated amendments to the text of the UDO to change the existing public hearing process for Comprehensive Plan-, UDO-, and Zoning Atlas-related items/amendments.

Perdita Holtz said she would like to note that this amendment would not affect other existing public hearing processes for other departments. She reviewed the following PowerPoint slides:

Public Hearing Process Changes
Quarterly Public Hearing
September 8, 2014
Item C.5

Purpose of Amendment

- To change the current public hearing process for Comprehensive Plan, Unified Development Ordinance, and Zoning Atlas Amendments
- Discussed at September 9, 2013 BOCC work session after quarterly public hearing agenda
  -Staff received direction on some points at this meeting, although not unanimous
- On February 24 and May 27, 2014 quarterly public hearing agendas but postponed due to time constraints

Statutory Requirements

- Statutes require that the planning board be given the opportunity to review and comment on amendments, and that public hearings be held with notification in compliance with statutes. Local government can decide:
- When planning board recommendation occurs (before or after public hearing)
- How frequently public hearings are held
- Other process components such as whether the Planning Board holds its own public hearing

Proposal

- End the current joint quarterly public hearings with the Planning Board
- Create the opportunity for a minimum of 8 planning-related public hearings per year
- Planning Board would provide a recommendation after the public hearing
- Policy decision to end practice of having the BOCC approve the legal advertisements (would shave 3 weeks off of review process due to agenda deadline dates, much more for the first hearing after the summer break)
- An alternative could be to circulate the draft ad via e-mail instead of making it a Consent Agenda item

Existing & Proposed Processes
Designation of Public Hearing Dates

- A minimum of 8 meetings would be designated for planning-related public hearings each year when the BOCC adopts its meeting calendar for the next year
- Internal changes to current agenda-setting processes
  -Little ability to remove public hearing items that were filed by deadline dates
  -Legal advertisements would be run in advance of agenda review dates (both Attorney/staff and Chair/Vice-Chair) in order to meet statutory requirements

Ancillary Points

- Current process of having all planning-related public hearings on segregated agendas likely results in more predictable BOCC regular meetings
  - -Sometimes planning-related items can generate a great deal of public interest and comments
  - -Possibility of having several planning-related public hearings on an agenda, depending on when applications are received
  - --Could affect the amount of time available during a meeting for non-planning items
  - --Since Special Use Permit quasi-judicial process tends to be more time consuming than legislative (text amendments, rezonings) items, could potentially limit SUP items to fewer agendas per year.

- Currently, public hearing agendas are posted to the website at least 10 calendar days prior to the public hearing
- BOCC agendas are generally posted 4 calendar days prior to the meeting date
  - --Fewer number of days for interested persons to have information in final form
- Requirement for written comments after oral public hearing (current requirement not proposed for change)
  - -Allows interested persons to submit written comments to the Planning Board
  - -Ensures Planning Board meeting does not become a de facto second public hearing
  - -Particularly important to avoid in quasi-judicial matters (Special Use Permits)
  - -Ensures BOCC is aware of additional comments
- Continuation of Public Hearings to date/time certain
  - -Case law in the mid-2000s resulted in legal advice to adjourn to a date/time certain unless the public hearing is closed the night of the hearing
    - -Closing comments the night of the hearing would mean that no written comments could be accepted after the hearing and interested persons could not address the Planning Board
    - -Could not close hearing if additional information is requested at the public hearing
- BOCC agenda language when accepting Planning Board recommendation and any written comments
  - -Currently, listed under "Public Hearings" section but with note that no additional comments are accepted
  - -If the County wants to maintain the existing process of allowing written comments after the public hearing, but avoid potential confusion about an item being listed as a "Public Hearing," a new Section could be added to BOCC agendas that would not use the words "public hearing"
    - -However, additional comments could not be made (persons could not sign up to speak on matters listed in this section)

Planning Board Ordinance
Review Committee

- Reviewed on January 8, 2014
- Generally supportive of changes
- Meeting Notes included in QPH package
  - -One member had concerns about the (existing) requirement of accepting only

written comments after the public hearing (e.g., no oral-only comments at Planning Board meeting when a recommendation is made)
-Discussion starts on line 88 of meeting notes

Public Notification & JPA Review

- Completed in accordance with Section 2.8.7 of the UDO
  -Newspaper legal ads for 2 successive weeks
- Amendment package sent to JPA partners on January 13, 2014 since new process would affect any requests related to the Rural Buffer
  -To date, no comments have been received

Effective Date

- The effective date of the amending Ordinance should be a specific date so submittal deadline schedules can be published
  -Staff recommends beginning new process with 2015 meeting calendar, so January 1, 2015 effective date

Recommendation

- Receive the proposal to amend the Unified Development Ordinance.
- Conduct the Public Hearing and accept public, BOCC, and Planning Board comment on the proposed amendment.
- Refer the matter to the Planning Board with a request that a recommendation be returned to the Board of County Commissioners in time for the **November 6, 2014** BOCC regular meeting.
- Adjourn the public hearing until **November 6, 2014** in order to receive and accept the Planning Board's recommendation and any submitted written comments.

Perdita Holtz noted that some of the process components are included in the Unified Development Ordinance (UDO) as part of the procedure, but some things are just policies that are not written into the ordinance.

She said the flow chart represents only the currently proposed process, but there was also some discussion of having the Planning Board make a recommendation before the Public Hearing, or having two separate public hearings for the Planning Board and the Board of County Commissioners.

Perdita Holtz said the September meeting used to be held in August, and there is still a reference in the UDO to an August meeting date. She said this administrative change will need to be made at some point, even if no other changes are made.

Perdita Holtz said part of the internal change to the agenda-setting process is that notifications would have to be mailed before the Chair/Vice Chair agenda meeting.

Referring to the last slide of ancillary points, Perdita Holtz said the language change regarding written comments would be a policy type decision that would not be written into the UDO.

Perdita Holtz said that if the County were to drop the requirement for accepting only written comments after the oral public hearing, that it would be prudent to only do this for legislative matters and not for quasi-judicial matters. She said it would be necessary to look at how this change might affect processes, as a fair number of applications are both legislative and quasi-judicial in nature. She noted the confusion related to this with the past process for the Buckhorn Village project.

Chair Jacobs said when this first came up he was very supportive of making changes and incorporating flexibility. He said the more he thought about it, and considering the four hour

solar array public hearing, he is definitely opposed to having these items on the Commissioner's regular meeting schedules. He said it is very hard to predict what will generate a public reaction, and it is hard to plan when there is no way to know when something may blow up.

He said it is reasonable to have the Planning Board comment after the Commissioners have a public hearing. He said the rest of this just makes things more complicated.

Chair Jacobs pointed out on page 85 that staff states the Orange County's typical review timeframe of 4-5 months compares favorably to other North Carolina local governments. He said the current process is not a burden to the development community.

Commissioner Dorosin said, as someone who has been pushing this kind of change, he takes Commissioner Jacobs points well. He said his original concern with the current process is that a public hearing is held and comments are taken, then these are sent to the Planning Board for a meeting and discussion. He said the Planning Board comes back with its recommendations, and then another Public Hearing is held with no actual public comments. He said the renaming of this hearing is fine, but what is missing in the proposal is the fundamental sequence of things.

Commissioner Dorosin suggested that the Planning Board should have a public hearing or open meeting with notices to invite the public and take comments. He said after this the Planning Board can submit its recommendation to the County Commissioners, who will then hold a public hearing with public input. He said the public hearing could then be closed, and a vote would be taken. He said this sequence would maximize the opportunity for public input. He said whether this is done in one meeting or quarterly is a different question, but that is not the main issue.

Commissioner Rich agreed with Commissioner Dorosin's suggestion, and she said this is the way she has done it in the past. She said she also agrees with Chair Jacobs.

Commissioner Pelissier said she is not sure where she stands on the sequence, but her main concern is the timing. She said she does not want to base everything on the one meeting that took four hours for the special use permit. She does not think this would happen if the changes were made to the special use permit process.

She said part of what motivated this was the issue of not having quorums, which could be addressed by not requiring the Planning Board to be part of the public hearing. She said there were also grave concerns that some of the simple projects had to wait so long for approval because they had to wait for the quarterly public hearings. She said the goal is to balance having a process that is not onerous but allows for public input. She is interested in having greater opportunity than quarterly public hearings.

Commissioner Gordon said she has no objections to changing the process. She wants to follow the principles of making sure the public has enough notice to find out what is going on and to formulate their comments.

Commissioner Gordon said there should not be a minimum of 8 hearings, but there should be a maximum of 8 hearings. She referenced information on page 96 regarding the potential meeting dates, which stated that there were only seven months when hearings were feasible, and she said this information seems to point to no more than 8 possible dates. She said there was also information stating that if these hearings are part of the regular meeting, the required notice is only 4 days, which is worse than the usual 10 days for public hearings.

She agrees with Chair Jacobs that it makes the meetings unpredictable if you have public hearing items that have to be scheduled in.

Commissioner Gordon said she did not even think about the internal timing changes until she saw the information about publishing notices prior to attorney, chair and vice-chair review. She said this change would not be wise.

She thinks it would be a good idea for the Commissioners to have some kind of review of the advertisements for the timing.

Commissioner Gordon said she would argue for the Planning Board to consider items after the public hearing with the Board of Commissioners. She said if the Planning Board makes the recommendation before the hearing, then they will have to confine themselves to more technical comments. She said the official notice that gets attention is the one listing when the Commissioners hold their public hearing, so you would get the public input here, and then the process would be closed under the proposed process.

Commissioner Price said she agrees that the public might be better served if the hearings are held more than quarterly. She said she has no problem with taking the legal advertisements off of the consent agenda if there is another way to get approval from the Commissioners. She said if they are going to do away with the joint public hearing, she feels that it is even more important to get the Planning Board recommendation after the public hearing. She said some of the recommendations may become null and void after the public hearing.

Commissioner Price asked about the phrasing change for the public hearing title. She asked why not just call it "close public hearing."

Perdita Holtz said staff was trying to avoid using the words "public hearing" in the title.

Commissioner Price said she understood the point of letting the public know that this was the deadline for written comment. She thinks it needs to be simpler than what has been recommended.

Chair Jacobs said if there are some items that would not be difficult to consider as part of a regular agenda, there is no reason why that cannot be done now. He said the planning director can consult with the manager to determine which items can go on the regular agendas. He is just concerned about the larger items.

He said the advertisements can be approved by email.

Chair Jacobs said the issue of where the Planning Board fits in is somewhat of a philosophical question. He said when he was on the Planning Board, it was very important that they got the last word with the Commissioners. He said this setup gives the Planning Board more weight, as they get to hear and weigh everything before commenting to the Board. He said part of this process is making a decision about the role of the Planning Board, as this proposal would allow the public to have the final word to the Commissioners. He said he is willing to listen to the argument, but it is hard for him to think of doing it differently.

James Bryan said these public hearings can be very confusing. He said there are two separate decisions, the legislative decisions and the quasi-judicial systems. He said it may be a philosophical distinction, but there is also a legal distinction. He said these should be looked at separately. He said neither the Planning Board nor the written comments should be involved in the quasi-judicial decisions. He said written comments are hearsay and should have no value in these situations. He said the only thing that can be considered is the evidence presented at the quasi-judicial hearing.

Commissioner Rich asked if the public comes to the Planning Board meetings

Pete Hallenbeck said this ranges from 0 to 20 members of the public, but there is no trend.

Commissioner Rich said she thinks this is a problem. She thinks that when the Planning Board is discussing what will be presented, the public should be there.

Commissioner Rich said there is something wrong when we are calling something a public hearing when it is not a public hearing.

Commissioner McKee said he agrees that the public should be involved in the Planning Board meetings, but most of the public knows that the final decision is made here.
Most of the public knows that the final decision is made by the Board of County Commissioners

Commissioner Dorosin said if you said the culture could be changed to encourage people to go to the Planning Board hearings. He said he has talked to a lot of people on different advisory boards, and he has heard the opinion that the elected officials yield undue

influence. He said it seems that having the Planning Board make a recommendation after listening to the public and the Commissioners is putting the thumb on the scale of what is expected, if the Board is seeking the Planning Board's independent analysis.

Commissioner Dorosin questioned whether the Planning Board could be an expert at the quasi-judicial hearing. He said they are the expert witnesses for the UDO and he feels this would be relevant testimony.

Lisa Stuckey said this is her 4th year on the Planning Board. She said staff members are the experts, but the board members do not have a long enough term to be considered experts.

Lisa Stuckey said the Planning Board struggles to get a quorum at these meetings, and she said that the planning board could not have a public hearing on a quasi-judicial matter. She questioned whether it is really fair to the public to make them go through two public hearings.

Commissioner Dorosin said he does not think it is fair to call the public back to a second public hearing where they cannot talk.

Lisa Stuckey said she understands this but she is not sure that adding another public hearing in front of the Board's public hearing changes anything. She said the Planning Board is not the final decision maker.

Tony Blake said he is on the planning board representing his neighbors. He feels that the neighborhood information meetings might augment the Planning Board quite a bit, if they are broad enough.

He said he is not a rubber stamp and he does not feel bound to the Board's opinions. From his perspective the Board is not putting their thumb on the scale.

Lisa Stuckey said the Planning Board usually does not know what the Board of Commissioners thinks. She said there is discussion, but it is rare that there is a consensus.

Paul Guthrie said this is a complicated issue because of the various functions within the relationship. He said the number one question is what the Board wants from their Planning Board, and how they want it to function. He said he has asked a lot of questions about these proposed changes. He thinks that well managed citizen advisory groups serve an important role. He thinks a better definition of what the Commissioners want from the Planning Board and planning staff would be helpful, along with building a process that continues to bring information from citizens about what is important to them.

Pete Hallenbeck said the quorum problems have been bad this year. He thinks it would be helpful if the Planning Board did not have to have quorum at the hearings. He said it is human nature for people to want to deal with decision makers and not middle managers, but he does think it would help if the Planning Board could take input from the public.

He views the Planning Board role as a little bit of Planning Department oversight. He said their role is also to provide community feedback.

Pete Hallenbeck said it seems that synergy has been shattered by this item, and Commissioner input is low, which makes it hard to come up with something. He said every time they try to streamline this process there are too many unknowns.

Lydia Wegman said it is burdensome to expect the public to attend two different public hearings. She said the Commissioners are the decision makers and they will get more people, and more focused comments than at the Planning Board meetings. She encouraged them to allow opportunity for the public to speak. She said she hopes that she, as a Planning Board member, would have an opportunity to hear everything the Commissioners hear before making a recommendation.

Commissioner Gordon said the key question is the role of the Planning Board. She said to get the Planning Board recommendation before the public hearing would only provide technical comments. She said this would not provide the benefit of the experienced Planning Board members going over the issues. She believes it would be better to get the Planning Board recommendation after they have heard all of the information.

Commissioner Dorosin said a lot of time has just been spent talking about how to engage people earlier in the process, and he thinks that engaging them with the Planning Board early in the process is part of this. He asked if the public hearing could be left open and could include the Planning Board's recommendation, as well as any public input. He said this is more honest and sincere. He asked the attorney if this could be done.

James Bryan said the Board has broad discretion over legislative decisions.

Commissioner Rich asked why the Board closes the public hearing to comments.

Perdita Holtz said she is not sure why this is done. She said this is how it is written, and it predates anyone on the staff. She said this would be a policy change with some minor text amendments, and staff would need to work with the attorney's office regarding those items with a re-zoning and a special use permit. She said this needs to be looked at closely.

Commissioner Rich said she understands not having the public hearing all over again, but that's the part that doesn't make sense.

Perdita Holtz said the problem arose in the mid-2000's. She said it used to be that the public hearing was just open and there was always a requirement for written comments only after the oral public hearing. She said the UDO would have to be re-written to state that this is no longer a requirement.

Commissioner Price said she likes to go home at a reasonable hour, but she also likes to hear what people say. She said she was on the Planning Board for an extended period of time, and people would come to meetings and express their opinions. She said quorum was rarely an issue. She said there were times when the board disagreed with the Commissioners, and she would support the Planning Board hearing from the public before making a decision. She said if it is the pleasure of the Board to hear other comments on the day that the public hearing is closed, she is for this as well.

Commissioner Pelissier said she would like to hear the Planning Board recommendation after the public comments. She said when she was on the Planning Board, no one really thought about what the Commissioners thought. She said the Planning Board was there to give advice, and as a Commissioner she looks to this advice when making land use decisions.

She asked planning staff if they have been able to predict which will be the difficult decisions and which will not.

Planning Board member James Lea left at 9:42 p.m.

Perdita Holtz said no, not necessarily. She said staff would have to toss a coin. She said obviously text amendments take longer to discuss.

Commissioner Pelissier said the legislative decisions are easier to incorporate into the meetings, but the quasi-judicial decisions are more of an issue. She is not sure how to address it, but she would like some consideration to not having these boxed in to so few dates. She would like to see more than a quarterly option.

Commissioner McKee said he wishes he could say if it isn't broke, don't fix it, but this is broken. He agreed with Commissioner Dorosin's comment about taking public comment at the later meeting. He also agrees with Chair Jacobs' comments about time management and trying to figure out how long these meetings are going to be. He said he is confused, and he thinks all of what he has heard is reasonable.

He suggested that the current framework should be maintained, and the Board can tweak it to make it more public friendly. He suggested maintaining the quarterly public hearings due to the necessity of quasi-judicial decisions. He said maybe there will be other controversial items that don't belong in a regular meeting. He said the Board should just tweak the things that need to change, and if those tweaks don't work, they can be changed back.

Perdita Holtz said planning staff often does not know that an application is coming until right at application deadlines, which are based on the public hearing process. She thinks that the attorney would disagree that it is okay to have two different processes for judicial and legislative processes, but not for quasi-judicial items or legislative items.

Chair Jacobs said he is not sure this is at a good place to even be referred to the Planning Board. He thinks there needs to be more discussion between the planning director, manager, and attorney. He said someone needs to walk through the process and make some projections.

He said the Board has heard that there needs to be more public participation, and there is discussion about the ultimate role of the Planning Board. He said there are issues that staff needs to talk about before this comes back for a public hearing.

Chair Jacobs said maybe a better job can be done of publicizing this discussion of the process to encourage public input.

Commissioner Gordon said she would like to see this go back to the Planning Board to see what they come up with.

Craig Benedict said he agrees that he needs to speak with the manager and the attorney's office to glean some direction. He said there is an opportunity for conversation at the upcoming dinner with the Planning Board. He agrees that there is not a consensus. He sees that the public input at the end is a big issue, and this could be modified.

Commissioner Pelissier said she would also like to refer this back to the Planning Board. She said two broken items have been identified, and one of them is a public hearing that cannot be held due to a lack of Planning Board quorum. She said the other issue is allowing the public to make comments at the final decision meeting.

Craig Benedict said this room offers the Planning Board members the opportunity to watch the televised meeting if they were unable to attend.

Chair Jacobs said he also did not hear anyone disagree with the idea of looking at the public hearing notices through email.

Commissioner Gordon said she would like to move the manager's recommendation.

Chair Jacobs asked if the manager has any input.

Bonnie Hammersley said she would be happy to work on this with staff and the Planning Board. She said she and the attorney have some ideas of things that can be implemented. She said focus groups could be formed in order to gather information. She said she also has some ideas based on other places she has worked.

A motion was made by Commissioner Gordon, seconded by Commissioner McKee for the Board to: Refer the matter to the Manager, staff and Planning Board with a request that a recommendation be returned to the BOCC in time for the **November 6, 2014** BOCC regular meeting.

Adjourn the public hearing until **November 6, 2014** in order to receive and accept the Planning Board's recommendation and any submitted written comments, as well as the recommendation of the manager and staff.

Chair Jacobs noted that the motion creates a deadline for the Planning Board to bring back information by November 6th.

Commissioner Gordon said this allows two months, and if that is not enough, it can be continued.

Bonnie Hammersley said she thinks this is possible.

Commissioner McKee asked if the timing could be changed to the first meeting in February.

Commissioner Gordon said she would like to be involved in the discussion.

Commissioner McKee said this seems like a tight timeline.

Commissioner Gordon asked the manager if she feels something can be pulled together by November 6th.

Bonnie Hammersley said she will respect the opinions of the Planning Board, who look a little unsure of that timing. She said her thought was that the planning staff and the manager

could work on this and then bring options to the Planning Board to consider for presentation to the Commissioners. She said staff can support whatever level of urgency the Planning Board wants to work with.

Perdita Holtz said that the next planning board meeting is October 8th.

Chair Jacobs said he would suggest that a compromise way of looking at this is to bring back an interim recommendation by November 6th, with no expectation that it will be completely done.

Bonnie Hammersley said this could be a progress report.

Chair Jacobs said this does not change the motion.

VOTE: UNANIMOUS

D. ADJOURNMENT OF PUBLIC HEARING-CHAIR

A motion was made by Commissioner McKee, seconded by Commissioner Gordon to adjourn the meeting at 10:02pm.

VOTE: UNANIMOUS

Barry Jacobs, Chair

David Hunt
Deputy Clerk to the Board

Attachment C - Excerpt of
Nov. 6, 2014 BOCC Minutes

APPROVED 1/22/2015

MINUTES
BOARD OF COMMISSIONERS
REGULAR MEETING
November 6, 2014
7:00 p.m.

The Orange County Board of Commissioners met in regular session on Thursday, November 6, 2014 at 7:00 p.m. at the Whitted Building, in Hillsborough, N.C.

COUNTY COMMISSIONERS PRESENT: Chair Jacobs and Commissioners Mark Dorosin, Alice M. Gordon, Earl McKee, Bernadette Pelissier, Renee Price and Penny Rich
COUNTY COMMISSIONERS ABSENT:
COUNTY ATTORNEYS PRESENT: John Roberts
COUNTY STAFF PRESENT: County Manager Bonnie Hammersley, Assistant County Managers Clarence Grier, Cheryl Young and Clerk to the Board Donna Baker (All other staff members will be identified appropriately below)

NOTE: ALL DOCUMENTS REFERRED TO IN THESE MINUTES ARE IN THE PERMANENT AGENDA FILE IN THE CLERK'S OFFICE.

Chair Jacobs called the meeting to order at 7:02 p.m.

1. Additions or Changes to the Agenda

Chair Jacobs reviewed the following list of items at the Commissioner's places:
- Pink Sheet - Revision for Item 11a - Advisory Board on Aging Appointments
- PowerPoint Slides for Item 5a - 2030 Comprehensive Plan Future Land Use Map Amendment
- PowerPoint Slides for Item 5b - Zoning Atlas Amendment – Related to Town of Hillsborough Extraterritorial Jurisdiction (ETJ) Relinquishment
- Monthly Report from the Planning Division

Chair Jacobs recognized Bonnie Hammersley, who introduced Elections Director Tracy Reams.

Tracy Reams gave a brief presentation and update on the 2014 election night. She said everything went well for Orange County, and early voting had a record turnout of 23,195 voters. She said the County offered 303 hours of voting, and there was also record turnout on Election Day with 52,663 ballots cast and a turnout of 48.24 percent. She said results came in quickly on election night, and Orange County was one of the first large counties to report. She said the County was able to recruit and train over 200 volunteers, and she commended her staff members.

Commissioner Rich asked if there were any specific problems her staff had to address with voters, such as questions about polling sites or identification requirements.

Tracy Reams said they had both visual and printed materials available during early and regular voting.

Tracy Reams said there were very detailed instructions given to workers, and there were signs made to communicate requirements. She said there were 155 provisional ballots cast.

- Reviewed the differences between Rural Residential (R-1) and Agricultural Residential (AR) and consistency with County plans.
- Recommended unanimously that the BOCC approve the amendment as presented at public hearing (Attachment 4, Draft PB Minutes).

Consistency Statement
In response to a new opinion issued by the N.C. Court of Appeals in July 2014, the

- Planning Board has provided a written recommendation to the BOCC addressing plan consistency (Attachment 5, pp. 24-25); and
- The BOCC must also approve a consistency statement (Attachment 6, pp. 26-27).
-

Manager's Recommendation

- Receive the Planning Board Statement of Consistency and recommendation of approval.
- Close the public hearing.
- Adopt the BOCC Statement of Consistency (Attachment 6, pp. 26-27).
- Adopt the ordinance (Attachment 7, pp. 28-29) approving the zoning atlas amendment.

A motion was made by Commissioner Gordon, seconded by Commissioner Price to:
1. Receive the Planning Board Statement of Consistency and recommendation of approval;
2. Close the public hearing;
3. Adopt the BOCC Statement of Consistency (Attachment 6); and
4. Adopt the ordinance (Attachment 7) approving the zoning atlas amendment.

Commissioner Dorosin said he will vote against this for same reasons stated in the previous motion.

VOTE: 6-1 (Commissioner Dorosin)

c. Unified Development Ordinance Text Amendment – Public Hearing Process Changes – Interim Report and Closure of Hearing

The Board opened the public hearing, received the information contained in this abstract and attachments, and closed the public hearing on a Unified Development Ordinance (UDO) text amendment that proposed changes to the public hearing process (presented at the September 8, 2014 Quarterly Public Hearing).

Perdita Holtz said this item was heard at the September 8th quarterly public hearing and was referred to the Planning Board. She said this has been discussed extensively, and the flowchart in attachment 2 outlines a new process for legislative items. She said this process captures what the Planning Board discussed in October.

Perdita Holtz said last night the Planning Board discussed a potential new process for quasi-judicial items, and although there is no flowchart, this would generally follow the cadence of the attachment 2 flowchart.

She said the reason for the recommended closure of the public hearing is because the proposed public hearing is likely to change enough to necessitate re-advertising it for a new presentation at a future public hearing date.

Commissioner Rich asked if any members of the public were in attendance while the Planning Board discussed this.

Perdita Holtz said no.

Commissioner Rich said she does not feel that there has been enough outreach to the public regarding this process.

Chair Jacobs noted that the discussion is not ending, just being deferred to another date.

Commissioner Rich asked for an explanation on the reason for deferring it.

Chair Jacobs said the Board would advertise the public hearing, and if significant changes are being made, there would be extraordinary efforts to make sure the public is aware of what is being proposed.

Commissioner Rich said that is her point - that there may need to be more effort made to put the information out there about these changes.

Commissioner Gordon said if this is changed, it is important to make sure the public has as much opportunity to comment as possible. She recommends that no conclusion should be made at the end of a regular public hearing, because this was often the first time that issues are articulated.

She said that to her it does not seem helpful to distinguish between quasi-judicial special use permit hearings and the legislative hearings if that means re-zonings do not have enough time. She agrees that it takes longer for a special use permit if you are going to try to get expert testimony. She would like to make sure that there will be plenty of time for re-zonings, especially for hearings involving conditional zoning districts since they involve a relatively new process.

Commissioner Gordon said she was interested to see that there was no recommendation to increase the number of hearings, and If there were to be an increase, she thinks seven meetings would work.

Commissioner Gordon said the main point is that the public needs more time to comment than just a few days. She likes the idea of posting information when an application comes in that meets the ordinance requirements.

She said she wonders about the issue of not requiring the Planning Board to attend the public hearings. She values the input of the Planning Board, and they offer public perspective as well as expertise.

Commissioner Gordon said this is a process that can be tweaked, as long as the basics, such as making sure the public has sufficient time for providing input, are in place. She said the public hearing is when the information needs to come out, and this needs to be followed by some time to think about the issues before voting.

Commissioner Price said she is a little confused on this process. She said this will not be resolved until sometime in 2015, and there is no mechanism right now to assure when and how the public will be involved.

Bonnie Hammersley said she has attended the last two Planning Board meetings, and she intends to be involved in this process. She said when this comes forward she will make sure everyone is informed about this process. She said if it is the will of the Board, this will be well advertised if it goes forward. She said this hearing is being closed because of the anticipation of significant changes that will require future public input.

Commissioner Price echoed what Commissioner Gordon said. She feels the Planning Board should be a part of the public hearings.

Commissioner Dorosin said he had some questions about the flow chart. He said the current process is that a public hearing is held, and the public speaks; then the Planning Board is sent away and instructed to come back with a recommendation; then the public does not have an opportunity to comment on the Planning Board's comments; then there is possibly another meeting for this to come back to the Board of County Commissioners. He said this seems problematic, and this was the concern he originally expressed.

Commissioner Dorosin said it appears that the flow chart has addressed his concerns about this structure for legislative items.

He read through the flow chart as shown on page 18 of the abstract. He said the idea of this is not to eliminate the public input at all, but it is to make the process more equitable and streamlined. He said one of the changes is that as soon as an application comes in, there will be some sort of public notification or report.

Perdita Holtz said that is correct.

Commissioner Dorosin said the next substantive change he sees is that there will be a round of mail notifications to direct neighbors about Planning Board meetings for map amendments. He said the people attending will have opportunity to make comments and suggestions, and it is almost like a mini public hearing at the Planning Board.

Perdita Holtz said that is correct.

Commissioner Dorosin said someone could come to the Planning Board meetings now, but what is different is the provision of first class mail notification to nearby property owners.

Perdita Holtz said currently the Planning Board does not discuss applications before the public hearing, and this would be a new change to increase public participation at this level. She said this moves the discussion up in the process, so that the Planning Board discussion occurs before the public hearing.

Commissioner Dorosin asked if the notification was previously an agenda item voted on by the Board.

Perdita Holtz said the legal ad was an agenda item.

Commissioner Dorosin said the notification will not be on the agenda, assuming this is acceptable to the Board.

Commissioner Dorosin asked if there is any legal requirement that the Board has to vote on this.

John Roberts said no.

Commissioner Dorosin said the proposal does not say that the Planning Board cannot participate in the public hearing; it just states that a quorum will not be required.

Perdita Holtz said this is correct.

Commissioner Dorosin said the public hearing, as laid out it in the proposal, would be the last step before a decision is made, whenever that may occur. He asked if there will be any reference back to the Planning Board.

Perdita Holtz said it could be the Board of County Commissioners' purview to send something back to Planning Board if something new comes forward at the public hearing. She said the public hearing would be closed, and then the item sent back to the Planning Board.

Commissioner Dorosin asked if the Board could also have the option to send something back to the Planning Board while still keeping the public hearing open. He does not want to have public hearings where the public cannot speak.

Perdita Holtz said for legislative items, it is required that a public hearing is held, and it is not precluded that that the public cannot comment before or after the public hearing. She said it is the County's Unified Development Ordinance (UDO) that specifies written comments only being allowed after a public hearing.

Commissioner Dorosin said it seems like this is getting close to a resolution. He agrees that the critical aspect is public participation, and he is in favor of the streamlining with targeted outreach early in the process. He said he not as wedded to the suggestion of not making a decision on the same night that it is presented at the public hearing. He can see both sides of this issue, and he is not sure it needs to be a matter of policy. He said there will be times when an issue is fully vetted by the time of the public hearing.

Perdita Holtz said if the concern is to get rid of the non-speaking public hearing, then the way to do this is to remove the requirement for only having written comments after a public hearing.

Commissioner Dorosin asked what the basis was for this rule.

Perdita Holtz said she believed that this was set up in the 1980's so that the Board of County Commissioners would be informed about anything that went on after the public hearing.

Craig Benedict said the reason for this rule was to insure that their legislative and quasi-judicial procedures were the same. He said the goal was to have some point in time where the testimony coming in could be stopped to allow for a decision based on a finite amount of information. He said the new suggestion is to have a legislative procedure that can be wide open the whole time. He said for the quasi-judicial items, there will probably be some point in time where that testimony has to stop.

Commissioner Pelissier said overall there are a lot of good things in the proposed new process, but she is confused about the lack of increase in the frequency of the quarterly public hearings. She said this would not accomplish the goal of speeding the process for applications that are "no brainers."

Perdita Holtz said there were concerns expressed by the Board of County Commissioners about the possibility of putting quarterly public hearings on regular agendas. She said the current suggestion is to try this new process prior to taking that next step.

Commissioner Pelissier asked if the UDO would have to be changed in order to change the process.

Perdita Holtz said yes.

Commissioner Pelissier said the recommendation to close the public hearing tonight does not preclude the Board from taking some action based on what has already been heard and discussed; but it is an iterative process, and there would need to be another public hearing in order to make changes other than what has been discussed.

Perdita Holtz said one of the more substantive changes that would require a second public hearing was removing the proposed language about having up to 8 public hearings per year. She said if the Commissioners still want to pursue this, then perhaps there would not be a need for a second public hearing.

Commissioner Rich asked if an additional meeting is being added after the notifications go out and the Planning Board meeting is held.

Perdita Holtz said it is just another opportunity for the public to comment to the Planning Board.

Perdita Holtz said one of the items in the 5th box on the flowchart talks about the fact that the Planning Board action could be to make a recommendation or to make a preliminary recommendation and ask the Board of Commissioners to send it back to the Planning Board if anything significant happens.

Commissioner Rich said she wonders if that is actually speeding things up, or if it is just adding another repetitive step.

Perdita Holtz said it could add a step to more controversial items where it may be sent back to the Planning Board. She said it is really just flipping when the Planning Board meeting occurs. She said, with this proposal there would be no Planning Board meeting after the public hearing for many legislative items. She said for more complicated issues, this would add another opportunity for the public to comment.

Commissioner Rich said if this process is adopted, it is important to make these changes clear to the public in order to have as much involvement as possible.

Commissioner Gordon said she wanted to add a historical note about the legal advertisement. She there was a case where the Board was sued over a deficient legal

advertisement. She said this may be why the Board of County Commissioners reviews the ad, and she likes the way this process is done now.

Commissioner Gordon said she wanted to make sure that all property is being posted, and people are being notified by certified mail.

Perdita Holtz said this is not going away. She said the requirement for certified mail is only for developer initiated applications.

Commissioner Gordon said there used to be more development applications. The economy may be the reason there are currently not as many development applications and therefore relatively fewer quasi- judicial public hearings.

Commissioner Gordon said her suggestion about waiting to vote is in reference to the first time a major public hearing is held. She said it is okay to decide something tonight for this item.

She said the Board needs to be careful about having too many categories of hearings, each with a different process, because it might be confusing to the public.

Commissioner Price said the flow chart states that the public can come to the Planning Board prior to the public hearing. She asked if these comments will then be entered into the record of the public hearing.

Perdita Holtz said the record only relates to the quasi-judicial process, but not the legislative process. She said the flow chart in the packet is related to the legislative process.

Commissioner Price asked if this flow chart would be the same for both.

Perdita Holtz said there would be a slightly different flowchart for quasi-judicial, but it would follow the same general cadence.

Commissioner Price asked if the public would be invited to speak at the Planning Board meeting.

Perdita Holtz said the public would not be invited to speak, but there would possibly be an opportunity for comment. She said all of this has not been worked out.

Commissioner Price said she is just concerned with the Board having an opportunity to see these comments.

Perdita Holtz said there is not really a record of comments at public hearings for legislative items. She said the comments show up in the minutes, just as comments show up in the Planning Board minutes.

Commissioner Price referred to item 1 in the bottom blue section of the flowchart on page 18. She asked when the public would be making comments if the item is not to be listed in the meeting agenda.

Perdita Holtz said it would be listed as a regular item or a consent agenda item, but it would not be listed under the public hearing section.

Commissioner Price said if it is on the consent agenda, the Commissioners may not know that there is someone in the audience who wants to speak.

Perdita Holtz said the public can sign up, or the Chair can ask if anyone wishes to speak before the consent agenda.

Chair Jacobs said he has never seen a planning item on the consent agenda.

Commissioner Pelissier said the recommendation is to stick with the quarterly public hearings. She said this proposal solves the public input issue but not the timing issue. She sees that the roadblock is that you have to provide information 10 days before a quarterly public hearing, whereas you only have 4 days if a public hearing is added to a regular meeting. She questioned whether it might be possible, for legislative public hearings, to provide information on the website 10 days before, and then incorporate it in the agenda 4 days before.

Perdita Holtz said there is no actual requirement to have it available 10 days in advance, but that is the practice that Orange County has had for 20 years.

Commissioner Pelissier said she would like to find a way to do this. She would like to find a way to have the legislative public hearing items be more frequent than just quarterly.

Perdita Holtz said it would be possible to have a section of the website that would allow for complete items to be listed ahead of the agenda.

Commissioner Pelissier said she would like to try the new process with the 8 public hearings and see how it goes.

Commissioner Gordon said it seems to her that Commissioner Pelissier's comments about the notices for public hearings are well taken. She said it is important with legislative items, like re-zonings, to give 10 days of notice for the public hearings.

Commissioner Rich agreed with Commissioner Pelissier. She said there are some public hearings that can be added to agenda items. She would like to leave this option open.

Chair Jacobs summarized that there had been comments and concerns regarding the following items:

- Timing of public hearings
- Provision of advanced notice of public hearings
- Capturing public comments
- Number of public hearings
- Rendering of decisions subsequent to public hearings
- Advertisement comments from Board of County Commissioners

Chair Jacobs said Commissioner Gordon made good points about giving notice and having a deliberate process. He said there needs to be more discussion about time between public hearings and rendering a decision.

Chair Jacobs said Commissioner Dorosin made some good points about the public engagement and the improvement in this. He referred to the final blue box in the flow chart and said this reminds him of the concept plans that are sent to the Planning Board for preliminary analysis and report. He said the Planning Board sends this report back to the Commissioners, and then if it is straightforward there is no need to send it back to the Planning Board. He said there are some items that are just very clear, and those could be on the regular Commissioner agenda.

Chair Jacobs said Commissioner Rich and Commissioner Price were both talking about thinking through what we hear as part of the public hearing process, and whether people have had an adequate opportunity to address the Board. He said the flip side is that we don't want to ask people to come more times than necessary. He said this needs to be combed out a little more.

He said his recollection is that staff reported that Orange County's review process is not any slower than neighboring jurisdictions. He said this process would potentially allow the Planning Board to take itself out of this process, but there is nothing that precludes that.

Chair Jacobs said this proposal is generally an improvement but there have been some points raised that the Board may want to isolate more.

Chair Jacobs said he is most concerned about there being more public access to the decision making process as well as the Board receiving that information in order to know what people are thinking.

Commissioner Rich referred to Chair Jacobs comment about the option for putting a public hearing on the agenda. She asked if this has ever happened, where it has come from the Planning Board.

Chair Jacobs said none have come from the Planning Board. He said he is saying that box 5 on the flowchart would accommodate a way to do this.

Commissioner Gordon said she is not sure Chair Jacobs got all of the major points. She said she wants to make sure to look through the minutes to capture all of these.

Chair Jacobs asked if there were any members of the public who would like to speak.

PUBLIC COMMENT: NONE

A motion was made by Commissioner McKee, seconded by Commissioner Rich to:
Receive the information contained in this abstract and attachments; and
Close the public hearing. (This is being recommended because the proposed text amendments are expected to be heard again at a future Quarterly Public Hearing, so there is no need to adjourn the public hearing to a date/time certain. Closure of the hearing is necessary to ensure the text amendment is not considered a withdrawal, which requires a yearlong waiting period before amendments on the same topic can be considered again.)

VOTE: UNANIMOUS

d. North Carolina Community Transportation Program Administrative and Capital Grant Applications for FY 2016

The Board conducted an annual public hearing on the North Carolina Community Transportation Program (CTP) grant application by Orange Public Transportation (OPT) for FY 2016 and considered approving the grant application that includes adopting a resolution authorizing the applicant to enter into an agreement with the North Carolina Department of Transportation (NCDOT), authorized the County Attorney to review and complete the necessary certifications and assurances, and authorized the Chair to sign.

Peter Murphy reviewed the following background information from the abstract:

BACKGROUND: Each year, the NCDOT Public Transportation Division accepts requests for administrative and capital needs for county-operated community transportation programs. OPT is eligible to make application for both administrative and capital funding.
The current year FY 2015-approved application includes $185,604 in administrative funding and $482,489 in capital funding for replacement vehicles with total expenses equaling $668,093.

The **total CTP funding request for FY 2016 is $166,765** for community transportation administrative expenses and an additional **$232,286 for capital expenses**. This draft grant application is made for expenses totaling **$399,051**.

Grant funds for administrative purposes will continue to be used to support overall transit systems management and operations and will continue to promote general ridership. Grant funds for capital items include the replacement of three (3) buses exceeding their useful life mileage thresholds in OPT's fleet. A public hearing (Attachment 3) is requested with the opportunity for public discussion and comment before the Board takes action on the resolution (Attachment 1). The acceptance of these grant funds requires compliance with the annual certifications and assurances, for which the signature pages are attached (Attachment 2). The attached signature pages are for the certifications and assurances for FY 2014. The FY 2016 certifications and assurances signature pages are very similar to those for FY 2014; however, the County has not yet received them from NCDOT. When received, they will be forwarded to the County Attorney and Chair for review and signatures.

MINUTES
ORANGE COUNTY PLANNING BOARD
OCTOBER 8, 2014
REGULAR MEETING

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

MEMBERS ABSENT: Lydia Wegman-At-Large Chapel Hill Township;

STAFF PRESENT: Craig Benedict, Planning Director; Michael Harvey, Current Planning Supervisor, Tom Altieri, Comprehensive Planning Supervisor, Perdita Holtz, Special Projects Coordinator, Tina Love, Administrative Assistant II

OTHERS PRESENT: Bonnie Hammersley, County Manager; James Bryan, Staff Attorney; Andrew Vanard

HANDOUTS GIVEN: *(email from Lydia Wegman concerning Item 10 which is attached at the end of the minutes)*

AGENDA ITEM 1: CALL TO ORDER AND ROLL CALL

AGENDA ITEM 2: INFORMATIONAL ITEMS

a) Planning Calendar for October and November
b) Dinner meeting with BOCC & quarterly public hearing on November 24, 2014

AGENDA ITEM 3: APPROVAL OF MINUTES
SEPTEMBER 3, 2014 REGULAR MEETING

MOTION by Paul Guthrie to approve the September, 2014 Planning Board minutes. Seconded by Buddy Hartley.
VOTE: UNANIMOUS

AGENDA ITEM 4: CONSIDERATION OF ADDITIONS TO 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 citizens and businesses through efficient and responsive process that contributes to and promotes the health, safety, and welfare of the overall County. The OCPB

~~MOTION by Bryant Warren to approve the statement of consistency. Seconded by Lisa Stuckey.~~
~~VOTE: UNANIMOUS~~

AGENDA ITEM 10: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENT: To either provide input or make a recommendation to the BOCC on government-initiated amendments to the text of the UDO to change the existing public hearing for Comprehensive Plan, UDO, and Zoning Atlas related items/ amendments. This item was heard at the September 8, 2014 quarterly public hearing.
Presenter: Perdita Holts, Special Projects Coordinator

Perdita Holtz reviewed abstract

Craig Benedict: What I put on the Board here is what we presently have. We usually give the Planning Board a briefing on what is coming up at the public hearings, this is kind of informal. We did have the joint public hearing here and then this was referred back to the Planning Board and then back to the Commissioners for action. As you answer these questions, we'll find out, does the Planning Board make recommendations here or do they make recommendation somewhere else? We will draft it up, as you come to some sort of consensus, we'll try to sketch something up for clarity.

Pete Hallenbeck: I am not going to read what is in attachment one, I'll just make a couple of quick comments. First we are going through something different here, it's not a text amendment or something laid out for us. It's an opportunity to say what we're thinking. With that comes the obligation to try to get our thoughts organized. I think the main thing is the joint meetings were a problem just because of the quorum and I think you could move that so they are not joint meetings. However, I think you can, somewhere between require and strongly urge, have the Planning Board members attend. I think it is really important, since we are giving recommendations, to have as many people as we can present to hear what is going on because there is such a difference between reading something and hearing someone present it. There is talk in the meeting about holding the Planning Board either before or after. I think Planning Board before I like a lot, Planning Board after the decision is like closing the barn door after the horse is gone. I'm not quite sure what we'd do, that was discussed. I think citizen notification which is in here is a good deal and it would be nice if that notification includes a description of the process so people know what to do. Part of what happened in the solar project is people were scrambling with the time they had and they weren't sure what the next steps were and also the dates. I think when you combine what we just voted on with the 45 day and you add in the changes we are looking at now and if that notification spells out what is going to happen, it should be a different picture than what we had before. I like treating legislative quasi-judicial mixes as quasi-judicial and that led to those recommendations. So you can sort of see what I am thinking from that attachment one. What we'll do here is just go around the room and take input that anyone would like to pass on to the Commissioners.

Perdita Holtz: I forgot to mention that Lydia Wegman sent an email earlier today about her views. I wanted to make sure it got into the minutes that I did distribute her email.

Pete Hallenbeck: Yes and we should put her comments into the minutes since she is not here. She also talked about it the Planning Board should be at the public hearing and she talked about how they should be required to attend the public hearing. We're seeing everybody wrestle with the same details.

Paul Guthrie: You took the first part of what I was going to acknowledge and suggest everybody read it carefully. Lydia is a very smart person and has been in this business a long time. I must admit that I've thought a lot about this issue and I really wasn't a 100% percent sure where I was going with it so I decided to make it simple. We are in business for one reason and that is to work for the County Board of Commissioners, present them with our understanding of issues and, where appropriate, make recommendations as we gather as citizens in the County. I would caution us as we shape this don't violate that particular rule and if you decide that it's necessary to change that rule in a significant manner, then you need to decide whether the Planning Board is relevant. I would just say that this is a very fundamental issue that needs to be carefully considered and I understand where the concern comes and it is legitimate concern in terms of the quorum/non-quorum issue. It seems to me we ought to be able to

deal with that issue without tearing up the relationship of what a citizen advisory board is to the elected leaders of this County. I think we should think in that line as we work on the process.

Pete Hallenbeck: I agree we need to find a way to get people there but we need to find a way to do it that doesn't penalize people who come to a meeting if we don't have enough people there. That might be the best way to put it.

Laura Nicholson: I have a lot of comments, in light of the timeline that we were given to consider this I wonder if we can't divide it. It seems like there are a few things that are easy and specific and there are a few things that are really squishy so if could just get through some of the specifics. In regard to the quorum, I obviously haven't been here long enough to understand why the quorum was ever an issue but it just seems like a communication thing. If we've made it clear that you are supposed to be at as many monthly meetings and you can and be at the quarterly public hearing, and are given insufficient notice, and we double check to make sure there's enough people there, I don't see it as an issue. I think it is a little insane to do this whole roundabout to change this whole process that seems important because we can't get our act together internally and I think it could be fixed internally so it doesn't have to be this whole big process. And the frequency of public hearings, I don't know if that is something that is really specific and easy to figure out or not but I'm just curious if we couldn't just divide it. So talk about a few things we can iron out tonight and a few things we go back and ask for more time to figure out.

Pete Hallenbeck: Again, it strikes me how to get people there because I think there's agreement that's really important but if we make mistakes and people can't show up for whatever reason, how do you keep that from throwing everything off track? We do serve at the pleasure of the Commissioners so they could certainly come up with some club and stick approach to make everybody come to the meetings but I would leave that decision to them.

Bryant Warren: Reading this I'm a little concerned with, I feel like it is on the step of dissolving the Planning Board and just going straight to the County Commissioners. I'll apologize I did miss the public hearing last month, I got my days mixed up and thought it was the next night. But it is very seldom that I'll miss a public hearing or a meeting. I will make sure I'm here and I don't understand how the Planning Board can make a recommendation to the BOCC before the public hearing is being held because I really think they need to be involved in the public hearing in order to make an adequate recommendation to the BOCC. I think we can do something, I only been on the Board for a couple of months now so I don't know what went on in the past regarding the quorums. I do feel like if you're a member of the Planning Board then it is your obligation to make sure you attend the meetings. I think what we need to do is stress that we need to keep things the way they are, continue the public hearing, continue with the Planning Board playing a very big role in it so they can make the recommendations they need to, because evidentially, if they don't, then you might as well dissolve the Planning Board and not even have it. That's my recommendation.

Pete Hallenbeck: One challenge that came out of this whole discussion that hit me was during the quarterly public hearing, I referred to citizens that want to go to the top they want to go to the decision makers and sometimes it's hard to get citizens to come to an advisory board, they want to talk to the Commissioners. Part of the reason for making sure that this notification process tells people about the Planning Board is to give them more opportunities for input. The before and after comes down to what Craig has up on the board. We have a public hearing then Planning Board then BOCC action. I think that's good I think that's critical and I think the Planning Board has to get input so they can make the recommendation to the Commissioners. When I talk about having a Planning Board meeting after what I am talking about is once the Board of County Commissioners has made decision, I don't think there is any role for further input from the Planning Board. I do think it's critical and would even say they shouldn't make a decision before the Planning Board has had an opportunity to make a recommendation. Any time the Commissioners have the option of doing it and just saying wow, this is just too much to handle all this input, they can kick it back to the Planning Board and we can talk it over and it will come up at the next meeting, they have that option. So, yes if the impression that the Planning Board is somehow being diminished in its role, no I don't want that. I do want to make sure we don't hold up the citizens that show up and I'd like to find a way to encourage citizens to come to the Planning Board to get their concerns known earlier. Part of that is what I'm talking about in here about the Planning Board meeting with the public if the public could come to these meetings, it is a bit of a dry run. The other thing that came up in that meeting is another problem we've always had which is would that we had a crystal ball to predict the no-brainers from the ones that are going to be controversial. If we can get citizens to come to the Planning Board

with input earlier, we can get a better feel of what is going on. The Commissioners can see that when they read the minutes and I think those are ways the Planning Board can be more engaged than it is now.

Bryant Warren: The problem with that is they want to meet with the top people and by having a joint public hearing appearing with both then they are both getting the information and people are showing up for it.

Pete Hallenbeck: I wouldn't be surprised if it continues in the same way but I also don't want to penalize people who want to learn how the systems works and try to get the most out of it. So if they have a 45 day notice and they come to the Planning Board and they're organized and they come to us and say here's the concern and talk about it then the Commissioners can read it. That's the closest we're going to come to that no-brainer crystal ball. They will be much more informed, the Commissioners will, than if all this just hits them for the first time.

Bryant Warren: Right now we have one every 4 months, if it goes to every 2 months, is there not some way if we need another public hearing we can call one or do we have a time frame that would keep us from doing that.

Craig Benedict: The Unified Development Ordinance does set out a public hearing specific dates of 4 a year. We can amend the UDO to say there are other times we can consider amendments. As Perdita put up there, there are three types of hearing, the legislative ones are typically a little bit easier. There is a good possibility we could move some of those legislative items to a regular meeting and have some more opportunities for them. We know that the quasi-judicial are usually the ones that are a little bit more labored because of the testimony and that would probably clog up a regular meeting so having the quarterly public hearings isolated for them will probably remain a good idea. We can consider regular Commission meetings to have a public hearing.

Bryant Warren: I know a lot of developers want to get it out, get it to the public, and get it back as quickly as they can so they can start generating money from it. That's probably what we're trying to do is to accommodate some of them so I don't see anything wrong with it.

Pete Hallenbeck: We have the full spectrum of the developers would love a two month process and a lot of citizens would like a nine month process. What you're talking about with additional meetings, I know Commissioner Jacobs was concerned that if you put additional public hearings on the normal Commissioner calendar, that's where the crystal ball for the no-brainers comes in. You would hate to put, for example, that solar project on the end of a budget meeting cause it would take too long, you really won't be doing the citizens any service, everybody would be tired by the time it was midnight and probably wouldn't accomplish what you wanted. If you know, that crystal ball, that this was going to be a 30 minute with no problem.

Herman Staats: Pete, so I understand correctly, the process that is on the white board now, is what we currently use?

Pete Hallenbeck: Correct.

Herman Staats: Am I understanding you to say that we should have an additional Planning Board meeting with the public and if so where in that process do you propose to put it?

Pete Hallenbeck: The question is the first item, these quarterly public hearing are on a certain schedule but we meet every month. There's an opportunity to have that 45 day notice and have people come to a Planning Board meeting and get citizen feedback quicker and then that feedback can be presented at the next available quarterly public hearing it is unlikely that the Commissioners would decide at that time but that's where the no-brainer, crystal ball comes in. It is far more likely that they will take that citizen input and kick it back to the Planning Board. We would also be at that meeting, however the carrot and stick approach the Commissioners work out for getting us there.

Lisa Stuckey: So if I'm a citizen and I am bringing something forward, you're suggesting that there be a public hearing in front of the Planning Board and then a public hearing in front of the Board of County Commissioners and then it comes back to the Planning Board.

Craig Benedict: Maybe it doesn't have to go here afterwards. There are differences between the legislative and

Lisa Stuckey: But wait, because they were saying they wanted to give people a third or fourth opportunity to speak without question when it came back, as a former member of the school board, every time you hold a public hearing, you will get people to come and the more anxious they are about the outcome, the more they will come and they the longer they will talk. It is just a lot of time. I am not passing judgment on whether or not they should be allowed to, it's just a tremendous amount of time for the boards.

Craig Benedict: There could be different processes for legislative versus quasi-judicial. The reason we have a process now to just have written testimony after this public hearing is because you're trying to set a point in time where the record is closed, let's make a decision, and if we keep on opening things up very late in the process then it doesn't end. That was part of the reason, especially for quasi-judicial matters, for legislative matters, the Commissioners can choose to let them hold it in three minutes, don't repeat what we've heard here. They can diplomatically say that.

Lisa Stuckey: It won't work.

Craig Benedict: Also it shows in the agenda package that the Commissioners, when they have this public hearing over here, they can do three things; they could close the public hearing, this is what we are suggesting as potential options. They could close the public hearing this night and they can set a date to make a formal vote on it, or if it is contentious they could send it back to the Planning Board to return then for a date certain, or one that has never worked well in the past is they can actually decide that night, close the public hearing and say we have enough testimony to decide. That has always been a lot for them but over the many years there's been a few where they thought that were very simple, one was actually a school site for the Orange County school that was an SUP and they needed to get it built and they wanted to approve it there but the process didn't allow them to do that at that time, to vote the same night. It had to go back.

Bryant Warren: So you're talking about on the public hearing that is joint now it will not be a joint public hearing, it would be just the Commissioners?

Craig Benedict: That would be just the Commissioners and as the Chair said, we would suggest the Planning Board attend here or they could watch it on Granicus or they could watch a video of it or they could look at the minutes. *(referring to board)* This would not be a formal, this isn't the formal public hearing here, it's just a point where we can let people know in a neighborhood information meeting that the Planning Board is going to be hearing this item. It is what's called a Planning Board hearing, formal hearing will always stay with the Commissioners that's what state laws says.

Bryant Warren: I don't think you're going to get as many people showing up for just a public hearing with the Planning Board as you're going to get to show up for the Commissioners and Planning Board combined.

Craig Benedict: It's true, the Planning Board and staff may be able to answer some questions here at this pre-meeting. At this crystal ball meeting. Even at this point here, we're going to be educating the public because that's what the Commissioners suggested. Let them know about what process we're going through, is it legislative, is it quasi-judicial let them know what levels of input there are, is it going to be formal expert or can it be anecdotal i.e., we don't think that fits the neighborhood. We can do a lot of education here, having something early where the public can be invited. It probably would be a lot more attendance at Planning Board meetings than you've had in the past. It still goes to the formal public hearing, let's call that the legal public hearing. Then the Commissioners have the opportunity to decide at that point to bounce it back or to themselves two weeks hence.

Perdita Holtz: This Planning Board meeting where he crossed off formal review, the Planning Board recommendation meeting, where there would be notices that actually went out and the property would get posted with a sign to let people know that the Planning Board meeting was happening, it would not be a formal public hearing, it would just be a Planning Board meeting with changing the way we notify the public about Planning Board meetings so that people would know the Planning Board meeting was happening, they would be able to come and speak, it wouldn't have to

be written comments only and at the conclusion of that meeting the Planning Board would make a recommendation on whether they thought the application should be approved or not, on legislative items. Craig is a little bit mixing legislative and quasi-judicial together. Then the item would go to public hearing with the Planning Board recommendation. At the public hearing the BOCC could decide, man there's so many people here that maybe didn't talk at the Planning Board meeting; we really should kick it back to the Planning Board for them to consider this other information that came out at the public hearing. Or, the BOCC could decide this is one of those no-brainers, the people who have been on the Planning Board before will remember the discussion about no-brainers, this is a no-brainer, we can close the public hearing tonight and we can just vote on it, or they can say, well, you know the Planning Board gave us a recommendation, nothing major has come out but I want to mull this over more and the BOCC can say let's schedule it for a later meeting.

Loss of recording device/full memory- approximate 7 to 9 minutes lost.
[There was some discussion about how notices about the Planning Board meeting would be sent via first class mail to adjacent property owners and a sign would be posted on the affected property, in the case of map amendments].

Pete Hallenbeck: It is important that the notifications be a blend of the dry legal requirements of notification and a nice human readable, ok guys here's how it's going to work- we're going to have to this meeting here's what you can do, this is an opportunity for you, so it explains the process and people know what is going on.

Tony Blake: I have a couple of comments; I don't know how much power we really have. I think we're maybe assuming that we have more power than we do here. We are really looking at the UDO and deciding whether or not a project meets the criteria of the UDO, we can't just all of a sudden say, no we don't like that, and the second part of it is, I think we're all here to represent some part of the County. I represent Bingham because I live there and because I have other contacts in the community and it seems to me that we should be part of the notification list for any public information session in our area of representation. We should be at least as strongly encouraged to attend that public information meeting on behalf of the Planning Board and all the Planning Board members be encouraged to attend any public information meeting as that somewhat cloudy crystal because I think you can tell from a public information meeting how many people show up as to what kind of a response you're going to get and what the real concerns and questions are that need to be addressed up front. I don't really understand the quasi-judicial role we have, I understand that we stand up there and give testimony but if our power is limited to interpreting the UDO and trying make whatever changes proposed fits within the UDO and it either does or it doesn't and staff is far more versed in the UDO than I am. I find their recommendations are pretty bang on. All of what I have to say in a quasi-judicial way is hearsay, right?

Pete Hallenbeck: The role of the Planning Board is this oversight, are we meeting the requirements of the UDO. Yes, you're right, but that's a level of detail you have to have. I would point out, though, that there's also a document called the Comprehensive Plan. If the UDO is the rules, the left brain, the Comprehensive Plan is the heart and soul, it's the right brain part of it. There are times when we've reviewed things and it's met all of the requirements but then you'll find something in the Comprehensive Plan that's not right and I think it's not power per say but it's a very valid role of the Board is to point this out. An example of that is the Comprehensive Plan encourages that all subdivisions have sidewalks and yet every time we run into it there is no money for sidewalks and DOT doesn't want it. There is a conflict there and we don't have power over that but we can certainly point it out and I think that's also true with representing the areas you're from.

Tony Blake: Yeah, but I don't find that to be quasi-judicial in essence. You can point it out in a quasi-judicial hearing but it's not some...

Pete Hallenbeck: Quasi-judicial is such a different beast because people get sworn in and there's testimony. It really changes the game a lot and our role in quasi-judicial is very strict.

Lisa Stuckey: We're supposed to be the judge in a quasi-judicial, aren't we?

James Bryan: In quasi-judicial, it's the governing board- the deciding body that is the judge. From a legal perspective, for planning boards' involvement, it's dangerous. Especially, how we have it where you close the public

hearing and then you have the statements. I think that's right before appeal, for a number of reasons, I don't know if the Board really wants to get into all of that but my recommendation would be that because of all of the legal concerns with all that let one board handle it, the Board of Adjustment, that's all they do and then you also have a corollary to that because when the public goes to these meetings and they want to know, look I'm a neighbor and I'm against this, quasi-judicial they can't say anything. That's objectionable, you're not supposed to allow them to go and speak to that. So if you have one board where they know, oh Board of Adjustment that's when I have to have my expert there to testify and any time you go before the Board of County Commissioners or the Planning Board, that's when I'm allowed to give my opinion because they do policy and legislative matters. It's clear for the public.

Lisa Stuckey: So, the quasi-judicial, and I guess the mix will move out of the Planning Board?

James Bryan: That would be my recommendation.

Perdita Holtz: Well, the legislative part of the mix would not but we need to figure out what we want to do for legislative versus quasi-judicial before we tackle that funny beast of the mix.

Lisa Stuckey: But quasi-judicial is leaving us.

Bonnie Hammersley: No, as the County Manager I have to speak. The issue tonight is some kind of recommendation from this Board to the County Board of Commissioners, they make the final determination. One thing I would want to add thought as you all talked about your power or your worth, this Board is a highly valued board in county government and is in all the counties I've been in. The County Board of Commissioners depend on you greatly for your recommendations and what you do and so I want you for that but no determination has been made on what is going to happen. That's what this discussion is about. It would be a recommendation to the County Commissioners and whether the Commissioners would agree with that, they would make the final determination and I don't know what that is.

Maxecine Mitchell: I'm sitting here thinking I want to share in my own way, when I decided to be on this Planning Board, I came to represent my community. I don't feel comfortable in any decision we make, I have to be there to hear what the people have to say. I sit here every month and hear the staff from their perspective and I get a good understanding on their challenges, what they are trying to do as a whole, I then like to come to the public hearing meeting and I cautiously listen to the people. Within the decisions we make to the UDO and the Comprehensive Plan when we have a chance that helps me to figure out if it a good thing for the community. Then my recommendation that I give to the County Board of Commissioners, I'm looking at it from the community perspective because I have to live here. You may not live in my neighborhood, in my area, and I don't want rules making it hard for me to enjoy the life here in Orange County. I take this very seriously so I don't want whatever we do, I want to hear from the public, as well as coming here every month and hearing from the Planning Board and hearing the County Commissioners and what they want and make it all work the best we possibly can. I understand the legal process but for me that's top concern because we have to live here in Orange County so we have to keep it where people can enjoy the County and not feel like they want to move to Durham or Alamance County, that's the way I see it and I want to find the best way to say that in the decisions we make. I try my best to show up to the public hearings and I go to work at 12 at night and the night of that long meeting, I left that meeting and went right to work because that's my commitment to the citizens of Orange County to be there. I think that staff and the Board of Commissioners get benefit from it.

Pete Hallenbeck: One good thing coming from this discussion is that it's an interesting opportunity for everyone to think about the role of the Planning Board and I think we are all basically on the same page. If anyone has another rule they think is critical.

Paul Guthrie: I mentioned one and that is the fact that we provide the Board of Commissioners with a screen with which they can filter through information as they deal with some very tough issues.

Pete Hallenbeck: Yes, with a blend of the feedback and the community and public input. Also I think there is representation of the areas and there is also that everybody here has a diverse skill set and drawing on both of those really helps with these opinions that we can give the Commissioners.

Tony Blake: Is it safe to say that any quasi-judicial process is preceded by a legislative?

Perdita Holtz: In quasi-judicial matters it depends on how you're zoned on whether you have to get a Special Use Permit and so at some point zoning was applied to the property but you can't say that it precedes it by a month or a year of something like that.

Tony Blake: No, what I'm saying is the maybe when we run up against this situation where we think, maybe the County is being too heavy handed but we don't really have the power to do anything but interpret the facts against the UDO and it either is or it isn't, right? Michael is the oracle on that, we have a handoff or a way to pass along to a more powerful body, the Board of Adjustment or the Board of Commissioners whoever it is and say here's our legislative view to take into your quasi-judicial. I don't know.

Perdita Holtz: No, it's not for most of the types of Special Use Permits that we see. The only time that there's a legislative component is if there is a rezoning associated with also needing a Special Use Permit and that happens in the case of some subdivisions when you get larger subdivisions in the rural area.

Tony Blake: Yeah, I was thinking of that dog kennel up on 70 where they weren't really in compliance. They wanted to do something, they couldn't do something without being in compliance first and then being in compliance was too expensive. It really got dicey and at the end of the day, basically, we were told we couldn't do anything outside of the UDO but at the same time it didn't qualify for the Board of Adjustment and so there was this limbo thing and then it was thrown over to the County Commissioners who changed the decision.

Perdita Holtz: Yes, that really was a messy one.

Tony Blake: That's the kind of situation I'm thinking of that it just really seems like we could be more graceful. Changing gears here if we got in early at the community information meetings and tried to make that at least as important as attending the quarterly public hearings for the representatives of that group to bring back to the Planning Board I think that would go a long way towards your crystal ball.

Pete Hallenbeck: Two things here, on page 72 there's that summary and that Perdita came up with and 88% of the time things are legislative and 3% of the time it is a mix. You never want to ignore a minority of cases but you also don't want to optimize the system on one low probability parameter. Also, Tony, I wanted to comment and this will sort of speak to what Maxecine was talking about, I like the idea that you notify Planning Board members if there is neighborhood information meeting in their district. I think that's a great thing to do.

Michael Harvey: With all due respect, I think that the policy should be that every Planning Board member gets notified and they can choose to attend if they can or cannot. That way everybody benefits. As neighborhood meetings are scheduled the Planning Board gets notified and every member has an opportunity to attend.

Tony Blake: I would agree.

Michael Harvey: The reason I saying it that way is if Tony Blake can't show up, maybe other members can and the fact that Tony was not able to show up on a given evening. I think if you're asking staff to make sure you're notified of every NIM then we can just do that as a policy.

Pete Hallenbeck: You're right on the money, that's more functional and easier to implement.

Paul Guthrie: I have a question for those of us who live in the County but are under Chapel Hill planning management, how do we get notified? Because most of the planning of what that has done is under Chapel Hill's Planning Board. There was a point in time in the past the County Commissioners made a recommendation for

appointment to the Chapel Hill Planning Board, from the area in which I live in, and the first thing that happened, it happened to be me as the nominee, and the first thing that happened was Chapel Hill Planning Board and the Council decided to eliminate that position so I think that we need to talk about those fringe areas that are in the extraterritorial jurisdiction and see if we can get the process working there too. I'm in the southeast corner of the County and it is going to be one of the big growth areas in a very small area over the next few years, I'm afraid, and there is a lot going on but you usually have to read about it in the newspaper to find out about it.

Perdita Holtz: So you're suggesting that we work with Chapel Hill Planning's Department for them to overhaul their practices on how they notify?

Paul Guthrie: No, I'm just saying it would be nice to know when those things are going on or how many newspapers I need to subscribe to.

Perdita Holtz: It's Chapel Hill's planning jurisdiction and we don't necessarily always know what is going on.

Pete Hallenbeck: I think the key thing is, you being in Chapel Hill, if there's any neighborhood information meetings, you'll find out about it in the County because Michael's suggestion was right on the money. It's easy to implement and everybody's informed.

Buddy Hartley: I feel like the process we have now is working. The question is can we get a quorum at the public hearing. That's the question. The process is working, staff is doing their job. Staff is giving us the information for whatever is taking place and we are recommending to the Board of County Commissioners, whether they like our recommendation or not, they do what they want to do. So, I do like the fact of possibly having the public being able to come to us before the public hearing but then the question is are we going to have a quorum at the public hearing. I don't see a big problem with that we just need to let staff know in advance if we cannot make that meeting so they know. We should be able to get a quorum at the public hearing.

Perdita Holtz: Well it's really far in advance because the legal ad gets published and notices get sent out, the legal ad is due to the paper like three weeks before the public hearing.

Buddy Hartley: So we want to be able to have a quorum at the public hearing, we either do or we don't.

Lisa Stuckey: Aside from the time somebody was late, and I was one of them one time, it's been very close. There were other meetings, I can think of two others, maybe three, where we were waiting for people to come.

Maxecine Mitchell: But I usually get an email and if not an email somebody calls. Does not everybody get that same thing as a reminder?

Perdita Holtz: Yes, Tina sends out emails asking about quorum.

Maxecine Mitchell: I have it on my calendar but when I get the email I remember, that's right I do have a public hearing.

Buddy Hartley: And she does call.

Maxecine Mitchell: Yes, if she doesn't hear from me, she'll call. I just wondering, is that not working for everybody to remember that there's a public hearing?

Perdita Holtz: Often we call because enough people have said no, and so it's getting very close on whether we're going to have quorum and so now we're scrambling to get on the phone with people who haven't responded to see if they can show up or not.

Pete Hallenbeck: You can put a lot of procedures in place but the bottom line is we had a lot of trouble and if it happens again something has got to change. I would ask, it's not clear to me, what the value of having a true joint

meeting where the Planning Board has a quorum versus requiring Planning Board members to attend and if you have bad attendance then the Commissioners can do something about it, like say thank you for your service but you're not cutting it. We're going to be there and we're going to hear the public hearing input. The commissioners certainly have the ability while we're there, even if it's not a joint meeting, to ask if there are any comments from the Planning Board. It's well within their purview so I just don't see that dropping the official joint with a quorum requirement, I don't think that will change the process a whole lot. What it will do is not hold up a meeting where you have 100 citizens there.

Craig Benedict: From what I'm hearing from the discussion, there seems to be somewhat of a role of the Board in a differentiation between how they act on a legislative matter, where they can hear opinions left and right, they can hear the community and they can see the site versus the quasi-judicial nature where your role is more structured. Not that we are making any determinations tonight, but maybe when we do this interim report, maybe there are two different processes that we follow for legislative matters versus a quasi-judicial and right now they're clustered together and maybe we should take a look at the role of the Board on a legislative matter and how we get input versus a quasi-judicial matter follow a different tract. Does that sound reasonable?

Pete Hallenbeck: In general, what I'm hearing, and I realize there is variation everywhere, is everybody agrees there is great value in having the Planning Board at the quarterly public hearing. The challenge is if you don't have a quorum, we don't want that to derail anything. I am also hearing people are happy with this concept that the Planning Board can take citizen input so we can get that sooner and hopefully that combined with the 45 days will just make everything go better. Most of what we've been talking about is for the legislative processes which are 88% of the time. The quasi-judicial is a different process and we need to work on knowing what our role is in that. That may be something staff and the attorney can work on to educate us on that a little bit better but again 88% of the time it is legislative and it would be great to also notify all Planning Board member of any neighborhood information meeting that is going on so we have a chance to get out there and see what is going on. Those are the main points I'm pulling out. Is there anything major anyone can think of?

Laura Nicholson: So, is the idea that we will have quorum and we'll all just internally say we are going to be better about getting quorum or was there some barrier that maybe some of us that are new don't understand why we couldn't get a quorum before?

Pete Hallenbeck: My personal opinion is to drop the quorum requirement because we've blown it two or three times and if we blow it one more time, it is just, it's getting to the point it's not excusable and that's also based on the fact that if we can just impress upon people how important it is to be there, it's not clear what the quorum is doing and the Commissioners can still ask Planning Board members who are present for comments and input.

Laura Nicholson: It's just funny that you're saying we need to make sure that we all know that it's really important to be there but it's not a requirement. If it's really important to be there it should be a requirement.

Pete Hallenbeck: It should but then when you don't have it, we were lucky that we had only a 30 minute delay. What would happen if you had a meeting and you didn't have quorum and you tell all these people I'm sorry we just don't have the people, we'll try this again in three months.

Laura Nicholson: I agree I just don't see how we can't have a quorum.

Lisa Stuckey: Why don't we ask staff, what's the problem? Do we know why people haven't shown up? What's been the issue?

Perdita Holtz: I think it just depends on the personalities that you have on the Board. How seriously people take their position.

Tina Love: There has never been a time when staff went to the meeting without a quorum. I have never left work at the end of the day that staff didn't have a quorum. If I haven't heard from you, I get on the phone and I call you and I keep on calling until I reach you, and I'm sorry about that, but we have to ensure there is a quorum. Then staff gets

to the meeting and for whatever reason, and things do come up last minute but there just isn't a quorum. I don't know what other process we can do to fix that.

Tony Blake: Send the Orange bus.

Maxecine Mitchell: For me, I know we get a copy of the calendar every month, I put it on my personal calendar and an alarm goes off and I say hey you've got a meeting. I don't care if it's an hour before, I'll throw on my clothes and get up here because I've made up in my mind I'm committed and I know it's part of my responsibility on the Board. If something comes up, an emergency, the first thing I try to do, I'm calling from South Carolina when my sister passed away to say she passed I can't make it. Things like that, you can't help but if you're here you should be making it to the meeting. I think it doesn't have to be a rule we just have to be committed and show up unless it is out of our control.

Laura Nicholson: I just think if the quorum isn't a rule then we're making ourselves seem less important. Like we can't make it to a quorum, we've already embarrassed ourselves by not being there so let's just not hold ourselves accountable and I think we should hold ourselves accountable by saying there has to be a quorum.

Pete Hallenbeck: If the quorum requirement were effective, we would never have not had a quorum and I see this as the price of failure of value of success and the price of failure having the quorum is we hold up the public. The value of success is we have a quorum, the meeting starts but after that I don't see a lot of difference because the Commissioners can still ask our opinion and we are still there to get input. I think that's why I come down on the side of dropping the quorum requirement. It's just that simple weighing of the price of failure and the value of success. I don't see any difference in the outcome.

Tony Blake: What's the reason for the joint meeting?

Pete Hallenbeck: I think Laura's right on the money, it does bring the Planning Board out, it makes it part of the process, it give value to it, adds importance to it. By the same reason if we don't show up it makes it look like the Planning Board isn't important it doesn't care and the people are not there and you're holding up the citizens.

Laura Nicholson: Is it possible that it was a communication issue, so for example, I knew I was going to be ten minutes late so I emailed Tina but I don't know if she got my email so maybe it's that we need cell phone numbers of staff so that we can call people and say hey, I'm going to be late or this came up or maybe it's just because I'm new.

Tina Love: One other thing we need is alternative numbers, cell phone numbers for Planning Board.

Laura Nicholson: So I see it as a communication issue that is holding up the quorum process and if we just over communicate rather than under communicate it will solve itself.

Perdita Holtz: It really wasn't the issue of someone being ten minutes late and calling. It was people having full calendars and just not making it to the meeting.

Laura Nicholson: And they don't know that in advance?

Perdita Holtz: I don't want to speculate on when people know in advance.

Laura Nicholson: I'm new so I can't comment but to me it seems simple you're supposed to be there, you're there and if you're not you tell somebody.

Perdita Holtz: That's a wonderful outlook.

Pete Hallenbeck: Sometimes just the ebb and flow of life just doesn't work out.

Buddy Hartley: Things come up and when things come up, you contact staff and you let them know, I can't make this meeting for whatever reason. Everyone won't be able to always make meetings and if that happened with 3 or 4 people for the same meeting, you might not have a quorum.

Lisa Stuckey: It's not a regularly scheduled meeting for us, it's an odd meeting and I think that's part of the problem and it's on a Monday instead of Wednesday when we normally meet. Honestly when you're talking about going to more meeting I wonder how many Planning Board members can really go to those neighborhood meetings.

Perdita Holtz: I'm a little fuzzy on a certain aspect of what you've discussed tonight; I hear that you want to attend the public hearing whether those are quorumed or not quorumed that you want to attend to hear the public.

Lisa Stuckey: But if they change it and they're doing it six or eight times a year, are we really committed to that? I would be extremely skeptical.

Perdita Holtz: That is a question at this time, I don't really think they are going to be changing the frequency but that's just my feeling from what we've heard.

Bonnie Hammersley: I will support Perdita on that. One of the things we have is for the November 24th quarterly public hearing we don't have any agenda items and so it's difficult to try to justify adding more meetings so right now I don't see that being the will of the Board to change it.

Perdita Holtz: I hear that you want to attend the public hearing what I'm fuzzy on is I've also heard that you want to do public meeting where the public can come to the Planning Board meeting and comment beforehand. There would be an official agenda item, we would send out notices to any affected property owners and they could come and talk with you. At that point, would you all make a recommendation at that Planning Board meeting and then attend the public hearing or do you still want to wait to make the recommendation after the public hearing? We're just talking about legislative not quasi-judicial for this. What I am trying to clear on, because I have to write something up for the BOCC, is you want to attend the public hearing and you also want to have a pre-meeting where the public can come and attend. If it involved a piece of property the public is going to get mailed notices and we are going to put notices/ a sign saying come to the Planning Board meeting and let them know what you think. At that meeting will you all make a recommendation prior to the public hearing or do you want to wait until after the public hearing to make a recommendation?

Pete Hallenbeck: I think we can no more guarantee we can make a recommendation than the Commissioners can guarantee they can make a decision at the quarterly public hearing much as happened with the solar project. I think the best the Planning Board can do is to provide feedback based on our knowledge on the communities we come from and maybe comment on what people say and yes there is a bit of a challenge there because there may be time when all we can do is except that input and frankly there won't be a whole lot we can say that is terribly intelligent other than thank you for the input.

Perdita Holtz: So after the public hearing you want to make a recommendation still so my concern is that on legislative items, that do not have a neighborhood information meeting, you are now adding an additional meeting before the public hearing that is going to make the process longer. I want to make sure that.

Pete Hallenbeck: I don't think I was saying it that way.

Perdita Holtz: You're having a Planning Board meeting that we are going to send out notices.

Craig Benedict: We'll send out the letter out and decide.

Perdita Holtz: No, they're saying they don't want to decide, I know that is what we talked about two weeks ago but this is not what's being talked about tonight. They want to wait to decide until after the public hearing.

Herman Staats: My own personal feeling about making a recommendation is what I said earlier, if you have opportunity for public input but no one comes then yes we can make recommendations based on the written guidelines but you still don't have public input. So the whole goal of us discussing this tonight was to increase and have a better access to public input but if they don't come then we're not increasing public input. I thought this whole process came up of how do we get more feedback from the public and how do we get them involved.

Perdita Holtz: That's one part of it.

Maxecine Mitchell: Right now, I'm going to go with leaving things the way they are right now.

Perdita Holtz: Increasing the public involvement, that's certainly one part of it Herman, about increasing the public involvement however, the increasing of public involvement is really pertinent to quasi-judicial matters and so I am trying to nail down more of what you are all thinking about the legislative matters and we're going to have to tackle quasi-judicial at some other time.

Pete Hallenbeck: Yes, I agree, just talking legislative and I think I agree with Herman that if we can make a recommendation or decision, we will but there may be circumstances where we just can't.

Michael Harvey: Is the concern that not enough citizens are interested in showing up and you're going to make a recommendation in a vacuum.

Pete Hallenbeck: No, if nobody shows up and they have met all the requirements for what they are trying to do and it meets the UDO, I say we make a decision and say yes, we're all for this. I think the times where we wouldn't make a decision would be like the solar array.

Paul Guthrie: It's not judicial, we're not encumbered on that solution that we have something, nobody shows up, we have a question about it, we could send that to the Commissioners and it could be incorporated in the call for the public hearing.

Pete Hallenbeck: Yes, all that is possible and again it's part of being an advisory board there

Tony Blake: Let me just suggest just opposing the whole thing for just a second here. Why not add, and I think other boards have this thing that they have sort of a County Commissioner liaison. Why not require that liaison to be here for quasi-judicial, no quasi-judicial right? Then they can carry that feedback back to the other County Commissioners.

Pete Hallenbeck: We're going to stick with the legislative, quasi-judicial is a very strict process.

Perdita Holtz: There are reasons there's not a BOCC liaison for the Planning Board and I don't think there is going to be.

Pete Hallenbeck: I think the changes we're talking about is we have the 45 days, we're just saying let the public come and present input either in writing or verbally at the Planning Board meeting that's part of the notification they get. We will discuss it there will be times when we can make a recommendation and there will be times when we'll just throw our hands up and there will probably be times when we go, we don't really want to get near this thing and we kick it back to the Commissioners.

Paul Guthrie: Would that be mandatory or just advisory? Could we simply say you may wish to come to a Planning Board meeting prior to the public hearing?

Pete Hallenbeck: Yes, but part of this is to explain the process, is that exact language. You're not required but if you care to this is great as it gives us better input sooner, the Commissioners read your feedback before the quarterly public hearing. That explanation should enough to let a citizen realize how the process works.

Paul Guthrie: Probably a good idea.

Laura Nicholson: To me there is just some things that seem really cut and dried and there are some things that are really squishy. Is there a way we can delineate that and say these things we agree on and bring a recommendation on these things and these things we still want to talk about more, is that a possibility?

Pete Hallenbeck: Part of why I tried to say it's important to be at the QPH not wild about the quorum and you're comments you really think the quorum will help. The Planning Board taking citizen input, it sounds like everybody is good with that and more input is good. We realize this is legislative that is 88% of what we see, all Planning Board members get notification of any neighborhood information meetings and we realize that the quasi-judicial is a problem for another day we need more education as there are very strict rules. That's ok because we've just dealt with 88% of what we deal with and I would say that's the summation of what we are putting before the Commissioners along with this process.

Craig Benedict: Chair, based on the direction the Commissioners gave the manager and the attorney and staff is this interim report is not going to make decision so, that interim report will say probably some things are easier to achieve and some things are a little bit harder so I think in essence we are going to get some ideas on which way we can move with it. Where's there's some clarity and which areas might need a little more time. That's why they said the November 6th meeting wouldn't have everything done by then. We'll let them know where we are in the process that we were getting consensus on some areas and we are also determining that there are differences, clear differences, on how the Board's role is for quasi-judicial versus legislative and how we get community input that might take a little longer.

Pete Hallenbeck: That's also why we're not going to vote tonight on this and what we recommend. We've talked they get to sludge through it and see what we're thinking and it goes on from there. Ok, the last item on the agenda, I'll entertain a motion to adjourn

AGENDA ITEM 11: COMMITTEE/ADVISORY BOARD REPORTS:
a. Board of Adjustment

AGENDA ITEM 12: ADJOURNMENT:

MOTION by Bryant Warren to adjourn. Seconded by Buddy Hartley.
VOTE: UNANIMOUS

Email from Lydia Wegman:

From: Lydia Wegman [mailto:lnwegman@gmail.com]
Sent: Wednesday, October 08, 2014 2:12 PM
To: Perdita Holtz
Subject: Re: October Planning Board Materials

Hi Perdita,

Thanks for that helpful explanation of the status of the recommendations on the public hearing process. I am very sorry to be missing the discussion tonight. As a new member of the Board, I feel I would benefit from hearing the views of the folks who have served on the Board longer than I. I do, however, have two thoughts to offer, which are laid out in the next paragraph. In addition to that, I plan to read the minutes of tonight's discussion and then offer my thoughts on the conclusions reached, if any. I know this is not the best way to engage in discussion, but given that I am out of town, I think it's the best I can do.

Here are my views on two issues for tonight's meeting: First, I do not think the Board of Adjustment should handle Class A SUPs. I think those should continue to come to the BOCC and to the Planning Board for a recommendation to the BOCC. I feel that decisions on these SUPs concern the way in which the county is using the precious land within its boundaries and those decisions should be left to the elected, not appointed, officials. I think it's important for the Planning Board to offer its views to the BOCC. My second thought is that the the Planning Board should make its recommendations to the BOCC after the conclusion of the public hearing, as is done now. I think the Planning Board should be required to attend the public hearing and am not sure why there has been such a problem with attendance at the quarterly hearings. Is there really such a problem? If so, I suggest that the Planning Board be asked to solve it. I don't think the solution is to cut the Board out of that process. But even if the Board is not required to attend the public hearing, it should be required to listen to the hearing before offering its views to the BOCC. The information at a public hearing is in my view essential to helping the Board thoughtfully consider what recommendation to make.

I hope these views can be considered at tonight's meeting. Thanks very much. I look forward to hearing about the discussion at the meeting.

Lydia

_____
Pete Hallenbeck, Chair

MINUTES
ORANGE COUNTY PLANNING BOARD
NOVEMBER 5, 2014
REGULAR MEETING

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

MEMBERS ABSENT: Peter Hallenbeck (Chair), Cheeks Township Representative; Herman Staats, At-Large, Cedar Grove Township;

STAFF PRESENT: Craig Benedict, Planning Director; Michael Harvey, Current Planning Supervisor, Perdita Holtz, Special Projects Coordinator, Tina Love, Administrative Assistant II

OTHERS PRESENT: Bonnie Hammersley, County Manager; James Bryan, Staff Attorney;

AGENDA ITEM 1: CALL TO ORDER AND ROLL CALL

AGENDA ITEM 2: INFORMATIONAL ITEMS

a) Planning Calendar for October and November
b) Dinner meeting with BOCC & quarterly public hearing on November 24, 2014 has been cancelled
c) Chapel Hill ETJ Expansion Request

Craig Benedict gave an overview of the ETJ expansion request. Subject area JPA vs ETJ land use regulations and financial investment representation future long term planning.

Craig Benedict: There is an area of the Joint Planning Area of Orange County, Chapel Hill and Carrboro in the transition area. In order to fund certain infrastructure improvements, Chapel Hill would be able to contribute more if it was part of their ETJ. That request will be going to the BOCC on November 18.

Lisa Stuckey: I was on a committee that worked to get the sidewalks in with DOT and there were 3 jurisdictions, Chapel Hill, County and Carrboro as I recall and it was a mess. To me this seems to simplify things.

Tony Blake: This goes from the town operation center all the way south.

Craig Benedict: This is about a 1,000 acre area and would include the whole section of the Joint Planning area that is north and west of Chapel Hill.

Tony Blake: Do those residents have a say in this?

Craig Benedict: There is a public notice requirement that the City has put out and they have come forward and said they are in agreement with this proposal.

~~MOTION made to approve the report and work plan presented by Craig Benedict by Andrea Rohrbacher. Seconded by Laura Nicholson.
VOTE: Unanimous~~

AGENDA ITEM 8: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENT: To continue discussion and provide input on government-initiated amendments to the text of the UDO to change the existing public hearing process for Comprehensive Plan-, UDO-, and Zoning Atlas-related items/amendments. This item was heard at the September 8, 2014 quarterly public hearing and was discussed at the October 8 Planning Board meeting. Discussion is expected to focus on the quasi-judicial process.
Presenter: Perdita Holtz, Planning Systems Coordinator

Perdita Holtz reviewed PowerPoint Chart

Paul Guthrie: If there is a different presentation at the BOCC from what was given to this Board, what would happen?

Perdita Holtz: If it were significant, we could say this is a significant difference, you may wish to send it back to the Planning Board and the BOCC would decide.

Paul Guthrie: If you want to catch up to speed on what happened, where would you get that?

Perdita Holtz: It is on video and eventually minutes are done by the County Clerk's office but they are not done within two days. It usually takes a couple of weeks at least.

Lydia Wegman: The Planning Board meeting would occur first. Most of the public will probably blow off the Planning Board meeting. If they come to the BOCC and make a presentation that the Planning Board didn't see or consider, how will the BOCC know they are seeing something the Planning Board didn't see that might be significant and change the recommendation?

Perdita Holtz: There would be a report that tells the BOCC who spoke at the Planning Board meeting. Also, staff could let the BOCC know if something significant is being raised at the public hearing that wasn't at the Planning Board meeting. Then the BOCC could decide if it should go back to the Planning Board.

Paul Guthrie: Worst case scenario, would it be possible for this Planning Board de nova after that decision to say we didn't hear any of that?

Perdita Holtz: That would depend on if the BOCC made a decision the night of the hearing or not.

Paul Guthrie: There are 99 times out of 100 you would never have a problem but it is that one time it could be sticky.

Lydia Wegman: It says the public hearing will be closed at the conclusion and written comments would no longer be required for making comments after the hearing. If the public hearing is closed, what would be the forum for making comments?

Perdita Holtz: On a legislative items, anybody can comment anytime. The current process is that the public hearing is left open for written comments.

Lydia Wegman: It the public hearing is closed then what does it mean to submit comments in any form?

Perdita Holtz: For legislative items, the public hearing is a statutory requirement that you hold a public hearing but you can receive comments before and after that formal hearing.

Lydia Wegman: If the BOCC has already made the decision, there is no opportunity for anyone to make comments.

Perdita Holtz: They should comment before the public hearing at the Planning Board or at the public hearing.

Lydia Wegman: What is the purpose of having this additional opportunity for comment after the public hearing is closed.

Perdita Holtz: There isn't an additional opportunity via statutes, people can continue to comment. It is not like a quasi-judicial process.

Craig Benedict: In the three cases the BOCC can decide, if they defer their decision, any input that comes from the citizens can still be considered. If it gets referred back to the Planning Board, the citizen can still provide comment. The only case it would not work is if the BOCC heard everything they thought they needed to decide that night.

Tony Blake: Where along this process line is the community information meeting?

Perdita Holtz: The information meeting 45 days ahead of time is associated with Special Use Permit applications which are not legislative but are quasi-judicial.

Michael Harvey: Neighborhood meetings are also for major subdivision and fire stations.

Tony Blake: That is a localized place to make comments and the Planning Board rep should be notified and invited to that meeting. This seems to cry out for a Neighborhood Information Meeting.

Perdita Holtz: We were kind of looking at it as the Planning Board meeting would be the prelude to the public hearing.

Tony Blake: They are involved by the applicant. You are making the distinction that these are not text amendments. The Neighborhood Information Meeting is more important for something like this that is not a text amendment than a Special Use Permit.

Perdita Holtz: The whole point of having the Neighborhood Information Meeting for the Special Use Permit is so people can understand that is a very special process and that you will have to hire experts to represent you.

Tony Blake: A concrete example is the Mountains to Sea Trail. I would think that sort of process would be valuable there.

Perdita Holtz: I think that DEAPR is holding meetings on the Mountains to Sea Trail.

Tony Blake: I am getting pounded by this new gas pipeline.

Michael Harvey: The BOA held a public hearing on the gas line proposal which was advertised and notifications were sent. We were on tenuous ground as to whether the hearing was required but we had the hearing and went through the process.

Bonnie Hammersley: I met with PSNC's representatives with the Chair and Vice Chair and how we can inform people better about those issues.

Paul Guthrie: Having managed the acquisition of trails for snow mobiles and hiking, etc. in Wisconsin I can tell you that it would be good to keep a master file of all communications that come in whether the are timely or not for information.

Lisa Stuckey: Going back to the discussion of the suggestion to change our process, if it's related to the change, now is the time. Perdita, do you need a vote or consensus?

Perdita Holtz: For a consensus that says this flowchart captures the discussion at last month's Planning Board meeting.

Laura Nicholson: I like the flowchart and I think it does capture what we have been talking about. When you get to the last bubble it gets wordy. It says Planning Board members would be encouraged to attend, could we say expected to attend so it sounds more like we care about being there.

Lisa Stuckey: In the description of the Planning Board's responsibilities and what people see when they are thinking about applying to the Planning Board, it doesn't mention the quarterly public hearings, it mentions only the monthly meetings.

Laura Nicholson: I agree. If it is in there as an expectation then the idea is that you should know that upfront.

Lisa Stuckey: Now there is a quarterly public hearing, people have been making comments at our meeting, the process hasn't been explained to them, we are expanding the number of times a person can comment from only the quarterly public hearing to our meeting in a more formalized way, the public hearing, they have another chance to speak. We are expanding the number of times people can speak; do you think it will slow the process?

Perdita Holtz: On controversial items, possibly.

Buddy Hartley: I like the setup. It does do what we have talked about for years.

Lisa Stuckey: Is there a consensus?

Lydia Wegman: People need to understand if the BOCC makes a decision that night, it is over. People need to understand upfront that is a possibility.

Tony Blake: I agree with the caveat that if you are changing zoning there should be a public information meeting.

Perdita Holtz: That would make the process longer.

Lisa Stuckey: In the letter that goes out, notifying the people of the Planning Board meeting, there could be a note of encouragement that if you have questions or concerns, attend and make your feelings known.

Laura Nicholson: At the bottom bubble, it says the public hearing will be closed at the conclusion of the hearing and written comments will no longer be made. You say hearing a lot and you are talking about written comments would no longer be required, you might want to say solely written comments wouldn't be required.

Perdita Holtz: This flowchart is for people who are somewhat familiar with the process, so they can make decisions about changes from the existing process, it's not to be distributed to lay people who know nothing about how the process works.

Andrea Rohrbacher: From my experience, no matter how hard you try, you will have someone who says I didn't know.

Perdita Holtz: Moving on to the quasi-judicial process. Reviewed abstract. Three questions that may frame the discussion. One, do you think the Planning Board should make recommendation on quasi-judicial. Two, if you decide you want to continue to make a recommendation, when would that occur? Three, if the Planning Board is no longer attending the public hearings as an official board, what would the Planning Board meeting be?

Paul Guthrie: Does the BOCC feel they need a buffer?

Perdita Holtz: I don't know what the BOCC feels.

Paul Guthrie: It may be a little bit of a pain if we have to look at a million items but it could serve a useful purpose and it could expedite the process.

Tony Blake: 99.99% of the time, staff is correct that it meets or doesn't meet….but there are cases where there is something they are not aware of.

Lisa Stuckey: But we can't receive that information.

Tony Blake: If staff says it meets this checklist and you know otherwise, that is not testimony….

Lisa Stuckey: When we go through the checklist, is that before or after the public hearing?

Perdita Holtz: After the public hearing.

Lisa Stuckey: The Planning Board is not allowed to take additional testimony so we can't insert things we have heard.

Craig Benedict: You can ask questions. You can ask the applicant to provide information.

Lisa Stuckey: Can you ask a member of the public who spoke?

Craig Benedict: You have the right to cross examine anyone at the hearing.

Lisa Stuckey: If we don't have a quorum and we come back to our meeting, are we allowed to go forward with the checklist? If a quorum of the Planning Board is not required at the public hearing, can we proceed?

Lydia Wegman: What would be the role of the Planning Board after the public hearing?

James Bryan: From a legal standpoint, the public hearing, as the trial, once that is closed, there will be no other comments considered by the Board except for the Board talking among themselves and to their attorney. My belief now is the current process, if we have a written comment after the hearing is closed, it should not be considered from a legal perspective.

Lydia Wegman: The way it is set up now, any comment that comes in after the public hearing are a problem?

James Bryan: Yes.

Lydia Wegman: Your concern is whatever comments are coming in have to come in at the public hearing or before the public hearing?

James Bryan: At the public hearing, at the trial because everything the Board hears, all the parties, which is a legal term, anything the Board hears, I get to hear it being spoken to them, I get to question whoever speaks it to the Board.

Paul Guthrie: Does that also preclude the BOCC in considering the trial of discussing it? You used the analogy of the jury system. A jury can discuss in its own quarters. Who is the jury?

James Bryan: The BOCC. After the public hearing is closed, the only words they can hear are what they heard at the hearing. As a practice, in some jurisdictions, there is no planning board meeting. Other jurisdictions have it set up where it goes to the planning board first and they have a mock hearing. A dry run.

Lydia Wegman: Also an opportunity for citizenry to have information about what is required.

James Bryan: Every jurisdiction is different. This place has a lot of educated folks and a lot of money which is different than others that don't have those things.

Maxecine Mitchell: We are pretty much serving as a double check to the staff to make sure the applicant did everything according to the rules and laws of the County who, if they meet them and let them move forward so if a project happens in my area, I can know and prepare my neighbors.

Michael Harvey: Staff is preparing a script based on the evidence entered into the record and testimony at the hearing. Some items are based soley on the testimony of the public hearing.

Bryant Warren: Being on the Hillsborough Planning Board, this is totally different. We met then the Planning Board met and made recommendations. This sounds different and if we are not going to be in the public hearing, just the BOCC, then they will have the final say then there is nothing we can do about it. We can have an information meeting prior to that. I don't really see any place for a Planning Board in this process.

Perdita Holtz: Special Use Permits applications will have a Neighborhood Information Meeting 45 days ahead of the public hearing.

Bryant Warren: What about having that informational meeting at the Planning Board meeting and let them be there.

Perdita Holtz: We will look at that but sometimes the way the schedule works in quarters and having ORC Ordinance Review meetings sometimes, we might not be able to do everything in one night. There can be a scheduling difficulty when you have more than one meeting.

James Lea: It sounds like there is plus to making recommendations or just having quasi-judicial meetings.

Tony Blake: In this way our role is to inform more than represent.

Perdita Holtz: Should that pre-meeting with the Planning Board be the Neighborhood Information Meeting together?

Lisa Stuckey: In these cases, the folks are hiring lawyers so this is more expense to them. Maybe the lawyer is at the neighborhood meeting and then to our meeting and then they will do the public hearing.

Lydia Wegman: In your list you say if the Planning Board continues to make a recommendation so are you assuming there is a room as a legal matter to make a recommendation if the Planning Board meeting occurs before the meeting of the BOCC?

James Lea: It sounds like we are not making recommendations.

James Bryan: You have the public hearing. The first person to speak is staff who introduces it, reviewing the packet, and one item will be the Planning Board recommendation.

Lydia Wegman: The Planning Board could hear whatever we are hearing from the public from the applicant and make a recommendation prior to the public hearing that would go into the record that the BOCC would consider?

James Bryan: Right. The BOCC can't make a decision based on that recommendation. But it could prompt them to ask the right questions.

Tony Blake: Wouldn't staff do that anyway?

Paul Guthrie: Prior to the formal legal hearing, could this group discuss the project and appear as a witness for information at the legal hearing?

James Bryan: It depends on the facts but in general, no. I would object.

Bryant Warren: You said if the Planning Board wanted to be at the informational meeting and they had questions about it and they wanted staff to bring it to the BOCC during the quasi-judicial hearing, would that be a recommendation? As long as it is presented to the BOCC.

James Bryan: There is a difference between hearing it and using it as a basis for the decision.

Lisa Stuckey: Do we clarify things or muddy the waters? They can hear it but not base anything on it.

James Bryan: Attorneys will do that. Give you background information, sort of context for it.

Tony Blake: Even presenting new facts that are not in evidence, that is not sufficient?

James Bryan: Right.

Lydia Wegman: A recommendation could be considered by the BOCC if I understand correctly.

Paul Guthrie: Are staff communications directly to the BOCC privileged?

James Bryan: No.

Paul Guthrie: So they are considered just another testifier?

James Bryan: Anytime that staff sends anything to the BOCC it is called a work product and under the public records of law that is available. If it is quasi-judicial, staff isn't supposed to be talking to the Board about the particular question at hand. You deal with it by divulging the communication at the hearing so everyone knows.

Paul Guthrie: The recommendation of staff to the BOCC has to be done as a witness format?

James Bryan: Yes. Again, the statutes aren't the best in the world. The conventional thinking is that you have a board that acts as judges and anyone there has to be a party to it.

Maxecine Mitchell: My understanding from what I've heard, legally we really have no say but we can put information out that would make the BOCC look more in depth at what they are presented. I am ok to say if the Planning Board makes the recommendation. I guess I would go with before. If the Planning Board continues to make recommendations, we don't really need to be at the public hearing meeting.

Bryant Warren: If we get the information from the informational meeting, we make recommendations to staff and they can give it to them. I don't see the need for us to be at the public hearing.

Andrea Rohrbacher: For question one, I would say, yes, we still should make a recommendation and for question two it should be before the public hearing and attendance at the official meeting where all the testimony is being presented would be optional for the Planning Board.

Paul Guthrie: On one hand, I think one of the positive roles of this Board is that it can begin to articulate the sentiment of both itself and people it deals with on issues of public concern. On the other hand, the way this system is set up the way we have been talking about, the only way we can do it is at a very early stages of the process or outside the confines of this Board and this Board's responsibility. I don't think that helps the public decision process at all. I have great problems with the recommendation but I am not sure there is anything else to do.

Buddy Hartley: In the process where we haven't got to the public hearing yet, we would have seen the application, correct?

Perdita Holtz: You normally don't see the application until it goes out in the quarterly public hearing materials now. We are 99.99% sure we are adding the neighborhood informational meeting 45 days ahead of time.

Buddy Hartley: I think it is fine to make it before. Basically we see if everything meets the criteria and we make the recommendation.

James Lea: Item one I would say I would say yes and item number two I would say before and item three I don't know.

Laura Nicholson: Yes on item one, before on item two, I just think we have a responsibility to our townships, the only way we could influence or affect anything is before.

Tony Blake: We are not really making a recommendation but making a suggestion. I wouldn't mind having the opportunity of making a recommendation. I would also like to say that the Planning Board needs to know about this stuff earlier in the process so that when someone puts a sign out there and we get a call from someone in the community we don't have to say we don't know what you are talking about.

Perdita Holtz: One of the things we could institute as part of the neighborhood information process is to email you all the notice that is going out to the public.

Tony Blake: Even some more background on the project.

Perdita Holtz: I think there will start being information on the website and we can provide a link.

Tony Blake: Question one, yes; question two before; question three I think we need more information earlier.

Lydia Wegman: I do think the Planning Board should be making recommendations on quasi-judicial matters and I do think the recommendation should occur before the public hearing along the lines of what we are talking about. I am concerned about having an informed recommendation. There needs to be a process between the Neighborhood Information Meeting and the public hearing for the Planning Board to make a recommendation. The only concern I have about the Planning Board not being at the public hearing is if the BOCC should want to take more time to consider and continue the public hearing so if the BOCC wanted the Planning Board to offer more input subsequent, there would need to be a way for the Planning Board members to hear what went on at the public hearing.

Perdita Holtz: There have always been issues where some people make it to the public hearing but the same people don't make it to the Planning Board meeting.

Lisa Stuckey: I don't think we should make recommendations. I don't think going through that process up until now has been productive, we rely on staff if they meet all the requirements, we have to recommend it be approved. It seems a very artificial process. The real thing happens at the public hearing.

Paul Guthrie: Could a member or members of this group that have discussed this prior to any of the formal legal steps be subpoenaed by the applicant to testify at the hearing.

James Bryan: Yes. It is very rare but the chair gets to decide and you get to appeal that to the whole Board and they have subpoena power and if you don't show up, the Court of Justice can require you to get a contempt of court.

Tony Blake: Can we be deposed in the legal sense?

James Bryan: The subpoena will most likely require you to show up at the hearing and they you will be ask questions.

Bonnie Hammersley: I wanted to say on behalf of the County Board of Commissioners that on the 24th there is not going to be a quarterly public hearing because there aren't any items and also no dinner because there is no

meeting. They wanted to extend to you that at any time you want to schedule a meeting like that in 2015, they would love to spend that time with you.

AGENDA ITEM 8: COMMITTEE/ADVISORY BOARD REPORTS:

a. Board of Adjustment

Michael Harvey: The BOA approved the PSNC pipeline. We will have a meeting in December for an appeal. Local residents are appealing a decision by the County to rescind a notice of violation involving a gun range.

AGENDA ITEM 12: ADJOURNMENT:

Pete Hallenbeck, Chair

Approved 2/4/15

MINUTES
ORANGE COUNTY PLANNING BOARD
DECEMBER 3, 2014
REGULAR MEETING

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

MEMBERS ABSENT: Lisa Stuckey (Vice-Chair), Chapel Hill Township Representative; Maxecine Mitchell, At-Large Bingham Township;

STAFF PRESENT: Craig Benedict, Planning Director; Perdita Holtz, Special Projects Coordinator; Ashley Moncado, Special Projects Planner; Tina Love, Administrative Assistant II; Steve Brantley, Economic Development Director;

OTHERS PRESENT: Bonnie Hauser

AGENDA ITEM 1: CALL TO ORDER AND ROLL CALL

AGENDA ITEM 2: INFORMATIONAL ITEMS

a) Planning Calendar for December and January
   - Elect Chair and Vice-Chair for the year in January.

AGENDA ITEM 3: APPROVAL OF MINUTES
NOVEMBER 5, 2014 REGULAR MEETING

MOTION by Bryant Warren to approve the October 8, 2014 Planning Board minutes with additional information. Seconded by Laura Nicholson.
VOTE: UNANIMOUS

AGENDA ITEM 4: CONSIDERATION OF ADDITIONS TO 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 citizens and businesses 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, decisions, and recommendations.

Bonnie Hauser: If I go to Mebane or another community versus Orange County what is the time table to get something approved in another place versus Orange County?

Steve Brantley: I think Mebane approved Morinaga within 60 to 90 days and had Mebane not annexed Morinaga, it still could have gone on here but it would have taken them longer to go through the process which in Orange County would have been….

Craig Benedict: What Steve mentioned was pre-zoning where zoning has certain uses permitted by right which means review can be a staff function and if it was a staff function we would match the same time frame that Mebane would have. If they have to go through a rezoning process where they have to change or up zone it from the base zoning that is probably 4 to 5 months of process and a developer may not want to go through the site plan process concurrent with this legislative rezoning process.

AGENDA ITEM 8: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENT: To continue discussion and provide input on government-initiated amendments to the text of the UDO to change the existing public hearing for Comprehensive Plan, UDO, and Zoning Atlas related items/ amendments. This item was heard at the September 8, 2014 quarterly public hearing and was discussed at the October 8 and November 5 Planning Board meetings.
Presenter: Perdita Holts, Special Projects Coordinator

Perdita Holtz reviewed abstract

Paul Guthrie: I think the flowchart pretty much portrays the conversation, I am still concerned about how some of this will work. We may not find that out until we do it.

Pete Hallenbeck: I read the minutes and this certainly seems to align with it. The problem is that at the quarterly public hearing the commissioners went in all different directions of opinions and at some point we have to just let them decide. The other problem is the concept that some people only want to deal with the decision makers so no matter what process you put in place some people will want to just wait and talk with the commissioners. We will at least have a system where people can come to the Planning Board and express their concerns early; we can only do as good as the feedback we get from people.

Lydia Wegman: How do you reconcile that with you hearing that the County Commissioners want the Planning Board to attend the quarterly meetings?

Pete Hallenbeck: That's a decision they have to make. My interpretation of that is because it is currently a joint meeting and if the rules change on that then they'll have to give us guidance.

Lydia Wegman: Then what is the point of the Planning Board? How significant has this quorum problem been?

Pete Hallenbeck: We've had two events in the last year of so where the meeting was held up and one 3 or so years ago there was over a 30 minute hold up.

Lydia Wegman: Isn't it a simpler solution to make sure the Planning Board members know they are expected to attend rather than change the whole process.

Perdita Holtz: It depends a lot on who is on the Planning Board and what commitment they have. Some people had jobs where they had to travel a lot and that Monday night meeting was difficult for them. It varies depending on who is on the Planning Board.

Pete Hallenbeck: I think the fact that we've had two problems in the last year or so and we made it clear and it happened again so I don't know what more could be done.

Laura Nicholson: I brought it up in a previous meeting and the consensus was it is easier to fix it this way. Judging by the push back I think there are things going on the new members don't always get.

Lydia Wegman: I am stating for the record my main problem is having the Planning Board offer its view before the public hearing is problematic. The Planning Board will never be sufficiently informed to offer a well-considered view without having heard the presentations at the BOCC meetings.

Pete Hallenbeck: I understand, we are all wrestling with this problem. At least this mechanism has a way where the Commissioners can identify that this one is going to take a while, etc.

Perdita Holtz: In this process it would also allow the lay person to actually speak to the Planning Board, in a lot of communities if you are not an expert at the quasi-judicial hearing, you don't get to speak. If Orange County were ever to perhaps be sued over that, we might adopt that type of attitude about it too. This process would allow the lay person to come to the Planning Board and speak their concerns and why.

Lydia Wegman: You're right Perdita but I'll just note that because of the public hearing, the layperson's testimony is irrelevant. It would have to be made very clear to the lay person that while they might speak at the Planning Board that because it is quasi-judicial, by the time it's before the Board of County Commissioners, only expert witnesses can give testimony.

Pete Hallenbeck: Again, with the solar project as a reference, if there were interaction with the Planning Board while the developers were here there are a lot of questions, answers, interchanges that just can't happen at a quasi-judicial setting and the resident have an opportunity to get better organized so that when you went quasi-judicial and you have to swear in you have experts and it's much more focused.

Lydia Wegman: The three most critical elements in that was the staff could not make a recommendation.

Craig Benedict: Nor the Planning Board.

Lydia Wegman: Nor the Planning Board, they are the most critical ones and they are the only ones in fact which the case if it ever went to court would be considered. The key one was 'the use will maintain or enhance the value of contiguous property'. In the case of the solar application, there was an appraisal offered by the solar company and I bet that appraiser, even if he showed up, would have come and said whatever he was going to say to the Planning Board and at the public hearing they have a new appraisal and a new appraiser which no one had seen before. And there would be nothing that could have been done.

Pete Hallenbeck: There's another example, they showed this picture of these panels that were further away than what was planned with trees there and claimed that was equivalent and so to have that opportunity to do that in advance…

Lydia Wegman: The advance doesn't necessarily stop the applicant from showing up with new information that is crucial to the decision.

Pete Hallenbeck: I think it is a great way to think through the ramifications of the process because we have an example to look at. Those are the discussion you can have when you're not constrained by the quasi-judicial process and the benefit there if we had this discussion is the residents would have an opportunity to see and get feedback from the Planning Board and staff and all of that would help them to make a better presentation.

Lydia Wegman: It is disingenuous to the community to pretend that what the Planning Board and staff can offer an opinion on the 3 most crucial elements. I think that is a flaw in the process.

Perdita Holtz: That's under state law, it's not something we can change. In some communities the Planning Board doesn't hear the quasi-judicial matters at all.

Paul Guthrie: It seems to me that if this process will work at all, this Board may have a bigger responsibility because we have one shot to raise the critical questions that need to be considered in the decisions and that doesn't happen in the joint session now where we sit there and listen to something until 11 o'clock at night and then by the time it's over we can't even remember what the questions are that you really think need to be considered. I think we have an obligation if this becomes practice to think through how we communicate through staff to the Board of County Commissioners on issues that need to be dealt with by the Commissioners at the time of testimony. The Boards that I have seen operate in this County only occasionally rise to that level. The staff rises to it but I'm not sure the boards do and we need to think about that as a Board.

Perdita Holtz: Probably what will happen is that the Planning Board minutes will become part of that public hearing packet.

Craig Benedict: We would accent anything different that occurred in the application from the original material. We do accent any new information, any change in information that has occurred from the original application and evidentiary material that comes forward.

Pete Hallenbeck: Ok, so the action for tonight is?

Perdita Holtz: Is there consensus that this flowchart captured the quasi-judicial discussion.

MOTION by Paul Guthrie that the flowchart captured the Planning Board discussion of the quasi-judicial process. Seconded by Buddy Hartley.
VOTE: UNANIMOUS

Lydia Wegman: Let me clarify. I am voting to say the flowchart captures what we've talked about, I am not saying I agree with it just to be clear.

AGENDA ITEM 9: COMMITTEE/ADVISORY BOARD REPORTS:
a. Board of Adjustment

AGENDA ITEM 10: ADJOURNMENT:

MOTION by Bryant Warren to adjourn. Seconded by Tony Blake.
VOTE: UNANIMOUS

Pete Hallenbeck, Chair

ORANGE COUNTY
BOARD OF COMMISSIONERS
ACTION AGENDA ITEM ABSTRACT
Meeting Date: May 12, 2015

Action Agenda
Item No. 3

SUBJECT: Private Road and Access Standards

DEPARTMENT: Planning and Inspections **PUBLIC HEARING: (Y/N)** No

ATTACHMENT(S):
A. Emergency Access to Trail Systems at Orange County Parks – Draft Goal and Objectives
B. Planning Board Comments

INFORMATION CONTACT:
Abigaile Pittman, Transportation/Land Use Planner, 245-2567
Michael Harvey, Current Planning Supervisor, 245-2597
Tom Altieri, Comprehensive Planning Supervisor, 245-2579
Craig Benedict, Planning Director, 245-2592

PURPOSE: To receive an update and provide guidance on options for addressing various private road access concerns.

BACKGROUND: The 2014 Work Plans for both the Orange Unified Transportation Board (OUTBoard) and Planning Board identified the need to review private road and access standards. This review was predicated on addressing concerns, as identified by emergency service personnel and various advisory boards, related to the accessibility of public and private property in the event of an emergency.

On May 20, 2014, the Board of County Commissioners (BOCC) authorized Planning staff to proceed with this multi-department/advisory board review of private road access and trail system standards and develop options for consideration. On December 9, 2014, staff provided the BOCC with a summary of stakeholder input and requested to place this item on an upcoming agenda for presentation and prioritization of possible actions.

A summary of the issues and possible regulatory changes are contained within Attachments A and B.

Current Unified Development Ordinance (UDO) Regulations – Road Development
The County's private road standards are found within Sections 7.8.4 and 7.8.5 of the UDO summarized as follows:

1. The standards and specifications for private roads apply to subdivision in the County depending on whether it is a Class A or B road:

TABLE 7.8.5.D BASIC STANDARDS AND SPECIFICATIONS FOR PRIVATE ROADS				
	CLASS A	CLASS B		
Max. Number of Lots	12	2	3	5
Right-of-Way Width	50 ft.	50 ft.	50 ft.	50 ft.
Travel-Way Width	18 ft.	No Standard	12 ft.	12 ft.
Road Maintenance Agreement Required	Yes	Yes	Yes	Yes
Maintenance Responsibility	Property Owners	Property Owners	Property Owners	Property Owners

Notes:

a. Class B private roads serve 1 to 5 lots or dwelling units; however, subdivisions with two lots or dwelling units may be served by a shared driveway.
b. Class A private roads serve 6 to 12 lots or dwelling units.
c. Both Class A and Class B private roads may be graveled.

2. Roads constructed to North Carolina Department of Transportation (NCDOT) standards for all subdivisions having 13 or more lots. NCDOT's Minimum Construction Standards for Subdivision Roads may be found at the following link: http://www.orangecountync.gov/document_center/Transport/NCDOT_Subdivision_Manual.pdf

The County's two-tiered approach to requiring private roads was originally intended to allow an affordable development option for small subdivisions of no more than 5 lots.

It should be noted North Carolina General Statutes exempt certain types of subdivisions from the County's subdivision review process:

1. The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the County, including private road justification standards, as detailed within the UDO.
2. The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved.
3. The public acquisition by purchase of strips of land for widening or opening streets.
4. The division of a tract in single ownership of the entire area of which is no greater than two acres into not more than three lots if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the County, as detailed within the UDO.

Lots created via the exempt process do not have to comply with established road development standards as detailed herein regardless of the number of lots proposed.

Summary of Concerns: Problems have been reported by the County's Emergency Services Department and the Volunteer Fire Departments regarding emergency vehicle access on private roads. The narrow width of the Class B road has presented public safety issues as it does not provide adequate access for emergency services vehicles, and thus impacts response times. There have also been issues for emergency vehicle access on roadways

serving exempt subdivisions due to road width issues, and admittedly the regulations cannot address the issue because of the exemption.

NCDOT Public Road Construction Standards: Long-term maintenance costs of private roads have led to many requests for NCDOT to accept these roads into the State-maintained system. The construction standards for NCDOT acceptance are higher than the County's private road standards and are typically prohibitively expensive to overcome.

Subdivision roads with a right-of-way dedicated, recorded, or with preliminary approval from a county planning board dated after September 30, 1975 will not be added to the State system unless the road is built to the minimum construction standards of the Division of Highways. The minimum State construction standard is 18 feet of pavement, depending on the classification of the roadway, within a 50-foot right-of-way.

Additional information regarding NCDOT construction standards can be found at:
http://www.orangecountync.gov/document_center/Transport/NCDOT_Subdivision_Manual.pdf

Possible Options for addressing Issues within the UDO: In reviewing the various issues, the OUTBoard, Planning Board, and Emergency Services personnel recommended the following options.

These suggestions are grouped into 2 categories, specifically those best handled through a UDO amendment and those not. To provide an appropriate level of service for emergency services vehicles and ensure the provision of adequate public safety protection, Planning staff believes the following options for revisions to the standards of the UDO should be considered:

1. Do away with the Class B private roads and allow only the Class A private roads, which requires a minimum 18-foot travel-way.

   STAFF COMMENT: we have no particular concerns associated with this possible amendment option.

2. Allow subdivisions with up to three lots or dwelling units to be served by a shared driveway, subject to provision of a minimum driveway width, maximum driveway length, and a turnaround area that can accommodate Emergency Services vehicles. (The UDO currently allows two lots or dwelling units to be served by a shared driveway.)

   STAFF COMMENT: staff has no particular concerns associated with this possible amendment option.

3. Develop a requirement that all newly created lots have access to a complying road (either private or public).

   STAFF COMMENT: There are potentially negative consequences, most notably for lots created via the exempt subdivision process, related to this option including:

   a. *Individual property owners will bear the brunt of the cost for roadway improvements rather than the developer,*

   b. *The following scenario must be kept in mind:*

i. A property owner takes their 200 acre tract of land and creates, through the exempt subdivision process, a total of 20 individual lots all 10 acres in size accessed via a private roadway 12 feet in width.

ii. Lots are sold or otherwise conveyed.

iii. Individual property owners will be required, if this standard is adopted, to upgrade the roadway to secure zoning permits authorizing construction on their property. This would include upgrading the roadway to a public street once certain development thresholds are met based on number of existing homes served by the respective road.

iv. Individual property owners will have to rely on their neighbors' willingness to 'dedicate' the necessary right-of-way/easement to accommodate roadway improvements. If they fail to do so the road cannot be improved to the appropriate standard and Planning staff would be required to deny permits authorizing development.

The effect of the standard may mean some lots become undevelopable due to County regulations and, it could be argued, that a taking of property development rights has occurred without 'just compensation'.

<u>Fire Council comments that could also be addressed through UDO amendments</u> *(Planning staff has no particular concerns associated with any of the following amendment options):*

1. Cul-de-sacs: Increase the minimum clearing width for all proposed cul-de-sacs to accommodate emergency vehicle access/staging within Section 7.8.5 (D) (10) of the UDO. There is currently no 'minimum clearing width' separate from the development of the actual, improved, travel area. This is something staff would verify before the subdivision is recorded.
2. Drainage pipes under driveways: Section 7.8.5 (D) (9) could be amended to establish a minimum width for all drain pipes of 16 feet, to address the concern of trucks being 'hung up' when attempting to access/leave a property.
3. Gates/Walls: With respect to required widths and setbacks for gates/privacy walls, regulations could be adopted to require minimum travel widths and stacking areas to accommodate the Fire Council's concerns. Staff would need to determine where such regulations would best fit within the UDO.
4. Pull-over Areas: Private road standards could be amended to include emergency pull off areas as suggested by the Fire Council. Staff will have to take into consideration the impact such a requirement would have on current impervious surface policies, as such a standard would increase the impervious surface area on a site and could possibly impact overall developability.

5. Private Bridges: There are currently no existing standards governing the development of a 'bridge'/stream crossing. Such crossings are permitted in accordance with Section 6.13.6 (C) (4) of the UDO. Staff is still reviewing this request.
6. Tree Clearance on Driveways: While the County may need a reference to a tree clearing requirement for subdivision projects to ensure emergency vehicular access, and reference such requirements in recorded road maintenance agreements for all subdivisions, the UDO may not be the most appropriate location for a County standard. (Also see #2 in next subsection.)

Possible Options for addressing Issues outside the UDO: Several comments do not appear to have either a land use component or lend themselves to a land use enforcement proceeding. Although possibly beyond the purview of the Planning and Inspections Department, staff reports these additional items as follows:

1. Locked gates: There is no land use issue related to a property owner choosing to secure his/her property. There is, however, a public safety concern. A separate policy/ordinance within Chapter 14 Emergency Services of the Orange County Code of Ordinances could be written.
2. Tree Clearance on Driveways: As with locked gates, there is no clear land use issue associated with this matter. A separate policy/ordinance as indicated in #1 above could be established to address this issue.
3. Road Identification: There is already a road naming policy enforced by the Land Records division of the Tax Administration office that could be reviewed and revised to address this matter.
4. District Issues with Road Conditions: This issue is beyond the scope of any one department or agency. From staff's perspective there could be a County policy for addressing access and maintenance in those circumstances where there is an older development that does not comply with County and/or NC DOT regulations.

   The biggest concern Planning staff hears, with respect to this issue, is from residents of older subdivisions, with no home owners association, trying to address road maintenance issues and/or lack of financial participation amongst neighbors.

Staff Options for Addressing Comments Regarding Emergency Access for Trail Systems:

1. Trail Systems: There are currently no standards for emergency access for trail systems in the UDO. On occasion, emergency service personnel has a need to access people using trails at Orange County parks and nature preserves administered by the Department of Environment, Agriculture, Parks and Recreation (DEAPR). The draft goal and objectives (Attachment A) could be implemented and considered by the BOCC in the future as a matter of County policy for the planning and development of future parks or for incorporation into the UDO. It may provide a more flexible approach, responsive to the site-specific environmental issues of individual park sites, if a matter of policy.

FINANCIAL IMPACT: Existing Staff has accomplished the work thus far on this project and will complete any remaining work that is authorized by the BOCC.

RECOMMENDATION(S): The Manager recommends the Board:

1. Receive the update;
2. Discuss the concerns and options as necessary; and
3. Provide staff with feedback on any potential regulatory amendments.

Attachment A

Emergency Access to Trail Systems at Orange County Parks

Draft Goal and Objectives

The following are draft goals and objectives for accommodating emergency service personnel gaining access to people using trails at Orange County parks and nature preserves administered by the Orange County Department of Environment, Agriculture, Parks and Recreation (DEAPR).

Orange County parks that currently have trails are Efland-Cheeks Park, Cedar Grove Park, Fairview Park, River Park, and Little River Regional Park and Natural Area. The Jones Creek Greenway connects Lake Hogan Farms with Morris Grove Elementary School. Future trails are being designed for the future Blackwood Farm Park, Hollow Rock Access Area, and at the Seven Mile Creek Preserve.

These draft goal and objectives are intended for review and comment by the Parks and Recreation Council, the Emergency Services Department, and the Orange Unified Transportation Board.

Overarching Goal: Trail systems will be designed and constructed to accommodate the maximum enjoyment of trail users, however, in doing so, there will be considerations for topography, sedimentation and erosion control, the avoidance of sensitive natural and cultural resources, public safety, and the provision of staging areas for vehicles to access trail users in times of emergency.

Objective #1 – Trails will be constructed and maintained with a minimum clearance width of six feet (even if width of the trail tread is narrower) and a minimum clearance height of eight feet. [Single-track bike trails at Little River Park may have sections less than six feet of clearance.]

Objective #2 – Trail networks greater than one mile in total length will be marked with periodic signs that specify distances from trailheads and with GPS reference points for users to identify their location along the trail.

Objective #3 – Trails will be shown on maps displayed on kiosks located at trailheads, and maps will be available from the park office (for parks that have an office) and from the DEAPR Central Recreation Center in Hillsborough.

Objective #4 – Emergency Service vehicles will have access to trails in such a way that larger vehicles can reach staging areas identified within the park (and on maps) and smaller all-terrain vehicles (e.g., Gator) can access most sections of the trail. Staging areas will be located where feasible within close proximity (approximately ¼ mile) to any point along the trails. Keys to any gates/ bollards

Attachment A

will be provided to the appropriate Emergency Services provider(s) and will be available from the park office (for parks that have an office).

Objective #5 – Each park containing a trail network will develop an Emergency Action Plan, including protocol and procedures for trail-related emergencies.

Attachment B

EXCERPT FROM MINUTES – SEPTEMBER 3, 2014 PLANNING BOARD MEETING

AGENDA ITEM 9: REGULAR AGENDA

UNIFIED DEVELOPMENT ORDINANCE PRIVATE ROAD AND ACCESS STANDARDS: To receive information about a current multi-department advisory board project involving the review of private road and access standards and to receive the Board's comments.

Abigaile Pittman presented abstract.

Lisa Stuckey: Would the pullover roads apply just to 18 foot wide roads?

Abigaile Pittman: It would apply to any one way road.

Paul Guthrie: What is the definition of a private road?

Abigaile Pittman: One that is not accepted for public maintenance. Not built to public maintenance standards.

Paul Guthrie: There are no use standards or number of properties attached to define it; it has to do strictly with the shape and construction of the road.

Abigaile Pittman: Yes.

Pete Hallenbeck: A private road is one that NCDOT does not maintain.

Paul Guthrie: Any existing non-public road servicing more than one household is grandfathered until an effort is made to do some sort of planning development.

Abigaile Pittman: The new regulations are not retroactive.

Paul Guthrie: What would trigger on that situation this proposal?

Michael Harvey: Someone coming in and trying to subdivide any of those existing lots. There are two dual issues here. We have an addressing ordinance that is enforced by Orange County Land of Records via the attorney's office that spells out road serving x number of lots or certain size has to be name. That is part of the ordinance. County subdivision regulations have been adopted over the years. We didn't get private road standards until 1998-2000 so the County has a history of subdivision development some of which have been done under different standards. We also have several properties in the County that have exercised their right under the general statute to develop their property or subdivide their property through the exempt subdivision process. By state law, we have no review authority and cannot hold them to any specific requirements identified in our subdivision standards.

Abigaile Pittman: The standard we are recommending to address those exempt subdivisions is to develop a requirement that all newly created lots have access to a complying road, public or private, for emergency responders.

Attachment B

Tony Blake: I do want to have this discussion around water supply at some point.

Lisa Stuckey: I do think it would be a good idea to say that if you have a gate we can't get through, there should not be any discussion about who owes what for whom.

Craig Benedict: It is important how we differentiate what would go in the UDO and what needs to be handled by other ordinances.

Paul Guthrie: In the emergency access to trails systems, there are two sides to it, one is providing the access points but the trails may not be able to accommodate the size vehicles we have. We may need smaller vehicles.

Pete Hallenbeck: I like the three lots on the driveway.

Craig Benedict: You will probably need a road name.

Pete Hallenbeck: We have a few roads in Efland we cannot get the fire trucks down. With the pullovers, anyone who had to go through a 1700 foot road would appreciate those pullovers.

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: May 12, 2015

Action Agenda Item No. 4

SUBJECT: Educational Facility Impact Fee Ordinance and Age-Restricted Housing

DEPARTMENT: Planning/County Attorney **PUBLIC HEARING: (Y/N)** No

ATTACHMENT(S):
3-23-15 Letter from Developer's Representative to County Attorney
5-4-15 Letter from Developer's Representative to Planning Director

INFORMATION CONTACT:
Craig Benedict, 919-245-2592
John Roberts, 919-245-2318

PURPOSE: To discuss the possibility of amending Article 2 of Chapter 30 of the Orange County Code of Ordinances (the Ordinance) regarding educational facility impact fees to include age-restricted housing as an exception to structures requiring impact fees.

BACKGROUND: Orange County is one of the few counties in North Carolina that can impose school impact fees because the County obtained special local enabling legislation from the State in 1987. In 1993, the County acted upon this authority and, in collaboration with the Towns and school districts, began the fee assessment. Since then, the County has occasionally (every few years) updated the fees based on school costs, categories of housing, etc. Findings of impact, benefit, and proportionality must be shown to form a good methodology and legal basis.

The Ordinance requires impact fees be paid for new residential construction in order to assist with educational impact costs associated with new students. A developer has approached staff to request that an exception be created for age-restricted housing, i.e. housing that would be limited by deed or covenant restrictions to housing for persons over a minimum age (see attached letter). The developer prefers the exception be created as quickly as possible. If the Board is interested in pursuing an amendment to the Ordinance, Planning staff recommends that the decision be based on relevant data because of the requirements necessary to set impact fee levels. There are two possible methods to achieve data needs:

1. Require the developer requesting this exception provide information about other age-restricted projects in a specific geographic area (to be determined) and have staff evaluate the data to determine probable impacts.
2. Conduct a student generation rate study specifically for age-restricted housing and assess the fee accordingly. Historically, such studies have been completed by a consultant with data supplied by the local governments. (This method is preferable due to the enhanced ability to defend the outcome of the study).

It should be noted that a new impact fee study (which includes the accompanying student generation rate analysis) has been requested by Planning in the department's FY 2015-16 Budget (approximately $70,000) since the last study was completed in 2007. If recommended

by the Manager and approved by the Board, the new impact fee study would disaggregate housing types by number of bedrooms (similar to the 2014 study which evaluated only housing that had been constructed in the past 10 years; impact fees must be based on the entire housing stock). It would be possible to include age-restricted housing as a housing type in this new study, but the results of the study would likely not be available until early 2016 and would then have to be adopted. This timeframe may be longer than the developer would prefer.

It should be noted that the Educational Facilities Impact Fee Ordinance (EFIFO) is independent from the Schools Adequate Public Facilities Ordinance (SAPFO) with only the student generation rates having a common data ingredient. Because the special local enabling legislation for the EFIFO is grounded in land use and zoning authority, any changes to the Ordinance must be advertised in accordance with statute requirements and must be heard at a public hearing. The public hearing can be on a regular BOCC meeting agenda (e.g., it is not restricted to only the quarterly public hearings).

FINANCIAL IMPACT: A student generation rate study specifically for age-restricted housing (Option #2 above) would likely cost approximately $15,000 and would require staff time from all of the local governments within Orange County and the school districts to compile raw data. Option #1 would require County staff time to evaluate the information provided by the developer. If the ordinance is amended, there would likely be a reduction in impact fees collected (presuming age-restricted housing generates fewer students). The decrease would correspond to the amount of new housing that qualifies as age restricted housing under that amendment. Other housing type categories may increase if this type of housing is removed from the previous aggregated housing totals.

RECOMMENDATION(S): The Manager recommends that the Board discuss the topic and provide direction.

Mack A. Paul. IV | Attorney
630 Davis Drive, Suite 200
Morrisville, NC 27560

919-590-0377
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www.morningstarlawgroup.com

March 23, 2015

John Roberts
Orange County, County Attorney
200 S. Cameron Street
Hillsborough, NC 27278

Re: Educational Facilities Impact Fee Ordinance Text Amendment (Ch. 30 Art. 2 § 3034)

Dear John:

I am writing to you seeking a text amendment to the Orange County Ordinance regarding Educational Impact Fees. I had previously submitted an Application for Unified Development Ordinance (UDO) Text Amendment for the same matter, but was informed that the proposed change was not an amendment of the UDO. Consequently, we are making this request as a citizen petition.

The text amendment proposes that the Multifamily category on the schedule of fees be modified to read "Multifamily and Age Restricted Housing." Furthermore, the text amendment proposes a definition of "Age Restricted Housing" be added that reads "residential dwelling units restricted by law or covenant for a period of at least thirty (30) years to housing for the elderly, including active adult communities."

Please feel free to call me with any questions or comments. I will be submitting supporting documentation for the text amendment prior to the hearing and would appreciate the opportunity to meet with staff to discuss it. I look forward to working with you on this matter.

Sincerely,

Mack Paul

Mack A. Paul. IV | Attorney
630 Davis Drive, Suite 200
Morrisville, NC 27560

919-590-0377
mpaul@morningstarlawgroup.com
www.morningstarlawgroup.com

May 4, 2015

Craig Benedict, AICP
Orange County, Planning & Inspections Department
131 W. Margaret Lane
P.O. Box 8181
Hillsborough, NC 27278

Re: School Impact Fees

Dear Mr. Benedict:

I wanted to pass along some information to follow up our April 24, 2015 meeting about the school impact fees in Orange County. Attached to this letter are:

- The proposed covenant restricting age
- A description of the proposed unit types
- Section 8 of the Orange County "Schools Adequate Public Facilities Memorandum of Understanding"
- An analysis of school age children currently living in Triangle area age-restricted Epcon developments
- An analysis of the Tax Revenue Impact of Epcon Communities in the Olentangy Local School District from August 2014
- An excerpt from Approving 55+ Housing: Facts That Matter, NAHB, Housing Policy

Sincerely,

Mack Paul

CC: John Roberts, Esq.

James Bryan, Esq.

PROPOSED COVENANT RESTRICTING AGE

Occupancy Restriction. No rule or action by the Association or Board shall violate the following occupancy restriction. The Association and Owners must comply with the following restrictive covenants regarding occupancy. Except as hereinafter provided, at least 90% of the occupied Units shall at all times have as a permanent Occupant therein at least one person who is 55 years of age or older ("Qualifying Occupant"); provided, in the event of (i) the death of a person who was the sole Qualifying Occupant of a Unit; (ii) a legal separation or divorce resulting in the sole Qualifying Occupant of a Unit moving out of the Unit, or (iii) the removal by reason of incapacitation (e.g. being placed in a nursing home) of the sole Qualifying Occupant of a Unit, then the spouse (or former spouse, in the case of a divorce) and any other members of the household occupying the Unit prior to the death, legal separation or divorce, or incapacitation of such Qualifying Occupant may continue to occupy the Unit.
For purposes of this Subsection, an Occupant shall not be considered a "permanent Occupant" unless such Occupant considers the Unit to be his or her primary legal residence and actually resides in the Unit for at least six months during every calendar year or such shorter period as the Unit is actually occupied by any person.

Nothing in this Subsection is intended to restrict the ownership of, or transfer of title to, any Unit; provided, no Unit Owner may occupy the Unit unless the requirements of this Subsection are met nor shall any Unit Owner permit occupancy of the Unit in violation of the provisions of this Subsection. The Association shall be responsible at all times for maintaining age records on all Occupants of Units. On or before January 1 of each calendar year, the Association shall conduct a census of all Occupants of Units. The Association, through its Board, shall adopt rules and regulations to monitor and maintain compliance with the provision of this Subsection, including policies regarding visitors, updating of age records, the granting of exemptions pursuant to the provisions hereof, and enforcement. The Association shall periodically distribute such rules and regulations to the Unit Owners and make copies available to the Unit Owners, their tenants, and mortgagees upon reasonable request.

The Association, through its Board, shall have the obligation to administer and enforce the provisions of this Subsection in any legal manner available, as it deems appropriate, including, without limitation, conducting a census of the Occupants of Units, requiring copies of birth certificates or other proof of age for each Occupant of the Unit to be provided to it on a periodic basis, and taking action to evict the occupants of any Unit which does not comply with the requirements and restrictions of this Subsection. EACH UNIT OWNER HEREBY APPOINTS THE ASSOCIATION AS ITS ATTORNEY-IN-FACT FOR THE PURPOSE OF TAKING LEGAL ACTION, INCLUDING, WITHOUT LIMITATION, LEGAL ACTION TO DISPOSSESS, EVICT, OR OTHERWISE REMOVE THE OCCUPANTS OF THAT OWNER'S UNIT AS NECESSARY TO ENFORCE COMPLIANCE WITH THIS SUBSECTION. Each Unit Owner shall fully and truthfully respond to any and all requests by the Association for information regarding the occupancy of that Owner's Unit which in the judgment of the Board are reasonably necessary to monitor compliance with the provisions of this Subsection.

Each Owner shall be responsible for ensuring compliance of that Owner's Unit with the requirements and restrictions of this Subsection, and the rules of the Association adopted hereunder, by that Unit and by its tenants and other Occupants of that Owner's Unit. EACH UNIT OWNER, BY ACCEPTANCE OF TITLE TO A UNIT, AGREES TO INDEMNIFY, DEFEND, AND HOLD THE ASSOCIATION HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, AND CAUSES OF ACTION WHICH MAY ARISE FROM FAILURE OF THAT OWNER'S UNIT TO SO COMPLY.

EXHIBIT E

COURTYARDS AT HOMESTEAD ROAD

UNIT TYPES

Type:

PZ (Palazzo). Contains a kitchen, living room, dining room, two baths, two bedrooms, and a garage, all at ground level. May also contain an optional second floor bonus room, and a screened or enclosed porch or veranda.

PO (Portico). Contains a kitchen, living room, dining room, two baths, two bedrooms, a den, and a garage, all at ground level. May also contain an optional second floor bonus room, and a screened or enclosed porch or veranda.

PE (Promenade). Contains a kitchen, living room, dining room, two baths, two bedrooms, a den, and a garage, all at ground level. May also contain an optional second floor bonus room, and a screened or enclosed porch or veranda.

Type	Approximate Gross Interior Square Feet[1]	Par Value
PZ	1,519-2,520	1.00
PO	1,776-2,923	1.00
PE	1,995-3,121	1.00

[1] Gross interior square feet means the approximate gross area constituting the Unit at all levels, is measured from the undecorated inner surfaces of its boundary walls, and includes space occupied by interior partitions, staircases, and voids, as well as space in the garage, and any screened or enclosed porch or veranda. This measurement is not the measurement normally used in the real estate industry for sales and leasing purposes.

PROPOSED

SCHOOLS ADEQUATE PUBLIC FACILITIES MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into this _____ day of _____, 200__, by and between the Town of Hillsborough, the Orange County Board of Education (the "School District") and Orange County.

WHEREAS, the portion of Orange County, served by the Orange County School System has for the past decade been experiencing rapid growth in population; and

WHEREAS, this growth, and that which is anticipated, creates a demand for additional school facilities to accommodate the children who reside within new developments; and

WHEREAS, the responsibility for planning for and constructing new school facilities lies primarily with the Orange County School Board, with funding provided by Orange County; and

WHEREAS, Orange County, Hillsborough, and the Orange County School District, have recognized the need to work together to ensure that new growth within the School District occurs at a pace that allows Orange County and the School District to provide adequate school facilities to serve the children within such new developments;

WHEREAS, the parties have worked cooperatively and developed a system wherein school facilities are currently adequate to meet the needs of the citizens of the county and will continue to maintain a Capital Investment Plan (CIP) that is financially feasible and synchronized with historical growth patterns;

NOW, THEREFORE, the parties to this Memorandum hereby agree as follows:

Section 1. The parties will work cooperatively to develop a realistic Capital Improvement Plan for the construction of schools such that, from the effective date of this Memorandum, school membership within each school level (i.e. elementary, middle or high) does not exceed the following:

Elementary School	105% of Building Capacity
Middle School	107% of Building Capacity
High School	110% of Building Capacity

a. For purposes of this Memorandum, the term "school membership" means the actual number of students attending school as of November 15 of each year. The figure is determined by considering the number of students enrolled (i.e. registered, regardless of whether a student is no longer attending school) and making adjustments for withdrawals, dropouts, deaths, retentions and promotions. Students who are merely absent from class on the date membership is determined as a result of sickness or some other temporary reason are included in school membership figures. Each

Section 8. In recognition of the fact that some new development will have a negligible impact on school capacity, a CAPS shall not be required under the following circumstances:

a. For residential developments restricted by law and/or covenant for a period of at least thirty years to housing for the elderly and/or adult care living and/or adult special needs;

b. For residential developments restricted for a period of at least thirty years to dormitory housing for university students.

If the use of a development restricted as provided above changes, then before a permit authorizing such change of use becomes effective, a CAPS must be issued just as if the development were being constructed initially.

Section 9. The parties acknowledge that this Memorandum of Understanding is not intended to and does not create legally binding obligations on any of the parties to act in accordance with its provisions. Rather, it constitutes a good faith statement of the intent of the parties to cooperate in a manner designed to meet the mutual objective of all the parties that the children who reside within the School District are able to attend school levels that satisfy the level of service standards set forth herein.

The Town of Hillsborough intends to remain committed to the MOU only as long as Orange County continues to execute the CIP as agreed in the MOU. If the Hillsborough Board of Commissioners finds Orange County is no longer in compliance with the CIP as outlined in the MOU, the Town of Hillsborough will no longer consider itself bound by this MOU and may consider repealing the Ordinance referenced in Section 2 of this MOU.

This the _____ day of _____, 20___.

TOWN OF HILLSBOROUGH

SEAL

By: _____
Mayor

Attest:

_____
Town Clerk

ORANGE COUNTY BOARD OF EDUCATION

SEAL

By: _____
_____ Chair

Attest:

_____
_____ Secretary

CURRENT EPCON DEVELOPMENTS
TRIANGLE AREA , NC

Following information is reported by Community Association Management (CAS) who is the community manager for both Epcon Projects.

Courtyards at Culp Arbor - Farrington Rd, Durham (Chapel Hill address)
69 homes closed/occupied
67 families with head of household over 55
2 families with head of household under 55
0 school age children living in development

Courtyards at Cary- Green Level Church Road, Cary
14 homes sold , 11 currently occupied, 3 under contract
14 families with head of household over 55
0 school age children living in development

Analysis of the Tax Revenue Impact of Epcon's Communities
in the Olentangy Local School District
August 2014

Community	# of Units	Date Started	Location, Tax District	Average Sales Value	Estimated Market or Assessed Value	Estimated Tax Payment	Total Taxes Paid	Public School Pupils
Woods at Big Bear Farms	88	Oct-97	Powell, 24	$139,236	$125,312	$2,933	$258,104	7
Villas at Riverbend	140	Aug-99	Orange, 27	$156,413	$140,772	$3,310	$463,400	5
Orchards at Big Bear Farms	112	Oct-99	Liberty, 25	$148,997	$134,097	$3,029	$339,248	7
Stone Bridge at Golf Village	180	Aug-01	Powell, 24	$174,815	$157,334	$3,683	$662,940	16
Villas at Woodcutter	68	Apr-02	Powell, 24	$195,753	$176,178	$4,124	$280,432	11
Villas at Maple Creek	52	Feb-03	Orange, 27	$195,540	$175,986	$4,138	$215,176	3
Village of North Falls	124	May-04	Orange, 27	$203,007	$182,706	$4,296	$532,704	14
Courtyards at Seldom Seen	50	Feb-11	Liberty, 25	$273,449	$246,104	$5,559	$277,950	3
Courtyards at Little Bear	23	May-12	Orange, 27	$292,762	$263,486	$6,195	$142,485	0
Total	837			$161,816			$3,172,439	66

Tax Revenue Generated from Epcon Communities - Percent of Taxes Paid Going to Public Schools @ a rate of 78.62% $2,494,172

Number of Students Supported by Tax Revenues Generated from Epcon Communities (at a rate of $9,403 spent per student) 265

NOTES:

1. In all three Delaware County tax districts, 78.62 percent of the real estate taxes went to the public schools in 2013.
   Source: http://www.co.delaware.oh.us/Forms/pdf/Auditor/Tax%20Rates13.pdf

2. Olentangy's total annual expenditure per pupil for 2013 was $9,403.
   Source: http://odevax.ode.state.oh.us/htbin/F2013-DISTRICT-PROFILE.COM?irn=046763

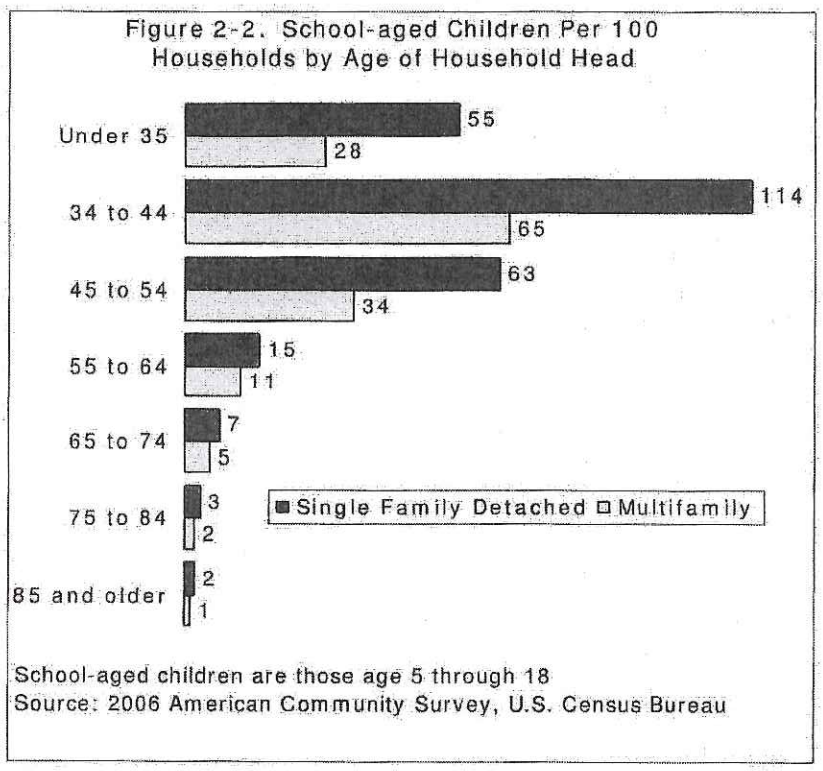
3. Information on pupil population in each Epcon community was obtained from Debbi Murphy via email and phone conversation on July 2, 2014.

4. Assessed Value computed as 90% of the Average Sales Value

5. Estimated Tax Payments computed using the Delaware County Auditor's website Tax Estimator at http://delaware-auditor-ohio.manatron.com/TaxEstimatorSite.aspx

6. The Courtyards of Powell and the Courtyards at Grandshire are new communities is 2014 so pupil population information is not yet applicable.

EXCERPT FROM APPROVING 55+ HOUSING: FACTS THAT MATTER



Because 55+ households contain few children, a perception may arise that these households have a small stake in local school systems, and that a 55+ housing development will create a voting block that tends to oppose new school bond issues. But this perception isn't true in every case, as California's Measure K demonstrates.

Measure K was a $450 million bond issue for school construction (the fourth-largest school bond in California history), which was on the November 2001 ballot in the Desert Sands Unified School District in Riverside County. In order to pass, the bond required a 67 percent supermajority of the votes.

A large minority of voters in the district live in Sun City Palm Desert, a Del Webb age-restricted active adult community. California adds some conditions to the federal laws governing seniors housing. In California every household in an age-restricted community must have at least one member who is age 55 or older, and none of the residents can be under age 45 with certain exceptions (such as a spouse, caregiver, principal means of support, or handicapped child).

According to information obtained from the Riverside County Registrar of Voters through Del Webb's director of public affairs, Measure K passed easily. Overall, the measure gained 12,110 "yes" votes compared to 2,896 "no" votes, so that just over than 80 percent voted in favor of the bond issue and easily surpassed the required two-thirds supermajority.

ORANGE COUNTY
BOARD OF COMMISSIONERS

,

ACTION AGENDA ITEM ABSTRACT
Meeting Date: May 12, 2015

Action Agenda
Item No. 5

SUBJECT: Follow-up Discussion on Board Rules of Procedures - Petitions Process

DEPARTMENT: Board of Commissioners **PUBLIC HEARING: (Y/N)** No

ATTACHMENT(S):

February 10, 2015 Abstract
February 10, 2015 Version of Board Procedures
Excerpt of the Approved February 10, 2015 Minutes
March 3, 2015 Approval Abstract

INFORMATION CONTACT:
Donna Baker, Clerk to the Board of Commissioners, 245-2130

PURPOSE: To follow-up on previous discussions and decisions as necessary on the Board of Commissioners' Rules of Procedure, and in particular to specifically follow-up as necessary on the Board members' Announcements/Petitions process.

BACKGROUND: At the April 21, 2015 regular Board meeting, Commissioner Barry Jacobs petitioned the Board of Commissioners to discuss further, potentially at a work session, the Announcements & Petitions structure/process for Board Members to determine if it was working as the Board intended. At the May 5, 2015 regular meeting, Commissioner Jacobs confirmed his petition for Board discussion on the item.

The Board of Commissioners adopted its "Rules of Procedure for the Board of County Commissioners" in May 2002. Multiple amendments have been made since that time.

At the February 10, 2015 BOCC work session, the Board discussed the Board Comments section of the agenda. The Board suggested modifying the regular meeting agenda to add "Announcements" to the "Petitions by Board Members" portion of the regular meetings. The intent of the change was to allow BOCC members an opportunity to announce events which the public might attend earlier in the meeting. The revision was subsequently approved formally at the March 3, 2015 regular Board meeting.

The current Order of Business for regular Board meetings is as follows:

1. Additions or Changes to the Agenda
   Public Charge
2. Public Comments (Limited to One Hour)
3. Announcements/Petitions by Board Members (Three Minute Limit Per Commissioner)
4. Proclamations/Resolutions/Special Presentations

5. Public Hearings
6. Consent Agenda
   - Removal of Items from Consent Agenda
   - Approval of Remaining Consent Agenda
   - Discussion and Approval of the Items Removed from the Consent Agenda
7. Regular Agenda
8. Reports
9. County Manager's Report
10. County Attorney's Report
11. Appointments
12. Board Comments (Three Minute Limit Per Commissioner)
13. Information Items
14. Closed Session
15. Adjournment

FINANCIAL IMPACT: There is no financial impact associated with additional discussion of the Board's Rules of Procedure.

RECOMMENDATION(S): The Manager recommends that the Board follow-up on previous discussions and decisions as necessary on the Board of Commissioners' Rules of Procedure, in particular to specifically follow-up as necessary on the Board members' Announcements/Petitions process, and provide any direction to staff as needed.

COPY

ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: February 10, 2015

Action Agenda Item No. 4

SUBJECT: Discussion on Board Rules of Procedures

DEPARTMENT: Board of Commissioners **PUBLIC HEARING: (Y/N)** No

ATTACHMENT(S):

Board of Commissioners Rules of Procedure

INFORMATION CONTACT:
Clerk's Office

PURPOSE: To discuss as necessary the Board of Commissioners' Rules of Procedure, and to specifically address potentially rearranging the Order of Business for regular Board meetings to re-locate "Board Comments" to occur earlier in the meeting.

BACKGROUND: The Board of Commissioners utilizes adopted Rules of Procedure (http://orangecountync.gov/occlerks/RulesofProceedureV11.pdf) to guide its processes and deliberations. The Rules address a multitude of issues including Board meeting scheduling, activities and actions during Board meetings, and approval/voting on motions made during meetings.

Along with general discussion of the Board's current Rules of Procedure, a principal item for Board consideration relates to potentially re-locating "Board Comments" to occur earlier in the Order of Business for a regular Board of Commissioners' meeting. Individual Board members have recently suggested that moving this item to earlier in the agenda may be desirable.

The current Order of Business for regular Board meetings is as follows:

1. Additions or Changes to the Agenda
   Public Charge
2. Public Comments (Limited to One Hour)
3. Petitions by Board Members (Three Minute Limit Per Commissioner)
4. Proclamations/Resolutions/Special Presentations
5. Public Hearings
6. Consent Agenda
   - Removal of Items from Consent Agenda
   - Approval of Remaining Consent Agenda
   - Discussion and Approval of the Items Removed from the Consent Agenda
7. Regular Agenda

8. Reports
9. County Manager's Report
10. County Attorney's Report
11. Appointments
12. Board Comments
13. Information Items
14. Closed Session
15. Adjournment

For benefit of Board consideration, it is worth noting that the "Board Comments" item on regular meeting agendas occurred earlier in meetings during the 1990's and early 2000's. In the 1990's and early 2000's, "Board Comments" was included as Item #3 in the Order of Business. Having "Board Comments" earlier in the Order of Business provided, among other things:

- The opportunity early in a regular meeting for individual Board members to share information with the public and other Board members on meetings they had attended
- The opportunity early in a regular meeting for individual Board members to share information with the public and other Board members on upcoming community and County-sponsored events, forums and celebrations
- The opportunity early in a regular meeting for individual Board members to share concerns they had heard from members of the public with other Board members and with the public
- The opportunity early in a regular meeting for the public to hear individual Board members voice policy concerns to staff and other Board members and/or recommend that staff pursue certain actions to address an issue/problem/etc.

In April 2007 the Order of Business was amended to relocate "Board Comments" to occur after the "Reports" item. "Board Comments" was then subsequently relocated to its current placement, after "Appointments", in February 2010.

To the best of staff's general recollection, some of the factors and observations leading to one or both of the 2007 and 2010 actions to re-locate "Board Comments" included:

- Board Comments had grown in length, sometimes continuing up to approximately one hour during the early portion of a regular meeting
- Desire for the Board to address issues and make decisions on written agenda items as early in the meeting as possible when everyone was presumably more attentive rather than making those decisions later in the evening
- Concern that Board Comments occurring earlier in the meeting extended the wait time for the public that attended Board meetings to provide input and witness decisions on items on the written agenda
- Provide the opportunity for members of the public with school-age children to be present for Board decision items. Members of the public would be present for "Board Comments" early on the agenda, but would sometimes subsequently have to leave and miss items for which they had actually attended the meeting due to their children's sleep/homework needs
- The time invested for Board Comments sometimes limited the Board from accomplishing the "Business" items on the written agenda, causing items to be discussed late at night or delayed to future meetings, sometimes prompting frustration for Board members, the public and staff

FINANCIAL IMPACT: There is no financial impact associated with discussion of the Board's Rules of Procedure.

RECOMMENDATION(S): The Manager recommends that the Board discuss as necessary the Board of Commissioners' Rules of Procedure, and specifically address whether or not the Board wishes to re-locate "Board Comments" to occur earlier in the Order of Business for regular meetings.

(Version as of February 10, 2015)

Rules of Procedure for the Board of County Commissioners

Adopted - May 2002
Amended - November 2013
Printed - November 2013

Orange County
North Carolina

Principles of Parliamentary Law

- *Justice and courtesy for all*
- *Majority rules*
- *Right of the minority to be heard*
- *Protection of the rights of the individual and the absentee*
- *Consideration of one thing at a time*
- *Maintain order*
- *Expedite business*
- *Partiality to no one*

Rules of Procedure for the Board of County Commissioners

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Orange County, North Carolina

Preface

These rules of procedure for use by a North Carolina board of county commissioners were first compiled in 1978 by Bonnie E. Davis, who at that time was a member of the Institute of Government faculty. The second edition was issued in 1990. This revised second edition takes into account several changes in the Open Meetings Law and other statutes that have been made since 1990.

The 1994 and 1999 changes to the Open Meetings Law reduced the grounds for holding closed meetings and required that motions to hold closed sessions be specific as to the reason. Rule 3 has been revised to bring it into compliance with the new law.

A 1993 amendment to G.S. 153-26 requires that the organizational meeting following the general election in even-numbered years must be held on the first Monday in December. This statutory change brought clarity to the confusion that previously existed as to what business could be transacted by the old board at the first meeting in December following an election. The old board should conclude all of its business before the December organizational meeting, even if the board normally holds a regular meeting on the first Monday of each month.

Acknowledgements

These rules of procedure are based on the following publications of the Institute of Government at the University of North Carolina, Chapel Hill:

Rules of Procedure for the Board of County Commissioners, Second Edition, Revised. Joseph S. Ferrell, Institute of Government, the University of North Carolina at Chapel Hill, 1994.

Suggested Rules of Procedure for Small Local Government Boards, Second Edition. A Fleming Bell, II, Institute of Government, the University of North Carolina at Chapel Hill, 1998.

The text of these publications was utilized and modified as appropriate to reflect the specific needs of the Board of Commissioners of Orange County.

Rules of Procedure for the Board of County Commissioners

Introduction

These rules of procedure were designed for use by a North Carolina board of county commissioners. Essentially, the rules are a modified version of *Robert's Rules of Order, Revised. Robert's Rules* is intended to guide the deliberations of a large legislative body; consequently, it is not always appropriate for a small governing board, which can afford to proceed with much less formality. Another valuable resource consulted for this revision of the rules was *Mason's Manual of Legislative Procedure. Mason's Manual* is intended primarily for state legislatures, but its extensive discussion of the basic principles of parliamentary law and procedure is valuable for local governing boards as well.

These rules apply to all meetings of the Orange County Board of Commissioners at which the Board is empowered to exercise any of the executive, administrative or legislative powers conferred on it by law.

The North Carolina law (G.S. 153A-41) permits a board of county commissioners to adopt its own rules of procedure if these conform to "generally accepted principles of parliamentary procedure" and do not conflict with applicable law. *Mason's Manual* suggests that parliamentary law affecting the work of a board of county commissioners can be summarized in ten basic principles:

1. *The board can take only those actions that it has authority or jurisdiction to take.* A corollary of this principle is that the board's action, to be valid, must not violate any applicable law or constitutional provision. This is simply another manifestation of the familiar legal doctrine that a unit of local government has only those powers conferred on it by law or necessarily implied from some specific grant of power.
2. *The board must meet in order to act.* Under North Carolina law, the powers conferred on the county governing board are exercised by the county board of commissioners as a group, not its individual members. Therefore, the group must meet in order to act.

3. *All board members must receive proper notice of meetings.* Since all members are equally entitled to participate in board meetings, each member must be properly notified of the place, time, and purpose of meetings.
4. *The board may act only with a quorum.*
5. *There must be a question before the board on which it can decide.* Except when electing their own officers or balloting for appointments, legislative bodies proceed by voting *yes* or *no* on specific proposals put forward by one or more members. Each member has a right to know at all times what question is before the board and what effect a yes or no vote would have on that question.
6. *There must be opportunity for debate.* The very nature of a deliberative body requires that members share information and opinion about matters before the board.
7. *Questions must be decided by vote.* Legislative bodies do not decide matters by discussing them until a consensus emerges.
8. *Votes are decided by majority.* Usually only a simple majority of votes cast suffices, but the board's rules or an applicable law may sometimes require an extraordinary majority.
9. *There must be no fraud, trickery, or deception in the board's proceedings.*
10. *The board's rules of procedure must be applied consistently.*

Most of the following rules have been modified to suit local needs and customs. The comments following the rules note when rules state procedures required by law (North Carolina General Statutes, hereinafter cited as G.S.).

I. Applicability

Rule 1. Applicability of Rules. These rules apply to all meetings of the Board of Commissioners of Orange County at which the board is empowered to exercise any of the executive, quasi-judicial, administrative, or legislative powers conferred on it by law.

> Comment: On the whole, rules of procedure of a governing board are intended to govern formal meetings of the board where it will exercise any of its executive and legislative powers. These rules fulfill that purpose and also are designed to ensure board compliance with the Open Meetings Law, G.S. 143-318.9 through 318.18, which applies to any gathering of a majority of

the board to discuss public business. The rules also apply to informal work sessions or committee meetings where public business is discussed but no official action is taken.

II. Open Meetings

Rule 2. Meetings to be Open. (a) It is the public policy of North Carolina and of Orange County that the hearings, deliberations, and actions of this board and its committees be conducted openly.

(b) Except as otherwise provided in these rules and in accordance with applicable law, each official meeting of the Orange County Board of Commissioners shall be open to the public and any person is entitled to attend such meeting.

Comment: See G.S. 143-318.10(a).

(c) For the purposes of the provisions of these rules concerning open meetings, an official meeting of the board is defined as any gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of board members for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting public business within the jurisdiction, real or apparent, of the board.

Comment: See G.S. 143-318.10(d). The Open Meetings Law provides that a social meeting or other informal assembly or gathering together of the members of the board does not constitute an official meeting unless it is "called or held to evade the spirit and purposes" of the laws requiring meetings to be open.

Rule 3. Closed Sessions. (a) Notwithstanding the provisions of Rule 2, the board may hold a closed session for the reasons listed below. It is the policy of the state of North Carolina that closed sessions shall be held only when required to permit a public body to act in the public interest as permitted in this section. A public body may hold a closed session and exclude the public only when a session is required:

1. To prevent the disclosure of information that is privileged or confidential pursuant to the law of this state or of the

United States, or is not considered a public record within the meaning of Chapter 132 of the General Statutes.

2. To prevent the premature disclosure of an honorary degree, scholarship, prize or similar award

3. To consult with the county attorney or another attorney employed or retained by the county in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. G.S. 143-318.11(a)(2) provides that general policy matters may not be discussed in a session closed in order to consult with the county attorney, and the mere fact that the county attorney is participating in a board meeting is not grounds to close the meeting. The statute further provides that the board may consider and give instructions to the attorney concerning handling or settlement of any pending litigation or other matter in controversy, but the terms of any settlement (other than a malpractice claim against a public hospital) must be reported to the board of commissioners and entered in the minutes "as soon as possible within a reasonable time" after the settlement is concluded.

4. To discuss matters relating to the location or expansion of industries or other businesses in the county, including agreement on a tentative list of economic development incentives that may be offered by a public body in negotiations. G.S. 143-318.11(a)(4) requires that the action approving the signing of an economic development contract or commitment, or the action authorizing the payment of economic development expenditures be taken in open session.

5. To establish or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract.

6. To consider the qualifications, competence, performance, character, fitness, conditions of appointment or conditions of initial employment or appointment of an individual public officer or employee, or prospective public officer or employee; or to hear or investigate a complaint, charge or grievance by or against an individual public officer or employee. General personnel

policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment or removal of a member of the public body or a member of any other public body, and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting.

7. To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct.

(b) The board may go into closed session only upon a motion made and duly adopted at an open meeting. This motion must cite one or more of the permissible purposes listed in subsection (a) of this rule. In addition, a motion to go into closed session pursuant to Rule 3 (a)(1) must state the name or citation of the law that renders the information to be discussed privileged or confidential, and a motion to go into closed session pursuant to Rule (a)(3) must identify the parties in each existing lawsuit, if any, concerning which the board expects to receive advice during the closed session.

(c) The board shall determine who shall attend the closed session. The county manager, county attorney and clerk to the board shall attend all closed sessions unless otherwise determined by the board. The board shall determine other necessary attendees as the facts and the circumstances dictate. With respect to a closed session to consult with the county attorney or another attorney employed by or retained by the county, in order to preserve the attorney-client privilege between the attorney and the board, the board shall not permit a person to attend the closed session if that person's attendance would defeat the attorney-client privilege.

(d) The board shall conclude a closed session and return to open session upon a motion made and adopted to do so.

III. Organization of the Board

Rule 4. Organizational Meeting. The board shall hold an organizational meeting at its regular meeting place at 7:00 p.m. on the first Monday in December of each year. The former chair shall call the meeting to order and shall preside until a chair is elected. The agenda shall be as follows: (1) special recognition of any outgoing commissioners, (2) taking and subscribing the oath of office by the newly elected members of the board, (3) election of a chair and vice-chair, (4) designation of voting delegate for all NCACC and NACo meetings, (5) seating arrangement and (6) appointment of the manager, clerk and county attorney. The bonds of the Register of Deeds and the Sheriff shall be approved as part of the consent agenda.

> Comment: This rule incorporates the requirements of G.S. 153A-26 concerning the times for organizational meetings and the qualifications of new members and the requirements of G.S. 153A-39 concerning the election of the chair and the vice-chair, G.S. 161-4 (for the Register of Deeds), G.S. 162-9 (for the Sheriff), require the board to approve the bonds of these officials.
>
> G.S. 153A-26 provides that the oath of office is that prescribed by Article VI, Section 7, of the North Carolina Constitution (see also G.S. 11-6 and G.S. 11-7) and may be administered by any person authorized by law to administer oaths. The written statement of the oath shall be signed by each new member and filed with the clerk to the board. The statute also provides that a new member who cannot be present at the organizational meeting may take and subscribe the oath later.

Rule 5. Election of the Chair. The chair of the board shall be elected annually for a term of one year and shall not be removed from the office of chair unless he or she becomes disqualified to serve as a member of the board.

> Comment: G.S. 153A-39 provides for the election of a chair and states that he or she is chosen "for the ensuing year."

IV. Regular and Special Meetings

Rule 6. Regular and Special Meetings.

(a) Regular Meetings. The board usually holds a regular meeting on the first and third Tuesday of each month in accordance with the "Board Calendar of Meetings" approved by the board. All meetings shall begin at 7:00 p.m. unless otherwise noted on the "Calendar of Meetings." The board may change the place or time of any meeting listed on the approved "Calendar of Meetings" by a majority vote, and have it posted and noticed no less than seven days before the change takes effect. A notice shall be filed with the clerk to the board and posted, on the principal bulletin board of the county, and at or near the regular meeting place, and copies shall be sent to all persons who have requested notice of special meetings of the board.

> Comment: See G.S. 143-318.12(b)(1) and G.S. 153A-40(a). Any permanent change in the schedule of regular meetings must be adopted not later than ten days before the first meeting to which the new schedule applies. Also, G.S. 153A-40 requires the board of county commissioners to meet at least once a month. The notice requirements of the proposed rule are somewhat broader than those required by law.

(b) Special Meetings. The chair or a majority of the members of the board may at any time call a special meeting of the board by signing a notice stating the time and place of the meeting and the subjects to be considered. The person or persons who call the meeting shall cause the notice to be posted on the principal bulletin board of the county, located at the Link Government Services Center in Hillsborough, and at or near the meeting place, and delivered to the chair and all other board members or left at the usual dwelling place of each member at least 48 hours before the meeting. In addition, the notice shall be mailed or sent by e-mail to individual persons and news media organizations who have requested such notice as provided in subsection (e), below. Only those items of business specified in the notice may be transacted at a special meeting, unless all members are present or those who are not present have signed a written waiver.

A special meeting may also be scheduled by vote of the board in

open session during another duly called meeting. The motion calling for a special meeting shall specify its time, place, and purpose. At least 48 hours before the meeting, the notice shall be posted on the principal bulletin board of the county and at the regular meeting place, and delivered to all board members not present at the meeting at which the special meeting was called. Only items of business specified in the motion calling for the special meeting may be transacted at a special meeting called in this matter unless all members are present and the board determines in good faith at the meeting that it is essential to discuss or act on the additional item immediately.

Comment: See G.S. 153A-40(a) and G.S. 143-318.12(b)(2).

(c) Emergency Meetings. The chair or a majority of board members may at any time call an emergency meeting of the board by signing a written notice stating the time and place of the meeting and the subjects to be considered. Written or oral notice of the meeting shall be given to each board member and to each news organization that has filed a written emergency meeting notice request with the clerk to the board, and whose request includes that organization's telephone number. Only business connected with the emergency may be considered at an emergency meeting.

(d) Work Sessions, Committee Meetings or other Informal Meetings. The chair or a majority of the board members may schedule work sessions, committee meetings or other informal meetings of the board or of a majority of its members at such times and concerning such subjects as may be established by the board. The times and subject matter may be established by resolution or order of the board. A schedule of any such meetings that are held on a regular basis shall be filed in the same place and manner as the schedule of regular meetings. Work sessions and other informal official meetings not held regularly are subject to the same notice requirements as special board meetings.

(e) Sunshine List. Any individual person and any newspaper, wire service, radio station, and television station may file with the clerk to the board of commissioners a written request for notice of all special meetings of the board. These are meetings

not listed on the regular "Calendar of Meetings." Requests by individuals must be renewed on or before the last day of each calendar year and are subject to a $10.00 nonrefundable annual fee.

> Comment: The Open Meetings Law requires that any "official meeting" at which a majority of the board deliberates on public business must be open to the public and notice must be given. The last sentence of the rule embodies that principle. The rule goes beyond the Open Meetings Law in requiring a published schedule of work sessions or committee meetings held on a regular basis.
>
> G.S. 143-318.13(a) provides that if the board holds any regular, special, emergency, or other official meeting by use of conference telephone or other electronic means, the clerk shall provide a location and means whereby members of the public may listen to the meeting and notice of the meeting shall specify that location.

Rule 7. Location of Meetings. All meetings shall be held within the boundaries of Orange County except as otherwise provided herein.

1. A joint meeting with the governing board of any other political subdivision of this state or any other state may be held within the boundaries of either subdivision as may be stated in the call of the meeting. At any such joint meeting, the board reserves the right to vote separately on all matters coming before the joint meeting.

2. A special meeting called for the purpose of considering and acting upon any order or resolution requesting members of the General Assembly representing all or any portion of this county to support or oppose any bill pending in the General Assembly or proposed for introduction therein may be held in Raleigh or such other place as may be stated in the call of the meeting.

3. A meeting may be held in connection with a retreat, forum, or similar gathering solely for the purpose of providing members of the board with general information relating to the performance of their public duties.

4. A meeting may be held while in attendance at a convention, association meeting, or similar gathering solely to discuss

or deliberate the board's position concerning convention resolutions, elections of association officers, and similar issues that are not legally binding upon the board or its constituents.

Comment: See G.S. 153A-40(c). That statute also speaks of two other categories of gatherings that may be held outside the boundaries of the county: retreats, and meetings with the legislative delegation representing the county in the General Assembly. The statute expressly forbids the board to take any official action at any such meetings, so they are not mentioned in the proposed rule. However, such meetings are covered by the Open Meetings Law if a majority of the board is present and "deliberates" on public business.

V. Agenda

Rule 8. Agenda. (a) The county manager shall prepare the agenda for each regular, special and emergency meeting subject to review and approval by the chair and vice-chair. A request to have an item of business placed on the agenda must be received by 12:00 noon, Monday of the week prior to the meeting. Any Board member may petition the Board to have an item placed on the agenda.

(b) The agenda packet for regular meetings shall include the agenda document, any proposed ordinances or amendments to ordinances, and supporting documentation and background information relevant to items on the agenda. A copy of the agenda packet shall be delivered to each member of the board at least ninety-six hours before the meeting. Documents in the agenda packet, if not previously available for public inspection, shall become so when packets have been delivered to each board member or left at his or her usual dwelling. Copies shall be available for members of the public in the clerk's office and at the Orange County Main Public Library. Quarterly Public Hearing Agendas shall also be placed at the Chapel Hill Library. The agenda is also published on the county's web site, orangecountync.gov.

For all other meetings (special, work sessions, etc.) a copy of the agenda and attachments shall be available to members of the public on the Orange County website prior to the meeting (usually 48-72 hours before the meeting).

The clerk's office shall post agendas for regular meetings, public hearings and work sessions on the county's website within 24 hours after they are distributed to the board of Commissioners by the county manager's office. Agendas which are distributed on Thursday prior to a Friday holiday or agendas which are distributed on Friday will be posted on the County's web site by noon the following Monday.

(c) The board may, by approval of a majority of its members, i.e. an affirmative vote equal to a quorum, add an item that is not on the agenda.

> Comment: Because of the increased volume and complexity of the matters they must consider, nearly all boards use an agenda. Some boards use an agenda only to organize the material they must consider and to give themselves an opportunity to study the issues before they meet. These boards generally allow last-minute additions to the agenda by general consent. This rule takes that approach. Other boards use their agenda to control the length of their meetings. Often a board that uses its agenda for this purpose will hold a work session before the regular meeting to ask questions and thoroughly explore the proposals that must be voted on at the regular meeting. Generally these boards take a stricter approach and do not allow late additions to the agenda unless an emergency exists.

Rule 9. Public Comments - Items Not on the Printed Agenda. The county manager shall include on the agenda of each regular meeting a time for comments or questions from members of the public in attendance. The chair will first recognize individuals or groups who have signed up to be heard, and then may recognize others, subject to available time. Speakers will be allowed three minutes each up to an hour total. After the hour set aside for public comments has expired, the chair will recognize further speakers only upon motion duly made and adopted.

Petitions/Resolutions/Proclamations and other similar requests submitted by the public will not be acted upon by the Board of Commissioners at the time presented. All such requests will be referred for Chair/Vice Chair/Manager review and for recommendations to the full Board at a later date regarding a) consideration of the request at a future regular Board meeting; or b) receipt of the request as information only. Submittal of information to the Board or receipt of information by the Board does not constitute approval, endorsement, or consent.

Comment: The board may decide as a matter of general policy to set aside part of each meeting for individuals or groups to address the board. The rule allows any individual or group to get on the agenda but lets the board decide whether there is time to hear its comments.

Rule 10. Order of Business.

(a) Regular Meetings. For all regular meetings, items shall be placed on the agenda as listed below:

1. Additions or Changes to the Agenda
   Public Charge
2. Public Comments (Limited to One Hour)
3. Petitions by Board Members (Three Minute Limit Per Commissioner)
4. Proclamations/Resolutions/Special Presentations
5. Public Hearings
6. Consent Agenda
   - Removal of Items from Consent Agenda
   - Approval of Remaining Consent Agenda
   - Discussion and Approval of the Items Removed from the Consent Agenda
7. Regular Agenda
8. Reports
9. County Manager's Report
10. County Attorney's Report
11. Appointments
12. Board Comments
13. Information Items
14. Closed Session
15. Adjournment

If there is no objection, the chair may call items in any order most convenient for the dispatch of business. The meeting will end at 10:30 unless there is a majority vote of the Board to continue beyond that time.

(b) Order of Business for Public Hearings

1. Opening Remarks from the Chair
2. Public Charge
3. Public Hearing Items
4. Adjournment

(c) Public Charge. A public charge may be read at each meeting to set the tone for civil decorum. The public charge is placed on the agenda immediately after item 1, "Additions or Changes to the Agenda" and it shall read:

> *"The Board of Commissioners pledges to the residents of Orange County its respect. The Board asks its residents to conduct themselves in a respectful, courteous manner, both with the board and with fellow citizens. At any time should any member of the Board or any resident fail to observe this public charge, the Chair will ask the offending person to leave the meeting until that individual regains personal control. Should decorum fail to be restored, the Chair will recess the meeting until such time that a genuine commitment to this public charge is observed. All electronic devices such as cell phones, pagers, and computers should please be turned off or set to silent/vibrate."*

VI. Conduct of Debate

Rule 11. Powers of the Chair. The chair shall preside at all meetings of the board if he or she is present. If the chair is absent, the vice-chair shall preside. If both the chair and vice-chair are absent, another member designated by vote of the present board members shall preside. A member must be recognized by the presiding officer in order to address the board. The chair shall have the following powers:

1. To rule on points of parliamentary procedure, including the right to rule out of order any motion patently offered for obstructive or dilatory purposes;

2. To determine whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks and to entertain and rule on objections from other members on this ground;
3. To entertain and answer questions of parliamentary law or procedure;
4. To call a brief recess at any time;
5. To adjourn in an emergency.

A decision by the presiding officer under any of the first three powers listed above may be appealed to the board upon motion of any member. Such a motion is in order immediately after a decision under those powers is announced and at no other time. The member making the motion need not be recognized by the presiding officer, and the motion, if timely made, may not be ruled out of order.

> Comment: The chair normally presides at board meetings. In his or her absence, the vice-chair, if there is one, presides. If there is no vice-chair, or if both the chair and vice-chair are absent, the board typically selects a temporary presiding officer.
>
> The board may choose whether the chair always votes or votes only to break a tie. Someone who is temporarily presiding in the chair's place is still a full member of the board and thus entitled to make motions and to vote.
>
> The chair or anyone presiding in the chair's place has substantial procedural powers, but those powers are not absolute. Under this rule and Rule 15, any board member is entitled to make a motion to appeal to the other members concerning the presiding officer's decisions on motions, decorum in debate and most other procedural matters.
>
> There are two exceptions to this right of appeal. A chair or other presiding officer may adjourn without the board's vote or appeal in an emergency, and he or she may also call a brief recess without a vote at any time, when necessary to "clear the air" and thus reduce friction among the members.

Rule 12. Presiding Officer when the Chair is in Active Debate. If the chair wishes to become actively engaged in debate on a particular proposal, he or she shall designate another board member to preside. The chair shall resume the duty to preside as soon as action on the matter is concluded.

Comment: Good leadership depends, to a certain extent, on not taking sides during a debate. On a small board this may not always be feasible or desirable; yet an unfair advantage accrues to the side whose advocate controls access to the floor. This rule is designed to ensure evenhanded treatment to both sides during a heated debate. Ordinarily the chair should call on the vice-chair to preside if he or she finds it necessary to step aside.

Rule 13. Action by the Board. The board shall proceed by motion. Any member, including the chair, may make a motion. If two or more Commissioners speak at the same time to make a motion (or second), the chair shall determine, for purposes of recording action for the minutes, which name the clerk shall use.

Comment: The chair may make motions, or the chair may invite another member to make a motion by saying "The chair will entertain a motion that..."

Rule 14. Second Required. A motion shall require a second, followed by discussion and/or comments and a vote.

Comment: The philosophy underlying the requirement of a second is that if a proposal is not supported by at least two members, it is not worth the time it would take to consider the matter. A second does not necessarily mean that a member agrees with the motion, but that the member wishes the matter open to discussion. A second allows the matter to be discussed further.

Rule 15. One Motion at a Time. A member may make only one motion at a time.

Rule 16. Substantive Motion. A substantive motion is out of order while another substantive motion is pending.

Comment: This rule sets forth the basic principle of parliamentary procedure: distinct issues are considered and dealt with one at a time, so a new proposal may not be put forth until action on the preceding one has been concluded.

Robert's Rules of Order does not refer to substantive motions as such; instead it uses such adjectives as "main" or "principal." Here, a substantive motion is any motion other than the procedural motions listed in Rule 19. The possible subject matter of a substantive motion coexists with the board's legal powers, duties, and responsibilities. Indeed, since Rule 13 provides that the board shall proceed by motion, the substantive motion is the board's exclusive mode of action. The procedural

motions detailed in the following rules set forth the board's various options in disposing of substantive motions.

Rule 17. Adoption by Majority Vote. A motion shall be adopted if approved by a majority of the votes cast, a quorum being present, unless an extraordinary majority is required by these rules or the laws of North Carolina. A majority is more than half. A quorum is a majority of the actual membership of the board, including any vacant seats. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

Rule 18. Debate. The chair shall state the motion and then open the floor to debate, presiding over the debate according to these general principles:

1. The member making the motion or introducing the ordinance, resolution, or order is entitled to speak first.
2. A member who has not spoken on the issue shall be recognized before someone who has already spoken.
3. To the extent possible, the debate shall alternate between opponents and proponents of the measure.

Rule 19. Procedural Motions. (a) In addition to substantive proposals, the procedural motions listed in subsection (b) of this rule, and no others, shall be in order. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority vote for adoption.

Comment: This rule substantially departs from *Robert's Rules of Order*. Each procedural motion in *Robert's Rules of Order* was reviewed to determine whether it was appropriate for use by a small board; substantial modifications and deletions were the result. The following enumeration of procedural motions is exhaustive; if a procedural option is not on the list, it is not available.

(b) In order of priority (if applicable), the procedural motions are:

Comment: While a substantive motion is out of order if another substantive motion is pending, several procedural motions can be entertained in succession without necessarily disposing of the immediately pending one. The order of the list below establishes which procedural motion yields to which-for

example, a move to defer consideration (6) may be made while a move to refer to committee (9) is pending because (6) ranks higher on the list.

1. *To Appeal a Procedural Ruling of the Presiding Officer.* A decision of the presiding officer ruling a motion in or out of order, determining whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks, or entertaining and answering a question of parliamentary law or procedure may be appealed to the board as specified in Rule 11. This appeal is in order immediately after such a decision is announced and at no other time. The member making the motion need not be recognized by the presiding officer and the motion, if timely made, may not be ruled out of order.

   Comment: Rule 11 allows the ruling of the presiding officer on certain procedural matters to be appealed to the board. This appeal must be made as soon as the presiding officer's decision is announced, so this motion is accorded the highest priority. See Rule 11 and its comment for further discussion of this motion.

2. *To Adjourn.* The motion may be made at the conclusion of action on a pending matter; it may not interrupt deliberation of a pending matter.

   Comment: This motion differs from the *Robert's Rules of Order* motion in several respects. In *Robert's Rules of Order*, it is not debatable or amendable and can be made at any time, even interrupting substantive deliberations. In view of the small number of members and the available procedures to limit debate, this rule allows debate and amendment of the motion to adjourn but allows the motion to adjourn only when action on a pending matter is over. The motion to defer consideration or to postpone to a certain time or day may be used if the board wants to adjourn before completing action on a matter.

3. *To Take a Recess.*

   Comment: *Robert's Rules of Order* does not allow debate on this motion, but since the number of members is small and procedures to limit debate are available, this rule allows debate on the motion. As in *Robert's Rules of Order*, the motion is in order at any time. Note that under Rule 11, the chair also has the power to call a brief recess.

4. *To Call to Follow the Agenda.* The motion must be made at the first reasonable opportunity or it is waived.

   Comment: This motion differs from the call for the orders of the day in *Robert's Rules of Order*: it may be debated and must be made when an item of business that deviates from the agenda is proposed or the right to insist on following the agenda is waived for that item.

5. *To Suspend the Rules.* The motion requires a vote equal to a quorum.

   Comment: This motion differs from *Robert's Rules of Order* in that it is debatable and amendable and the number of necessary votes is a quorum rather than two-thirds. Thus if a board has seven members, four members (a quorum) must vote for the motion; if only four members are present at a particular meeting, all four must vote for the motion in order to adopt it. This motion is in order when the board wishes to do something that it may legally do but cannot without violating its own rules. The procedure will pose some problems for a three-member board, as it can be used to prevent one member from participating in the board's deliberations. Frequent use of the motion to prevent one member from presenting proposals to the board or from speaking on an issue before the board is of doubtful legality. A three-member board may decide to require a unanimous vote to suspend the rules.

6. *To Divide a Complex Motion and Consider it by Paragraph.* This motion is in order whenever a member wishes to consider and vote on subparts of a complex motion separately.

   Comment: This motion is the same as the division of a question and consideration by paragraph in *Robert's Rules of Order* except that it is debatable.

7. *To Defer Consideration.* The board may defer a substantive motion for later consideration at an unspecified time. A substantive motion that has been deferred expires 100 days thereafter, unless a motion to revive consideration is adopted.

   Comment: This motion, which replaces the motion to lay on the table in *Robert's Rules of Order*, was renamed to avoid confusion. It allows the board temporarily to defer consideration of a proposal. It differs from *Robert's Rules of Order* in that it may be debated and amended, and in that a motion that has been deferred dies if it is not taken up by the board

(via a motion to revive consideration) within one hundred days of the vote to defer consideration. (In *Robert's Rules of Order* a motion laid on the table dies at the end of the particular session of the assembly.) One hundred days is the suggested period of time for deferring consideration because it is also the time within which a proposed ordinance must be enacted (see Rule 27).

8. *To Call the Previous Question.* The motion is not in order until there has been a debate and every member has had one opportunity to speak.

Comment: This motion differs from the motion in *Robert's Rules of Order*. The *Robert's Rules of Order* motion is always in order, is not debatable or amendable, and requires a two-thirds vote for adoption. Thus, it may be used to compel an immediate vote on a proposal without any debate on the issue. Such a device may be necessary to preserve efficiency in a large assembly, but with a small board, a minimum period of debate on every proposal that comes before the board strikes a better balance between efficiency and effective representation by all board members. Since every member will have an opportunity to speak, the debate may be ended by a majority vote.

9. *To Postpone to a Certain Time or Day.*

Comment: This motion allows the board to defer consideration to a specified time or day and is appropriate when more information is needed or the deliberations are likely to be lengthy.

10. *To Refer a Motion to a Committee.* The board may vote to refer a substantive motion to a committee for its study and recommendations. Sixty days or more after a substantive motion has been referred to a committee, the introducer of the substantive motion may compel consideration of the measure by the entire board, whether or not the committee has reported the matter to the board.

Comment: This motion is identical with the motion of the same name in *Robert's Rules of Order* except that the introducer's right to compel consideration by the full board after a specified period of time prevents using the motion to defeat a proposal by referring it to a committee that intends to take no action on it. If the board does not use committees, this rule is unnecessary.

11. *To Amend.* An amendment to a motion must be pertinent to the subject of the motion. An amendment is improper if adoption of the motion with that amendment added would have the same effect as rejection of the original motion. A proposal to substitute completely different wording for a motion or an amendment shall be treated as a motion to amend. There may be an amendment to the motion and an amendment to an amendment, but no further amendments. Any amendment to a proposed ordinance shall be reduced to writing. A vote on a motion to amend a motion may be regarded as a vote on the motion as amended if that is determined to be the intent of the board.

    Comment: This motion is identical to the motion of the same name in *Robert's Rules of Order* except for the requirement for written amendments to proposed ordinances.

12. *To Revive Consideration.* The motion is in order at any time within one hundred days of a vote deferring consideration of it. A substantive motion on which consideration has been deferred expires one hundred days after the deferral, unless a motion to revive consideration is adopted.

    Comment: This motion replaces the motion to take up from the table in *Robert's Rules of Order* and was renamed in order to avoid confusion. This motion may be debated and amended; the motion in Robert's Rules of Order may not. If the motion to revive consideration is not successful within 100 days of the original deferral date, the substantive motion expires. The subject matter of the motion may be brought forward again by a new motion.

13. *To Reconsider.* The board may vote to reconsider its action on a matter. The motion to do so must be made by a member who voted with the prevailing side (the majority, except in the case of a tie; in that case the "nos" prevail) and only at the meeting during which the original vote was taken, including any continuation of that meeting through recess to a time and place certain. The motion cannot interrupt deliberation on a pending matter but is in order at any time before final adjournment of the meeting. If a member wishes to reverse an action taken at a previous meeting, he or she generally may make a new motion having the opposite effect of the prior action.

Any new motion having the opposite effect of the prior action that is related to the board issuing or not issuing a permit may be considered only where new evidence is presented to the board concerning the permit and all pertinent ordinance requirements, substantive and procedural, including those related to public hearings, have been met. Any new motion having the opposite effect of the prior action that relates to an ordinance may only be considered consistent with pertinent ordinance requirements, substantive and procedural, including those related to public hearings.

Comment: According to *Robert's Rules of Order*, the motion may be at the same meeting or on the next legal day and may interrupt deliberation on another matter. The rule does not allow reconsideration of a vote once the meeting adjourns. A member wishing to reverse an action taken at a previous meeting may make a motion or introduce a new ordinance having the opposite effect, consistent with public hearing requirements of North Carolina Law.

14. *To Prevent Reconsideration for Six Months.* The motion shall be in order immediately following the defeat of a substantive motion, and at no other time. The motion requires a vote equal to a quorum and is valid for six months or until the next regular election of county commissioners, whichever occurs first.

Comment: This clincher motion prevents the same motion from being continually introduced when the subject has been thoroughly considered. Because this motion curtails a member's right to bring a matter before the board, a vote equal to a quorum is required. As with every other motion, a clincher may be dissolved by a motion to suspend the rules. Six months is merely a suggested time; the board may shorten or lengthen the time as it sees fit. In order to give a new board a clean slate, the motion is not effective beyond the next regular election.

Rule 20. Renewal of Motion. A defeated motion may not be renewed at the same meeting.

Rule 21. Withdrawal of Motion. A motion may be withdrawn by the introducer at any time before it is amended or before the chair puts the motion to a vote, whichever occurs first.

Comment: *Robert's Rules of Order* provides that once a motion has been stated by the chair for debate, it cannot be withdrawn without the assembly's consent. Such a procedure is unnecessary for a small board.

VII Quorum and Other Rules

Rule 22. Duty to Vote. It is the duty of each member to vote unless excused by a majority vote according to law. The board shall excuse members from voting on matters involving their own financial interest or official conduct as provided by law. A member who wishes to be excused from voting shall so inform the chair, who shall take a vote of the remaining members. No member shall be excused from voting except in cases involving conflicts of interest, as defined by the board or by law, or the member's official conduct, as defined by the board. In all other cases, a failure to vote by a member who is physically present in the meeting, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote.

Comment: G.S. 153A-44 provides that board members have a duty to vote, but does not state the remedy for failure to do so. Many boards record all members as voting yes on any matter put to vote unless members audibly vote no. A few boards reverse the presumption and record members as voting no unless they audibly vote yes.

Rule 23. Prohibition of Secret Voting. No vote may be taken by secret ballot. If the board decides to vote by written ballot, each member shall sign his or her ballot and the minutes shall record the vote of each member. These ballots shall be retained and made available for public inspection until the minutes of that meeting have been approved, at which time they may be destroyed.

Comment: See G.S. 143-318.13(b)

Rule 24. Action by Reference. The board shall not deliberate, vote, or otherwise act on any matter by reference to an agenda or document number unless copies of the agenda or documents being referenced are available for public inspection at the meeting and are so worded that people at the meeting can understand what is being discussed or acted on.

Comment: See G.S. 143-318.13(c).

Rule 25. Introduction of Ordinances, Resolutions, and Orders. A proposed ordinance shall be deemed introduced at the first meeting at which it is on the agenda and actually considered by the board and its introduction shall be recorded in the minutes.

Comment: G.S. 153A-45 provides that an ordinance may not be finally adopted at the meeting at which it is introduced except by unanimous vote. The definition of introduction therefore is important because it makes a difference in the number of votes required to adopt an ordinance. The rule assumes that a measure is introduced only when the board begins to consider the matter.

Rule 26. Adoption, Amendment, or Repeal of Ordinances. To be adopted at the meeting where first introduced, an ordinance or any action with the effect of an ordinance, or any ordinance amending or repealing an existing ordinance (except the budget ordinance, a bond order, or other ordinance requiring a public hearing before adoption), must be approved by all members of the board of commissioners. If the proposed measure is approved by a majority of those voting but not by all members of the board, or if the measure is not voted on at the meeting where introduced, it shall be considered at the next regular meeting of the board. If the proposal receives a majority of the votes cast at the next meeting or at a meeting within 100 days of being introduced, it is adopted.

Adoption of Ordinances, Resolutions, Proclamations and Orders. A motion shall be adopted by a majority of the votes cast for any and all resolutions, proclamations and orders. The vote shall express the sense of the board on a question or issue brought before it and shall serve as an official declaration of a particular state of fact or circumstance.

Comment: See G.S. 153A-45. See also G.S. 153A-46 for requirements for granting franchises.

Rule 27. Quorum. A majority of the board membership shall constitute a quorum. The number required for a quorum is not affected by vacancies. If a member has withdrawn from a

meeting without being excused by majority vote of the remaining members present, he or she shall be counted as present for the purposes of determining whether a quorum is present. The board may compel the attendance of an absent member by ordering the sheriff to take the member into custody.

> Comment: See G.S. 153A-43. Compelling the attendance of a member by ordering the sheriff to take the person into custody is an extraordinary remedy intended for use when a member obstinately refuses to attend meetings for the purpose of preventing action on a proposal. If the board contemplates using this power, it should give the absent members notice that their attendance is required by the majority and may be compelled in this manner.

Rule 28. Public Hearings. Public hearings required by law or deemed advisable by the board shall be advertised per legal requirements and staff shall set forth the subject, date, place, and time of the hearing as well as any rules regarding the length of time allotted to each speaker and designating representatives to speak for large groups. At the appointed time, the chair shall call the hearing to order and preside over it. When the allotted time expires, or earlier, if no one wishes to speak who has not done so, the presiding officer shall entertain or make a motion to end the hearing or adjourn the public hearing to another board meeting, or vote on the item. The board shall thereafter resume the regular order of business.

Anyone wishing to speak during a public hearing must first provide his or her name and address to the clerk.

> Comment: G.S. 153A-52 provides that public hearings may be held anywhere within the county and gives the board authority to adopt rules governing the hearings.

Rule 29. Quorum at Public Hearings. A quorum of the board shall be required at all public hearings required by law.

> Comment: G.S. 153A-52 implies that a quorum of governing board members is necessary for a public hearing by providing that a hearing shall be deferred to the next regular meeting if a quorum is not present at the originally scheduled time. However, if the board decided to hold a public hearing not required by law to gather a consensus of public opinion on an issue, the hearing could be held at several different sites, with a few members at each site.

Rule 30. Minutes. Minutes shall be kept of all board meetings. Minutes will be presented to the board on the regular meeting agenda. Substantive changes, including changes in content, will be made in open session. Other changes may be provided to the clerk. The exact wording of each motion and the results of each vote shall be recorded in the minutes. On the request of any board member the board shall be polled by name on any vote.

Minutes of closed sessions will be presented to the board during a closed session held under G.S. 143-318.11(a)(1). Motion to go into closed session should state that one purpose of the session is "to prevent the disclosure of information that is made privileged or confidential by G.S. 143-318.10(e)."

Minutes and general accounts of closed sessions shall be considered sealed automatically. Closed session records shall be unsealed by board action if and when the closed session's purpose would no longer be frustrated by making these records public.

> Comment: See G.S. 143-318.10(d) and the discussion of minutes in Bonnie E. Davis, *Handbook for North Carolina County Commissioners*, *second edition, revised*, by Joseph S. Ferrell (Chapel Hill, N.C.: Institute of Government, 1985). G.S. 143-318.11(d) provides that minutes and other records made of a closed session may be withheld from public inspection as long as such inspection would frustrate the purpose of the closed session.

Rule 31. Appointments. The board shall use the procedure as stated in the resolution for "Appointment and Orientation Process for Boards and Commissions" approved on April 6, 1992 and amended on March 15, 1994, August 8, 1994, November 3, 1999, November 22, 1999, December 7, 1999, February 14, 2000, June 6, 2000, March 6, 2001, April 20, 2004, and April 12, 2005 when making appointments to fill vacancies in the regular and short-term boards and commissions on which they make appointments. Appointments will be presented by the clerk to the board.

Rule 32. Amendment of the Rules. These rules may be amended at any regular meeting or at any properly called special meeting that includes amendment of the rules as one of

the stated purposes of the meeting. Adoption of these rules or an amendment thereof shall require an affirmative vote equal to a quorum.

> Comment: Local boards may generally amend their rules of procedure whenever they choose, unless a statute or rule of the body that created the particular board provides otherwise. To ensure that any amendments adopted reflect the will of the board majority, a vote equal to a quorum is required to approve the amendment.

Rule 33. Reference to Robert's Rules of Order. To the extent not provided for in, and not conflicting with the spirit of, these rules, the chair shall refer to *Robert's Rules of Order* to resolve procedural questions.

> Comment: *Robert's Rules of Order* was designed to govern a large legislative assembly, and many of its provisions may be inappropriate for small boards. Nevertheless, it is the best source of Parliamentary procedure; care should simply be taken to adjust *Robert's Rules of Order* to meet the needs of small governing boards.

Rule 34. The Clerk to the Board shall be the Sole County Officer Responsible for Presenting Documents to the Chair for Signature. The clerk shall review all such documents with the county manager and county attorney before they are presented to the chair for execution.

Excerpt from the February 10, 2015 Work Session- Approved Minutes

4. Discussion on Board Rules of Procedures

Chair McKee said this item arises from discussion about moving board comments to the beginning of the meeting when there is more of an audience present.

Commissioner Dorosin said his real concern was regarding announcements that are directed at the public, such as event announcements and things of that nature. He thinks this should be included at the front of the meeting as Board petitions and announcements, and the Board should police themselves that these announcements are directed outward.

He said reports that are more internal process updates could stay at the end of the meeting. He said when there are community based events, it is important to have these at the front of the meeting.

Chair McKee suggested that the Board open up the petition section to include announcements that are related to public events, while holding the three minute limit. He said he objects to moving all comments to the beginning, because there are people waiting to discuss other items.

Commissioner Rich said she would like to keep the petitions separate from the announcements.

Chair McKee said he is just trying to find a way to limit the time.

Commissioner Price said she is still thinking along the lines of comments versus announcements. She said there are times when you want to make a comment recognizing employees for doing an outstanding job, and you want the public to hear this.

Chair McKee said he does not have a problem with that, and the Board members would have to use their own discretion.

Commissioner Price said she agrees with the idea of giving certain comments in the beginning and then give more internal reports at the end of the meeting.

Commissioner Jacobs said the key is keeping it to three minutes. He said Board members should have the opportunity to make any comments while the room is full. He said there have been problems in the past with sticking to the three minute requirement, but everyone in this group is good at keeping within the time frame.

Commissioner Burroughs said she is very comfortable with the three minute limit.

Chair McKee said he is hearing consensus to make this change and leave three minutes for each Board member.

Commissioner Rich asked if “Petitions” would become “Petitions and Announcements.”

Chair McKee said that was his wording, but he is open to other suggestions. He said it will be up to the Board to clarify when a comment is being made versus a petition. He said there needs to be a habit of making a clear statement when it is a petition.

David Hunt said this proposal would need to come back to the Board for approval. He said he is hearing that this is to be changed to “Petitions and Announcements” with a three minute time limit, and then there will be comments time at the end of the meeting, without a time limit.

Chair McKee said there seems to be consensus on that solution.

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ORANGE COUNTY
BOARD OF COMMISSIONERS

ACTION AGENDA ITEM ABSTRACT
Meeting Date: March 3, 2015

Action Agenda Item No. 6-l

SUBJECT: BOCC Rules of Procedure Revisions

DEPARTMENT: BOCC

PUBLIC HEARING: (Y/N) No

ATTACHMENT(S):

INFORMATION CONTACT:

Donna Baker, Clerk to the Orange County Board of Commissioners
(919) 245-2130

PURPOSE: To consider approval of modifications to the BOCC Rules of Procedure and update of the Rules of Procedure booklet.

BACKGROUND: The Board of Commissioners adopted its "Rules of Procedure for the Board of County Commissioners" in May 2002. Multiple amendments have been made since that time.

At the February 10, 2015 BOCC work session, there was discussion of the Board Comments section of the agenda. The Board suggested modifying the regular meeting agenda to add "Announcements" to the "Petitions by Board Members" portion of the regular meetings. The intent of the change is to allow BOCC members an opportunity to announce events which the public might attend earlier in the meeting. The Order of Business below reflects the proposed revision to the BOCC Rules of Procedure.

Regular Meetings. For all regular meetings, items shall be placed on the agenda as listed below:

1. Additions or Changes to the Agenda
   Public Charge
2. Public Comments (Limited to One Hour)
3. Announcements and Petitions by Board Members (Three Minute Limit Per Commissioner)
4. Proclamations/Resolutions/Special Presentations
5. Public Hearings
6. Consent Agenda
   - Removal of Items from Consent Agenda
   - Approval of Remaining Consent Agenda

- Discussion and Approval of the Items Removed from the Consent Agenda
7. Regular Agenda
8. Reports
9. County Manager's Report
10. County Attorney's Report
11. Appointments
12. Board Comments (Three Minute Limit Per Commissioner)
13. Information Items
14. Closed Session
15. Adjournment

At the same meeting the Board discussed official and alternate spokespeople for the Board. The following new rule is offered for consideration.

Rule 35. The Chair shall be the Spokesperson for the Board. The Chair shall be the official spokesperson for the Board. In the Chair's absence, the Vice-Chair shall be spokesperson. In the absence of the Chair and Vice-Chair, the most senior BOCC member will be the spokesperson. This follows the standard hierarchy of Board leadership. The Chair may designate a Board representative to speak at events where a speaker has been requested to represent the BOCC.

FINANCIAL IMPACT: None

RECOMMENDATION(S): The Manager recommends that the Board approve the changes to the "Rules of Procedure for the Board of Commissioners" as outlined above regarding Announcements and Petitions by Board Members and the Spokesperson for the Board.