

MINUTES  
PLANNING BOARD  
APRIL 6, 2016  
REGULAR MEETING

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**MEMBERS PRESENT:** Lydia Wegman-At-Large Chapel Hill Township (Chair); Tony Blake, Bingham Township Representative (Vice-Chair); Paul Guthrie, At-Large Chapel Hill Township; Buddy Hartley, Little River Township Representative; Laura Nicholson, Eno Township Representative; Lisa Stuckey, Chapel Hill Township Representative; Maxecine Mitchell, At-Large Bingham Township; Kim Piracci, At-Large; James Lea, Cedar Grove Township Representative; Patricia Roberts; Cheeks Township Representative;

**MEMBERS ABSENT:** Andrea Rohrbacher, At-Large Chapel Hill Township;

**STAFF PRESENT:** Craig Benedict, Planning Director; Michael Harvey, Current Planning Supervisor; Ashley Moncado, Special Projects Planner; Meredith Pucci Administrative Assistant;

**OTHERS PRESENT:** None

**AGENDA ITEM 1: CALL TO ORDER**

*Lydia Wegman called meeting to order and introduced new member, Kim Piracci.*

**AGENDA ITEM 2: INFORMATIONAL ITEMS**

- a) Planning Calendar for April and May

*Lydia Wegman reviewed Calendar for next meetings.*

**AGENDA ITEM 3: APPROVAL OF MINUTES**

- a) March 2, 2016 Regular Meeting

**MOTION** by Buddy Hartley to approve the minutes. Seconded by Tony Blake.

**VOTE: UNANIMOUS**

**AGENDA ITEM 4: CONSIDERATION OF ADDITIONS TO AGENDA**

*No changes to the agenda.*

**AGENDA ITEM 5: PUBLIC CHARGE**

**Introduction to the Public Charge**

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

**Public Charge**

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

61 **AGENDA ITEM 6: CHAIR COMMENTS**

62  
63 *None.*  
64

65 **AGENDA ITEM 7: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENT** - To make a  
66 recommendation to the BOCC on government-initiated amendments to the text of the  
67 UDO regarding sign regulations. This item is scheduled for the May 23, 2016 quarterly  
68 public hearing and was most recently discussed by the Planning Board at its March  
69 meeting.  
70

71 **Presenter:** Michael Harvey, Current Planning Supervisor  
72

73 *Michael Harvey reviewed the abstract.*  
74

75 Paul Guthrie: Just to show everybody what these guys are talking about. This is the Supreme Court ruling that all of  
76 this started. About 5 different justices taking a different take at it and they came together for a decision so that's  
77 where it starts. And then tied after North Carolina law and whether it comes anywhere close to this or provides  
78 municipalities of Counties with the ability to react to this is the swimming pool these guys are working in right now.  
79

80 *Michael Harvey continued presentation.*  
81

82 James Lea: When you say eliminate, what do you mean? Those churches now have to take those signs down?  
83

84 Michael Harvey: I believe you are talking about the proposal to eliminate the allowance for off-site directional signage  
85 for churches. The answer is no, those churches that already have signs up will be allowed to keep them consistent  
86 with the non-conforming section of the UDO. What this means if a car happens to mow it down it cannot be replaced.  
87 If the sign falls into disrepair to a certain dollar amount or is destroyed a certain percentage it can't be replaced. But,  
88 they can continue to have them up until such time. And yes, there are going to be institutions that have enjoyed some  
89 flexibility that are losing it now. Those churches without this signage will also be unable to erect them.  
90

91 Lydia Wegman: So there will be no off site advertising prohibit?  
92

93 Michael Harvey: Well right now, there's no off site advertising technically allowed period. Churches are losing their  
94 exemption. Outdoor advertising, specifically billboards, is a totally different animal actually regulated by the state.  
95

96 *Michael Harvey continued presentation.*  
97

98 James Lea: Is that an issue just in North Carolina?  
99

100 Michael Harvey: No, but communities are allowed to deal with sign regulations differently. For example, Alamance  
101 County doesn't have some of the same standards we have with respect to setback and size of signs whereas Chapel  
102 Hill, in certain circumstances, is more restrictive than we are currently.  
103

104 James Lea: So it's a county issue?  
105

106 Michael Harvey: Well it's a county and municipality issue. It is also a preference issue where communities adopt  
107 regulations forwarding their own concepts of acceptability.

108  
109 Tony Blake: Sounds like a DOT issue.

110  
111 Michael Harvey: It's a little bit of both. If the sign is on private property, DOT has no regulatory authority. We would.  
112 Signs erected in a public right-of-way are their purview.

113  
114 James Lea: So it looks like we're going to put a regulation outlining what constitutes a flashing sign meaning a sign  
115 can't flash but only so often in a day correct.

116  
117 Michael Harvey: Currently flashing, blinking signs are illegal. We are actually going to allow them so long as the  
118 message only changes a certain amount of times in a given hour. They're currently prohibited in Orange County.  
119 We're actually creating an allowance where you can have digital signage so long as the message doesn't change but  
120 a certain number of times an hour. Our problem currently is that we have no measureable standard to outline what is  
121 and is not legal.

122  
123 *Michael Harvey continued presentation.*

124  
125 Tony Blake: Would it make more sense to base the square footage of the signage on the amount of road frontage or  
126 the amount of area that's visible to the public? I'm just kicking that around because it seems like this is somewhat  
127 more arbitrary than what I would've expected and the other part of it is that you may be creating a market for signage.  
128 If I'm only using 150 square feet of my signage, can I sell my signage allotment to someone else?

129  
130 Michael Harvey: No, you can't.

131  
132 James Lea: What district does churches fall in on this table?

133  
134 Michael Harvey: Churches are allowed in every (general use zoning) district we have.

135  
136 James Lea: Because I know that some of them have nice signs that change.

137  
138 Michael Harvey: For example, a church developed in the LC1 zoning district could have 172 square foot signage. A  
139 church developed in the industrial district could have more signage.

140  
141 *Michael Harvey continued presentation.*

142  
143 Paul Guthrie: I think what would clarify and get focus on exactly where you're going... Understand what this case did.  
144 It was brought by a church that had no basic place for church services, so it moved around the community. They put  
145 up temporary signs for a period of days, time where it was going to be each Sunday. And those weren't taken down  
146 over time and they got cited over time. That was the original cite. So they went in to court on both freedom of speech  
147 and the fact that they were a church, and where the court got people in a pickle was this language, the sign content  
148 based restrictions do not survive strict scrutiny because the town has not demonstrated that the code differentiation  
149 between temporary directional signs and other types of signs further a compelling dominant interest and is narrowly  
150 taled to that ending. That's what he's playing with right now. Is trying to meet that standard, and it's a very tough  
151 standard to meet.

152  
153 Michael Harvey: Building on Paul's point... The town's ordinance (Reed versus Gilbert) said that if you have a  
154 temporary sign announcing a special event you could have it up 72 hours before the event and has to be removed  
155 within 24. If you have an off site directional sign it can only be up for 12 hours and has to be removed within the hour  
156 the event ceases. So the issue was what is the sign this church is erecting. Is it a special event? No. Is it directional?  
157 Yes, but it has this shelf life. So I, as the zoning officer, had to read the sign to determine what type of sign it was.  
158 And enforce the ordinance appropriately. So I was basing my determination on content, not on the size of the sign,  
159 not on what it was, or placement. And I was treating the signs of the same shape, size, everything different. Based on

160 the content of the wording. Our ordinance, with two or three notable exceptions, treated signage the same. It was  
161 universally the same. And again, there are two or three exceptions to that where what I just said is incorrect, and  
162 that's precipitated all of these changes. But, the further problem is as James and I have gotten into it is you're  
163 establishing a standard based on the content. For example, if we said you're allowed 8 square foot of signage on a  
164 residential building if it has to convey hazardous material being store on site.

165  
166 Tony Blake: That's a bad example because that's public safety.

167  
168 Michael Harvey: Unfortunately, that's not necessarily true. If you're saying you can have this sign because it's  
169 conveying this message, that's illegal. If you say you can have hazard identification signs that's perfectly legitimate.

170  
171 James Lea: So this ordinance now will be based on content.

172  
173 Michael Harvey: It's content neutral. Each district is going to be treated the same. Each land use in certain districts  
174 are going to be treated the same.

175  
176 Tony Blake: What's your reason for treating the rural buffer different than our 1 or our 2?

177  
178 Michael Harvey: Bluntly, it's the rural buffer. It is by definition, by law, a less intensive district than our R1 and AR  
179 zoning districts. And as a result, it has less allowable signage.

180  
181 Lisa Stuckey: Try to expect more non-commercial

182  
183 Michael Harvey: Correct... More single-family residential development versus any other allowed activity, yes... The  
184 reason for the difference is because the inherent nature of the district is different than the other.

185  
186 Lisa Stuckey: So that means that a sign for a temporary event is going to have the same status as a sign for a  
187 permanent situation. You're not able to make the distinction?

188  
189 Michael Harvey: We can establish regulations for temporary signage, for temporary events. And there are still  
190 standards that exist in here for that. But for example, what we have in here for the residential district is no sign on a  
191 residential land use can be bigger than 12 square feet. We can't even regulate political signs anymore.

192  
193 Tony Blake: So the difference would be you could have your standard real estate sign out front and Sunday you're  
194 having an open house, you could put in a bigger open house sign and then that would have to come down?

195  
196 Michael Harvey: Yes, because it's a temporary component.

197  
198 *Michael Harvey continued presentation.*

199  
200 Maxecine Mitchell: So if I put a sign up and it said, "I hate all white people" you can't come and tell me that I have to  
201 take it down based on the content?

202  
203 Michael Harvey: Correct. From a zoning stand point... Just because there's a zoning component that says we don't  
204 regulate the content doesn't mean that the sheriff's department or law enforcement entities don't have the authority to  
205 say that you're sign violates x,y, or z. This doesn't eliminate or stop the enforcement of other applicable regulation. It  
206 just says that the county, I, can't drive down your road and say, "I don't like that sign, it has to come up" based solely  
207 on the message it conveys.

208  
209 Maxecine Mitchell: One more question, Michael. I think we were talking about these topless bars and stuff, does that  
210 mean they'll be able to put up...?

211  
212 Michael Harvey: This was actually a 6 week argument. I took the position, and after James and I looked at court  
213 cases and we both agreed, that we could still say you cannot have a sign that contains lewd or lascivious letters,

214 words, displays, or characters. So you can't have the adult cabaret or .. that has suggestive descriptive sign. You can  
215 still have that regulation because there are actually court cases that say, you have the right as a community to not  
216 allow this. We're still allowing you to have your sign, but you can't have lewd or lascivious displays or characters.

217  
218 *Michael Harvey continued presentation.*

219  
220 Craig Benedict: What could be an issue is you have the flag exemptions. If somebody flies a confederate flag, that's  
221 not listed.

222  
223 Michael Harvey: Flags are the one issue that James and I are having a lot of... Craig is referring to page 36...  
224 problems with. Currently this proposal says United States, State of North Carolina, Orange County flags are exempt  
225 from regulations. It used to say flags, emblems or insignia of any national, state, or political subdivision. I don't  
226 consider the confederate flag to be a sign, I consider it to be a flag, I don't think it's an advertising material and I don't  
227 think it's necessarily regulated by the sign ordinance. Whether or not I think the sign should or shouldn't be flown is a  
228 different discussion. But, this is where we get into a content problem. What happens when McDonalds has a 500  
229 square foot flag that just has the big M on it? If you're exempting flags... If the whole goal of the sign ordinance is to  
230 say everyone is going to be operating from the same page in terms of allowable signage you do have to draw the line  
231 somewhere. And what constitutes advertising and what doesn't.

232  
233 Tony Blake: Why can't you regulate the size of the flag?

234  
235 Michael Harvey: You could probably establish a regulation that says flags only of this size...

236  
237 Tony Blake: Because over a certain size they do become an advertisement. They're a focal point.

238  
239 Michael Harvey: But I also would argue that if you say it's 32 square feet of flag, why can't I be patriotic and have a  
240 64 square foot American flag. Why are you limiting my ability to fly a larger American flag? And then I lose the court  
241 case on a totally different issue.

242  
243 James Lea: Not to mention in a residential area. Can residents fly flags? If so, how big, what kind?

244  
245 Lisa Stuckey: Also, you could have 22 flags. That's a sign.

246  
247 Michael Harvey: Again, I don't think that... You have a banner that has a kitten hanging from a tree in your garden,  
248 should I count that? I don't think I should.

249  
250 Paul Guthrie: I think limiting what you do with flags is probably a good idea. Because, for instance, you tell the  
251 counsel general or Guatemala that he can't fly the Guatemalan flag outside the consulate general's office. Of course  
252 not.

253  
254 Michael Harvey: Well that's a good example but it's a good example for a different reason. I would argue that when  
255 you have an embassy that's not technically regulated under local law anyway. It's covered in a diplomatic immunity.

256  
257 Paul Guthrie: It's immunity there but what do you say to a Quebec citizen who lives in Orange County and flies the  
258 Quebec Flag? What do you say to them? The only thing you can do is you're using content as the basis for your  
259 regulation.

260  
261 Kim Piracci: This is related to a question that keeps running through my head. Is there ever a problem with  
262 differentiating art and signage?

263  
264 Michael Harvey: I'm sure that there could be. What is it? If you have a piece of art that's meant to convey an  
265 advertising message, that's content, what's the purpose and intent of the structure? That's where we always get into  
266 a foul area of what do you do? And on page 36, you'll notice we've added the golden arches. The golden arches at

267 McDonald's are symbols and will be included in the computation of sign area. It's a brand. So we would say that's  
268 part of the sign.

269  
270 Paul Guthrie: Let me pose a similar thing. A couple of restaurants in Chapel Hill have commission on their walls  
271 pieces of art that have a theme that makes you hungry and want to eat, outside, are they signs?  
272

273 Michael Harvey: In my opinion it only becomes a sign if it says, "Eat at Spanky's" whereas if you paint a mural that  
274 has this wonderful scene of people eating but Spanky's name isn't in it, I don't think it's a sign. It's a mural. It's art. I  
275 don't think it ought to be regulated by this ordinance and I don't think the County has any business trying to do that.  
276 What I have told businesses in Orange County is, you want to paint the side of your building, paint it as a mural and  
277 do some intricate design. Great, go for it. What you can't do is exceed the sign allowance so if you have a 32 square  
278 foot area where you say this that's fine because that's the sign limit, you just can't turn your whole side of your  
279 building into a billboard because that's when I have to count the whole side of the building.  
280

281 Lisa Stuckey: I do think within here there was one place that was very complicated. I think you lost track of which sub  
282 a to sub b whatever and just want to encourage you to go through it very carefully.  
283

284 Maxecine Mitchell: Have you spoke on community signs?  
285

286 Michael Harvey: That's actually going to be covered, if you're doing a community/residential project like a subdivision  
287 it's going to be covered under the non-residential project development because while it is a residential subdivision we  
288 count it as a non-residential project. So they get that allowance for a freestanding sign for the entry and then all the  
289 signage for internal, like park this way or remember that road/street signs are exempt, construction entrance is going  
290 to be exempt because it's a directional sign. That's required by the County.  
291

292 Lisa Stuckey: But why is it called non-residential?  
293

294 Michael Harvey: Truly, it's either non-residential land uses or projects. A subdivision is a project. The individual  
295 houses are residential development but the entity in and of itself is a project.  
296

297 Tony Blake: What's the criteria for turning the thing over to a community board or homeowners association?  
298

299 Michael Harvey: Well for me, once the subdivision is built out, the roads are in, and the subdivision's plated and here  
300 it is, each individual lot is now going to be sold. It's each individual lot that falls to residential development and those  
301 limitations. The subdivision in and of itself exists as an entity.  
302

303 Paul Guthrie: Michael, how do you handle communities that have homeowner associations and don't have public  
304 roads or signage?  
305

306 Michael Harvey: Well, in this ordinance we've actually spelled out that if you're erecting street signs in a private  
307 subdivision those are exempt because they serve a public safety purpose.  
308  
309  
310

311

312 **AGENDA ITEM 8: COMMITTEE/ADVISORY BOARD REPORTS**

313 **A. Board of Adjustment**  
314 None  
315

316 **B. Orange County Transportation**  
317

318 *Craig Benedict went over recent items from the OUTBoard and transportation division.*  
319

320 Tony Blake: The one I was interested in was Orange Grove Road cutting through to 70, and that would take some of  
321 the pressure off Churton street in downtown Hillsborough.

322  
323 Craig Benedict: We're interested in the development that Hillsborough recently approved, Collin's Ridge, a thousand  
324 units that would be using that as the primary access point because that's the only... And they have to get additional  
325 right of way for that. We're trying to see if some contributions by the developer could accelerate that road.

326  
327 Paul Guthrie: Is the state still listing the train station...

328  
329 Craig Benedict: Yes, it's still on schedule. It's not 2017, I think it's 2019... That's an important link and if we can  
330 leverage all the money together it could accelerate that project. The developer of Colin's Ridge was going to make 8  
331 improvements on Churton by 2018 and 2022 Churton Street was going to be widened by DOT in 2023. And so our  
332 recommendations from the county were, why don't you take the money from the developer, give it to DOT and have  
333 them bring the whole project forward instead of .. And reconstruction and the waste of those 8 improvements... And  
334 we have a new finding that could make this even more feasible. They actually want to bend/change the curvature in  
335 that area and so what they could do is while they're building the new curvature which is shorter they can build the  
336 tunnel before they build the track on top of it which is a lot cheaper and it doesn't make the rail paranoid that you're  
337 tunneling underneath it in active traffic. That's something that we just got recently.

338  
339 Tony Blake: So one more question... I was reading today and I went to that meeting with the Chamber of Commerce  
340 in Chapel Hill and there was some talk about this, they used to call it the EDGE... And so is there any movement  
341 there in that joint planning area or is that still...

342  
343 Craig Benedict: It's Chapel Hill's decision... They changed. It was JPA but last year they turned to... They asked for  
344 comments from Orange County on that but the master plan developed had this wide range of approvals from 30%  
345 residential to 70% residential so the impacts for that wide range is quite a difference so we said 30% residential and  
346 70% non-residential tax base. It probably would be a good balance sheet for County purposes.

347 **AGENDA ITEM 9: ADJOURNMENT**

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349 Motion to adjourn made by Lisa Stuckey.

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Lydia Wegman, Chair