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**MEETING MINUTES**  
**ORANGE COUNTY PLANNING BOARD**  
**JANUARY 2, 2019**  
**REGULAR MEETING**

7 **MEMBERS PRESENT:** Lydia Wegman (Chair), At-Large Chapel Hill Township Representative;  
8 Alexander Gregory (Vice-Chair), Chapel Hill Township Representative; Buddy Hartley, Little  
9 River Township Representative;  
10 Randy Marshall, Bingham Township Representative; Kim Piracci, At-Large; Adam Beeman,  
11 Cedar Grove Township Representative; Hunter Spitzer, At-Large; Paul Guthrie, At-Large Chapel  
12 Hill Township; David Blankfard, Hillsborough Township Representative; Carrie Fletcher,  
13 Bingham Township Representative; Patricia Roberts, Cheeks Township Representative;

14  
15 **MEMBERS ABSENT:** Laura Nicholson, Eno Township Representative.

16  
17 **STAFF PRESENT:** Craig Benedict, Planning & Inspections Director; Michael Harvey, Current  
18 Planning Supervisor;  
19 Tom Altieri, Comprehensive Planning Supervisor, Nish Trivedi, Transportation Planner; Tina  
20 Love, Administrative Assistant III

21  
22  
23 **AGENDA ITEM 1: CALL TO ORDER AND ROLL CALL**

24 Chair Lydia Wegman called the meeting to order

25  
26  
27 **AGENDA ITEM 2: ELECTION OF CHAIR AND VICE-CHAIR FOR 2019**

28  
29 **MOTION** by Kim Piracci to nominate Lydia Wegman as Chair. Seconded by Paul Guthrie

30 **VOTE:** Unanimous

31  
32 Lydia Wegman asked if there were any nominations for Vice-Chair.

33  
34 Alex Gregory replied he would stick his name in the hat.

35  
36 Hunter Spritzer commented that he desired to be Vice-Chair.

37  
38 Lydia Wegman asked Randy if he had an interest in Vice-Chair.

39  
40 Randy Marshall replied I'm good.

41  
42 Lydia Wegman stated okay and asked for any other nominations. She remarked that there had  
43 been nominations for both Alex and Hunter and asked all in favor of Alex Gregory.

44 **VOTE:** 8

45  
46 Lydia Wegman commented okay and then asked all in favor of Hunter Spritzer.

47 **VOTE:** 3

48  
49 Lydia Wegman acknowledged that Alex won and extended a congratulations.

50  
51 Alex Gregory elected as Vice-Chair.

52  
53  
54 **AGENDA ITEM 3: INFORMATIONAL ITEMS**

55 a. Planning Calendar for January and February 2019

56 - Planning Board meeting scheduled for February 6, 2019.

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**AGENDA ITEM 4: APPROVAL OF MINUTES**

November 7, 2018 Training Notes  
November 7, 2018 Regular Meeting  
November 7, 2018 Ordinance Review Committee Notes

**MOTION** by Randy Marshall to approve the November 7, 2018 Regular Meeting Minutes and the November 7, 2018 Ordinance Review Committee Notes. Seconded by Hunter Spitzer.

**VOTE:** Unanimous

**AGENDA ITEM 5: CONSIDERATION OF ADDITIONS TO AGENDA**

**AGENDA ITEM 6: PUBLIC CHARGE**

Chair Lydia Wegman waived the reading of the 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 law 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.

**PUBLIC CHARGE**

The Planning Board pledges to the citizens of Orange County its respect. The Board asks its citizens 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 citizen fail to observe this public charge, the Chair will ask the offending member 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.

**AGENDA ITEM 7: CHAIR COMMENTS**

There were none

**AGENDA ITEM 8: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENTS** -To make a recommendation to the BOCC on proposed amendments to the UDO regarding stormwater regulations, in response to changes in State laws.

**PRESENTER:** Michael Harvey, Current Planning Supervisor

Michael Harvey presented the abstract beginning on page 13, the Unified Development Ordinance (UDO) Text Amendments to address the Enforcement of Nutrient Standards within the Jordan Lake Watershed. Mr. Harvey summarized that erosion sedimentation control is regulated on non-farm activities through two processes; one through the enforcement of erosion control standards, and the other through enforcement of stormwater standards. These regulations deal with both water quantity and water quality. These standards have been implemented in accordance with applicable state law, which are enforced throughout the County. A couple years back the state eliminated the ability of the local government to enforce nutrient standards in the Cape Fear River Basin otherwise known as the Jordan Lake

113 Watershed, so they could continue to study the most effective stormwater management strategy  
114 to address nutrient issues in that particular river basin. Mr. Harvey stated that the standards had  
115 already been adopted, and yet the state has eliminated our authority to adopt/implement/enforce  
116 those standards. This text amendment is designed to do a couple of different things. It first  
117 brings our ordinance into compliance with state law, and second, updates outdated terminology.  
118 There have been changes in the names of state departments that regulate this and there has  
119 been a change in nomenclature referring to stormwater features. These were formerly known as  
120 Best Management Practices or (BMPs). They are now referred to as Stormwater Control  
121 Measures or (SCMs). In the (UDO), all (BMPs) have been changed to (SCMs). Mr. Harvey  
122 advised that the text amendment has been reviewed by the County Attorney's Office and by the  
123 Development Advisory Committee with no issues and the staff's recommendation is to approve  
124 the Statement of Consistency as attached in Attachment (1) and to approve the actual  
125 amendment itself as contained in Attachment (2).

126  
127 Mr. Harvey welcomed any questions.

128  
129 Paul Guthrie questioned who had the ultimate final jurisdiction on Lake Jordan.

130  
131 Michael Harvey replied that the state and the Army Corp of Engineers.

132  
133 Paul Guthrie asked whether or not it was still a possession of the Army Corp of Engineers.

134  
135 Michael Harvey responded that it is a water body of the U.S. meaning the Army Corp has  
136 jurisdiction, but the state is addressing nutrient issues through the adoption of stormwater rules.  
137 This process means the state is working with multiple entities.

138  
139 Paul Guthrie commented as long as the Clean Water Act keeps that definition.

140  
141 Michael Harvey confirmed to his knowledge the answer is yes.

142  
143 Alex Gregory questioned whether the standards were being released as a best practice as they  
144 are currently being studied and decided.

145  
146 Michael Harvey stated, the state was re-evaluating the standards and attempting to develop new  
147 best practices with respect to nutrient reduction. Mr. Harvey said he believed there is supposed  
148 to be an update to the General Assembly in 2020. He added there is no estimated completion  
149 on the study or its submittable rules, and what we know right now is that there are standards in  
150 the UDO that are unenforceable and need to be removed.

151  
152 Kim Piracci mentioned that she had read something that said these rules are supposed to be  
153 passed, but aren't passed and asked whether this is a regulation that is going to be passed or is  
154 passed.

155  
156 Michael Harvey clarified that the General Assembly has eliminated local government's authority  
157 to enforce the nutrient standards relating to water quality issues into a river basin. He reiterated  
158 that these are unenforceable standards that will need to be removed from the UDO as the  
159 enforcement of same cause litigation concerns.

160  
161 Lydia Wegman questioned whether the rules still apply in the Neuse River Basin.

162  
163 Michael Harvey confirmed that enforcement of nutrient reduction standards within the Neuse  
164 has not been altered by the state. He reminded the board that there are still stormwater  
165 regulations in the Cape Fear River Basin, just not water-quality standards, but reasserted that  
166 there are water-quantity standards local development is still required to abide by. He stated, for  
167 a lot of you that does not address the nutrient concerns you have, but hopefully, it is resolved in

168 the next year or two. Once the state adopts a final nutrient reduction strategy, the county will be  
169 able to amend the UDP incorporating these new standards and enforce them.

170

171 Alex Gregory expressed that it seemed as though the current regulation was more about  
172 keeping water from flowing. Water level like previously mentioned versus silt runoff, or  
173 something from disturbing the land.

174

175 Michael Harvey confirmed.

176

177 Alex Gregory commented that we would usually require a regulation on that, but now it's just  
178 don't block the water.

179

180 Michael Harvey explained that erosion control standards are not being impacted by this  
181 ordinance amendment. What is being impacted is the quality of the water leaving the site.

182

183 Lydia Wegman asserted the total amount of water leaving the site is still regulated.

184

185 Michael Harvey agreed.

186

187 Lydia Wegman responded with but not the quality of that water.

188

189 Michael Harvey confirmed.

190

191 Carrie Fletcher sought clarification on whether the quality issue would be addressed within one  
192 to two years.

193

194 Michael Harvey advised that that's the hope but it was up to state officials to complete work on  
195 this before local governments could take action to implement and enforce new nutrient reduction  
196 standards.

197

198 Carrie Fletcher responded with is there any teeth to get it sooner.

199

200 Michael Harvey replied, no. We are at the whim of the General Assembly and the entities that  
201 are studying the issue and trying to come up with a solution to address the concerns which  
202 forced the descending of the Jordan Lake rules.

203

204 Carrie Fletcher commented so, it could be nudged with popularity from citizens.

205

206 Michael Harvey acknowledged that it could be nudged, but stated you are also relying on  
207 several different entities studying the matter to respond to nudging.

208

209 Paul Guthrie mentioned that the water quality issue, what is in the water, is on the public mind.  
210 In the long term, the erosion and fill-in is the biggest threat because over time that will reduce  
211 the capacity of Jordan Lake. Mr. Guthrie reminded the Board the lake was originally developed  
212 and intended to serve as a flood control project. He questioned if anybody had looked at that  
213 context at both of those at the same time.

214

215 Michael Harvey responded that he did not have an answer. He said the county still enforces  
216 erosion control standards and reminded the Board this amendment did not impact that program.

217

218 Paul Guthrie questioned whether the Army Corp of Engineers under federal law have the ability  
219 to look into it.

220

221 Michael Harvey informed that ultimately, they do, but whether or not it is their priority is a  
222 different question.

223

224 Kim Piracci sought clarification and asked Mr. Harvey to reiterate the downside of not amending  
225 the ordinance.

226

227 Michael Harvey explained that we are unable to enforce nutrient reduction standards within the  
228 Cape Fear river basin. If we attempted to enforce these standards we subject ourselves to  
229 possible litigation, which staff and the Attorney's office believe we would lose. He suggested it  
230 is cleaner to remove something that has no legal basis in the law to have in the ordinance  
231 anymore rather than to potentially subject yourself to possible legal action for attempting to, or  
232 not attempting to, enforce your ordinance. He reminded the board that property owners cannot  
233 currently be held to this standard. He explained that there have been attempts to remove these  
234 provisions when state law was modified approximately a year-and-a-half ago. Unfortunately the  
235 current Engineering and Erosion Control supervisor was unable to complete the assignment as  
236 mandated by the Director. He said Mr. Benedict assigned him the task to complete the project  
237 approximately six months ago and it is now coming to a conclusion.

238

239 Hunter Spitzer stated there is a reason why we can't recommend a developer voluntarily adhere  
240 or adopt the standard, is that correct.

241

242 Michael Harvey replied, no. If a developer wants to do it, that is their personal decision. We  
243 cannot hold them to it. The county cannot mandate they abide by it. There is no longer any legal  
244 basis allowing for the enforcement of nutrient reduction standards in the basin. He reiterated the  
245 standards need to come out of the UDO.

246

247 Lydia Wegman questioned whether that could be something that the public and neighbors might  
248 ask of the developer, and the developer could look into it on their own.

249

250 Kim Piracci asked if farming practices was the bigger problem with this particular issue.

251

252 Michael Harvey replied I think the totality of development activity, meaning the disturbance of  
253 land, is responsible for these issues. He reminded the Board farming is not regulated by these  
254 standards as such operations are exempt from zoning.

255

256 Lydia Wegman asked for any other questions or comments.

257

258 Hunter Spritzer remarked that it seemed like this is the county's only recourse.

259

260 Michael Harvey commented regrettably, but it is necessary.

261

262 **MOTION** by Hunter Spritzer to recommend the Statement of Consistency and approve the UDO  
263 Text Amendments. Seconded by Alex Gregory.

264 **VOTE:** Passed 9-2 (Guthrie, Piracci opposed)

265

266 Kim Piracci remarked if this isn't my drinking water than it is other people's drinking water. It is  
267 getting polluted, and I am on the on the planning board and feel we need to take a stand and  
268 address the issue head on.

269

270 Paul Guthrie explained that this encourages something that has been going on at Lake Jordan  
271 since the day it was first considered, it's a big federal project or it's a big state action and we  
272 can't act right now on this particular problem, you can't get anywhere with that over the long  
273 haul. He asserted that what this is doing aside from water quality is reducing the ability of the  
274 lake to protect the downstream and quantity of water that goes in heavy rainfall. He stated that  
275 he thinks it goes beyond Orange County and therefore votes, no.

276

277 Lydia Wegman commented that she wanted clarification that there were still water quantity  
278 regulations.

279

280 Michael Harvey replied, yes. We enforce water quantity standards through erosion control and  
281 through stormwater permitting, but we can't require compliance with water quality standards  
282 which are the removal of nitrogen and phosphorus.  
283

284 Craig Benedict explained that since all of the comments were out, he wanted to give a post log  
285 to the discussion. He reported that in North Carolina many of the regulations are setting limits  
286 about what can be enforced. In the past, there was no problem in exceeding what was being  
287 asked to be more restrictive or cleaner. He explained that we are in a modified Dillion Rule  
288 State, and we only have the authority to enforce things that the state gives the authority to  
289 enforce, so we are not independent. Until we get back to mode with some of the creativity and  
290 progressiveness we have tried to do in the past, we are having to roll back some of our  
291 regulations that we had intact for 20 plus years.  
292

293 Lydia Wegman contributed that she felt the same indignation that Kim had expressed but  
294 understood the legalities of why this route was being taken. She explained that she voted in  
295 favor because she thinks it is the best process to keep us out of litigation.  
296

297 Craig Benedict agreed and recommended that the amendment be passed.  
298

299 Lydia Wegman questioned whether as citizens they could voice their indignation to the other  
300 leaders in an effort to make the North Carolina policy different and exclude Orange County from  
301 this position.  
302

303 Hunter Spitzer asked if they could defer recommendation on the amendment until 2020.  
304

305 Craig Benedict responded that this had already been on the books for too long and that is why  
306 they are proceeding to remove it from the UDO.  
307

308 Kim Piracci asked how long we had been a Dillion State.  
309

310 Craig Benedict replied since Day 1. We only have the authority to regulate as the legislator  
311 gives us the power.  
312

313 Kim Piracci questioned whether Dillion's Law just not being implemented or whether it is  
314 something that was recently invented.  
315

316 Craig Benedict explained that in the past the policy had been set with minimum standards and  
317 that it had been acceptable to perform beyond those standards.  
318

319 Kim Piracci asked even though we were a Dillion State.  
320

321 Craig Benedict replied, yes. He informed that there are now maximum standards and that it is  
322 not acceptable to perform below or above the standard threshold.  
323

324 Kim Piracci questioned whether the Dillion's Law was in the constitution.  
325

326 Craig Benedict explained that the Dillion Rule originated from a previous legislator.  
327

328 Lydia Wegman remarked that she did not believe it was in the constitution.  
329

330 Craig Benedict said that it was just the way the process had been set to establish powers. He  
331 advised the board that they would receive a handout to view the information.  
332

333 Lydia Wegman informed that the Planning Board, in light of the situation that the county finds it  
334 in, it has been approved, but there are still concerns. She stated that the Planning Board

335 continues to support nutrient controls and hopes that there can be acceleration on the part of the  
336 state in developing nutrient requirements, so the county can propose them.

337

338

339 **AGENDA ITEM 9: EFLAND-BUCKHORN-MEBANE ACCESS MANAGEMENT PLAN** -To receive an update  
340 on updates to the Efland-Buckhorn-Mebane Access Management Plan.

341

342 **PRESENTER:** Nish Trivedi, Transportation Planner

343

344 Nish Trivedi mentioned to the board that the Public Hearing scheduled on November 1<sup>st</sup> of last  
345 year had been continued and rescheduled to February 5<sup>th</sup>. He mentioned that the updates  
346 would also be presented to the OUTBoard on the 16<sup>th</sup> of January and to Economic Development  
347 on the 8<sup>th</sup> of January. He stated that the Planning Board provided recommendations to approve  
348 the plan with two conditions. The first condition was to provide the plan with more clarity on  
349 what the plan is and is not. The second condition was how the plan would meet specific goals  
350 and objectives in the plan. Additional content has been added to the plan which addresses the  
351 two conditions. The plan will be released no later than January 31.

352

353 Lydia Wegman questioned when the plan would be posted to the web.

354

355 Nish Trivedi responded no later than January 31 before the public hearing.

356

357 Alex Gregory asked if he thought that would give the public a better idea of what the plan is and  
358 is not.

359

360 Nish Trivedi confirmed that he did.

361

362 Lydia Wegman questioned and that is then the planning board will be able to see it as well on  
363 the 31<sup>st</sup>.

364

365 Nish Trivedi stated, yes.

366

367 Lydia Wegman asked if there was a Board of Commissioners meeting on the 16<sup>th</sup>.

368

369 Nish Trivedi informed her that there is an OUTBoard meeting on the 16<sup>th</sup>.

370

371 Nish Trivedi continued his updates.

372

373 Lydia Wegman asked whether the board would have a chance to see the comments from the  
374 Economic Development meeting.

375

376 Nish Trivedi advised that the comments would be provided.

377

378 Nish Trivedi continued his updates and stated that a lot of content on the public involvement  
379 process had been added to the planning update. Nish reminded the board that the document  
380 would be released and online January 31<sup>st</sup> with track changes showing where additional content  
381 had been added since the last time it was reviewed. He stated that the Public Hearing would  
382 take place February 5<sup>th</sup> at the Whitted Building at 7:00 p.m.

383

384 Craig Benedict added that in addition to the importance of an Access Management Plan there  
385 are also four additional criteria involved with new development that assist with the economic  
386 development potential of properties and the development restrictions.

387

388 Lydia Wegman stated that there had been a lot of confusion on the part of the public of why it  
389 was being performed and the overall Access Management Plan. She asked if Craig thought the

390 concerns of the public had been addressed in the plan's updates and if he thought the members  
391 of the public with concerns had a clearer understanding.

392

393 Craig Benedict replied, yes. He explained that the Access Management Plan makes sense and  
394 that the plan would not directly affect the person possibly farming the land but would affect the  
395 neighbor who buys the land from them for future development. He mentioned meeting with  
396 people individually to explain development on a case-by-case basis and mentioned that  
397 information could be found on the website should people have any concerns.

398

399 Lydia Wegman replied with a thank you and asked for further questions.

400

401 **AGENDA ITEM 10: ADJOURNMENT**

402 The meeting was adjourned by consensus.

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Lydia N. Wegman, Chair