

ORANGE COUNTY PLANNING DEPARTMENT
131 W. MARGARET LANE, SUITE 201
HILLSBOROUGH, NORTH CAROLINA 27278



AGENDA
ORANGE COUNTY PLANNING BOARD

ORANGE COUNTY WEST CAMPUS OFFICE BUILDING
131 WEST MARGARET LANE – LOWER LEVEL CONFERENCE ROOM (ROOM #004)
HILLSBOROUGH, NORTH CAROLINA 27278
Wednesday, August 5, 2015
Ordinance Review Committee Meeting – 6:30 pm

Note: This is a meeting of the Ordinance Review Committee (ORC) for Planning Board members who would like to review and comment on proposed amendments before the items are placed on a Quarterly Public Hearing agenda. Attendance is not mandatory and a quorum is not necessary for meetings of the ORC.

<u>No.</u>	<u>Page(s)</u>	<u>Agenda Item</u>
1.		CALL TO ORDER
2.	3 - 67	UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENTS – PUBLIC HEARING PROCESS REVISIONS To continue review and comment upon proposed amendments to the UDO to revise the public hearing process. Presenter: Perdita Holtz, Planning Systems Coordinator
3.		ADJOURNMENT

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**ORANGE COUNTY
PLANNING BOARD ORDINANCE REVIEW COMMITTEE
ACTION AGENDA ITEM ABSTRACT**

Meeting Date: August 5, 2015

**Action Agenda
Item No. 2**

SUBJECT: Unified Development Ordinance (UDO) Text Amendment – Public Hearing
Process Revisions

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N)

No

ATTACHMENT(S):

INFORMATION CONTACT:

- | | | |
|---|--|--|
| <p>1. Comprehensive Plan and Unified Development Ordinance Amendment Outline Form (UDO & Zoning 2015-09)</p> <p>2. Draft UDO Text Amendment – Option A (Planning Board Review/ Recommendation Earlier in Process for Legislative Items)</p> <p>3. Draft UDO Text Amendment – Option B (Planning Board Review/ Recommendation Later in Process for Both Legislative and SUP Items)</p> | <p>Perdita Holtz, Planner III
Craig Benedict, Director</p> | <p>(919) 245-2578
(919) 245-2575</p> |
|---|--|--|
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PURPOSE: To review and comment upon Planning Director initiated Unified Development Ordinance (UDO) text amendments to revise the existing public hearing process for UDO and Comprehensive Plan-related items.

BACKGROUND: Please see Section B of Attachment 1 for relevant information. Two options are proposed to be presented at the September quarterly public hearing – Option A (Attachment 2) would have the Planning Board make its recommendation earlier in the process (e.g., before the public hearing) for legislative items while Option B (Attachment 3) would retain the existing cadence of having the Planning Board make its recommendation after the public hearing. The current cadence of having the Planning Board make its recommendation on Special Use Permit items after the evidentiary hearing would remain as is in both Options.

Both options would revise the existing process to no longer require a Planning Board quorum in order to hold the public hearing, but the Planning Board would still be expected to attend the quarterly public hearings. Additionally, revisions to the Planning Board Rules of Procedure are proposed to reflect discussion by the BOCC at its May 12, 2015 work session and to address comments made by Planning Board members regarding Neighborhood Information Meetings. These revisions are part of both amendment packages.

The Ordinance Review Committee (ORC) began review of the text amendments at its meeting on July 1. Since that time, staff and attorney comments have been received. These comments

have resulted in numerous revisions to the version the ORC reviewed in July. The revisions would not easily lend themselves to being tracked in a different color, so tracking was not done.

Staff is specifically requesting input on three aspects of the amendments which are noted with green highlighting in the amendment packages. Staff would also like to remind the ORC that the purpose of ORC meetings is for Planning Board members to have an opportunity to shape materials going forward to public hearing. It is not necessary at this point for Planning Board members to have preferences on which option they prefer as both options will be presented for comment at public hearing in September. The Planning Board will then make its recommendation at its October 7 meeting. The materials are also subject to further revisions prior to the public hearing as a result of ongoing discussions between Planning and Attorney staff members.

The "Amendment Outline Form" (Attachment 1) for these amendments was approved by the BOCC at its June 2, 2015 regular meeting.

FINANCIAL IMPACT: Please refer to Section C.3 of Attachment 1.

RECOMMENDATION(S): The Planning Director recommends the Ordinance Review Committee review and comment on the proposed amendments to the UDO.

COMPREHENSIVE PLAN / FUTURE LAND USE MAP AND UNIFIED DEVELOPMENT ORDINANCE (UDO) AMENDMENT OUTLINE

UDO / Zoning-2015-09
Revisions to Public Hearing Process

A. AMENDMENT TYPE

Map Amendments

- Land Use Element Map:
From: - - -
To: - - -
- Zoning Map:
From: - - -
To: - - -
- Other:

Text Amendments

- Comprehensive Plan Text:
Section(s):

- UDO Text:
 - UDO General Text Changes
 - UDO Development Standards
 - UDO Development Approval Processes
 Section(s): 1.6, 2.1, 2.3, 2.7, 2.8, 5.10.2 and 2.11.6 (correct typo).

- Other: Planning Board Rules of Procedure to: 1) require that the Planning Board Chair (or Vice-Chair in Chair's absence) attend quarterly public hearings and BOCC meetings at which a decision is scheduled for items on which the Planning Board has made a recommendation, and 2) encourage Planning Board members to attend Neighborhood Information Meetings.

B. RATIONALE

- **Purpose/Mission**
 To consider changes to the current public hearing process for Comprehensive Plan,

Unified Development Ordinance, and Zoning Atlas amendments. The current public hearing process is comprised of joint quarterly public hearings with the Planning Board and BOCC, which requires a quorum of both Boards.

County staff and elected officials received comments during development of the Comprehensive Plan (2008) and Unified Development Ordinance (2011) about the perceived need to streamline and speed up decisions on applications.

- **Analysis**

This topic was discussed extensively in 2014, after being heard at the September 2014 quarterly public hearing. The public hearing for the amendments, as proposed in 2014, was closed in November 2014 when it became apparent that the proposal would change significantly enough to require another public hearing. The topic was recently discussed at the May 12, 2015 BOCC work session. Work session materials include links to prior materials and are available at: <http://www.orangecountync.gov/150512.pdf>.

Additional analysis will be part of the quarterly public hearing materials.

- **Comprehensive Plan Linkage (i.e. Principles, Goals and Objectives)**

Land Use Goal 6: A land use planning process that is transparent, fair, open, efficient, and responsive.

- **New Statutes and Rules**

N/A

C. PROCESS

1. **TIMEFRAME/MILESTONES/DEADLINES**

a. BOCC Authorization to Proceed

June 2, 2015

b. Quarterly Public Hearing

September 8, 2015

c. BOCC Updates/Checkpoints

May 12, 2015 – work session

July 1 and August 5, 2015 – Planning Board ORC (agenda materials are available to all interested persons)

November 5, 2015 – receive Planning Board recommendation and make decision

d. Other

2. **PUBLIC INVOLVEMENT PROGRAM**

Mission/Scope: Public Hearing process consistent with NC State Statutes and Orange County ordinance requirements.

a. Planning Board Review:

Amendments proposed in 2014 were discussed extensively by the Planning Board in October, November, and December 2014. This discussion forms the basis of the 2015 proposed amendments.

July 1 and August 5, 2015 – ORC (Ordinance Review Committee)
October 7, 2015 - recommendation

b. Advisory Boards:

_____	_____
_____	_____
_____	_____

c. Local Government Review:

Proposed text amendments will be sent to JPA partners prior to the public hearing, in accordance with the JPA Agreement.

d. Notice Requirements

Consistent with NC State Statutes – legal ad prior to public hearing

e. Outreach:

<input type="checkbox"/> General Public:	_____
<input type="checkbox"/> Small Area Plan Workgroup:	_____
<input type="checkbox"/> Other:	_____

3. FISCAL IMPACT

Consideration and approval will not create the need for additional funding for the provision of County services. Costs for the required legal advertisement will be paid from FY2015-16 Departmental funds budgeted for this purpose. Existing Planning staff included in the Departmental staffing budget will accomplish the work required to process this amendment.

D. AMENDMENT IMPLICATIONS

If adopted, the amendments would revise the existing process used by Orange County to review Comprehensive Plan, Unified Development Ordinance, and Zoning Atlas amendments.

E. SPECIFIC AMENDMENT LANGUAGE

See Attachments 2 and 3 (two separate options).

Primary Staff Contact:

Perdita Holtz, AICP

Planning Department

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Amendment Package to Revise the Existing Public Hearing Process
(Option A – Planning Board Review/Recommendation Before Public Hearing
for Legislative Items)

Notes

The pages that follow contain the amendments necessary to the Unified Development Ordinance (UDO) text to revise the existing public hearing process for Comprehensive Plan- and Unified Development Ordinance-related hearing items. This option would revise the existing cadence and would have the Planning Board make its recommendation before the public hearing for legislative items. The cadence for Class A Special Use Permits (SUPs) would not be revised; the Planning Board would continue to make its recommendation on SUPs after the quasi-judicial public hearing held by the Board of County Commissioners.

Proposed additions/changes to existing UDO text are depicted in **red**. Some of the proposed changes utilize footnotes to provide a brief explanation as to rationale. Users are reminded that these excerpts are part of a much larger document (the UDO) that regulates land use and development in Orange County. The full UDO is available online at: <http://orangecountync.gov/planning/Ordinances.asp>

Please note that the page numbers in this amendment packet may or may not necessarily correspond to the page numbers in the adopted UDO because adding text may shift all of the text/sections downward.

Some text on the following pages has a large “X” through it to denote that these sections are not part of the amendments under consideration. The text is shown only because in the full UDO it is on the same page as text proposed for amendment. Text with a large “X” is not proposed for deletion; proposed deletions are shown in **red-strikethrough** text.

- ~~(C) Each Township within the County shall be represented in the membership of the Board by at least one resident.~~
- ~~(D) The Board of County Commissioners may by resolution establish rules related to the requirements for volunteer service on the Planning Board, appointment and removal of Planning Board members, and rules of procedure.~~
- ~~(E) In establishing the Planning Board and its program, the Board of Commissioners intends that the Planning Board be guided by the following principle:
 - ~~(1) The Comprehensive Plan, and any ordinances or other measures to effectuate it, shall be made with the general purpose of guiding and accomplishing a coordinated, and harmonious development of the County which will, in accordance with present and future needs, best promote health, safety and the general welfare, as well as efficiency in the process of development; including, among other things, adequate provisions for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of populations, the promotion of good civic design, wise and efficient expenditure of public funds, and adequate provision of public utilities, services, and other public requirements, and conservation of significant natural and man-made resources within the County.~~~~

1.6.2 Tenure and Membership Expectations

- (A) The tenure of office shall be three years. Members are eligible for reappointment for a second consecutive full term. After two consecutive terms a member shall be ineligible for reappointment for one year after the expiration of the previous terms.
- (B) Appointments shall be made so that one-third of the terms expire in March of each calendar year.
- (C) Appointments made to fill vacancies shall be for the unexpired term and shall not be counted as a term in determining eligibility for reappointment.
- (D) A member whose term has expired shall continue to serve on the Board until his/her respective successor has been appointed.
- (E) Attendance at the regular meetings of the Board **and at quarterly public hearings¹** shall be considered a prerequisite for maintenance of membership on the Planning Board. The Board of County Commissioners may declare a vacancy on the Planning Board because of a member's non-attendance, in accordance with the Planning Board Rules of Procedure.
- (F) Absence due to sickness, death of an immediate family member or similar reason shall be considered approved absences and shall not affect the member's status. In the event of long illness or other cause for prolonged absence, the member shall be replaced.
- (G) The Board of County Commissioners may by resolution establish rules related to tenure and membership expectations. If the terms of such resolution, or policy created thereby, conflict with the terms of this section 1.6.1 or 1.6.2 the terms of the resolution or policy shall control.

1.6.3 Duties

As provided for in ~~153A-321~~ of the General Statutes of North Carolina, as amended, the Planning Board shall have the following ~~general Powers and Duties:~~

- ~~(A) Make studies of Orange County and surrounding areas;~~
- ~~(B) Determine objectives to be sought in the development of Orange County;~~
- ~~(C) Propose and recommend plans for achieving these objectives;~~

¹ Proposed addition to clarify that Planning Board members are expected to attend the quarterly public hearings.

ARTICLE 2: PROCEDURES

SECTION 2.1: REVIEW AND DECISION MAKING AUTHORITY – SUMMARY TABLE

The following table provides a brief synopsis of the review and decision-making processes for development applications.

TABLE 2.1: REVIEW AND DECISION MAKING AUTHORITIES						
R=REVIEW DM=DECISION MAKER PH=PUBLIC HEARING						
ZONING/DEVELOPMENT REVIEW RELATED PROCEDURES	PLANNING DIRECTOR	EROSION CONTROL OFFICER	DEVELOPMENT ADVISORY COMMITTEE (DAC)	BOARD OF ADJUSTMENT	PLANNING BOARD	BOCC
Zoning Compliance Permits	R and DM	R	R			
Soil Erosion and Sedimentation Control Permits		R and DM				
Stormwater Management Plans		R and DM				
UDO Text Amendments	R		R		R [1]	DM and PH
Zoning Atlas Amendments	R		R		R [1]	DM and PH
Special Use Permits	R	R	R	DM and PH Class B	R [4 3] Class A	DM and PH Class A
Zoning Variances	R		R	DM and PH		
Conditional Use	R	R	R		R [4 3]	DM and PH
Appeals/Interpretations	R		R	DM and PH		
Comprehensive Plan Amendments	R				R [1]	DM and PH
Subdivision Related Procedures						
Exempt	R and DM					
Minor	R and DM	R	R			
Major	R	R	R		R and DM [2]	R and DM
Conditional Use	R	R	R		R [1]	R, DM, and PH
Appeal						
NOTES						
[1]	The Planning Board attends a Joint Public Hearing with the BOCC to review all zoning related items requiring a public hearing. The Planning Board will have the item referred to it and shall have up to 90 days to comment on the application. The Planning Board reviews applications and makes a recommendation prior to the public hearing held by the Board of County Commissioners. The Board of County Commissioners may choose to refer an application back to the Planning Board at the conclusion of the public hearing.					
[2]	The Planning Board approves the Concept Plan for a Major Subdivision and then makes a recommendation on the Preliminary Plat to the BOCC.					
[3]	The Planning Board reviews applications and makes a recommendation after the public hearing held by the Board of County Commissioners.					

~~(A) If the Board of County Commissioners denies an application, or the application is withdrawn subsequent to notice of the public hearing thereon, no application for the same or similar amendment, affecting the same property or a portion of it, may be submitted for a period of one year. Said one year period begins on the date of denial or withdrawal, as appropriate.~~

2.2.9 Manner of Review²

Applications requiring a public hearing shall be reviewed using either a legislative process or a quasi-judicial process as follows:

- (A) Comprehensive Plan amendments – legislative
- (B) Special Use Permits – quasi-judicial
- (C) Zoning Atlas and Unified Development Ordinance amendments – legislative
- (D) Conditional Use District (CUD) – rezoning portion is legislative; Special Use Permit portion is quasi-judicial
- (E) Conditional Zoning District (CZD) - legislative

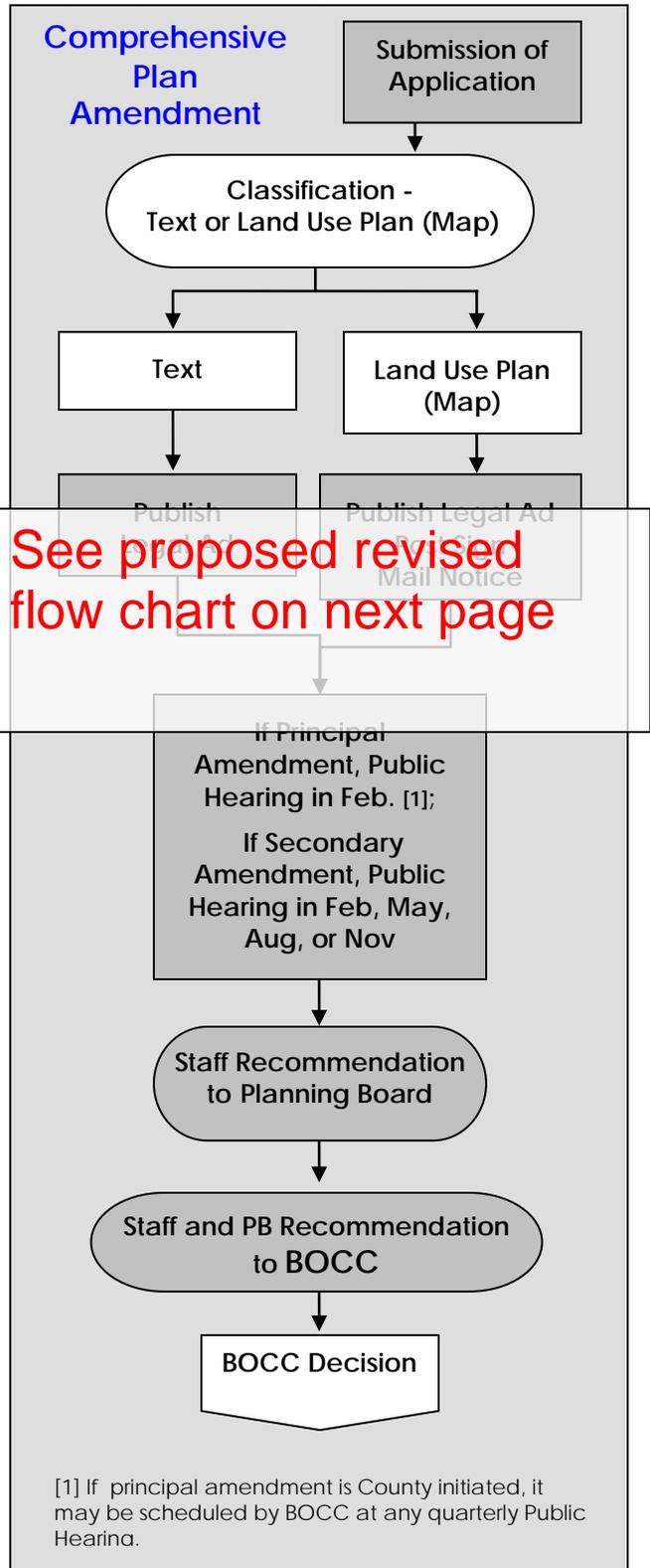
SECTION 2.3: COMPREHENSIVE PLAN AMENDMENTS

2.3.1 Review and Approval Flow Chart

The review and approval process for Comprehensive Plan Amendments is shown in the procedure’s flowchart.

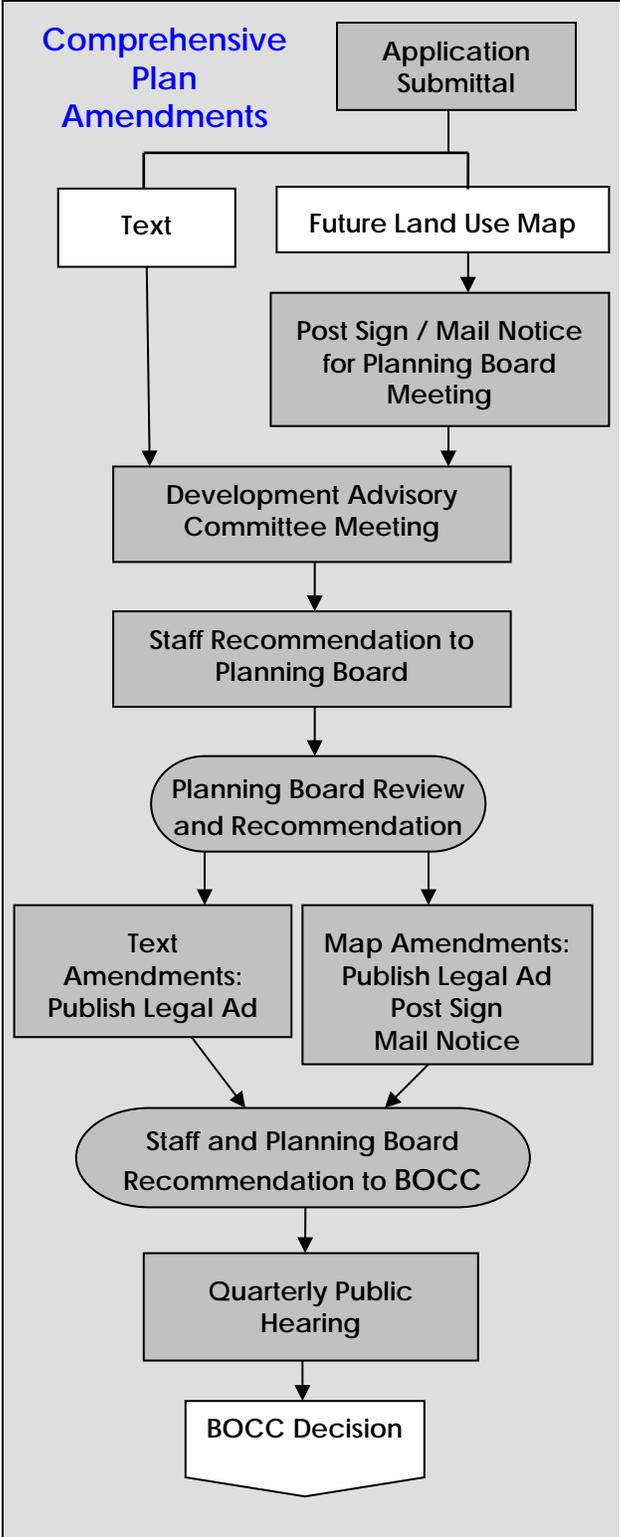
2.3.2 Generally

- (A) The Comprehensive Plan shall be so prepared that all or individual elements and parts thereof may be adopted and/or amended by the Board of Commissioners.
- (B) For the purpose of establishing and maintaining sound, stable, and desirable development within Orange County, the Comprehensive Plan or portion thereof shall not be amended except as follows:
 - (1) Because of changed or changing conditions in a particular area or areas of the County;
 - (2) To correct an error or omission; or



² Proposed to be added to provide clarity on which type of review process is used for the various types of applications that require a public hearing. Staff is not suggesting adding the specifics of each process in the UDO as specifics may change as case law is made or State statutes are modified.

Proposed flow chart for Section 2.3.1



- (3) In response to a change in the policies, objectives, principles or standards governing the physical development of the County.

2.3.3 Initiation of Amendments

- (A) An amendment to the Comprehensive Plan or portion thereof may be initiated by:
 - (1) The Board of Commissioners on its own motion;
 - (2) The Planning Board;
 - (3) Application, by any person or agency, which accurately and completely sets forth the reason(s) for the proposed amendment as prescribed in Section 2.3.2(B); or
 - (4) The Planning Director.³
- (B) Once initiated, all amendments shall be referred to the Planning Board.⁴

2.3.4 Classification of Amendments⁵

Amendments to the Comprehensive Plan or portion thereof are classified as "principal" or "secondary" amendments.

- (A) **Principal Amendments Include**
 - (1) Additions to or modifications of policies, objectives, principles or standards;
 - (2) The creation of new activity nodes or additions to existing activity nodes which exceed ten acres in land area; or
 - (3) Proposals for new freestanding plan areas or additions to existing areas that exceed 100 acres in land area.
- (B) **Secondary Amendments Include**
 - (1) The expansion of an activity node where the additional area is contiguous to an existing node and does not increase its land area by more than ten acres;
 - (2) The expansion of a designated plan area where the additional area is contiguous to the existing plan designation and does not increase its land area by more than 100 acres;
 - (3) A correction of an error or omission; or
 - (4) Revisions to any factual or descriptive material.

Staff proposes this entire section for deletion (see footnote below) – request ORC comment

³ (1) through (4) are currently (A) through (D). This section has been reformatted on the advice of the Staff Attorney.

⁴ These proposed revisions here and on subsequent pages incorporate the discussion the Planning Board had in October, November, and December 2014 and which the BOCC discussed on May 12, 2015. The cadence of the review process would be revised to have the Planning Board make its recommendation prior to the public hearing for legislative items. Notices would be mailed to nearby property owners and a sign(s) would be posted; this revision will notify nearby property owners of potential changes much earlier in the process. Although the Planning Board meeting would not be an official public hearing, the public could address the Planning Board (the existing requirement for written comments only is not proposed to continue in this revised process) and the Planning Board can take all public comments into consideration when making its recommendation.

⁵ Staff proposes that this entire section (2.3.4) be deleted because it is relevant only in conjunction with Section 2.3.7. Rather than limiting "principal" amendments to being heard "generally" only once per year, staff proposes that any Comprehensive Plan amendment could be heard at any of the quarterly public hearings. If Section 2.3.4 is deleted, subsequent sections would be renumbered and section reference updates might occur in other sections/articles of the UDO.

2.3.5 Public Hearing Required⁶

A public hearing shall be held before adoption of any proposed Comprehensive Plan amendment. The Board of County Commissioners ~~and the Planning Board~~⁷ shall hear applications and receive public comment for proposed Comprehensive Plan amendments in a Quarterly Public Hearing.

2.3.6 Notice Requirements for ~~Planning Board Meetings and~~ Public Hearings⁸

- (A) The Planning Director shall provide notification of Planning Board meetings at which the Planning Board is to review and make a recommendation on Future Land Use Map amendments. Notifications shall be mailed and posted for the Planning Board meeting in the same manner as for the public hearing, as detailed in (D) below. The notice shall include the time and location of the Planning Board meeting.⁹
- (B) The Planning Director shall provide public notice for any Comprehensive Plan amendment to be heard at a Quarterly Public Hearing. The notice shall include the time and location of the public hearing.¹⁰
- (C) For all proposed amendments, ~~Notice~~ notice of the public hearing shall be given by publishing said notice at least twice in a newspaper of general circulation in the County, stating the time and place of such hearing and the substance of the proposed amendment.¹¹
 - (1) This notice shall appear in said newspaper for two consecutive weeks with the first notice appearing not less than ten days nor more than 25 days before the date set for the public hearing. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.
 - (2) The minimum published size of the notice shall be 25 square inches.¹²
- (D) ~~In the case of~~ For amendments to the ~~Land Use Plan (map)~~ Future Land Use Map¹³, the Planning Director shall ~~provide additional notice with the following:~~¹⁴
 - (1) prominently post a notice of the public hearing on the ~~site proposed for the land use change affected parcel~~ or on an adjacent public ~~street or highway~~ right of way not less than ten days before the date set for the public hearing.

⁶ Staff notes that public hearings are not required by State statutes for Comprehensive Plan amendments but Orange County chooses to hold public hearings on amendments to the Comprehensive Plan.

⁷ Since a quorum of Planning Board members will no longer be necessary to hold a public hearing, the public hearing would no longer be a joint hearing.

⁸ Staff notes there are no statutory requirements to provide notice of Comprehensive Plan amendments (since statutes do not require public hearings for Comprehensive Plans), however, Orange County chooses to provide notice regarding Comprehensive Plan amendments to property owners/residents in the same manner zoning and UDO amendments (which are required by statutes to be noticed) are noticed.

⁹ The Planning Board has stated that it would like the public to have notice of its meetings when it is considering amendments so the public can attend the meetings and provide comments if desired. **This will result in two mailed notifications/sign posting for Future Land Use Plan amendments unless there is interest in combining the notices into one. This can be done for Comprehensive Plan amendments since State statutes do not require notices nor notice timelines. Staff requests ORC input.**

¹⁰ Proposed addition made by the Staff Attorney.

¹¹ This language is currently (A) but has been automatically re-numbered due to a new (A) and (B) being proposed for addition.

¹² (C)(1) and (C)(2) are currently (C) and (D) but have been recommended as subparagraphs by the Staff Attorney.

¹³ The name of this map was changed in the Comprehensive Plan in 2012 and should be updated here.

¹⁴ Proposed changes suggested by the Staff Attorney to clarify the existing language.

- (a) When multiple parcels are ~~included within a proposed Land Use Plan (map) [Future Land Use Map] amendment affected~~, a posting on each individual parcel is not required, but ~~the county shall post~~ sufficient notices ~~shall be posted~~ to provide reasonable notice to interested persons.
- (2) ~~In the case of amendments to the Land Use Plan (map) [Future Land Use Map]~~, written notice of the public hearing shall be sent by first-class mail to all property owners, as listed in the Orange County tax records, whose property is affected ~~(property that is included in the proposed land use plan [Future Land Use Map] amendment) and all property owners or~~ within 500 feet of the affected parcel(s). Said notice shall be mailed at least 14 days, but not more than 25 days, prior to the date of the public hearing.

2.3.7 Consideration of Amendments¹⁵

Staff proposes A, B, and C for deletion (see footnote) – request ORC comment

- (A) Principal amendments shall generally ~~only~~ be considered ~~only~~ once each year at the first quarterly public hearing ~~in February of the calendar year, usually held in February~~¹⁶.
- (B) If a principal amendment is scheduled ~~by the Board of County Commissioners~~¹⁷ for other than the ~~February first~~ quarterly public hearing of the calendar year, it shall be scheduled during one of the quarterly public hearings held ~~in May, August, and November later in the year~~.
- (C) Secondary amendments may be considered four times each year at ~~the a~~ quarterly ~~joint~~ public hearings, ~~in February, May, August, and November~~ as designated each year on the Board of County Commissioners meeting calendar.
- (D) A proposed amendment may be considered in conjunction with a rezoning request for the same property ~~if the requests are in compliance with an adopted small area plan~~¹⁸.
- (E) ~~Requests for a rezoning not in compliance with an adopted small area plan, conditional use district, and/or special use permit may only be considered at subsequent hearings or meetings following approval of the proposed amendment to the Comprehensive Plan.~~¹⁹

2.3.8 Application Requirements

(A) Generally

¹⁵ Staff proposes that (A), (B), and (C) of this section be deleted because staff believes that any proposed amendment to the Comprehensive Plan should be able to be heard at any of the quarterly public hearings. Allowing principal amendments “generally” only once per year imposes constraints. If there is not interest in allowing consideration of any amendment at any of the four QPHs per year, then the language should be modified as shown. If (A), (B), and (C) are deleted, the following language should become a new (A): A proposed amendment may be considered at any Board of County Commissioners meeting designated as a Quarterly Public Hearing.

¹⁶ Staff is suggesting the language be less restrictive in case the BOCC wants to move quarterly public hearing dates in the future when the annual BOCC meeting calendar is created in the fall of each year. For example, this was done for the public hearing that was formerly held in August of each year but is now held in September.

¹⁷ The BOCC does not schedule amendments (staff is responsible for doing so) but if a principal amendment were proposed for a QPH other than the first hearing of the year, staff would coordinate with the Manager and Chair/Vice-Chair to gain input into whether the application should be allowed to be heard at one of the three later QPHs.

¹⁸ The Staff Attorney has recommended deletion of this provision due to concerns over who determines compliance with a small area plan and how compliance is determined.

¹⁹ The Staff Attorney has recommended deletion of this provision because of the modification made in (D). If the modification in (D) is not made, the language of (E) should be modified because of the concern that a restriction on a rezoning application has been placed in the Comprehensive Plan amendment section.

- (1) All applications for amendments to the Comprehensive Plan shall be submitted on forms supplied by the Planning Department and shall be signed.
- (2) Three copies of the application shall be submitted to the Planning Director.
- (3) Before accepting any amendment application, the Planning Director shall ensure that it contains all required information, as specified in this Ordinance. Applications which are not complete, or otherwise do not comply with the provisions of this Ordinance, shall not be accepted by the Planning Director, but shall be returned to the applicant, with a notation by the Planning Director of the deficiencies in the application.

(B) Contents of Application

Applications for amendments to the Comprehensive Plan, without limiting the right to file additional material, shall contain at least the following:

- (1) For amendments to the ~~Land Use Plan (map)~~ **Future Land Use Map** within the Land Use Element, a map at a legible scale adequately illustrating the land which would be covered by the proposed map amendment, and a complete list of Property Identification Numbers (PIN) for the properties;
- (2) For amendments to the Comprehensive Plan text, a copy of the existing text provision(s) which the applicant proposes for amendment, and a written statement which describes in detail changes which the applicant proposes to make to the text of the Comprehensive Plan and the rationale for the proposed amendment consistent with the standards established in this Ordinance; and
- (3) All other circumstances, factors and reasons which the applicant offers in support of the proposed Comprehensive Plan amendment.

2.3.9 Analysis and Recommendation

The Planning Director shall cause an analysis to be made of the application and, based upon that analysis, prepare a recommendation for consideration by the Planning Board and the Board of County Commissioners.

2.3.10 Planning Board Review

- ~~(A) Following the public hearing, all proposed amendments shall be referred to the Planning Board for consideration and recommendation.~~
- ~~(B) The Board of County Commissioners may direct the Planning Board to provide a recommendation by a date certain. If the Board of County Commissioners does not so direct, the Planning Board shall make its recommendation within three regularly scheduled Planning Board meetings unless the Board of County Commissioners grants an extension.~~
- ~~(C) If the Planning Board fails to make a recommendation within the time allotted in subsection (B), the application shall be forwarded to the Board of County Commissioners without a Planning Board recommendation.~~
- ~~(D) Amendments initiated by Orange County shall not be subject to time limitations other than those specified by the Board of County Commissioners during the public hearing process.~~
- ~~(E) Evidence not presented at the public hearing may be submitted in writing to the Planning Board for consideration prior to the Planning Board's recommendation to the Board of County Commissioners. The Planning Board may consider additional oral evidence only if it is for the purpose of presenting information also submitted in writing.~~
- (A) The Planning Board shall allow public comments at its meeting and those comments shall be taken into consideration by the Planning Board in making its recommendation.

- (B) The Planning Board shall review and comment on applications and shall make one of the following recommendations prior to the quarterly public hearing:
 - (1) Recommend approval,
 - (2) Recommend denial,
 - (3) Recommend approval but with specified changes.
 - (4) Recommend the Planning Board be given extended time to consider the matter.²⁰
- (C) Should the Planning Board fail to make a recommendation prior to the quarterly public hearing, the application shall be forwarded to the Board of County Commissioners without a Planning Board recommendation.²¹

2.3.11 Action by Board of County Commissioners

- (A) The Board of County Commissioners shall ~~not consider enactment of proposed amendment until~~ hold a public hearing after the Planning Board either makes its recommendation or takes no action on the application ~~as prescribed in this section~~ within 30 days of its referral.²²
- (B) ~~In making its decision, the Board of Commissioners shall consider all relevant evidence presented at the public hearing and any submitted written evidence that was considered by the Planning Board in making its recommendation.~~
- (C) ~~The Board of Commissioners, upon receipt of a recommended Comprehensive Plan or portion thereof from the Planning Board, shall consider such recommendations and adopt them by resolution, either unchanged or with modifications.~~
- (B) After the Board of County Commissioners closes the public hearing, the Board of County Commissioners shall do one of the following:
 - (1) defer a decision to a later Board of County Commissioners meeting date, or
 - (2) make a decision.
- (C) In making its decision, the Board of Commissioners shall consider comments made at the public hearing, the Planning Board's recommendation, and the Planning Director's recommendation.

SECTION 2.4: ZONING COMPLIANCE PERMITS

2.4.1 Applicability

- (A) As required by this Ordinance, a Zoning Compliance Permit must be issued before any new site ~~development, building, structure, or vehicular use area may be erected,~~ constructed or used.

²⁰ The previous version the ORC reviewed proposed to allow the Planning Board to make a preliminary recommendation and request that the BOCC refer the application back to the Planning Board if significant new information were presented at the public hearing. The Staff Attorney has suggested that, because the BOCC always has the procedural right to send an application back to the Planning Board, that the previously proposed possibility be removed and replaced with the language shown in (4). Additionally, the Staff Attorney has recommended that procedural rights not be codified in the UDO; this has resulted in some changes from the version the ORC reviewed in July 2015. Some procedural aspects of the process will be available via "cheat sheets" the night of the Planning Board meeting and/or public hearing.

²¹ This paragraph is a slight modification from existing paragraph (C), which is proposed to be deleted. It addresses what happens in the event the Planning Board fails to make a recommendation (namely, that the process moves forward without a Planning Board recommendation).

²² The Staff Attorney has suggested this paragraph be rephrased to make it affirmative.

- (1) Recreational vehicles meeting requirements of Section 6.6.1(B)(5);
- (2) Temporary structures meeting requirements of Section 6.6.1(B)(7); and
- (3) Accessory Structures with any dimension that is 12 feet or greater in height, width, or depth, meeting requirements of Section 6.6.1(B)(8).

SECTION 2.7: SPECIAL USE PERMITS

2.7.1 Generally

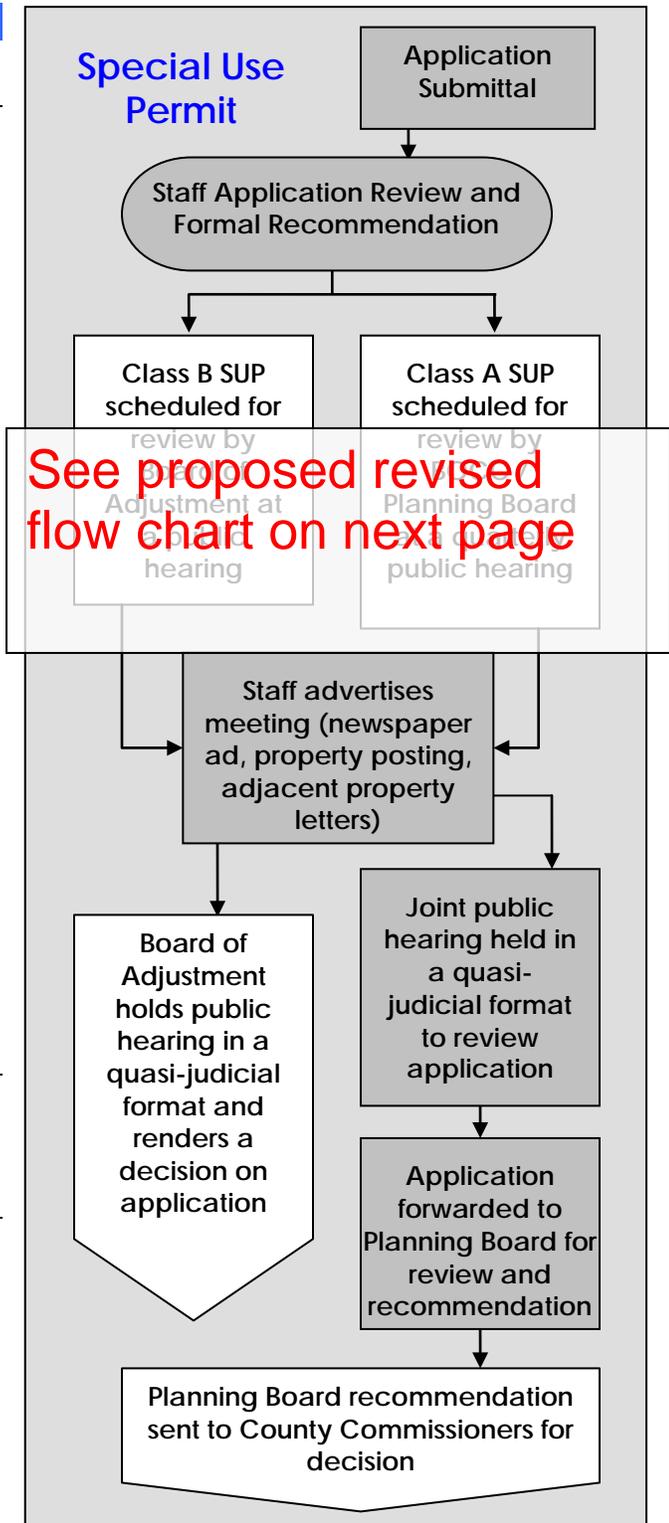
- (A) Any use or development designated by applicable zoning district regulations contained within Article 5 as a special use, or as allowed only pursuant to a special use permit (either Class A or Class B), may be established in that district only after the use or development is authorized by a validly issued and recorded special use permit.
- (B) This section sets forth required review and approval procedures for submittal, review, and approval of applications for special use permit.
- (C) A special use permit authorizes its holder to use or develop a particular parcel of land in a particular way, as specified by the terms and conditions of the special use permit.
- (D) A special use permit imposes on its holder the responsibility of ensuring that the authorized use or development continues to comply with the terms and conditions of approval.
- (E) Issuance of a special use permit does not relieve the holder of the special use permit of the additional responsibility of obtaining a building permit or any other permit or approval required by any other applicable law.

2.7.2 Review and Approval Flow Chart

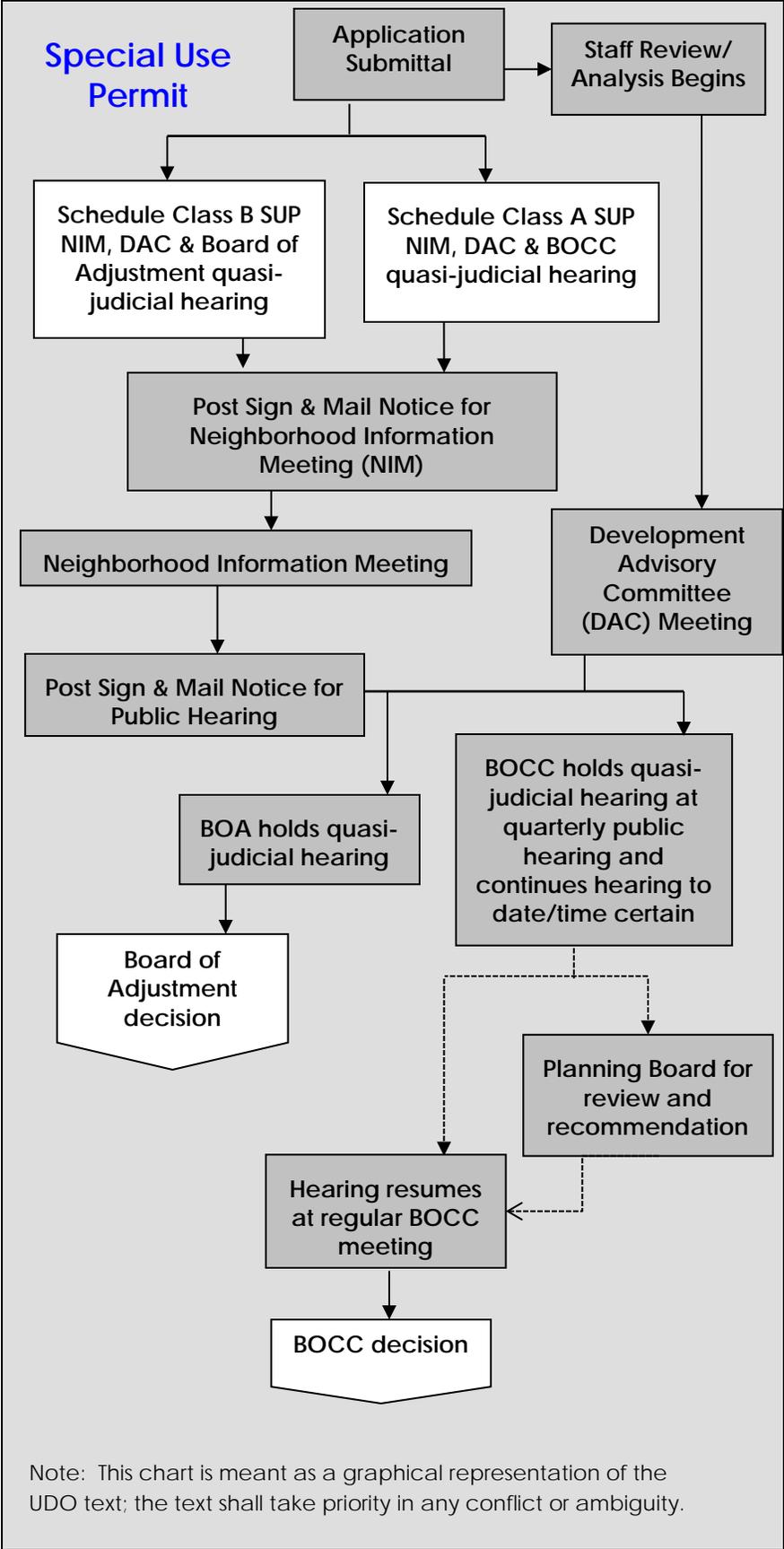
The review and approval process for Special Use Permits is shown in the procedure's flowchart.

2.7.3 Application Requirements

- (A) Applications for a Special Use shall be submitted on forms provided by the Planning Department in accordance with Section 2.2 of this Ordinance.
- (B) Applications shall include:
 - (1) A full and accurate description of the proposed use, including its location, appearance, and operational characteristics.



Proposed flow chart for Section 2.7.1



- (2) The name(s) and address(es) of the owner(s) of the property involved.
- (3) Relevant information needed to show compliance with the general and specific standards governing the Special Use (See Articles 5 and 6).
- (4) For Class A Special Uses 26 copies of the site plan, and for Class B Special Uses 10 copies of the site plan, prepared by a registered North Carolina land surveyor, landscape architect, architect, or engineer, which shall contain the information listed in Section 2.5.
- (5) If the application involves a Preliminary Subdivision Plat, 26 copies of the Plat prepared in accordance with Section 7.14 shall be provided.
- (6) A list of all parcels located within 500 feet of the subject parcel and the name and address of each property owner, as currently listed in the Orange County tax records.
- (7) Elevations of all structures proposed to be used in the development.
- (8) For Class A Special Uses 26 copies and for Class B Special Uses 10 copies of the Environmental Assessment and/or Environmental Impact Statement, if required by Section 6.16.
- (9) Method of disposal of trees, limbs, stumps and construction debris associated with the permitted activity, which shall be by some method other than open burning.
- (10) Statement from the applicant indicating the anticipated development schedule for the build-out of the project.
- (11) Statement from the applicant in justification of any request for vesting for a period of more than two years (five years maximum).

2.7.4 Staff Review

- (A) The Planning Director shall cause an analysis to be made of the application by qualified representatives of the County and other agencies or officials as appropriate.
 - (1) Applications for agricultural support enterprise uses located within the Rural Buffer land use classification, as depicted on the Future Land Use Map of the adopted Comprehensive Plan, shall be forwarded to the County's Agricultural Preservation Board for review and comment.
 - (a) The Agricultural Preservation Board shall have 30 calendar days to provide comments. If comments are not received within this timeframe, the application review process shall not be delayed.
 - (b) For purposes of this subsection, agricultural support enterprise uses shall be defined as those permitted in the ASE-CZ zoning district, as detailed within Section 5.2.3 of this Ordinance.
- (B) The Planning Director shall submit the analysis to the Board of County Commissioners and the Planning Board, in the case of Class A Special Uses, or the Board of Adjustment, in the case of Class B Special Uses.
- (C) The appropriate Board reviewing the application shall receive and enter the analysis into evidence during the public hearing. The analysis shall be subject to examination by all interested parties and the Planning Director shall be subject to cross-examination regarding the analysis.
- (D) The Planning Director shall not make a recommendation on the general findings detailed within Section 5.3 of this Ordinance

2.7.5 Neighborhood Information Meeting

- (A) Before a Public Hearing may be held for a Special Use the applicant is required to schedule a minimum of one neighborhood information meeting. The purpose of the meeting is to obtain surrounding property owner input and comments on the proposed development project and allow staff an opportunity to explain the review process associated with the request.
- (B) The applicant shall obtain property owner mailing address information from the Orange County Planning Department, which shall utilize Orange County Land Records data, and shall mail certified notices of the meeting date and time to each property owner within 500 feet of the property for which a Special Use has been requested.
- (C) The applicant shall mail notice of the Neighborhood Information Meeting a minimum of 14 days prior to the date of the meeting.
- (D) The applicant shall post a sign on the property advertising the date, place, and time of the meeting a minimum of 10 days prior to the date of the meeting.
- (E) The meeting shall be held a minimum of 45 days prior to the date of the Public Hearing.
- (F) Neighborhood information meetings for telecommunication facilities shall be held in accordance with the provisions of Section 5.10.8 (B) (2).

2.7.6 Notice Requirements for Class A Special Use Permits

- (A) The Planning Director shall give public notice of the date, time and place of the public hearing to be held to receive ~~comments, evidence in the form of~~²³ testimony and exhibits pertaining to the application for a Special Use.
- (B) ~~Such notice shall be published in a newspaper of general circulation in Orange County once a week for two successive weeks, with the first notice to be published not less than ten days nor more than 25 days prior to the date of the hearing. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.~~²⁴
- (C) The Planning Director shall post on the affected property a notice of the public hearing at least ten days prior to the date of said hearing.
- (D) Written notice shall be sent by certified mail to all adjacent property owners not less than 15 days before the hearing date. Adjacent property owners are those whose property lies within five hundred feet of the affected property and whose names and addresses are currently listed in the Orange County tax records.

2.7.7 Notice Requirements for Class B Special Use Permits

Notice Requirements for Class B Special Use Permits shall follow the procedures in Section 2.12.6.

2.7.8 Nature of Proceedings

- (A) The review of Special Use Permit applications shall be conducted during a public hearing by the decision-making board.

²³ The Staff Attorney has suggested this language modification since SUP applications are quasi-judicial in nature and require testimony rather than comments.

²⁴ The Staff Attorney has suggested that legal advertisements for quarterly public hearings not include SUP applications since the general public does not have standing in such matters and cannot participate. (State Statutes do not require legal ads for SUP applications). As shown in the remainder of this section, a notice would still be posted on the affected parcel and adjoining property owners would receive mailed notification of the hearing date (which they would also have been informed of via the Neighborhood Information Meeting materials).

- (B) The review of a Special Use Permit application is a quasi-judicial process, where the Board responsible for rendering a decision acts much like a panel of judges. The Board hears factual evidence and sworn testimony presented at an evidentiary hearing, and then makes findings of fact supported by competent, substantial, and material evidence.
- (C) The chair or presiding officer of the hearing shall swear all parties intending to present evidence or testimony during the hearing.
- (D) The chair or presiding officer may take whatever action is necessary to limit testimony to the presentation of new factual evidence that is material to the application, to ensure fair and orderly proceedings, and to otherwise promote the efficient and effective gathering of evidence. Such actions may include:
- (1) Barring the presentation of obvious hearsay evidence,
 - (2) Barring the presentation of non-expert opinion,
 - (3) Interrupting digressions into immaterial testimony,
 - (4) Interrupting repetitive testimony,
 - (5) Reasonably limiting the time allotted each witness or cross-examination,
 - (6) Providing for the selection of spokespersons to represent groups of persons with common interests,
 - (7) Interrupting personal attacks, and/or
 - (8) Ordering an end to disorderly conduct.
- (E) Where the Board finds compliance with the general standards, specific rules governing the specific use, and that the use complies with all required regulations and standards, the application must be approved unless the Board shall also find, in some specific manner, that:
- (1) the use will not maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted.
- (F) Those opposing approval of the application on the grounds that the use will not promote the public health, safety and general welfare shall have the burden of establishing, by competent material and substantial evidence, the specific manner in which the proposed use does not satisfy the requirements for approval of the application for a Special Use.

2.7.9 Review and Decision

- (A) For Class A Special Use ~~permits~~Permits, the following shall apply:
- (1) The Board of County Commissioners ~~and Planning Board~~²⁵ shall review the application during ~~a regularly scheduled public hearing~~ a meeting designated as a Quarterly Public Hearing.
 - (2) All evidence shall be submitted during the public hearing. If additional evidence is requested during a hearing which must be submitted at a later date, the hearing shall be continued to a date/time certain in order to receive the additional evidence.²⁶

²⁵ While the Planning Board is expected to attend the public hearing to hear evidence, a quorum of Planning Board members will not be necessary in order to conduct the hearing.

²⁶ In order to meet legal requirements for quasi-judicial proceedings, staff is suggesting this proposed language. Evidence would no longer be allowed to be submitted in writing after the quasi-judicial hearing. Instead, additional evidence would have to be presented by experts at a subsequent hearing (which does not necessarily have to be a quarterly public hearing date).

- (3) Following ~~review~~ submission of all evidence at a public hearing the Special Use ~~permit~~ Permit application shall ~~may~~²⁷ be referred to the Planning Board for its consideration and recommendation.
- (a) The public hearing may be continued to a date/time certain in order to receive the Planning Board's recommendation.
- ~~(4) The Board of County Commissioners may direct the Planning Board to provide a recommendation by a date certain. If the Board of County Commissioners does not so direct, the Planning Board shall make its recommendation within three regularly scheduled meetings.²⁸~~
- (i) If the Planning Board fails to make a recommendation within the time allotted ~~within subsection (3) above~~, the ~~application shall be forwarded to the Board of County Commissioners public hearing will resume~~ without a Planning Board recommendation.²⁹
- (5) The Planning Board shall consider only the evidence presented to the Board of County Commissioners at the public hearing.³⁰
- (6) The Planning Board shall make a recommendation and proposed findings of fact on the application, including the findings required in Section 5.3.2 of this Ordinance³¹. The Planning Board's action on an application shall be one of the following:
- (a) Recommend approval based on proposed findings of fact,
- (b) Recommend denial based on proposed findings of fact,
- (c) Recommend approval based on proposed findings of fact but with specified conditions.
- (7) After receipt of any Planning Board recommendation and closure of the public hearing, the Board of County Commissioners shall take action upon the application. This action shall be one of the following:
- (a) Approval;
- (b) Approval with conditions; or
- (c) Denial.

~~(B) For Class B Special Use Permits, the following shall apply:~~

- ~~(1) The Board of Adjustment shall review the application during a regularly scheduled public hearing.~~

²⁷ The Staff Attorney has suggested this language modification in order to allow for flexibility by the BOCC in cases that have no or little controversy.

²⁸ Because public hearings must be kept open to a date/time certain, this paragraph is obsolete and should be deleted.

²⁹ Currently, the language in (i) is (4) in the adopted UDO. It is suggested to be moved to under the new (a) in order to flow better. Language modifications have been suggested by the Staff Attorney.

³⁰ Language suggested by the Staff Attorney.

³¹ The Planning Board has expressed strong feelings about continuing to make a recommendation of the required findings in Section 5.3.2. Because the recommendation needs to be based on the evidence presented at the hearing, the Planning Board recommendation must occur after the evidentiary hearing. This is necessary because applicants and opponents cannot be required to present their evidence prior to the public hearing (as might be expected if the Planning Board meeting occurs prior to the public hearing). Additionally, if the Planning Board meeting were to occur prior to the public hearing, it is possible that there would be future concerns about people not having enough time to prepare between the Neighborhood Information Meeting and the Planning Board meeting. Since there is not an expectation that review/decision processes are to be lengthened, the logistics of having the Planning Board make a recommendation prior to the public hearing are difficult.

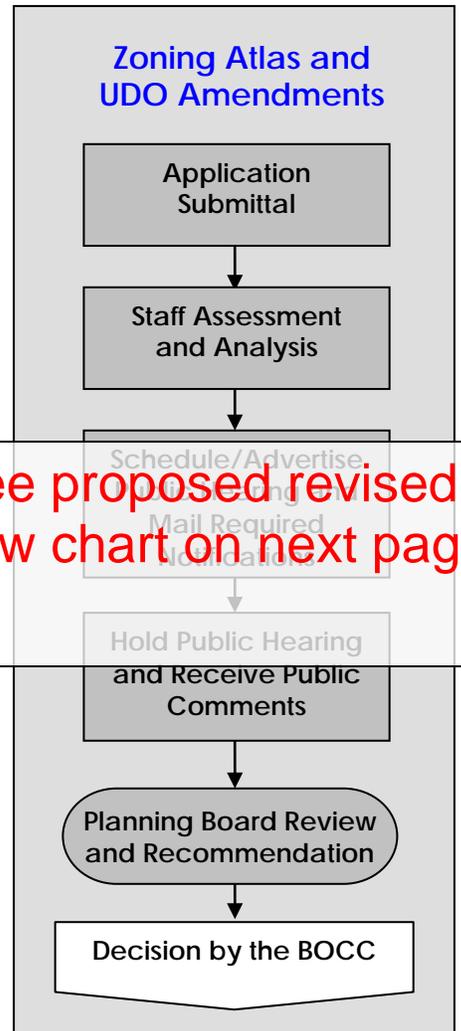
SECTION 2.8: ZONING ATLAS AND UNIFIED DEVELOPMENT ORDINANCE AMENDMENTS

2.8.1 Review and Approval Flow Chart

The review and approval process for a Zoning Atlas and Unified Development Ordinance Amendment is shown in the procedure's flowchart.

2.8.2 Amendment Initiation

- (A) An amendment to this Ordinance or the Zoning Atlas may be initiated by:
 - (1) The Board of County Commissioners on its own motion;
 - (2) The Planning Board;
 - (3) Application, by any person or agency, or
 - (4) The Planning Director.
- (B) If a request for consideration of an amendment proposal is submitted directly to the Board of County Commissioners, said Board may decline to consider the request or may refer the amendment proposal to the Planning Director for preparation of an amendment application.
- (C) Once initiated, all amendments shall be referred to the Planning Board.³²



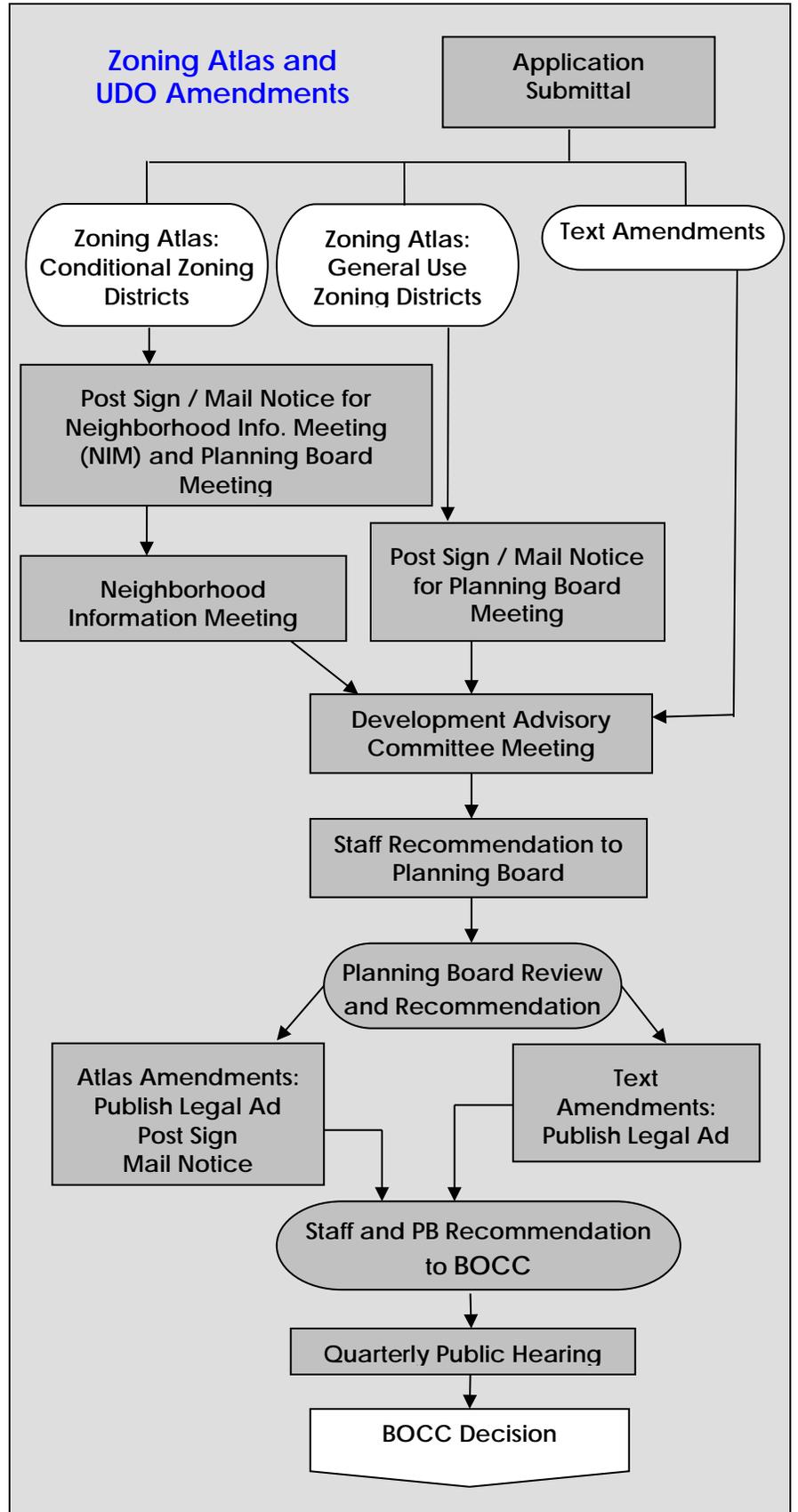
2.8.3 Contents of Application

Applications shall contain the following:

- (A) For amendments to the Zoning Atlas:
 - (1) A map at a legible scale showing the land which would be covered by the proposed amendment, and
 - (2) A legal description of the land.
- (B) For amendments to the Unified Development Ordinance text:
 - (1) A copy of the existing text provision(s) which the applicant proposes for amendment, and
 - (2) A written statement which describes in detail the changes the applicant proposes to make.
- (C) The alleged error in the Zoning Atlas and/or Unified Development Ordinance text that would be corrected by the proposed amendment with a detailed explanation of such error

³² These proposed revisions here and on subsequent pages incorporate the discussion the Planning Board had in October, November, and December 2014 and which the BOCC discussed on May 12, 2015. The cadence of the review process would be revised to have the Planning Board make its recommendation prior to the public hearing for legislative items. Notices would be mailed to nearby property owners and a sign(s) would be posted; this revision will notify nearby property owners of potential changes much earlier in the process. Although the Planning Board meeting would not be an official public hearing, the public could address the Planning Board (the existing requirement for written comments only is not proposed to continue in this revised process) and the Planning Board can take all public comments into consideration when making its recommendation.

Proposed flow chart for Section 2.8.3



in the Zoning Atlas and/or Unified Development text and detailed reasons how the proposed amendment will correct the alleged error;

- (D) The changed or changing conditions, if any, in the area or in the County generally, which makes the proposed Zoning Atlas and/or Unified Development Ordinance text amendment reasonably necessary to promote the public health, safety and general welfare;
- (E) The manner in which the proposed Zoning Atlas and/or Unified Development Ordinance text amendment will carry out the intent and purpose of the adopted Comprehensive Plan or part thereof; and
- (F) A traffic impact study as required by Section 6.17.
- (G) For amendments to the Special Flood Hazard Area Overlay District, pertaining to a Letter of Map Amendment:
 - (1) An elevation certificate with either an MT-1, MT-2, or MT-EZ (forms available through FEMA), or
 - (2) A “No-Impact” analysis for a Letter of Map Revision.
- (H) All other circumstances, factors and reasons that the applicant offers in support of the proposed Zoning Atlas and/or Unified Development Ordinance text amendment.

2.8.4 Applications for Amendment – Joint Planning Area

Applications for amendments to the Orange County Unified Development Ordinance and Zoning Atlas for the purpose of incorporating the provisions of the Chapel Hill Land Development Ordinance (and Zoning Maps) and/or the Carrboro Land Use Ordinance (and Zoning Maps) shall be processed as specified herein and as specified in the Joint Planning Agreement adopted November 2, 1987, and as amended from time to time.

Any text amendments adopted by Orange County shall be adopted by reference as though fully set forth herein. Any map amendments adopted by Orange County shall be officially denoted on the County Zoning Atlas. Where there is inconsistency between the amendment procedures contained herein and those contained in the Joint Planning Agreement, the provisions of the Joint Planning Agreement shall apply.

2.8.5 Review, Analysis and Recommendation

- (A) The Planning Director shall cause an analysis to be made of the application and, based upon that analysis, prepare a recommendation for consideration by the Planning Board and the Board of County Commissioners.
- (B) Applications for agricultural support enterprise uses located within the Rural Buffer land use classification, as depicted on the Future Land Use Map of the adopted Comprehensive Plan, shall be forwarded to the County’s Agricultural Preservation Board for review and comment.
 - (1) The Agricultural Preservation Board shall have 30 calendar days to provide comments. If comments are not received within this timeframe, the application review process shall not be delayed.
 - (2) For purposes of this subsection, agricultural support enterprise uses shall be defined as those permitted in the ASE-CZ zoning district, as detailed within Section 5.2.3 of this Ordinance.

2.8.6 Public Hearing Required

A public hearing shall be held before adoption of any proposed Zoning Atlas Amendment and/or text amendment to this Ordinance. The Board of County Commissioners ~~and the Planning~~

~~Board~~³³ shall hear applications and receive public comment for Zoning Atlas amendments and/or text amendments to this Ordinance in a Quarterly Public Hearing.

2.8.7 Notice of Requirements for Planning Board Meetings and Public Hearings

- (A) The Planning Director shall provide notification of Planning Board meetings at which the Planning Board is to review and make a recommendation on Zoning Atlas amendments. Notifications shall be mailed and posted for the Planning Board meeting in the same manner as for the public hearing, as detailed in (C) and (D) below. The notice shall include the time and location of the Planning Board meeting.³⁴
- (B) The Planning Director shall cause notice ~~Notice~~ of the public hearing to review the application and receive public comment ~~shall to~~ be published at least twice in a newspaper of general circulation in the county, stating the time and place of the hearing and the substance of the proposed amendment.
- (1) Said notice shall appear in said newspaper for two successive weeks with the first notice appearing not less than ten days nor more than 25 days before the date set for the public hearing. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.³⁵
- (C) ~~In the case of For~~ amendments to the ~~zoning atlas~~ Zoning Atlas, the Planning Director shall post on the affected property a notice of the public hearing at least ten days prior to the date of said hearing.
- (D) ~~In the case of For~~ amendments to the Zoning Atlas, written notice shall be sent by certified mail to the affected property owner and all adjacent property owners at least 15 days, but not more than 25 days, before the public hearing date. Adjacent property owners are those whose names and addresses are currently listed in the Orange County tax records and whose property lies within 500 feet of the affected property.
- (1) If amendments to the Zoning Atlas are proposed by the County, notice shall be sent by first class mail to all affected property owners and to all adjacent property owners within 500 feet as provided in (D) above.³⁶
- (E) The Planning Director shall certify the mailing of all notices to the Board of County Commissioners.

2.8.8 Planning Board Review³⁷

- ~~(A) Following the public hearing, all proposed amendments shall be referred to the Planning Board for consideration and recommendation.~~

³³ Since a quorum of Planning Board members will no longer be necessary to hold a public hearing, the public hearing would no longer be a joint hearing.

³⁴ The Planning Board has stated that it would like the public to have notice of its meetings when it is considering amendments so the public can attend the meetings and provide comments if desired. This will result in two mailed notifications/sign postings for Zoning Atlas amendments in order to meet statutory requirements for public hearings (mailed/posted at least 10 days but not more than 25 days prior to the public hearing)

³⁵ This paragraph has been indented one level to better reflect the cadence of ordinance structure.

³⁶ This paragraph has been indented one level to better reflect the cadence of ordinance structure.

³⁷ These proposed revisions incorporate the discussion the Planning Board had in October, November, and December 2014 and which the BOCC discussed on May 12, 2015. The cadence of the review process would be revised to have the Planning Board make its recommendation prior to the public hearing. Notices would be mailed to nearby property owners and a sign(s) would be posted; this revision will notify nearby property owners of potential changes much earlier in the process. Although the Planning Board meeting would not be an official public hearing, interested persons could address the Planning Board (the existing requirement for written comments only is not proposed to continue in this revised process) and the Planning Board can take all public comments into consideration when making its recommendation.

- ~~(B) The Board of County Commissioners may direct the Planning Board to provide a recommendation by a date certain. If the Board of County Commissioners does not so direct, the Planning Board shall make its recommendation within three regularly scheduled Planning Board meetings.~~
- ~~(C) If the Planning Board fails to make a recommendation within the time allotted in subsection (B) above, the application shall be forwarded to the Board of County Commissioners without a Planning Board recommendation.~~
- ~~(D) Amendments initiated by Orange County shall not be subject to time limitations other than those specified by the Board of County Commissioners during the public hearing process.~~
- ~~(E) Evidence not presented at the public hearing may be submitted in writing to the Planning Board for consideration prior to the Planning Board's recommendation to the Board of County Commissioners. The Planning Board may consider additional oral evidence only if it is for the purpose of presenting information also submitted in writing.~~
- (A) The Planning Board shall allow public comments at its meeting and those comments shall be taken into consideration by the Planning Board in making its recommendation.
- (B) The Planning Board's action on an application shall be one of the following:
- (1) Recommend approval,
 - (2) Recommend denial,
 - (3) Recommend approval but with specified changes, or
 - (4) Recommend the Planning Board be given extended time to consider the matter.³⁸
- (C) In making its recommendation, the Planning Board shall also approve a statement describing whether its action is consistent with an adopted comprehensive plan or any other officially adopted plan that is applicable, and briefly explain why the board considers the action taken to be reasonable and in the public interest.³⁹
- (D) Should the Planning Board fail to make a recommendation prior to the quarterly public hearing, the application shall be forwarded to the Board of County Commissioners without a Planning Board recommendation.⁴⁰

2.8.9 Action by Board of County Commissioners

- (A) The Board of County Commissioners shall ~~not consider enactment of the proposed amendment until~~ hold a public hearing after the Planning Board either makes its recommendation or takes no action on the application ~~as prescribed in Section 2.8.8(C) within 30 days if its referral.~~

³⁸ The previous version the ORC reviewed proposed to allow the Planning Board to make a preliminary recommendation and request that the BOCC refer the application back to the Planning Board if significant new information were presented at the public hearing. The Staff Attorney has suggested that, because the BOCC always has the procedural right to send an application back to the Planning Board, that the previously proposed possibility be removed and replaced with the language shown in (4). Additionally, the Staff Attorney has recommended that procedural rights not be codified in the UDO; this has resulted in some changes from the version the ORC reviewed in July 2015. Some procedural aspects of the process will be available via "cheat sheets" the night of the Planning Board meeting and/or public hearing.

³⁹ Required by NCGS 160A-383.

⁴⁰ This paragraph is a slight modification from existing paragraph (C), which is proposed to be deleted. It addresses what happens in the event the Planning Board fails to make a recommendation (namely, that the process moves forward without a Planning Board recommendation).

- (B) ~~In making its decision, the Board of Commissioners shall consider all relevant evidence presented at the public hearing and any submitted written evidence that was considered by the Planning Board in making its recommendation.~~
- (C) ~~After the Board of County Commissioners closes the public hearing, the Board of County Commissioners shall do one of the following:
 - (1) ~~defer a decision to a later Board of County Commissioners meeting date, or~~
 - (2) ~~make a decision.~~~~
- (D) ~~In making its decision, the Board of County Commissioners shall consider adopted plans, comments made at the public hearing, the Planning Board's recommendation, and the Planning Director's recommendation. The Board of County Commissioners shall also approve a statement describing whether its action is consistent with an adopted comprehensive plan or any other officially adopted plan that is applicable, and briefly explain why the board considers the action taken to be reasonable and in the public interest.⁴¹~~

2.8.10 Text Revisions Pertaining to Soil Erosion and Sedimentation Control Provisions

- (A) ~~The Erosion Control Officer shall review all of the North Carolina Sedimentation Control Commission's revisions to the State's Model Soil Erosions and Sedimentation Control Ordinance and, within 90 days of receipt of the recommended revisions, submit draft amendments to the North Carolina Sedimentation Control Commission for its consideration and comments.~~
- (B) ~~Within 150 days after receipt of the North Carolina Sedimentation Control Commission's comments, Orange County shall formally consider proposed amendments and, to the extent deemed necessary by the Board of County Commissioners, incorporate the amendments into this Ordinance.~~
- (C) ~~Text amendments to this Ordinance for soil erosion and sedimentation control provisions shall comply with the requirements in effect for any other text amendment.~~

2.8.11 Text Revisions Pertaining to Stormwater Provisions

- (A) ~~The Erosion Control Officer shall review all of the State Environmental Management Commission's revisions to the State's Model Stormwater Ordinance and, within 90 days of receipt of the recommended revisions, submit draft amendments to the State Environmental Management Commission for its consideration and comments.~~
- (B) ~~Within 150 days after receipt of the State Environmental Management Commission's comments, Orange County shall formally consider proposed amendments and, to the extent deemed necessary by the Board of County Commissioners, incorporate the amendments into this Ordinance.~~
- (C) ~~Text amendments to this Ordinance for stormwater provisions shall comply with the requirements in effect for any other text amendment.~~

SECTION 2.9: CONDITIONAL DISTRICTS

2.9.1 Conditional Use District (CUD)

- (A) ~~Generally
 - (1) ~~Any use permitted under the CUD process shall conform to all applicable development regulations for the corresponding general use zoning district as well as any specific development standards outlined within this Ordinance.~~~~

⁴¹ Required by NCGS 160A-383.

2.11.5 Findings of Fact

The Board of Adjustment shall provide a detailed rationale for its decision in the form of an order to affirm, modify, or reverse the decision of the Planning Director. This order shall provide the necessary justification for the Board's action based on the testimony and evidence entered into the record during the hearing.

2.11.6 Notice Requirements

Notice requirements shall follow Section 2.12.6(A). Other subsections of Section ~~2.2.6~~ 2.12.6⁴² are not applicable to applications for an appeal of an interpretation.

SECTION 2.12: BOARD OF ADJUSTMENT

2.12.1 General Provisions

- (A) The Board shall act on all applications before it.
- (B) The Board shall act on any appeal of a Stop Work Order issued by the Planning Director at its next regularly scheduled meeting or at a special meeting called for that purpose.

2.12.2 Quasi-Judicial Proceedings

- (A) The Board of Adjustment acts in a quasi-judicial capacity. However, it is not intended that its proceedings be conducted as formally as those before courts.
- (B) The rules of procedure and evidence set forth in this Ordinance shall be followed to protect the interests of all parties and the public.
- (C) The presiding officer shall administer oaths to all witnesses and shall make rulings necessary to preserve fairness, order, or proper decorum in any matter before the Board of Adjustment. Any person who, while under oath during a proceeding before the Board, willfully swears falsely is guilty of a Class I misdemeanor.
- (D) Any member of the Board of Adjustment or any interested party may object to, and the presiding officer may exclude, any evidence, testimony, or statement that is deemed incompetent, irrelevant, immaterial, or unduly repetitious and therefore fails to reasonably address the issues before the Board of Adjustment.

2.12.3 Evidence and Testimony

- (A) **Interested Party**
 - (1) Any interested party may present evidence or testimony, cross-examine witnesses, inspect documents, and offer evidence or testimony in explanation or rebuttal.
 - (2) Any member of the Board of Adjustment may question any interested party.
 - (3) Persons other than interested parties may make competent, relevant, and material comments.
- (B) **Subpoenas**
 - (1) The Board of Adjustment may subpoena witnesses and compel the production of evidence.
 - (2) To request issuance of a subpoena, persons with standing as detailed under NCGS 160A-939(d), shall make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas in those cases where testimony or evidence is deemed to be relevant, reasonable in nature and scope, and not oppressive.

⁴² Typographical error that staff recommends correcting as part of this amendment package.

- (3) The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full Board.
- (4) If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment, or the party seeking the subpoena, may apply to the General Court of Justice for an order requiring that its order be obeyed, and the Court will have jurisdiction to issue those orders after notice to all proper parties.
- (5) No testimony of any witness before the Board of Adjustment, pursuant to a subpoena issued in exercise of the power conferred by this subsection, may be used against the witness in any civil or criminal action, other than a prosecution for false swearing committed on the examination.
- (6) Anyone who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely, is guilty of a Class 1 misdemeanor.

2.12.4 Quorum and Vote Required

- (A) A quorum of the Board is necessary to conduct any business and shall consist of four members.
- (B) The affirmative vote of four of the members of the Board shall be necessary in order to effect any variation in this Ordinance.
- (C) A majority of the members shall be required to decide on the issuance of a Class B Special Use Permit or an appeal application.

2.12.5 Notification of Board Action

- (A) Within five working days after Board action, the Planning Director shall have available in the Planning Department's office a notice of decision of the Board's action.
- (B) The Planning Director shall notify the parties to an application or appeal of the Board's disposition. This includes the applicant, the property owner if different from the applicant, or any individual who has submitted a written request for a copy prior to the date the decision becomes effective. This notice shall be made by registered or certified mail within five working days of the Board's actions.
- (C) The Planning Director shall keep a copy of the Board's action on file.

2.12.6 Notice Requirements for Matters Before the Board

- (A) For matters other than applications for Class B Special Use Permits which are not published in a newspaper⁴³, the Board shall give notice of matters coming before it by causing notice to be placed in a newspaper of general circulation in Orange County. The notice shall appear once a week for two consecutive weeks, the first insertion to be not less than ten days nor more than 25 days prior to the meeting date. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.
- (B) In the case of application for a Class B Special Use permit or variance the Planning Director shall give written notice by certified mail to adjacent property owners. This notice shall be given not less than 15 days prior to the meeting date. Adjacent property owners are those whose property lies within 500 feet of the affected property and whom are currently listed as property owners in the Orange County tax records.

⁴³ The Staff Attorney has suggested that public hearings for SUPs not be included in legal advertisements since the general public does not have standing in such matters and cannot participate. (State Statutes do not require legal ads for SUP applications). As shown in the remainder of this section, a notice would still be posted on the affected parcel and adjoining property owners would receive mailed notification of the hearing date (which they would also have been informed of via the Neighborhood Information Meeting materials).

There are no proposed changes in this page - it is provided for information.

- (C) The Planning Director shall post on the affected property a notice of the Board meeting at least ten days prior to the meeting date.
- (D) In the case of an appeal of a Stop Work Order issued by the Planning Director, the Planning Director shall give written notice by certified mail to the property owner, and/or person(s) engaged in the alleged violation. Notification of adjacent property owners, posting of property, and publication of a hearing notice is not required.

SECTION 2.13: EXEMPT SUBDIVISIONS

2.13.1 Generally

- (A) Persons proposing divisions of land that do not constitute a subdivision must request a determination of an exempt subdivision status with the Planning Director. Activities that do not constitute a subdivision are found in Section 7.2.1.
- (B) One copy of the final mylar plat and three paper copies of the plat shall be submitted with the request for a determination for an exempt subdivision.
- (C) Exempt subdivisions shall comply with all applicable non-plat requirements of this Ordinance.

2.13.2 Review and Action

- (A) Following receipt of a request for a determination of an exempt subdivision status, the Planning Director shall make a determination of the land division's exempt or nonexempt status.
- (B) If the Planning Director determines that the proposed land division does not constitute a subdivision, the Planning Director shall certify the proposed land division as exempt and include the necessary statement on the plat certifying same.
- (C) If the Planning Director determines that the proposed land division constitutes a subdivision, the applicant shall be informed of such in writing and shall be required to submit the appropriate Subdivision application.

SECTION 2.14: MINOR SUBDIVISIONS

2.14.1 Review and Decision Process Flow Chart

Review and approval of Minor Subdivision applications shall adhere to the process detailed herein. The applicant shall demonstrate compliance with the development standards contained in Article 7 of this Ordinance.

- (4) Historic properties,
 - (5) Scenic corridors,
 - (6) Known bird migratory patterns through the County,
 - (7) Voluntary Agricultural Districts, and
 - (8) Publicly-owned or quasi-public lands.
- (C) In order to participate in the Plan, all owner(s), or their legally binding representatives, shall submit an application on a form prepared by the Planning Department requesting inclusion.
- (D) All telecommunication providers who elect to construct facilities on properties in the Plan shall provide all necessary and requested information to the County's telecommunications consultant.
- (E) Modification of the Plan may be considered annually at the **February first** Quarterly Public Hearing **of the calendar year, normally held in February**. Any applicant requesting modification of the Plan shall make application to the Planning Director on or before December 1st of each year. The fee for modifying the Plan shall be that as set forth in the Orange County Schedule of Fees.
- (F) Withdrawal from the Plan is permitted if any owner submits, to the Planning Director, a notarized statement requesting same. Upon receipt of the request, including any fee for modifying the Plan as set forth in the Orange County Schedule of Fees, the Planning Director shall inform interested parties that the property has been withdrawn from consideration. Removal of the property from the Plan shall be processed as a modification as detailed herein.

5.10.3 Annual Telecommunications Projection Meeting (ATPM)

(A) Purpose and Outcome

- (1) The purpose of the ATPM meeting is to allow for a complete review of collocation opportunities, address coverage issues, and discuss the location of needed telecommunication support structures with providers who intent on submitting development applications for action by the County. The intended outcome of the meeting is to allow the County and interested parties to develop a plan for facility deployment within the County that provides reasonable coverage based on the needs of the County and its residents, while minimizing the total number of needed telecommunication support facilities, including minimizing the intrusiveness of such facilities, and encouraging the development of a more efficient telecommunication network.
- (2) The intended outcome of the meeting is an understanding amongst the Planning Director and providers on areas of the County where telecommunication support facilities are needed and application request for the year should be focused.

(B) Applicability

- (1) By December 31st of each calendar year, telecommunication providers shall submit to the Planning Director a plan indicating proposed search rings for anticipated telecommunication support structures. This plan shall identify areas where providers are looking to locate facilities, as well as identify those areas of the County that are underserved by existing facilities.
- (2) As of the effective date of this Ordinance amendment any pending applications that have not received a zoning compliance permit or a special use permit shall meet all requirements of this Ordinance, including, but not limited to submission deadlines, application standards and processing, excluding the ATPM requirement.

(C) Meeting Specifics

PROPOSED AMENDMENTS TO THE PLANNING BOARD'S
POLICIES AND PROCEDURES

APPROVED 11/8/2012

PLANNING BOARD POLICIES AND PROCEDURES

SECTION I: SCOPE

A. Purpose

1. To establish a policy and procedures whereby the Orange County Board of Commissioners will establish the specific policies and procedures governing the Planning Board.
2. The Orange County Board of Commissioners may appoint an advisory board whose duty is to serve in an advisory capacity to Orange County Board of Commissioners.

B. Authority

1. North Carolina General Statute 153A-76 grants boards of county commissioners the authority to establish advisory boards.
2. The Orange County Advisory Board Policy serves as the underlying policy document to which the Planning Board, in addition to this policy and procedure document, is subject. The Orange County Advisory Board Policy is attached hereto as "Exhibit A".
3. In the event that there is a conflict between the Orange County Advisory Board Policy and this Policies and Procedures document this Policies and Procedures document shall control.

C. Charge

1. The charge of the Planning Board is contained in Section 1.6.3 of the Orange County Unified Development Ordinance.

The purpose for which the Planning Board was formed: to serve in an advisory capacity to the Orange County Board of Commissioners in regards to planning, zoning, and subdivision matters, as provided in Section 1.6.3 of the Orange County Unified Development Ordinance.

SECTION II: GOALS AND OBJECTIVES

A. Goals

1. The Planning Board shall carry out the duties contained in Section 1.6.3 of the Orange County Unified Development Ordinance to the best of its ability.

B. Objectives

1. Acting under the directives of the Board of County Commissioners and with County staff, the Planning Board shall pursue the duties contained in Section 1.6.3 of the Orange County Unified Development Ordinance.

SECTION III: MEMBERSHIP

APPROVED 11/8/2012

A. Authority

1. North Carolina General Statute 153A-76 grants boards of county commissioners the authority to establish advisory boards and to appoint members to and remove members from those advisory boards. In acting on this authority the Orange County Board of Commissioners hereby establishes certain general conditions to which applicants and members of advisory boards should conform.

B. Composition

1. Planning Board composition is detailed in Section 1.6.1 of the Orange County Unified Development Ordinance. Additional membership requirements are listed in said Section of the UDO.
2. The Planning Board does not have alternate members.

C. Chair, Vice Chair, and Secretary

1. The Planning Board shall elect by majority vote a Chair and Vice Chair from among its members at the regular meeting in January of each year.
2. Chair and Vice Chair terms of office shall correspond to the requirements of the Orange County Advisory Board Policy.
3. The Secretary of the Planning Board shall be the Planning Director or his/her designee.
4. The Chair and Secretary shall ensure that each Planning Board member is presented with a copy of the Planning Board's charge, scope of authority, membership responsibilities, and code of conduct when the Planning Board member is appointed to the Planning Board.
5. The Planning Board Chair, or Vice Chair in the Chair's absence, shall attend quarterly public hearings and Board of County Commissioners meetings at which a decision is scheduled for items on which the Planning Board has made a recommendation.¹

SECTION IV. MEETINGS

A. Staffing

1. The Planning Director shall perform the duties set forth in Section 1.6.4 of the Orange County Unified Development Ordinance.

B. Agendas

1. Items for agendas shall be approved by the Planning Board Chair and staff.

¹ The new requirement was suggested at the May 12, 2015 BOCC work session when the BOCC discussed the public hearing process.

APPROVED 11/8/2012

2. The designated staff will develop and distribute to each member an agenda listing the matters to be considered at upcoming advisory board meetings. The regular meeting agenda and materials shall be distributed at least seven (7) calendar days before the regular meeting

C. Date, Time, and Location of Regular Meetings

1. Regular Meetings of the Planning Board shall be held on the first Wednesday of each month. The start time and location of the meeting shall be included on the agenda and shall typically be 7:00 p.m. at the Orange County West Campus Office Building located at 131 West Margaret Lane, Hillsborough. The Planning Board Chair, in consultation with staff, shall have the authority to change the start time and location of a regular meeting to meet any special circumstances, provided the information is included on the distributed agenda.

D. Notice of Meetings

1. Notice of regular Planning Board meetings and agendas shall be made available to all members and interested parties, and to any person who requests such notice, at least seven (7) days in advance of the meeting by e-mail and by posting on the Orange County government website.
2. Notice of public hearings shall conform to the notice requirements of Section 2.3.6 and/or 2.8.7, as applicable, of the Orange County Unified Development Ordinance.
3. Agenda materials for public hearings shall be distributed to Planning Board members and posted on the Orange County government website for interested parties a minimum of ten (10) calendar days prior to the public hearing.

E. Neighborhood Information Meetings²

1. Planning Board members shall be encouraged to attend Neighborhood Information Meetings (NIM) held as part of development review processes. At-Large members and members representing the Township in which a particular development project is proposed are specifically encouraged to attend the NIM.
2. Planning Department staff shall keep Planning Board members informed of upcoming NIMs via e-mailed messages. Said e-mail messages shall be sent to Planning Board members on the same date, or shortly after, the notifications are mailed to adjacent property owners.

² This new procedure is in response to Planning Board members expressing the desire to be kept informed of upcoming NIMs so they may attend the meetings.

APPROVED 11/8/2012

SECTION V. ORIENTATION

A. Attendance

1. Each member shall attend an orientation presented by the Orange County Staff to familiarize the advisory board members with the operation of County government, the Planning Department rules, and the operating procedures of the advisory board.
2. Each voting member will be encouraged to complete the orientation within six weeks of his or her appointment and participate in at least one meeting with the staff.

SECTION VI. BY-LAWS

A. By-Laws

1. Any Bylaws adopted by the Planning Board are void and no further bylaws shall be adopted. Procedure shall be governed solely by this policy document and the General Advisory Board Policy Document.
2. Should the Planning Board determine modifications to policies and procedures are necessary the Planning Board may petition the Board of County Commissioners for such modifications.

Amendment Package to Revise the Existing Public Hearing Process
(Option B – Planning Board Review/Recommendation After Public Hearing for Both
Legislative and Quasi-Judicial Items)

Notes

The pages that follow contain the amendments necessary to the Unified Development Ordinance (UDO) text to revise the existing public hearing process for Comprehensive Plan- and Unified Development Ordinance-related hearing items. This option would retain the existing cadence of having the Planning Board make its recommendation after the public hearing.

Proposed additions/changes to existing UDO text are depicted in **red**. Some of the proposed changes utilize footnotes to provide a brief explanation as to rationale. Users are reminded that these excerpts are part of a much larger document (the UDO) that regulates land use and development in Orange County. The full UDO is available online at: <http://orangecountync.gov/planning/Ordinances.asp>

Please note that the page numbers in this amendment packet may or may not necessarily correspond to the page numbers in the adopted UDO because adding text may shift all of the text/sections downward.

Some text on the following pages has a large “X” through it to denote that these sections are not part of the amendments under consideration. The text is shown only because in the full UDO it is on the same page as text proposed for amendment. Text with a large “X” is not proposed for deletion; proposed deletions are shown in **red strikethrough** text.

- (C) Each Township within the County shall be represented in the membership of the Board by at least one resident.
- (D) The Board of County Commissioners may by resolution establish rules related to the requirements for volunteer service on the Planning Board, appointment and removal of Planning Board members, and rules of procedure.
- (E) In establishing the Planning Board and its program, the Board of Commissioners intends that the Planning Board be guided by the following principle:
 - (1) The Comprehensive Plan, and any ordinances or other measures to effectuate it, shall be made with the general purpose of guiding and accomplishing a coordinated, and harmonious development of the County which will, in accordance with present and future needs, best promote health, safety and the general welfare, as well as efficiency in the process of development; including, among other things, adequate provisions for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of populations, the promotion of good civic design, wise and efficient expenditure of public funds, and adequate provision of public utilities, services, and other public requirements, and conservation of significant natural and man-made resources within the County.

1.6.2 Tenure and Membership Expectations

- (A) The tenure of office shall be three years. Members are eligible for reappointment for a second consecutive full term. After two consecutive terms a member shall be ineligible for reappointment for one year after the expiration of the previous terms.
- (B) Appointments shall be made so that one-third of the terms expire in March of each calendar year.
- (C) Appointments made to fill vacancies shall be for the unexpired term and shall not be counted as a term in determining eligibility for reappointment.
- (D) A member whose term has expired shall continue to serve on the Board until his/her respective successor has been appointed.
- (E) Attendance at the regular meetings of the Board **and at quarterly public hearings¹** shall be considered a prerequisite for maintenance of membership on the Planning Board. The Board of County Commissioners may declare a vacancy on the Planning Board because of a member's non-attendance, in accordance with the Planning Board Rules of Procedure.
- (F) Absence due to sickness, death of an immediate family member or similar reason shall be considered approved absences and shall not affect the member's status. In the event of long illness or other cause for prolonged absence, the member shall be replaced.
- (G) The Board of County Commissioners may by resolution establish rules related to tenure and membership expectations. If the terms of such resolution, or policy created thereby, conflict with the terms of this section 1.6.1 or 1.6.2 the terms of the resolution or policy shall control.

1.6.3 Duties

As provided for in 153A-321 of the General Statutes of North Carolina, as amended, the Planning Board shall have the following general Powers and Duties:

- (A) Make studies of Orange County and surrounding areas;
- (B) Determine objectives to be sought in the development of Orange County;
- (C) Propose and recommend plans for achieving these objectives;

¹ Proposed addition to clarify that Planning Board members are expected to attend the quarterly public hearings.

ARTICLE 2: PROCEDURES

SECTION 2.1: REVIEW AND DECISION MAKING AUTHORITY – SUMMARY TABLE

The following table provides a brief synopsis of the review and decision-making processes for development applications.

TABLE 2.1: REVIEW AND DECISION MAKING AUTHORITIES						
R=REVIEW DM=DECISION MAKER PH=PUBLIC HEARING						
ZONING/DEVELOPMENT REVIEW RELATED PROCEDURES	PLANNING DIRECTOR	EROSION CONTROL OFFICER	DEVELOPMENT ADVISORY COMMITTEE (DAC)	BOARD OF ADJUSTMENT	PLANNING BOARD	BOCC
Zoning Compliance Permits	R and DM	R	R			
Soil Erosion and Sedimentation Control Permits		R and DM				
Stormwater Management Plans		R and DM				
UDO Text Amendments	R		R		R [1]	DM and PH
Zoning Atlas Amendments	R		R		R [1]	DM and PH
Special Use Permits	R	R	R	DM and PH Class B	R [1] Class A	DM and PH Class A
Zoning Variances	R		R	DM and PH		
Conditional Use	R	R	R		R [1]	DM and PH
Appeals/Interpretations	R		R	DM and PH		
Comprehensive Plan Amendments	R				R [1]	DM and PH
Subdivision Related Procedures						
Exempt	R and DM					
Minor	R and DM	R	R			
Major	R	R	R		R and DM [2]	R and DM
Conditional Use	R	R	R		R [1]	R, DM, and PH
Appeal						
NOTES						
[1] The Planning Board attends a Joint Public Hearing with the public hearing held by the BOCC to review all zoning related items requiring a public hearing. The Planning Board will have the item referred to it and shall have up to 90 60 ² days to comment on the application.						
[2] The Planning Board approves the Concept Plan for a Major Subdivision and then makes a recommendation on the Preliminary Plat to the BOCC.						

² Staff is suggesting a shorter potential review period. In recent years, the BOCC has instructed the Planning Board to return its recommendation by a date/time certain due to the case law requirement that public hearings be adjourned to a date/time certain. Since the public hearing is now proposed to be closed the night of the hearing and the requirement for only written comments after the public hearing is proposed for removal, the Planning Board will need to know that recommendations must be made within 60 days.

~~(A) If the Board of County Commissioners denies an application, or the application is withdrawn subsequent to notice of the public hearing thereon, no application for the same or similar amendment, affecting the same property or a portion of it, may be submitted for a period of one year. Said one year period begins on the date of denial or withdrawal, as appropriate.~~

2.2.9 Manner of Review³

- (A) Applications requiring a public hearing shall be reviewed using either a legislative process or a quasi-judicial process as follows:
- (B) Comprehensive Plan amendments – legislative
- (C) Special Use Permits – quasi-judicial
- (D) Zoning Atlas and Unified Development Ordinance amendments – legislative
- (E) Conditional Use District (CUD) – rezoning portion is legislative; Special Use Permit portion is quasi-judicial
- (F) Conditional Zoning District (CZD) - legislative

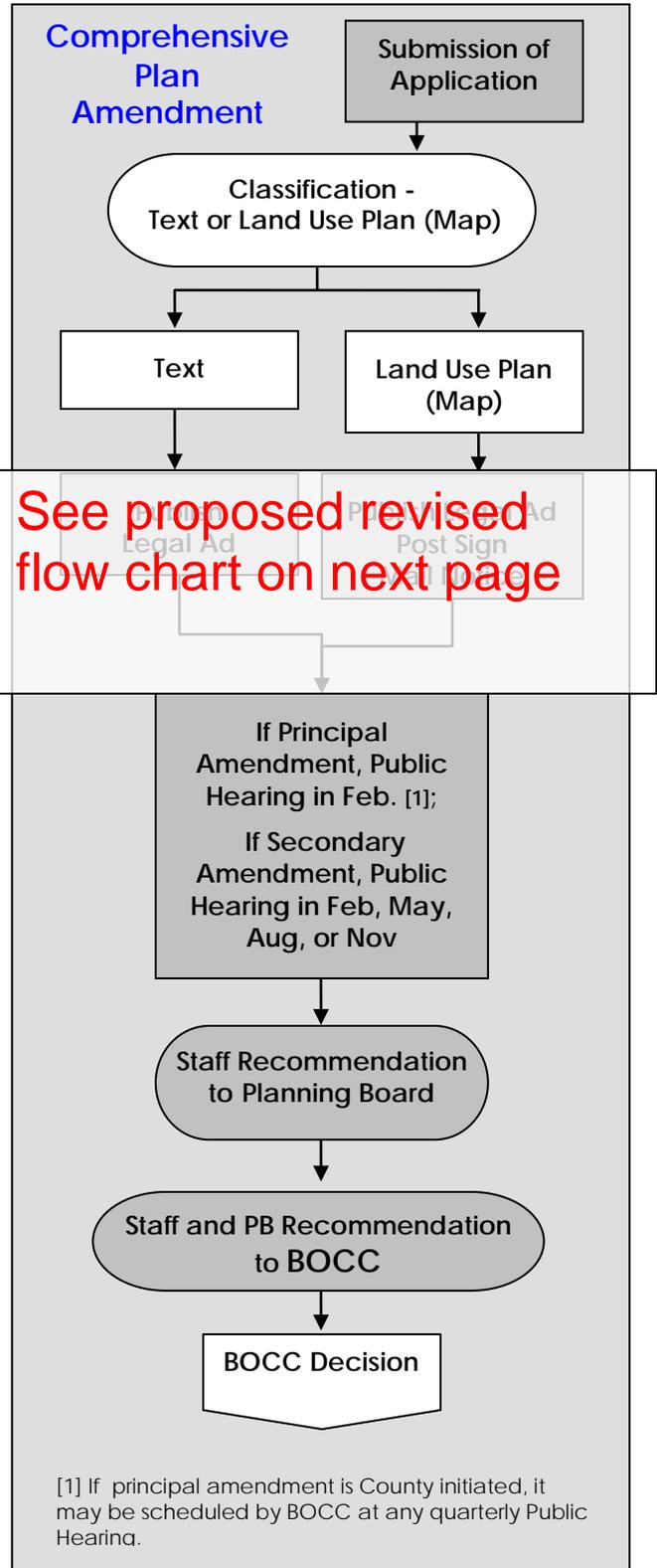
SECTION 2.3: COMPREHENSIVE PLAN AMENDMENTS

2.3.1 Review and Approval Flow Chart

The review and approval process for Comprehensive Plan Amendments is shown in the procedure’s flowchart.

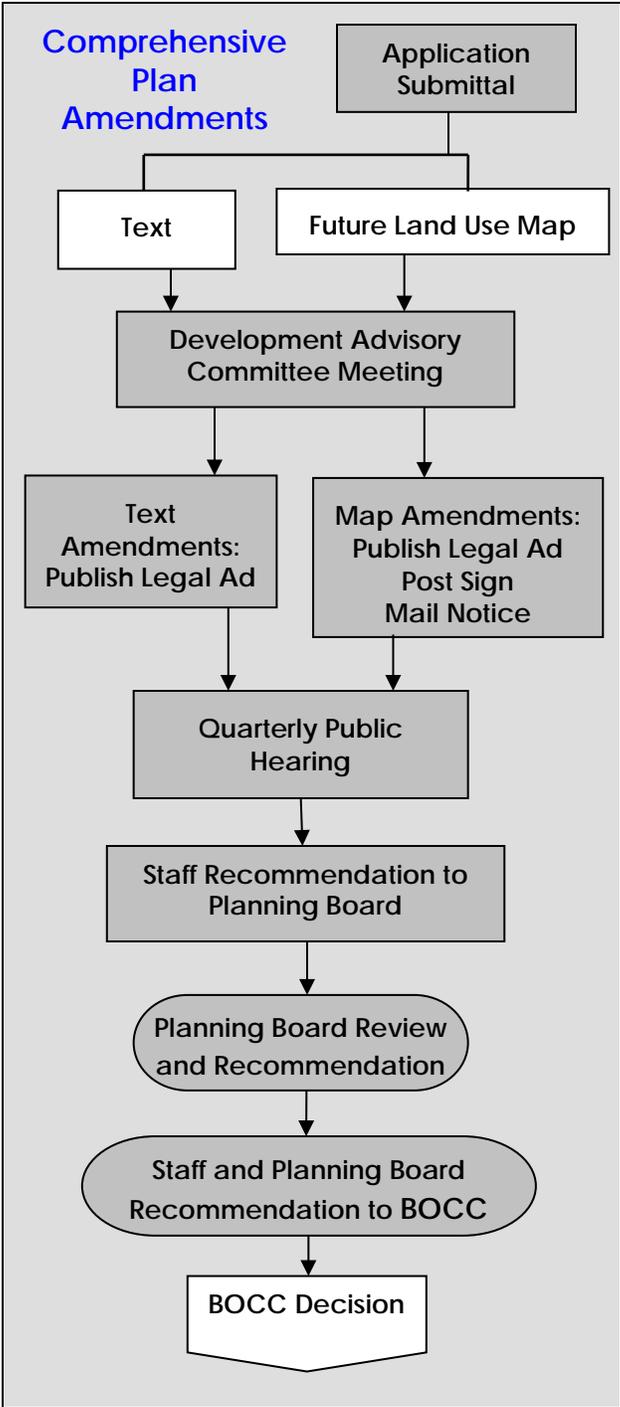
2.3.2 Generally

- (A) The Comprehensive Plan shall be so prepared that all or individual elements and parts thereof may be adopted and/or amended by the Board of Commissioners.
- (B) For the purpose of establishing and maintaining sound, stable, and desirable development within Orange County, the Comprehensive Plan or portion thereof shall not be amended except as follows:
 - (1) Because of changed or changing conditions in a particular area or areas of the County;
 - (2) To correct an error or omission; or



³ Proposed to be added to provide clarity on which type of review process is used for the various types of applications that require a public hearing. Staff is not suggesting adding the specifics of each process in the UDO as specifics may change as case law is made or State statutes are modified.

Proposed flow chart for Section 2.3.1



- (3) In response to a change in the policies, objectives, principles or standards governing the physical development of the County.

2.3.3 Initiation of Amendments

An amendment to the Comprehensive Plan or portion thereof may be initiated by:

- (A) The Board of Commissioners on its own motion;
- (B) The Planning Board;
- (C) Application, by any person or agency, which accurately and completely sets forth the reason(s) for the proposed amendment as prescribed in Section 2.3.2(B); or
- (D) The Planning Director.

2.3.4 Classification of Amendments⁴

Amendments to the Comprehensive Plan or portion thereof are classified as "principal" or "secondary" amendments.

(A) Principal Amendments Include

- (1) Additions to or modifications of policies, objectives, principles or standards;
- (2) The creation of new activity nodes or additions to existing activity nodes which exceed ten acres in land area; or
- (3) Proposals for new freestanding plan areas or additions to existing areas that exceed 100 acres in land area.

(B) Secondary Amendments Include

- (1) The expansion of an activity node where the additional area is contiguous to an existing node and does not increase its land area by more than ten acres;
- (2) The expansion of a designated plan area where the additional area is contiguous to the existing plan designation and does not increase its land area by more than 100 acres;
- (3) A correction of an error or omission; or
- (4) Revisions to any factual or descriptive material.

Staff proposes this entire section for deletion (see footnote below) - request ORC comment

2.3.5 Public Hearing Required

A public hearing shall be held before adoption of any proposed Comprehensive Plan amendment. The Board of County Commissioners ~~and the Planning Board~~⁵ shall hear applications and receive public comment for proposed Comprehensive Plan amendments in a Quarterly Public Hearing.

2.3.6 Notice Requirements for Public Hearings

- (A) The Planning Director shall provide public notice for any Comprehensive Plan amendment to be heard at a Quarterly Public Hearing. The notice shall include the time and location of the public hearing.⁶

⁴ Staff proposes that this entire section (2.3.4) be deleted because it is relevant only in conjunction with Section 2.3.7. Rather than limiting "principal" amendments to being heard "generally" only once per year, staff proposes that any Comprehensive Plan amendment could be heard at any of the quarterly public hearings. If this Section is deleted, subsequent sections would be renumbered and section reference updates might occur in other sections/articles of the UDO.

⁵ Since a quorum of Planning Board members will no longer be necessary to hold a public hearing, the public hearing would no longer be a joint hearing.

⁶ Proposed addition made by the Staff Attorney.

- (B) For all proposed amendments, ~~Notice~~ notice of the public hearing shall be given by publishing said notice at least twice in a newspaper of general circulation in the County, stating the time and place of such hearing and the substance of the proposed amendment.
 - (1) This notice shall appear in said newspaper for two consecutive weeks with the first notice appearing not less than ten days nor more than 25 days before the date set for the public hearing. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.
 - (2) The minimum published size of the notice shall be 25 square inches.⁷
- (C) ~~In the case of~~ For amendments to the ~~Land Use Plan (map)~~ Future Land Use Map⁸, the Planning Director shall ~~provide additional notice with the following:~~⁹
 - (1) prominently post a notice of the public hearing on the ~~site proposed for the land use change affected parcel~~ or on an adjacent public ~~street or highway~~ right of way not less than ten days before the date set for the public hearing.
 - (a) When multiple parcels are ~~included within a proposed Land Use Plan (map) [Future Land Use Map] amendment~~ affected, a posting on each individual parcel is not required, but ~~the county shall post~~ sufficient notices ~~shall be posted~~ to provide reasonable notice to interested persons.
 - (2) ~~In the case of amendments to the Land Use Plan (map) [Future Land Use Map],~~ written notice of the public hearing shall be sent by first-class mail to all property owners, as listed in the Orange County tax records, whose property is affected ~~(property that is included in the proposed land use plan [Future Land Use Map] amendment) and all property owners~~ or within 500 feet of the affected parcel(s) . Said notice shall be mailed at least 14 days, but not more than 25 days, prior to the date of the public hearing.

2.3.7 Consideration of Amendments¹⁰

- (A) Principal amendments shall generally ~~only~~ be considered ~~only~~ once each year at the first quarterly public hearing ~~in February of the calendar year, usually held in February~~¹¹.
- (B) If a principal amendment is scheduled ~~by the Board of County Commissioners~~¹² for other than the ~~February first~~ quarterly public hearing of the calendar year, it shall be scheduled during one of the quarterly public hearings held ~~in May, August, and November~~ later in the year.

⁷ (B)(1) and (B)(2) are currently (B) and (C) but have been recommended as subparagraphs by the Staff Attorney.

⁸ The name of this map was changed in the Comprehensive Plan in 2012 and should be updated here.

⁹ Proposed changes suggested by the Staff Attorney to clarify the existing language.

¹⁰ Staff proposes that (A), (B), and (C) of this section be deleted because staff believes that any proposed amendment to the Comprehensive Plan should be able to be heard at any of the quarterly public hearings. Allowing principal amendments "generally" only once per year imposes constraints. If there is not interest in allowing consideration of any amendment at any of the four QPHs per year, then the language should be modified as shown.

¹¹ Staff is suggesting the language be less constrictive in case the BOCC wants to move quarterly public hearing dates in the future when the annual BOCC meeting calendar is created in the fall of each year. For example, this was done for the public hearing that was formerly held in August of each year but is now held in September.

¹² The BOCC does not schedule amendments (staff is responsible for doing so) but if a principal amendment were proposed for a QPH other than the first hearing of the year, staff would coordinate with the Manager and Chair/Vice-Chair to gain input into whether the application should be allowed to be heard at one of the three later QPHs.

Staff proposes A, B, and C for deletion (see footnote) - request ORC comment

- (C) Secondary amendments may be considered four times each year at ~~the a quarterly joint~~ public hearings ~~in February, May, August, and November as designated each year on the Board of County Commissioners meeting calendar.~~
- (D) A proposed amendment may be considered in conjunction with a rezoning request for the same property ~~if the requests are in compliance with an adopted small area plan.~~¹³
- (E) ~~Requests for a rezoning not in compliance with an adopted small area plan, conditional use district, and/or special use permit may only be considered at subsequent hearings or meetings following approval of the proposed amendment to the Comprehensive Plan.~~¹⁴

2.3.8 Application Requirements

(A) Generally

- (1) All applications for amendments to the Comprehensive Plan shall be submitted on forms supplied by the Planning Department and shall be signed.
- (2) Three copies of the application shall be submitted to the Planning Director.
- (3) Before accepting any amendment application, the Planning Director shall ensure that it contains all required information, as specified in this Ordinance. Applications which are not complete, or otherwise do not comply with the provisions of this Ordinance, shall not be accepted by the Planning Director, but shall be returned to the applicant, with a notation by the Planning Director of the deficiencies in the application.

(B) Contents of Application

Applications for amendments to the Comprehensive Plan, without limiting the right to file additional material, shall contain at least the following:

- (1) For amendments to the ~~Land Use Plan (map)~~ **Future Land Use Map** within the Land Use Element, a map at a legible scale adequately illustrating the land which would be covered by the proposed map amendment, and a complete list of Property Identification Numbers (PIN) for the properties;
- (2) For amendments to the Comprehensive Plan text, a copy of the existing text provision(s) which the applicant proposes for amendment, and a written statement which describes in detail changes which the applicant proposes to make to the text of the Comprehensive Plan and the rationale for the proposed amendment consistent with the standards established in this Ordinance; and
- (3) All other circumstances, factors and reasons which the applicant offers in support of the proposed Comprehensive Plan amendment.

2.3.9 Analysis and Recommendation

The Planning Director shall cause an analysis to be made of the application and, based upon that analysis, prepare a recommendation for consideration by the Planning Board and the Board of County Commissioners.

2.3.10 Planning Board Review

- (A) Following the public hearing, all proposed amendments shall be referred to the Planning Board for consideration and recommendation.

¹³ The Staff Attorney has recommended deletion of this provision due to concerns over who determines compliance with a small area plan and how compliance is determined.

¹⁴ The Staff Attorney has recommended deletion of this provision because of the modification made in (D). If the modification in (D) is not made, the language of (E) should be modified because of the concern that a restriction on a rezoning application has been placed in the Comprehensive Plan amendment section.

- (B) The Board of County Commissioners may direct the Planning Board to provide a recommendation by a date certain. If the Board of County Commissioners does not so direct, the Planning Board shall make its recommendation within ~~three regularly scheduled Planning Board meetings~~ 60 calendar days¹⁵ unless the Board of County Commissioners grants an extension.
- (C) ~~The Planning Board shall allow public comments at its meeting and those comments shall be taken into consideration by the Planning Board in making its recommendation.~~
- (D) The Planning Board shall review and comment on applications and shall make one of the following recommendations after the public hearing:
 - (1) Recommend approval,
 - (2) Recommend denial, or
 - (3) Recommend approval but with specified changes.
- (E) If the Planning Board fails to make a recommendation within the time allotted in subsection (B), the application shall be forwarded to the Board of County Commissioners without a Planning Board recommendation.
- (F) ~~Amendments initiated by Orange County shall not be subject to time limitations other than those specified by the Board of County Commissioners during the public hearing process.~~¹⁶
- (G) ~~Evidence not presented at the public hearing may be submitted in writing to the Planning Board for consideration prior to the Planning Board's recommendation to the Board of County Commissioners. The Planning Board may consider additional oral evidence only if it is for the purpose of presenting information also submitted in writing.~~¹⁷

2.3.11 Action by Board of County Commissioners

- (A) The Board of County Commissioners shall not consider enactment of ~~the~~ a proposed amendment until the Planning Board either makes its recommendation or takes no action on the application as prescribed in ~~this section~~ Section 2.3.10.
- (B) ~~In making its decision, the Board of Commissioners shall consider all relevant evidence presented at the public hearing and any submitted written evidence that was considered by the Planning Board in making its recommendation.~~
- (C) The Board of Commissioners, upon receipt of a recommended Comprehensive Plan or portion thereof from the Planning Board, shall consider such recommendations and adopt them by resolution, either unchanged or with modifications.

¹⁵ Staff is suggesting a shorter potential review period. In recent years, the BOCC has instructed the Planning Board to return its recommendation by a date/time certain due to the case law requirement that public hearings be adjourned to a date/time certain. Since the public hearing is now proposed to be closed the night of the hearing and the requirement for only written comments after the public hearing is proposed for removal, the Planning Board will need to know that recommendations must be made within 60 days.

¹⁶ Staff is suggesting that amendments initiated by the County have the same review time as applications submitted by others.

¹⁷ Staff is suggesting that oral comments on legislative items could be made at the Planning Board meeting and they would not also have to be submitted in writing. This will help alleviate the current awkward process of leaving the public hearing open in order to receive written comments which necessitates items being placed on the BOCC under the "public hearing" heading but with the note that no additional comments are accepted.

- (3) A map, drawn to scale, showing the location of the proposed watercourse alteration or relocation.
- (E) Certification Exemptions
The following structures, if located within Zone AE, are exempt from the elevation/flood proofing certification requirements specified in items (A) and (B) above:
 - (1) Recreational vehicles meeting requirements of Section 6.6.1(B)(5);
 - (2) Temporary structures meeting requirements of Section 6.6.1(B)(7); and
 - (3) Accessory Structures with any dimension that is 12 feet or greater in height, width, or depth, meeting requirements of Section 6.6.1(B)(8).

SECTION 2.7: SPECIAL USE PERMITS

2.7.1 Generally

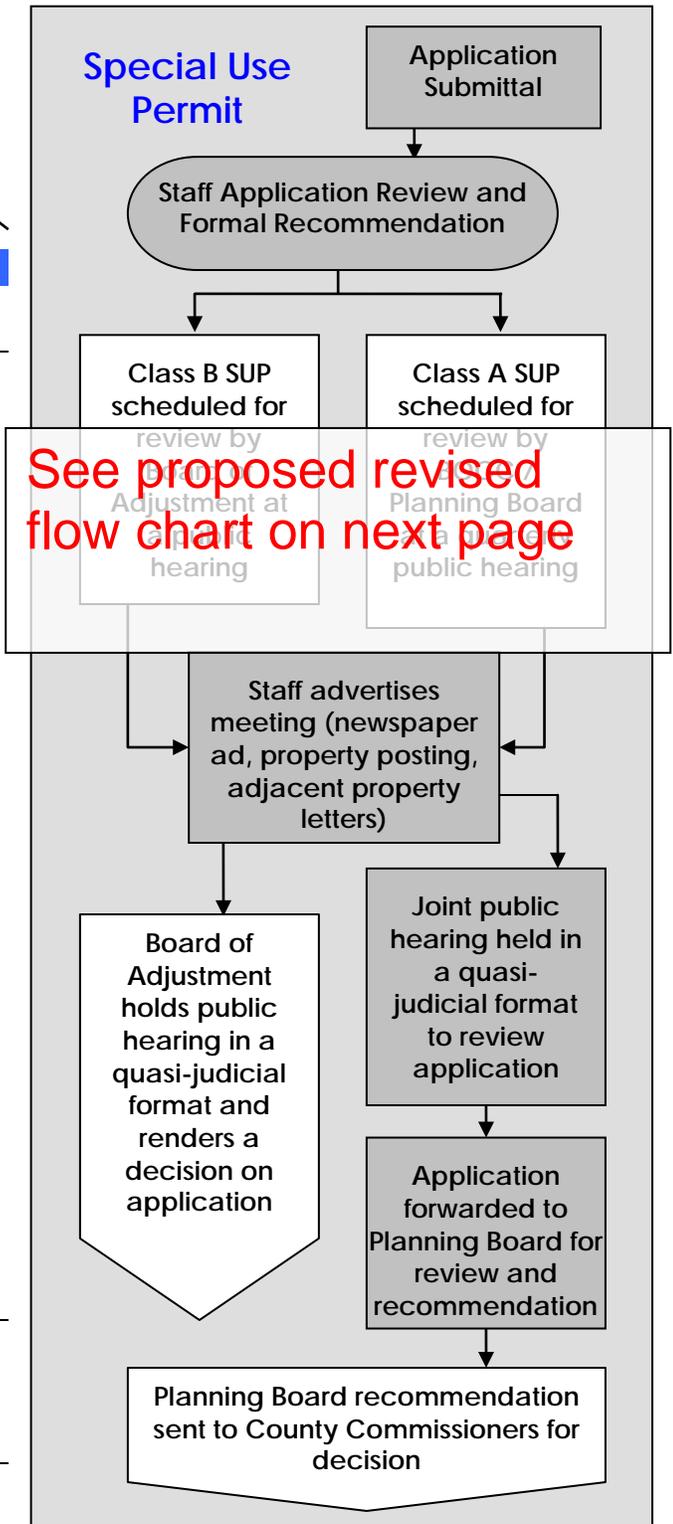
- (A) Any use or development designated by applicable zoning district regulations contained within Article 5 as a special use, or as allowed only pursuant to a special use permit (either Class A or Class B), may be established in that district only after the use or development is authorized by a validly issued and recorded special use permit.
- (B) This section sets forth required review and approval procedures for submittal, review, and approval of applications for special use permit.
- (C) A special use permit authorizes its holder to use or develop a particular parcel of land in a particular way, as specified by the terms and conditions of the special use permit.
- (D) A special use permit imposes on its holder the responsibility of ensuring that the authorized use or development continues to comply with the terms and conditions of approval.
- (E) Issuance of a special use permit does not relieve the holder of the special use permit of the additional responsibility of obtaining a building permit or any other permit or approval required by any other applicable law.

2.7.2 Review and Approval Flow Chart

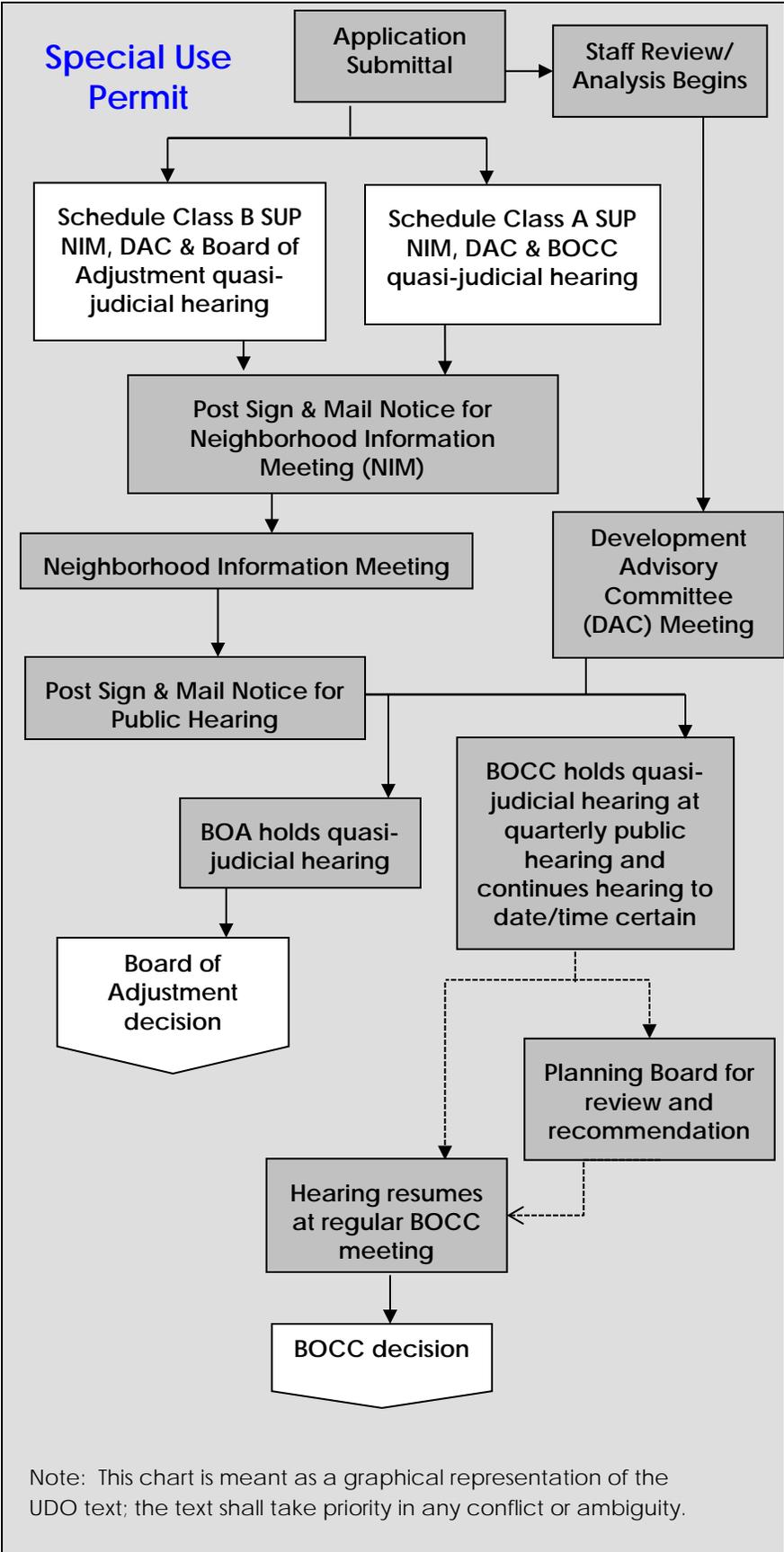
The review and approval process for Special Use Permits is shown in the procedure's flowchart.

2.7.3 Application Requirements

- (A) Applications for a Special Use shall be



Proposed flow chart for Section 2.7.1



submitted on forms provided by the Planning Department in accordance with Section 2.2 of this Ordinance.

- (B)** Applications shall include:
- (1)** A full and accurate description of the proposed use, including its location, appearance, and operational characteristics.
 - (2)** The name(s) and address(es) of the owner(s) of the property involved.
 - (3)** Relevant information needed to show compliance with the general and specific standards governing the Special Use (See Articles 5 and 6).
 - (4)** For Class A Special Uses 26 copies of the site plan, and for Class B Special Uses 10 copies of the site plan, prepared by a registered North Carolina land surveyor, landscape architect, architect, or engineer, which shall contain the information listed in Section 2.5.
 - (5)** If the application involves a Preliminary Subdivision Plat, 26 copies of the Plat prepared in accordance with Section 7.14 shall be provided.
 - (6)** A list of all parcels located within 500 feet of the subject parcel and the name and address of each property owner, as currently listed in the Orange County tax records.
 - (7)** Elevations of all structures proposed to be used in the development.
 - (8)** For Class A Special Uses 26 copies and for Class B Special Uses 10 copies of the Environmental Assessment and/or Environmental Impact Statement, if required by Section 6.16.
 - (9)** Method of disposal of trees, limbs, stumps and construction debris associated with the permitted activity, which shall be by some method other than open burning.
 - (10)** Statement from the applicant indicating the anticipated development schedule for the build-out of the project.
 - (11)** Statement from the applicant in justification of any request for vesting for a period of more than two years (five years maximum).

2.7.4 Staff Review

- (A)** The Planning Director shall cause an analysis to be made of the application by qualified representatives of the County and other agencies or officials as appropriate.
- (1)** Applications for agricultural support enterprise uses located within the Rural Buffer land use classification, as depicted on the Future Land Use Map of the adopted Comprehensive Plan, shall be forwarded to the County's Agricultural Preservation Board for review and comment.
 - (a)** The Agricultural Preservation Board shall have 30 calendar days to provide comments. If comments are not received within this timeframe, the application review process shall not be delayed.
 - (b)** For purposes of this subsection, agricultural support enterprise uses shall be defined as those permitted in the ASE-CZ zoning district, as detailed within Section 5.2.3 of this Ordinance.
- (B)** The Planning Director shall submit the analysis to the Board of County Commissioners and the Planning Board, in the case of Class A Special Uses, or the Board of Adjustment, in the case of Class B Special Uses.
- (C)** The appropriate Board reviewing the application shall receive and enter the analysis into evidence during the public hearing. The analysis shall be subject to examination by all

interested parties and the Planning Director shall be subject to cross-examination regarding the analysis.

- (D) The Planning Director shall not make a recommendation on the general findings detailed within Section 5.3 of this Ordinance

2.7.5 Neighborhood Information Meeting

- (A) Before a Public Hearing may be held for a Special Use the applicant is required to schedule a minimum of one neighborhood information meeting. The purpose of the meeting is to obtain surrounding property owner input and comments on the proposed development project and allow staff an opportunity to explain the review process associated with the request.
- (B) The applicant shall obtain property owner mailing address information from the Orange County Planning Department, which shall utilize Orange County Land Records data, and shall mail certified notices of the meeting date and time to each property owner within 500 feet of the property for which a Special Use has been requested.
- (C) The applicant shall mail notice of the Neighborhood Information Meeting a minimum of 14 days prior to the date of the meeting.
- (D) The applicant shall post a sign on the property advertising the date, place, and time of the meeting a minimum of 10 days prior to the date of the meeting.
- (E) The meeting shall be held a minimum of 45 days prior to the date of the Public Hearing.
- (F) Neighborhood information meetings for telecommunication facilities shall be held in accordance with the provisions of Section 5.10.8 (B) (2).

2.7.6 Notice Requirements for Class A Special Use Permits

- (A) The Planning Director shall give public notice of the date, time and place of the public hearing to be held to receive ~~comments, evidence in the form of~~¹⁸ testimony and exhibits pertaining to the application for a Special Use.
- ~~(B) Such notice shall be published in a newspaper of general circulation in Orange County once a week for two successive weeks, with the first notice to be published not less than ten days nor more than 25 days prior to the date of the hearing. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.¹⁹~~
- (C) The Planning Director shall post on the affected property a notice of the public hearing at least ten days prior to the date of said hearing.
- (D) Written notice shall be sent by certified mail to all adjacent property owners not less than 15 days before the hearing date. Adjacent property owners are those whose property lies within five hundred feet of the affected property and whose names and addresses are currently listed in the Orange County tax records.

2.7.7 Notice Requirements for Class B Special Use Permits

Notice Requirements for Class B Special Use Permits shall follow the procedures in Section 2.12.6.

¹⁸ The Staff Attorney has suggested this language modification since SUP applications are quasi-judicial in nature and require testimony rather than comments.

¹⁹ The Staff Attorney has suggested that legal advertisements for quarterly public hearings not include SUP applications since the general public does not have standing in such matters and cannot participate. (State Statutes do not require legal ads for SUP applications). As shown in the remainder of this section, a notice would still be posted on the affected parcel and adjoining property owners would receive mailed notification of the hearing date (which they would also have been informed of via the Neighborhood Information Meeting materials).

2.7.8 Nature of Proceedings

- (A) The review of Special Use Permit applications shall be conducted during a public hearing by the decision-making board.
- (B) The review of a Special Use Permit application is a quasi-judicial process, where the Board responsible for rendering a decision acts much like a panel of judges. The Board hears factual evidence and sworn testimony presented at an evidentiary hearing, and then makes findings of fact supported by competent, substantial, and material evidence.
- (C) The chair or presiding officer of the hearing shall swear all parties intending to present evidence or testimony during the hearing.
- (D) The chair or presiding officer may take whatever action is necessary to limit testimony to the presentation of new factual evidence that is material to the application, to ensure fair and orderly proceedings, and to otherwise promote the efficient and effective gathering of evidence. Such actions may include:
 - (1) Barring the presentation of obvious hearsay evidence,
 - (2) Barring the presentation of non-expert opinion,
 - (3) Interrupting digressions into immaterial testimony,
 - (4) Interrupting repetitive testimony,
 - (5) Reasonably limiting the time allotted each witness or cross-examination,
 - (6) Providing for the selection of spokespersons to represent groups of persons with common interests,
 - (7) Interrupting personal attacks, and/or
 - (8) Ordering an end to disorderly conduct.
- (E) Where the Board finds compliance with the general standards, specific rules governing the specific use, and that the use complies with all required regulations and standards, the application must be approved unless the Board shall also find, in some specific manner, that:
 - (1) the use will not maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted.
- (F) Those opposing approval of the application on the grounds that the use will not promote the public health, safety and general welfare shall have the burden of establishing, by competent material and substantial evidence, the specific manner in which the proposed use does not satisfy the requirements for approval of the application for a Special Use.

2.7.9 Review and Decision

- (A) For Class A Special Use ~~permits~~ ~~Permits~~, the following shall apply:
 - (1) The Board of County Commissioners ~~and Planning Board~~²⁰ shall review the application during ~~a regularly scheduled public hearing~~ ~~a meeting designated as a Quarterly Public Hearing~~.

²⁰ While the Planning Board is expected to attend the public hearing to hear evidence, a quorum of Planning Board members will not be necessary in order to conduct the hearing.

- (2) All evidence shall be submitted during the public hearing. If additional evidence is requested during a hearing which must be submitted at a later date, the hearing shall be continued to a date/time certain in order to receive the additional evidence.²¹
- (3) Following ~~review~~ submission of all evidence at a public hearing, the Special Use ~~permit~~ Permit application shall ~~may~~²² be referred to the Planning Board for its consideration and recommendation.
 - (a) The public hearing shall be continued to a date/time certain in order to receive the Planning Board's recommendation.
- (4) ~~The Board of County Commissioners may direct the Planning Board to provide a recommendation by a date certain. If the Board of County Commissioners does not so direct, the Planning Board shall make its recommendation within three regularly scheduled meetings.~~²³
 - (i) If the Planning Board fails to make a recommendation within the time allotted ~~within subsection (3)~~ above, the ~~application shall be forwarded to the Board of County Commissioners~~ public hearing will resume without a Planning Board recommendation.²⁴
- (5) The Planning Board shall consider only the evidence presented to the Board of County Commissioners at the public hearing.²⁵
- (6) The Planning Board shall make a recommendation and proposed findings of fact on the application, including the findings required in Section 5.3.2 of this Ordinance. The Planning Board's action on an application shall be one of the following:
 - (a) Recommend approval based on proposed findings of fact,
 - (b) Recommend denial based on proposed findings of fact,
 - (c) Recommend approval based on proposed findings of fact but with specified conditions.
- (7) After receipt of any Planning Board recommendation and closure of the public hearing, the Board of County Commissioners shall take action upon the application. This action shall be one of the following:
 - (a) Approval;
 - (b) Approval with conditions; or
 - (c) Denial.

~~(B) For Class B Special Use Permits, the following shall apply:~~

- ~~(1) The Board of Adjustment shall review the application during a regularly scheduled public hearing.~~

²¹ In order to meet legal requirements for quasi-judicial proceedings, staff is suggesting this proposed language. Evidence would no longer be allowed to be submitted in writing after the quasi-judicial hearing. Instead, additional evidence would have to be presented by experts at a subsequent hearing (which does not necessarily have to be a quarterly public hearing date).

²² The Staff Attorney has suggested this language modification in order to allow for flexibility by the BOCC in cases that have no or little controversy.

²³ Because public hearings must be kept open to a date/time certain, this paragraph is obsolete and should be deleted.

²⁴ Currently, the language in (i) is (4) in the adopted UDO. It is suggested to be moved to under the new (a) in order to flow better. Language modifications have been suggested by the Staff Attorney.

²⁵ Language suggested by the Staff Attorney.

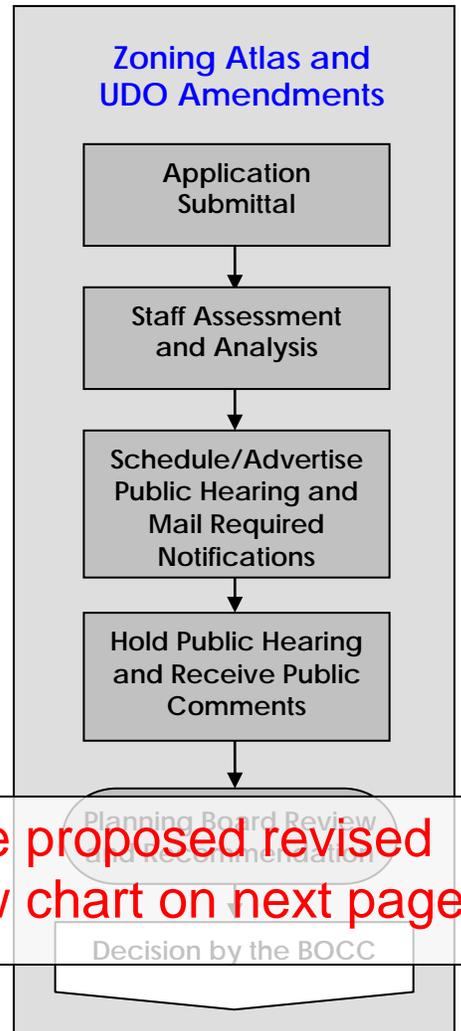
SECTION 2.8: ZONING ATLAS AND UNIFIED DEVELOPMENT ORDINANCE AMENDMENTS

2.8.1 Review and Approval Flow Chart

The review and approval process for a Zoning Atlas and Unified Development Ordinance Amendment is shown in the procedure's flowchart.

2.8.2 Amendment Initiation

- (A) An amendment to this Ordinance or the Zoning Atlas may be initiated by:
 - (1) The Board of County Commissioners on its own motion;
 - (2) The Planning Board;
 - (3) Application, by any person or agency, or
 - (4) The Planning Director.
- (B) If a request for consideration of an amendment proposal is submitted directly to the Board of County Commissioners, said Board may decline to consider the request or may refer the amendment proposal to the Planning Director for preparation of an amendment application.



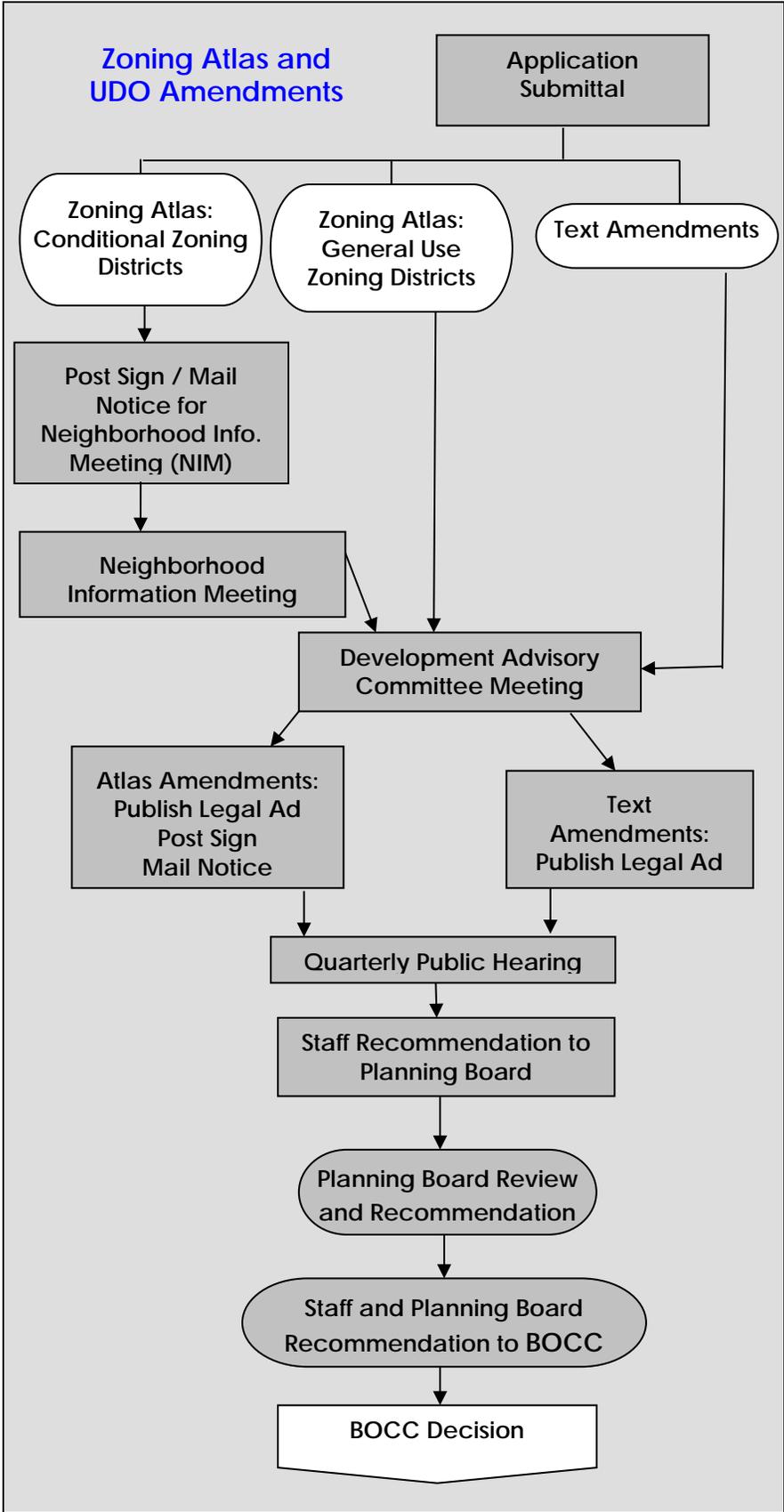
See proposed revised flow chart on next page

2.8.3 Contents of Application

Applications shall contain the following:

- (A) For amendments to the Zoning Atlas:
 - (1) A map at a legible scale showing the land which would be covered by the proposed amendment, and
 - (2) A legal description of the land.
- (B) For amendments to the Unified Development Ordinance text:
 - (1) A copy of the existing text provision(s) which the applicant proposes for amendment, and
 - (2) A written statement which describes in detail the changes the applicant proposes to make.
- (C) The alleged error in the Zoning Atlas and/or Unified Development Ordinance text that would be corrected by the proposed amendment with a detailed explanation of such error in the Zoning Atlas and/or Unified Development text and detailed reasons how the proposed amendment will correct the alleged error;
- (D) The changed or changing conditions, if any, in the area or in the County generally, which makes the proposed Zoning Atlas and/or Unified Development Ordinance text amendment reasonably necessary to promote the public health, safety and general welfare;
- (E) The manner in which the proposed Zoning Atlas and/or Unified Development Ordinance text amendment will carry out the intent and purpose of the adopted Comprehensive Plan or part thereof; and
- (F) A traffic impact study as required by Section 6.17.

Proposed flow chart for Section 2.8.3



- (G) For amendments to the Special Flood Hazard Area Overlay District, pertaining to a Letter of Map Amendment:
- (1) An elevation certificate with either an MT-1, MT-2, or MT-EZ (forms available through FEMA), or
 - (2) A “No-Impact” analysis for a Letter of Map Revision.
- (H) All other circumstances, factors and reasons that the applicant offers in support of the proposed Zoning Atlas and/or Unified Development Ordinance text amendment.

2.8.4 Applications for Amendment – Joint Planning Area

Applications for amendments to the Orange County Unified Development Ordinance and Zoning Atlas for the purpose of incorporating the provisions of the Chapel Hill Land Development Ordinance (and Zoning Maps) and/or the Carrboro Land Use Ordinance (and Zoning Maps) shall be processed as specified herein and as specified in the Joint Planning Agreement adopted November 2, 1987, and as amended from time to time.

Any text amendments adopted by Orange County shall be adopted by reference as though fully set forth herein. Any map amendments adopted by Orange County shall be officially denoted on the County Zoning Atlas. Where there is inconsistency between the amendment procedures contained herein and those contained in the Joint Planning Agreement, the provisions of the Joint Planning Agreement shall apply.

2.8.5 Review, Analysis and Recommendation

- (A) The Planning Director shall cause an analysis to be made of the application and, based upon that analysis, prepare a recommendation for consideration by the Planning Board and the Board of County Commissioners.
- (B) Applications for agricultural support enterprise uses located within the Rural Buffer land use classification, as depicted on the Future Land Use Map of the adopted Comprehensive Plan, shall be forwarded to the County’s Agricultural Preservation Board for review and comment.
- (1) The Agricultural Preservation Board shall have 30 calendar days to provide comments. If comments are not received within this timeframe, the application review process shall not be delayed.
 - (2) For purposes of this subsection, agricultural support enterprise uses shall be defined as those permitted in the ASE-CZ zoning district, as detailed within Section 5.2.3 of this Ordinance.

2.8.6 Public Hearing Required

A public hearing shall be held before adoption of any proposed Zoning Atlas Amendment and/or text amendment to this Ordinance. The Board of County Commissioners ~~and the Planning Board~~²⁶ shall hear applications and receive public comment for Zoning Atlas amendments and/or text amendments to this Ordinance in a Quarterly Public Hearing.

2.8.7 Notice of Public Hearings

- (A) ~~The Planning Director shall cause notice~~ Notice of the public hearing to review the application and receive public comment ~~shall to~~ be published at least twice in a newspaper of general circulation in the county, stating the time and place of the hearing and the substance of the proposed amendment.

²⁶ Since a quorum of Planning Board members will no longer be necessary to hold a public hearing, the public hearing would no longer be a joint hearing.

- (1) Said notice shall appear in said newspaper for two successive weeks with the first notice appearing not less than ten days nor more than 25 days before the date set for the public hearing. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.²⁷
- (B) ~~In the case of~~ For amendments to the ~~zoning atlas~~ Zoning Atlas, the Planning Director shall post on the affected property a notice of the public hearing at least ten days prior to the date of said hearing.
- (C) ~~In the case of~~ For amendments to the Zoning Atlas, written notice shall be sent by certified mail to the affected property owner and all adjacent property owners at least 15 days, but not more than 25 days, before the public hearing date. Adjacent property owners are those whose names and addresses are currently listed in the Orange County tax records and whose property lies within 500 feet of the affected property.
- (1) If amendments to the Zoning Atlas are proposed by the County, notice shall be sent by first class mail to all affected property owners and to all adjacent property owners within 500 feet as provided in ~~(D C)~~ above.²⁸
- (D) The Planning Director shall certify the mailing of all notices to the Board of County Commissioners.

2.8.8 Planning Board Review

- (A) Following the public hearing, all proposed amendments shall be referred to the Planning Board for consideration and recommendation.
- (B) The Board of County Commissioners may direct the Planning Board to provide a recommendation by a date certain. If the Board of County Commissioners does not so direct, the Planning Board shall make its recommendation within ~~three regularly scheduled Planning Board meetings~~ 60 calendar days²⁹.
- (C) The Planning Board shall allow public comments at its meeting and those comments shall be taken into consideration by the Planning Board in making its recommendation.
- (D) The Planning Board's action on an application shall be one of the following:
- (1) Recommend approval,
 - (2) Recommend denial, or
 - (3) Recommend approval but with specified changes.
- (E) In making its recommendation, the Planning Board shall also approve a statement describing whether its action is consistent with an adopted comprehensive plan or any other officially adopted plan that is applicable, and briefly explain why the board considers the action taken to be reasonable and in the public interest.³⁰
- (F) If the Planning Board fails to make a recommendation within the time allotted in subsection (B) above, the application shall be forwarded to the Board of County Commissioners without a Planning Board recommendation.

²⁷ This paragraph has been indented one level to better reflect the cadence of ordinance structure.

²⁸ This paragraph has been indented one level to better reflect the cadence of ordinance structure.

²⁹ Staff is suggesting a shorter potential review period. In recent years, the BOCC has instructed the Planning Board to return its recommendation by a date/time certain due to the case law requirement that public hearings be adjourned to a date/time certain. Since the public hearing is now proposed to be closed the night of the hearing and the requirement for only written comments after the public hearing is proposed for removal, the Planning Board will need to know that recommendations must be made within 60 days.

³⁰ Required by NCGS 160A-383.

- (G) ~~Amendments initiated by Orange County shall not be subject to time limitations other than those specified by the Board of County Commissioners during the public hearing process.³¹~~
- (H) ~~Evidence not presented at the public hearing may be submitted in writing to the Planning Board for consideration prior to the Planning Board's recommendation to the Board of County Commissioners. The Planning Board may consider additional oral evidence only if it is for the purpose of presenting information also submitted in writing.³²~~

2.8.9 Action by Board of County Commissioners

- (A) The Board of County Commissioners shall not consider enactment of ~~the a~~ proposed amendment until the Planning Board either makes its recommendation or takes no action on the application as prescribed in Section 2.8.8(C).
- (B) ~~In making its decision, the Board of Commissioners shall consider all relevant evidence presented at the public hearing and any submitted written evidence that was considered by the Planning Board in making its recommendation.~~
- (C) ~~In making its decision, the Board of County Commissioners shall consider adopted plans, comments made at the public hearing, the Planning Board's recommendation, and the Planning Director's recommendation. The Board of County Commissioners shall also approve a statement describing whether its action is consistent with an adopted comprehensive plan or any other officially adopted plan that is applicable, and briefly explain why the board considers the action taken to be reasonable and in the public interest.³³~~

2.8.10 Text Revisions Pertaining to Soil Erosion and Sedimentation Control Provisions

- (A) ~~The Erosion Control Officer shall review all of the North Carolina Sedimentation Control Commission's revisions to the State's Model Soil Erosions and Sedimentation Control Ordinance and, within 90 days of receipt of the recommended revisions, submit draft amendments to the North Carolina Sedimentation Control Commission for its consideration and comments.~~
- (B) ~~Within 150 days after receipt of the North Carolina Sedimentation Control Commission's comments, Orange County shall formally consider proposed amendments and, to the extent deemed necessary by the Board of County Commissioners, incorporate the amendments into this Ordinance.~~
- (C) ~~Text amendments to this Ordinance for soil erosion and sedimentation control provisions shall comply with the requirements in effect for any other text amendment.~~

2.8.11 Text Revisions Pertaining to Stormwater Provisions

- (A) ~~The Erosion Control Officer shall review all of the State Environmental Management Commission's revisions to the State's Model Stormwater Ordinance and, within 90 days of receipt of the recommended revisions, submit draft amendments to the State Environmental Management Commission for its consideration and comments.~~
- (B) ~~Within 150 days after receipt of the State Environmental Management Commission's comments, Orange County shall formally consider proposed amendments and, to the~~

³¹ Staff is suggesting that amendments initiated by the County have the same review time as applications submitted by others.

³² Staff is suggesting that oral comments on legislative items could be made at the Planning Board meeting and they would not also have to be submitted in writing. This will help alleviate the current awkward process of leaving the public hearing open in order to receive written comments which necessitates items being placed on the BOCC under the "public hearing" heading but with the note that no additional comments are accepted.

³³ Required by NCGS 160A-383.

2.11.4 Review Procedures

- (A) Applications for an appeal of an interpretation shall be reviewed and acted upon by the Board of Adjustment in accordance with the procedures contained in Section 2.12 of this Ordinance.
- (B) The conduct of the hearing shall be consistent with the provisions of Section 2.12 of this Ordinance.
- (C) The Planning Director shall complete an assessment of the application and provide a recommendation on the disposition of the application. The assessment shall include all relevant facts utilized in rendering the disputed decision and the rationale for the interpretation made by the Planning Director.
- (D) The assessment shall be introduced at the hearing and become part of the record.
- (E) Upon hearing all evidence associated with the application, the Board of Adjustment shall close the hearing and render a decision on the matter to affirm, modify, or reverse the decision of the Planning Director.

2.11.5 Findings of Fact

The Board of Adjustment shall provide a detailed rationale for its decision in the form of an order to affirm, modify, or reverse the decision of the Planning Director. This order shall provide the necessary justification for the Board's action based on the testimony and evidence entered into the record during the hearing.

2.11.6 Notice Requirements

Notice requirements shall follow Section 2.12.6(A). Other subsections of Section ~~2.2.6~~ 2.12.6³⁴ are not applicable to applications for an appeal of an interpretation.

SECTION 2.12: BOARD OF ADJUSTMENT

2.12.1 General Provisions

- (A) The Board shall act on all applications before it.
- (B) The Board shall act on any appeal of a Stop Work Order issued by the Planning Director at its next regularly scheduled meeting or at a special meeting called for that purpose.

2.12.2 Quasi-Judicial Proceedings

- (A) The Board of Adjustment acts in a quasi-judicial capacity. However, it is not intended that its proceedings be conducted as formally as those before courts.
- (B) The rules of procedure and evidence set forth in this Ordinance shall be followed to protect the interests of all parties and the public.
- (C) The presiding officer shall administer oaths to all witnesses and shall make rulings necessary to preserve fairness, order, or proper decorum in any matter before the Board of Adjustment. Any person who, while under oath during a proceeding before the Board, willfully swears falsely is guilty of a Class I misdemeanor.
- (D) Any member of the Board of Adjustment or any interested party may object to, and the presiding officer may exclude, any evidence, testimony, or statement that is deemed incompetent, irrelevant, immaterial, or unduly repetitious and therefore fails to reasonably address the issues before the Board of Adjustment.

2.12.3 Evidence and Testimony

- (A) Interested Party

³⁴ Typographical error that staff recommends correcting as part of this amendment package.

2.12.6 Notice Requirements for Matters Before the Board

- (A) For matters other than applications for Class B Special Use Permits which are not published in a newspaper³⁵, the Board shall give notice of matters coming before it by causing notice to be placed in a newspaper of general circulation in Orange County. The notice shall appear once a week for two consecutive weeks, the first insertion to be not less than ten days nor more than 25 days prior to the meeting date. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.
- (B) In the case of application for a Class B Special Use permit or variance the Planning Director shall give written notice by certified mail to adjacent property owners. This notice shall be given not less than 15 days prior to the meeting date. Adjacent property owners are those whose property lies within 500 feet of the affected property and whom are currently listed as property owners in the Orange County tax records.
- (C) The Planning Director shall post on the affected property a notice of the Board meeting at least ten days prior to the meeting date.
- (D) In the case of an appeal of a Stop Work Order issued by the Planning Director, the Planning Director shall give written notice by certified mail to the property owner, and/or person(s) engaged in the alleged violation. Notification of adjacent property owners, posting of property, and publication of a hearing notice is not required.

SECTION 2.13: EXEMPT SUBDIVISIONS

2.13.1 Generally

- (A) Persons proposing divisions of land that do not constitute a subdivision must request a determination of an exempt subdivision status with the Planning Director. Activities that do not constitute a subdivision are found in Section 7.2.1.
- (B) One copy of the final mylar plat and three paper copies of the plat shall be submitted with the request for a determination for an exempt subdivision.
- (C) Exempt subdivisions shall comply with all applicable non-plat requirements of this Ordinance.

2.13.2 Review and Action

- (A) Following receipt of a request for a determination of an exempt subdivision status, the Planning Director shall make a determination of the land division's exempt or nonexempt status.
- (B) If the Planning Director determines that the proposed land division does not constitute a subdivision, the Planning Director shall certify the proposed land division as exempt and include the necessary statement on the plat certifying same.
- (C) If the Planning Director determines that the proposed land division constitutes a subdivision, the applicant shall be informed of such in writing and shall be required to submit the appropriate Subdivision application.

³⁵ The Staff Attorney has suggested that public hearings for SUPs not be included in legal advertisements since the general public does not have standing in such matters and cannot participate. (State Statutes do not require legal ads for SUP applications). As shown in the remainder of this section, a notice would still be posted on the affected parcel and adjoining property owners would receive mailed notification of the hearing date (which they would also have been informed of via the Neighborhood Information Meeting materials).

- (4) Historic properties,
 - (5) Scenic corridors,
 - (6) Known bird migratory patterns through the County,
 - (7) Voluntary Agricultural Districts, and
 - (8) Publicly-owned or quasi-public lands.
- (C) In order to participate in the Plan, all owner(s), or their legally binding representatives, shall submit an application on a form prepared by the Planning Department requesting inclusion.
- (D) All telecommunication providers who elect to construct facilities on properties in the Plan shall provide all necessary and requested information to the County's telecommunications consultant.
- (E) Modification of the Plan may be considered annually at the **February first** Quarterly Public Hearing **of the calendar year, normally held in February**. Any applicant requesting modification of the Plan shall make application to the Planning Director on or before December 1st of each year. The fee for modifying the Plan shall be that as set forth in the Orange County Schedule of Fees.
- (F) Withdrawal from the Plan is permitted if any owner submits, to the Planning Director, a notarized statement requesting same. Upon receipt of the request, including any fee for modifying the Plan as set forth in the Orange County Schedule of Fees, the Planning Director shall inform interested parties that the property has been withdrawn from consideration. Removal of the property from the Plan shall be processed as a modification as detailed herein.

5.10.3 Annual Telecommunications Projection Meeting (ATPM)

(A) Purpose and Outcome

- (1) The purpose of the ATPM meeting is to allow for a complete review of collocation opportunities, address coverage issues, and discuss the location of needed telecommunication support structures with providers who intent on submitting development applications for action by the County. The intended outcome of the meeting is to allow the County and interested parties to develop a plan for facility deployment within the County that provides reasonable coverage based on the needs of the County and its residents, while minimizing the total number of needed telecommunication support facilities, including minimizing the intrusiveness of such facilities, and encouraging the development of a more efficient telecommunication network.
- (2) The intended outcome of the meeting is an understanding amongst the Planning Director and providers on areas of the County where telecommunication support facilities are needed and application request for the year should be focused.

(B) Applicability

- (1) By December 31st of each calendar year, telecommunication providers shall submit to the Planning Director a plan indicating proposed search rings for anticipated telecommunication support structures. This plan shall identify areas where providers are looking to locate facilities, as well as identify those areas of the County that are underserved by existing facilities.
- (2) As of the effective date of this Ordinance amendment any pending applications that have not received a zoning compliance permit or a special use permit shall meet all requirements of this Ordinance, including, but not limited to submission deadlines, application standards and processing, excluding the ATPM requirement.

(C) Meeting Specifics

PROPOSED AMENDMENTS TO THE PLANNING BOARD'S
POLICIES AND PROCEDURES

APPROVED 11/8/2012

PLANNING BOARD POLICIES AND PROCEDURES

SECTION I: SCOPE

A. Purpose

1. To establish a policy and procedures whereby the Orange County Board of Commissioners will establish the specific policies and procedures governing the Planning Board.
2. The Orange County Board of Commissioners may appoint an advisory board whose duty is to serve in an advisory capacity to Orange County Board of Commissioners.

B. Authority

1. North Carolina General Statute 153A-76 grants boards of county commissioners the authority to establish advisory boards.
2. The Orange County Advisory Board Policy serves as the underlying policy document to which the Planning Board, in addition to this policy and procedure document, is subject. The Orange County Advisory Board Policy is attached hereto as "Exhibit A".
3. In the event that there is a conflict between the Orange County Advisory Board Policy and this Policies and Procedures document this Policies and Procedures document shall control.

C. Charge

1. The charge of the Planning Board is contained in Section 1.6.3 of the Orange County Unified Development Ordinance.

The purpose for which the Planning Board was formed: to serve in an advisory capacity to the Orange County Board of Commissioners in regards to planning, zoning, and subdivision matters, as provided in Section 1.6.3 of the Orange County Unified Development Ordinance.

SECTION II: GOALS AND OBJECTIVES

A. Goals

1. The Planning Board shall carry out the duties contained in Section 1.6.3 of the Orange County Unified Development Ordinance to the best of its ability.

B. Objectives

1. Acting under the directives of the Board of County Commissioners and with County staff, the Planning Board shall pursue the duties contained in Section 1.6.3 of the Orange County Unified Development Ordinance.

SECTION III: MEMBERSHIP

APPROVED 11/8/2012

A. Authority

1. North Carolina General Statute 153A-76 grants boards of county commissioners the authority to establish advisory boards and to appoint members to and remove members from those advisory boards. In acting on this authority the Orange County Board of Commissioners hereby establishes certain general conditions to which applicants and members of advisory boards should conform.

B. Composition

1. Planning Board composition is detailed in Section 1.6.1 of the Orange County Unified Development Ordinance. Additional membership requirements are listed in said Section of the UDO.
2. The Planning Board does not have alternate members.

C. Chair, Vice Chair, and Secretary

1. The Planning Board shall elect by majority vote a Chair and Vice Chair from among its members at the regular meeting in January of each year.
2. Chair and Vice Chair terms of office shall correspond to the requirements of the Orange County Advisory Board Policy.
3. The Secretary of the Planning Board shall be the Planning Director or his/her designee.
4. The Chair and Secretary shall ensure that each Planning Board member is presented with a copy of the Planning Board's charge, scope of authority, membership responsibilities, and code of conduct when the Planning Board member is appointed to the Planning Board.
5. The Planning Board Chair, or Vice Chair in the Chair's absence, shall attend quarterly public hearings and Board of County Commissioners meetings at which a decision is scheduled for items on which the Planning Board has made a recommendation.¹

SECTION IV. MEETINGS

A. Staffing

1. The Planning Director shall perform the duties set forth in Section 1.6.4 of the Orange County Unified Development Ordinance.

B. Agendas

1. Items for agendas shall be approved by the Planning Board Chair and staff.

¹ The new requirement was suggested at the May 12, 2015 BOCC work session when the BOCC discussed the public hearing process.

APPROVED 11/8/2012

2. The designated staff will develop and distribute to each member an agenda listing the matters to be considered at upcoming advisory board meetings. The regular meeting agenda and materials shall be distributed at least seven (7) calendar days before the regular meeting

C. Date, Time, and Location of Regular Meetings

1. Regular Meetings of the Planning Board shall be held on the first Wednesday of each month. The start time and location of the meeting shall be included on the agenda and shall typically be 7:00 p.m. at the Orange County West Campus Office Building located at 131 West Margaret Lane, Hillsborough. The Planning Board Chair, in consultation with staff, shall have the authority to change the start time and location of a regular meeting to meet any special circumstances, provided the information is included on the distributed agenda.

D. Notice of Meetings

1. Notice of regular Planning Board meetings and agendas shall be made available to all members and interested parties, and to any person who requests such notice, at least seven (7) days in advance of the meeting by e-mail and by posting on the Orange County government website.
2. Notice of public hearings shall conform to the notice requirements of Section 2.3.6 and/or 2.8.7, as applicable, of the Orange County Unified Development Ordinance.
3. Agenda materials for public hearings shall be distributed to Planning Board members and posted on the Orange County government website for interested parties a minimum of ten (10) calendar days prior to the public hearing.

E. Neighborhood Information Meetings²

1. Planning Board members shall be encouraged to attend Neighborhood Information Meetings (NIM) held as part of development review processes. At-Large members and members representing the Township in which a particular development project is proposed are specifically encouraged to attend the NIM.
2. Planning Department staff shall keep Planning Board members informed of upcoming NIMs via e-mailed messages. Said e-mail messages shall be sent to Planning Board members on the same date, or shortly after, the notifications are mailed to adjacent property owners.

² This new procedure is in response to Planning Board members expressing the desire to be kept informed of upcoming NIMs so they may attend the meetings.

APPROVED 11/8/2012

SECTION V. ORIENTATION

A. Attendance

1. Each member shall attend an orientation presented by the Orange County Staff to familiarize the advisory board members with the operation of County government, the Planning Department rules, and the operating procedures of the advisory board.
2. Each voting member will be encouraged to complete the orientation within six weeks of his or her appointment and participate in at least one meeting with the staff.

SECTION VI. BY-LAWS

A. By-Laws

1. Any Bylaws adopted by the Planning Board are void and no further bylaws shall be adopted. Procedure shall be governed solely by this policy document and the General Advisory Board Policy Document.
2. Should the Planning Board determine modifications to policies and procedures are necessary the Planning Board may petition the Board of County Commissioners for such modifications.