

**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, December 2, 2015
Regular Meeting – 7:00 pm**

No.	Page(s)	Agenda Item
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- 1. **CALL TO ORDER**
- 2. **INFORMATIONAL ITEMS**
3 - 4
 - a. Planning Calendar for December and January
 - b. Reminder: Annual Election of Chair/Vice Chair in January
 - c. Revised Public Hearing Process Begins in January (Items on February QPH Agenda will be on January Planning Board Agenda for a Recommendation)
- 3. **APPROVAL OF MINUTES**
5 - 15
November 4, 2015 ORC Notes
November 4, 2015 Regular Meeting
- 4. **CONSIDERATION OF ADDITIONS TO AGENDA**
- 5. **PUBLIC CHARGE**
Introduction to the Public Charge

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

Public Charge

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

<u>No.</u>	<u>Page(s)</u>	<u>Agenda Item</u>
6.		CHAIR COMMENTS
7.	16 - 42	UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENT - To make a recommendation to the BOCC on government-initiated amendments to the text of the UDO regarding recreational land uses, including shooting ranges. This item was heard at the September 8, 2015 quarterly public hearing and was discussed at the October 7 and November 4, 2015 Planning Board meetings. Presenter: Michael Harvey, Current Planning Supervisor
8.	43 - 63	UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENT - To make a recommendation to the BOCC on government-initiated amendments to the text of the UDO regarding sexually oriented businesses. This item was heard at the November 23, 2015 quarterly public hearing Presenter: Michael Harvey, Current Planning Supervisor
9.	64 - 75	UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENT - To make a recommendation to the BOCC on government-initiated amendments to the text of the UDO regarding car sales and rental operations. This item was heard at the November 23, 2015 quarterly public hearing Presenter: Michael Harvey, Current Planning Supervisor
10.		COMMITTEE/ADVISORY BOARD REPORTS a. Board of Adjustment b. Orange Unified Transportation
11.		ADJOURNMENT

IF AN EMERGENCY OCCURS, OR IF YOU ARE RUNNING LATE FOR THE MEETING, PLEASE LEAVE A VOICE MAIL FOR MICHAEL HARVEY (919-245-2597).

< November		December 2015					January >
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	
		1	2	3	4	5	
			ORC 6:30 pm; reception for Pete Hallenbeck before Planning Board meeting @ 7:00 pm WCOB 004*				
6	7	8	9	10	11	12	
	Regular BOCC Meeting 7:00 pm Whitted Building						
13	14	15	16	17	18	19	
	Board of Adjustment 7:30 pm WCOB 004	Regular BOCC Meeting 7:00 pm Southern Human Services Center	OUTBoard 7:00 pm WCOB 004				
20	21	22	23	24	25	26	
			Holiday/Offices Closed	Holiday/Offices Closed	Holiday/Offices Closed		
27	28	29	30	31			
					Notes: * Planning Board Member Attendance Required WCOB = West Campus Office Building (131 W. Margaret Lane, Hillsborough)		

January 2016						
< December						February >
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
Notes: * Planning Board Member Attendance Required WCOB = West Campus Office Building (131 W. Margaret Lane, Hillsborough)					New Year's Day/Offices Closed	
3	4	5	6	7	8	9
			Planning Board 7:00 pm WCOB 004*			
10	11	12	13	14	15	16
	Board of Adjustment 7:30 pm WCOB 004					
17	18	19	20	21	22	23
	Martin Luther King Jr. Day/Offices Closed		OUTBoard 7:00 pm WCOB 004	Regular BOCC Meeting 7:00 pm Whitted Building		
24	25	26	27	28	29	30
					BOCC Annual Retreat 9:00 – 4:00 (location TBD)	
31						

SUMMARY NOTES
ORANGE COUNTY PLANNING BOARD
NOVEMBER 4, 2015
ORDINANCE REVIEW COMMITTEE

NOTE: A quorum is not required for Ordinance Review Committee meetings.

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

MEMBERS ABSENT: Buddy Hartley, Little River Township Representative; Laura Nicholson, Eno Township Representative; Herman Staats, At-Large;

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

AGENDA ITEM 1: CALL TO ORDER AND ROLL CALL

AGENDA ITEM 2: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENTS- TEMPORARY HEALTHCARE STRUCTURES AND OTHER HOUSING OPTIONS
 TO REVIEW AND COMMENT UPON PROPOSED AMENDMENTS TO THE UDO REGARDING TEMPORARY HEALTHCARE STRUCTURES AND OTHER CUSTODIAL CARE HOUSING OPTIONS
Presenter: Ashley Moncado

Ashley Moncado reviewed abstract

Perdita Holtz: Depending on how things go tomorrow night with the public hearing process if that gets adopted the next steps will be different.

Lisa Stuckey: If I live in a subdivision can I really put a 1,000 square foot unit.

Ashley Moncado: That depends on if you met zoning requirements.

Peter Hallenbeck: 350 square feet to start is too small.

Lisa Stuckey: I agree.

Lydia Wegman: Why does option B only allow two occupants?

Ashley Moncado: With option B you have the option of a larger size, so you can go up to the 1,000 square feet, you won't be limited to the 300 square feet.

Paul Guthrie: You have up to two people to reside in a temporary facility and you can have five unrelated people to live in a dwelling unit. What if you have five people living in a dwelling unit and had two people living in an unrelated care center. Could those five people use some of the facilities without violating the ordinance? Could you actually have seven people using the facility?

54 Ashley Moncado: In theory, possibly. If they met the health and environmental standards to put the temporary
55 structure on the property I don't know if there is anything we could do to enforce it until we receive a complaint.
56

57 Paul Guthrie: I'm not advocating restricting it; I'm just trying to get the definition.
58

59 Ashley Moncado: The session law is a little vague regarding that.
60

61 Andrea Rohrbacher: A person from another state comes to get care here needs to have a North Carolina license
62 provider for prescriptions. How is this going to cover that situation?
63

64 Perdita Holtz: That's not something we would enforce through land use laws.
65

66 Peter Hallenbeck: It sounds to me like there are two problems. One is the decision to bring someone in and once
67 they get here they are going to find local medical help. I'm noticing in this there is really no protection for somebody
68 using it as a business and there is also no protection for elderly abuse.
69

70 Ashley Moncado: Those were also concerns of ours. To be honest you could have the relationship requirement and
71 then you could have a child abusing a parent.
72

73 Peter Hallenbeck: One would hope with these amendments there might be some accompanying ordinances that
74 would cover it.
75

76 Ashley Moncado: I will be following up with the Department of Aging to see if they came across anything.
77

78 Craig Benedict: Any application we get for this, we could share that with the Health Department, Aging Department,
79 and Social Services. They may want to monitor something.
80

81 Peter Hallenbeck: I think you're right on the money with working the Department of Aging. With ordinances they can
82 figure out if there is some way to run a background check on them.
83

84 Andrea Rohrbacher: If the area where the structure was to be located happened to be a subdivision that had
85 covenants what happens to the covenants?
86

87 Ashley Moncado: They have to meet the covenants' restrictions.
88

89 Peter Hallenbeck: It sounds like we are taking it a little bit further in saying instead of just learning how to live with
90 what the State has mandated, let's see if we can't solve a bigger problem.
91

92 Paul Guthrie: I think we do what we can do under basically what is our core jurisdiction. Let's not try to solve the total
93 legal implications. That's not the role of the Planning Board. Other agencies may need to be brought in but that is not
94 our role and I think we could get in a quagmire if we try to regulate issues we have little to know knowledge of.
95

96 Peter Hallenbeck: I fully agree with that. I think we have done our part as we reviewed the land use and I think we
97 have commented correctly with regard to how critical it is for other agencies to be involved in the process to prevent
98 abuse.
99

100 Andrea Rohrbacher: Is the Health Department involved at all?
101

102 Ashley Moncado: This still needs to go to peer review. Tonight was just to see what option you wanted to go with and
103 then we will send it back out to our county attorneys.
104

105 Peter Hallenbeck: Well the recommendation is simply that we review and comment and I think we've done that.
106 People seem to like option B with all the cautions required.
107

108
 109 **AGENDA ITEM 3: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENTS- AIRPORTS**
 110 **TO REVIEW AND COMMENT UPON PROPOSED AMENDMENTS TO THE UDO REGARDING AIRPORT**
 111 **REGULATIONS**
 112 **PRESENTER: MICHAEL HARVEY**

113
114 Michael Harvey: Reviewed abstract

115
116 Paul Guthrie: A good significant part of southern Orange County is in a very high air traffic corridor. Is there any
117 reason it isn't mentioned that it could be comply with all necessary planning to avoid conflict.

118
119 Michael Harvey: That's why we mention FAA Standards. They are the ones who have jurisdiction over the air travel
120 ways.

121
122 Paul Guthrie: There are at least two places in southern Orange County that have airports but they are not currently
123 operating. Are they grandfathered in?

124
125 Michael Harvey: I would probably argue that they are not grandfathered in unless they are active. What I would also
126 say though is if it's a private air field remember that the non-conforming section of the unified development ordinance
127 mandates that if you have a legal land use you're deemed to have your permits.

128
129 Lydia Wegman: Are there many private airports right now in the county?

130
131 Michael Harvey: There is rumored to be about three.

132
133 James Lea: Is that the case on Efland-Cedar Grove Road?

134
135 Michael Harvey: Yes

136
137 Lisa Stuckey: Is the Chapel Hill Airport being used at all?

138
139 Michael Harvey: It is still in use and I think you're looking at it being there for quite a while.

140
141 Lisa Stuckey: Well they will go away with it if they do Carolina North because the runway is the main street.

142
143 Craig Benedict: Until they get enough funding to get Carolina North moving they will probably keep it open until they
144 foresee the development work.

145
146 Michael Harvey: I'll just stress obviously the genesis of this was to address the fact that our regulations would not
147 properly regulate a new airport facility because they were outdated and this is an attempt obviously to bring it up-to-
148 date.

149
150 Lisa Stuckey: I could see people getting pretty upset if there was a commercial airport nearby.

151
152 Peter Hallenbeck: With regard to the drones for commercial purposes, does that mean if a farmer has a drone that is
153 used to check his crops that he is going to have to fill this out?

154
155 Michael Harvey: No, because farms are exempt from zoning.

156
157 Michael Harvey: As part of this proposal we are recommending that there be a pre-application submittal requirement.
158 Specifically, if someone wants to develop a general aviation air field they have to get a letter to use with sufficient
159 documentation showing where the airport's going to be and showing the development of the airport. We are going to
160 have an initial public information meeting. This is going to be in addition to neighborhood meeting that is required.

161

162 Lisa Stuckey: So by state you mean if the University wanted to establish one that would also be exempt.

163

164 Michael Harvey: The only reason UNC had to come to use is because the general assembly said you have to comply
165 with local zoning regulations. Just so everyone knows we are going before the Economic Development Commission
166 advisory board to talk to them about this. We are going to make a presentation to the Commission for the
167 Environment.

168

169 Peter Hallenbeck: The airport in Alamance probably helps the economic development zone in the Efland area. It
170 probably doesn't help with the Eno.

171

172 Tony Blake: I'd like to see the commissioners consider higher requirements for the neighborhood information.

173

174 Michael Harvey: There are going to be two neighborhood meetings.

175

176 Lydia Wegman: Is it clear that there are two neighborhood information meetings required?

177

178 Michael Harvey: Yes, on article two under the conditional zoning process.

179

180 Peter Hallenbeck: Unless anyone has anymore comments we have reviewed and commented on the proposed
181 amendment.

182

183 **AGENDA ITEM 4: ADJOURNMENT**

**MINUTES
PLANNING BOARD
NOVEMBER 4, 2015
REGULAR MEETING**

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

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

AGENDA ITEM 1: CALL TO ORDER

AGENDA ITEM 2: INFORMATIONAL ITEMS

- a) Planning Calendar for November and December
- Quarterly Public Hearing on Monday, November 23

AGENDA ITEM 3: APPROVAL OF MINUTES
October 7, 2015 Regular Meeting

MOTION by Peter Hallenbeck to approve the minutes. Seconded by Lydia Wegman.

VOTE: UNANIMOUS

AGENDA ITEM 4: CONSIDERATION OF ADDITIONS TO AGENDA

No changes to the agenda.

AGENDA ITEM 5: PUBLIC CHARGE

Introduction to the Public Charge

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53 restored, the Chair will recess the meeting until such time that a genuine commitment to
 54 this public charge is observed.

55
 56 **AGENDA ITEM 6: CHAIR COMMENTS**

57
 58 Peter Hallenbeck: I will be leaving after the first item because I need to attend the Fire Chief meeting.

59
 60 **AGENDA ITEM 7: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENT - To make a recommendation**
 61 **to the BOCC on government-initiated amendments to the text of the UDO regarding**
 62 **recreational land uses, including shooting ranges. This item was heard at the September**
 63 **8, 2015 quarterly public hearing and was discusses at the October 7, 2015 Planning**
 64 **Board Meeting**

65 **Presenter: Michael Harvey, Current Planning Supervisor**

66
 67 Michael Harvey reviewed the abstract and mentioned that the attorney's office may decide to take some of the
 68 shooting range language out of the UDO and put it in the general code of ordinances.

69
 70 Lydia Wegman: What would be the process for putting it somewhere else?

71
 72 Michael Harvey: The County Attorney's office would have to draft the ordinance and take it to the County
 73 Commissioners and they would have to approve it but it would be in the general county code of ordinances. It
 74 wouldn't be a land use ordinance. So you all as an example wouldn't get to see it or comment on it because it's not a
 75 land use ordinance.

76
 77 Lydia Wegman: Who would get to comment on it?

78
 79 Perdita Holtz: Anybody can show up at the BOCC meeting and sign up to speak.

80
 81 Paul Guthrie: One issue that might keep you slightly in the process would be that the applicant had to be able to
 82 police all the brass and residue of shots off the property. It's changing the character of the land use.

83
 84 Michael Harvey: That was discussed and quite honestly the thought was that its ancillary component of the shooting
 85 activity and while it may be an important one the issue is the safety with respect to the discharge of the firearm.
 86 There are probably going to be regulations that will be enforced by other departments and agencies.

87
 88 Paul Guthrie: Have you begun to think through how you can link all of these organizations together for discussion of
 89 these issues?

90
 91 Michael Harvey: All the agencies we talked about have completed peer review of these regulations and have said
 92 that they have no concerns or comments.

93
 94 Lisa Stuckey: Do they care what we think? It seems to me that the enforcement of shooting regulations should be
 95 done by the Sheriff's Office.

96
 97 Michael Harvey: The County Commissioners care because they asked you to comment on it.

98
 99 Buddy Hartley: The Sheriff Deputies are going to come out to any call. If you call and say my neighbor is shooting
 100 they have got to come out. One thing that I don't want to see happen out of this is the Sheriff Department having
 101 more problems with frivolous things.

102
 103 Michael Harvey: At the October 7th meeting you were provided with a memorandum from the Sheriff's Office that
 104 basically said here is our SOP when it comes to discharge of guns and that's exactly what they do.

105

106 Buddy Hartley: Do we need to wait and see what the Attorney decides?
107

108 Michael Harvey: You have a couple of options. In my mind your options are that you can ask that this be delayed until
109 you hear what the County Attorney wants to do, you can all make the statement that you concur with the county
110 attorney and if that's the decision you will support it.
111

112 Paul Guthrie: It seems to me that the Sheriff's Department is not going to be enforcing the land use that is disturbing
113 a neighbor or potential harm to the neighbor. It's going to be a question of noise and stuff like that so what you're
114 saying to me is that there will be absolutely no regulations except the discharge of a firearm regulations.
115

116 Michael Harvey: The Sheriff's Office is not being asked to enforce a land use component.
117

118 Lydia Wegman: Won't the minimum back stop be ignored?
119

120 Michael Harvey: I don't know if they are going to exist or not because the County Attorney will be doing the
121 recommendation.
122

123 Peter Hallenbeck: I suggest that in regard to the item on page 34 at some point we go around the room and people
124 just address what they think otherwise we will be here talking back and forth. If two and three go away then the
125 Sheriff Deputies have to decide is it safe.
126

127 Michael Harvey: Well in conclusion let me just say everything else about the ordinance is going to stay the same
128 including the non-residential activity. Please note, on page 40 we added language in consultation with the County
129 Attorney's office. So if you're going to be active with this tonight I ask that replacement page 40 become a part of
130 your official action.
131

132 Paul Guthrie: You have no standard in the rest of the material if you're giving it all to the Sheriff.
133

134 Michael Harvey: We are not giving it all to the Sheriff because recreational facilities are the non-residential activity
135 and the shooting standards will remain in that section for recreational facilities. The only thing coming out is for
136 private shooting.
137

138 Peter Hallenbeck: We have to remember where this came from. We had definitions based on profit and non-profit.
139

140 Tony Blake: So there is no distinction between profit and non-profit?
141

142 Michael Harvey: Well the problem is from a language standpoint the impacts are the same.
143

144 Tony Blake: Right, so there is no leniency with one or the other.
145

146 Michael Harvey: I know it's a lot for you all to take in. I certainly don't want to try to tell you how you should respond
147 to what could potentially happen to the regulations with respect to shooting on private property but again I feel you
148 need to know it's certainly within your purview to say you want to see what the County Attorney does before we make
149 a recommendation.
150

151 Peter Hallenbeck: I would like to go around the room and let everyone comment and then we can have some general
152 discussion.
153

154 Buddy Hartley: I would like to see what the attorney decides.
155

156 Paul Guthrie: I don't think we should be making a formal presentation until we have seen how it's being fitted out
157 through the rest of the county.
158

159 James Lea: I too would like to hear what the attorney has to say.

160

161 Maxecine Mitchell: We should just sit and wait to see what the attorney says.

162

163 Lisa Stuckey: I agree with everybody else.

164

165 Andrea Rohrbacher: I agree with everybody else.

166

167 Tony Blake: Overall I agree with everybody else but I think what really needs to happen is they need to consider the source of the complaint but let's hear what the attorney has to say first.

168

169

170 Lydia Wegman: I agree with waiting for the attorney but I would like to have these set back requirements enforced in some way.

171

172

173 Peter Hallenbeck: I am a little concerned about the two incidents a month; I think that's too low for rural areas. I think I would be more concerned that target practice happens during daylight hours than I would how many times it happens. I like the simplification on page 34 that just says that the set-up is designed to keep the projectiles on the property. I think that's something that gives the Sheriff some discretion. I would not be opposed to some setbacks in regard to safety. I like the change on page 40, I think it strikes to the reason we are doing this. Meaning getting away from the profit and non-profit and simply saying is this going on for compensation. We need a big picture with respect to other agencies and how they work together because we keep running into this with planning ordinances. I would now like to open up the floor for any more comment.

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Michael Harvey: It sounds to me like the board would rather not make a decision until it gets something definitive from the County Attorney so my recommendation is that your motion be that this be continued to the December regular meeting and that you ask the county commissioners to extend the public hearing to the first meeting in January.

MOTION made by Paul Guthrie to move continue item to December meeting and request the public hearing be the first meeting in January. Buddy Hartley seconded.

VOTE: Unanimous

Michael Harvey: Just as a heads up we are due to go before the Board of County Commissioners tomorrow night and extend the public hearing so originally we asked it to be extended to the December 7th meeting, we will ask that it be adjourned until the first meeting in January.

Peter Hallenbeck: Are there any opposed?

Peter Hallenbeck: Okay so it is a unanimous decision to wait and not deal with this statement of consistency tonight.

AGENDA ITEM 8: JOINT PLANNING AGREEMENT AMENDMENT: To make a recommendation to the BOCC on amendments to the text of the Joint Planning Agreement initiated by the Town of Chapel Hill regarding membership of Transition Area residents on the Town's Planning Commission and Board of Adjustment. This item was heard at the October 15, 2015 Joint Planning Public Hearing.

PRESENTER: Perdita Holtz, Planning Systems Coordinator

Note: Peter Hallenbeck (Chair) left the meeting for a prior engagement and turned the meeting over to Lydia Wegman (Vice Chair)

Perdita Holtz reviewed the abstract.

212 Paul Guthrie: A number of years ago the County Board of Commissioners sent my name to the Town of Chapel Hill
213 to represent the ETJ and rather than appoint me the Town of Chapel Hill's Planning Department redistributed the
214 seats and eliminated the position that I would have been in without any consultation with the County. I like option B
215 but one thing that should be done is to make sure they can't play games with that procedure.

216
217 Tony Blake: I think it's very important that people from the neighborhoods be represented well on these boards.
218 Chapel Hill has been doing away with affordable housing and they seem to be pushing that responsibility more and
219 more on the county.

220
221 Lisa Stuckey: So by state law the ETJ areas have to be represented by at least one person and that person is
222 appointed by the county commissioners, so we are talking about 200 acres and whether or not there should be an
223 appointed person to represent the two purple areas?

224
225 Perdita Holtz: Yes, although it would be ETJ or Transition Area resident.

226
227 Tony Blake: It's just to give them a bigger pool of people to choose from.

228
229 Lisa Stuckey: ETJ is still under 7% of the population and has 2/9 of the representation, I kind of get why it's a
230 problem. I don't think they need one person for the two purple areas.

231
232 Tony Blake: I'm interested in the additional representation because I think there are some very critical decisions
233 coming up in those areas.

234
235 Andrea Rohrbacher: I am tending towards what Lisa said. I don't think we need the two seats. I think the one seat
236 would be adequate.

237
238 Lydia Wegman: Paul wanted to speak so after he speaks we will go around and hear from everybody.

239
240 Paul Guthrie: I personally don't think that one or two makes a lot of difference. I have lived in the ETJ for eleven
241 years and I have never had any communication on anything they are doing in that district. They do not communicate
242 at all so it seems to me that one of the issues is going well beyond what we are talking about.

243
244 Lydia Wegman: So that sounds like something we will want to convey potentially to the Town of Chapel Hill.

245
246 Perdita Holtz: It will be a part of the minutes and the BOCC reads those minutes and they might want to bring it up at
247 one of the joint meetings they have.

248
249 Lydia Wegman: Okay so let's go around, Buddy you can start.

250
251 Buddy Hartley: I'm okay with option B.

252
253 Paul Guthrie: I think I've said about all I need to say. When it comes time to vote I'll support option B. I do think it's a
254 bigger issue than just this issue.

255
256 James Lea: Are we up for a vote on this tonight?

257
258 Lydia Wegman: I think we are supposed to make a recommendation to the BOCC in time for their December
259 meeting.

260
261 James Lea: Based on what I have heard I think option B is a great option.

262

263 Maxecine Mitchell: I had a personal experience when a decision was being made in my area and we left feeling that
 264 we were not represented. We went to Carrboro and Chapel Hill and it seemed like they didn't really care. I can
 265 understand where Paul is coming from. I would support option B.

266
 267 Lisa Stuckey: I am sticking with option A. I think one person for 6.7% is sufficient.

268
 269 Andrea Rohrbacher: I am going to stick with option A for the same reason. I would like to also ask that both the Board
 270 of County Commissioners and the Town of Chapel Hill be more proactive in recruiting in these areas.

271
 272 Tony Blake: I'm going to go with option B from the same reasons I stated and exactly for the reasons Paul and
 273 Maxecine said.

274
 275 Lydia Wegman: I can see the virtues of option B and I would support option B for the reasons that have been
 276 previously stated.

277
 278 **MOTION** made by Tony Blake to recommend Option B to the County Commissioners. James Lea seconded.
 279 **VOTE:** 6 – 2 (Lisa Stuckey and Andrea Rohrbacher opposed)

280
 281 **AGENDA ITEM 9:** **PLANNING BOARD ANNUAL REPORT AND WORK PLAN FOR COUNTY COMMISSIONERS' ANNUAL**
 282 **PLANNING RETREAT:** To discuss the input form for the annual BOCC planning retreat in
 283 early 2016. The annual report informs the BOCC of the past year's activities of advisory
 284 boards/commissions and assists in overall County work planning.

285
 286 **Presenter:** Craig Benedict, Planning and Inspections Director

287
 288 Craig Benedict reviewed the abstract.

289
 290 Lydia Wegman: Will the Planning Board be working on the population projections or will the Planning Department
 291 work on it and bring it to the Board for comments?

292
 293 Craig Benedict: The Planning Department will be the ones doing it and will then bring it to the Planning Board; this is
 294 more of a comprehensive plan.

295
 296 Tony Blake: It's foundational to the number of schools, roads, mass transit, and all of the other decisions that are
 297 being made.

298
 299 Craig Benedict: Exactly and it's the service provisions.

300
 301 Tony Blake: In Wake County they have like 120 miles of bike paths that link their parks together. Is that possible in
 302 Orange County?

303
 304 Craig Benedict: We have a bikeway map now. We have had difficulty creating greenway dedication requirements in
 305 the rural part of Orange County.

306
 307 Tony Blake: Is there any focus on alternative septic arrangements? That's the key to the whole thing.

308
 309 Craig Benedict: We had a work session where Environmental Health and Planning looked at these and they didn't
 310 give the go-ahead so I do think we need to bring it back up again.

311
 312 Paul Guthrie: In terms of long term planning I think we need to develop a strategy to get ahead.

313
 314 Andrea Rohrbacher: Are the County Commissioners going to need to address the co-housing issue?

315

316 Craig Benedict: Yes, when we are modifying to allow five people living in a house that's co-housing.

317

318 Tony Blake: I'd love to see wireless and broadband access mentioned in communications with Jim Northrup.

319

320 Michael Harvey: Yes, we are engaging in that already.

321

322 Lydia Wegman: You mentioned on page 75 that there is a position on the Board of Adjustments for a Planning Board
323 member but the position is currently unfilled.

324

325 Craig Benedict: Yes, we are looking for a volunteer.

326

327 Perdita Holtz: If you're interested you should apply online

328

329 Craig Benedict: I think there were very good comments, there has been some great work done here.

330

331

332 **MOTION** made by Lydia Wegman to move approval of the work plan as amended. Tony Blake seconded.

333 **VOTE:** Unanimous

334

335

336 **AGENDA ITEM 11: COMMITTEE/ADVISORY BOARD REPORTS**

337 **A.** Board of Adjustment

338 None

339

340 **B.** Orange County Transportation

341 None

342

343 **AGENDA ITEM 12: ADJOURNMENT**

344

345 Motion to adjourn made by Lydia Wegman.

Pete Hallenbeck, Chair

**ORANGE COUNTY
PLANNING BOARD
ACTION AGENDA ITEM ABSTRACT**
Meeting Date: December 2, 2015

**Action Agenda
Item No. 7**

SUBJECT: Unified Development Ordinance Text Amendment – Recreational Land Uses

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N)

Yes

ATTACHMENT(S):

1. Comprehensive Plan and Unified Development Ordinance Outline Form - Recreation Amendments (UDO/Zoning 2015-04)
2. Statement of Consistency
3. Proposed UDO Text Amendment(s)

INFORMATION CONTACT:

Michael Harvey, Planner III (919) 245-2597
Craig Benedict, Director (919) 245-2585

PURPOSE: To continue review of, and make a recommendation to the BOCC on, Planning Director initiated amendments to the Unified Development Ordinance (UDO) regarding recreational land uses.

BACKGROUND: This item was presented at the September 8, 2015 Quarterly Public Hearing (materials available at: http://www.orangecountync.gov/document_center/BOCCAgendaMinutes/150908.pdf). For background information on the proposal please refer to Section B.1 of Attachment 1.

The review of this item began at the October 7, 2015 Planning Board meeting (materials available at: http://www.orangecountync.gov/Full_Agenda_Packet_PB_10_7_15.pdf) and continued at the November 4, 2015 meeting (materials available at: http://www.orangecountync.gov/PB_Full_Agenda_Package_110415.pdf).

During the November 4 meeting the Board was informed the County Attorney had concerns over Planning staff enforcing proposed setback and backstop standards for private shooting ranges, specifically over our safety in engaging in an inspection/enforcement action. The Attorney indicated he believed it would be more prudent to see these standards located within the County's general ordinances and enforced by a law enforcement agency (i.e. the Sheriff's office).

The Board requested additional information on the possible modification of the text amendment indicating they believed proposed setback/backstop construction standards were necessary. The Board also requested an opportunity to review and comment on the Attorney's proposal.

In reviewing the matter with the County Attorney, staff was informed a final determination had not been made and that the BOCC would be asked to provide direction. Staff will reiterate the Attorney is not objecting to the adoption of setback/backstop construction standards, but is

suggesting such standards might be better suited for enforcement by a different agency. At this time there is no draft ordinance/policy for review or comment.

Planning staff believes it would be prudent for the Planning Board to complete its review, make a recommendation on the text amendment as contained herein, and offer comment on the Attorney's concern/suggested course of action for BOCC consideration.

Procedural Information: In accordance with Section 2.8.8 of the UDO any evidence not presented at the public hearing must be submitted in writing prior to the Planning Board's recommendation. Additional oral evidence may be considered by the Planning Board only if it is for the purpose of presenting information also submitted in writing. The public hearing is held open to a date certain for the purpose of the BOCC receiving the Planning Board's recommendation and any submitted written comments.

Planning Director's Recommendation: The Planning Director recommends **approval** of proposed text amendment and further recommends approval of the:

- i. Statement of Consistency, as contained in Attachment 2, indicating the proposed text amendment is consistent with the adopted Comprehensive Plan, is reasonable, and in the public interest, and
- ii. The text amendment as contained in Attachment 3.

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

SOCIAL JUSTICE IMPACT: The following Orange County Social Justice Goals is applicable to this agenda item:

GOAL: ESTABLISH SUSTAINABLE AND EQUITABLE LAND-USE AND ENVIRONMENTAL POLICIES

The fair treatment and meaningful involvement of people of all races, cultures, incomes and educational levels with respect to the development and enforcement of environmental laws, regulations, policies, and decisions. Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.

RECOMMENDATION(S): The Planning Director recommends the Board:

1. Continue deliberation on the proposed amendment as necessary,
2. Consider the Planning Director's recommendation, and
3. Make a recommendation on the Statement of Consistency (Attachment 2) and the UDO text amendment (Attachment 3) in time for the **January 21, 2016** BOCC meeting.

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

UDO / Zoning-2015-04

Revision(s) of existing definitions and regulations governing the development of recreational facilities within the County.

A. AMENDMENT TYPE

Map Amendments

- Comprehensive Plan – Future 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): Section(s):

1. 5.2.1 *Table of Permitted Uses – General Use Zoning Districts;*
2. 5.2.2 *Table of Permitted Uses – Economic Development Districts;*
3. 5.2.3 *Table of Permitted Uses – Conditional Use Districts;*
4. 5.7 *Standards for Recreational Uses, and*
5. *Article 10 Definitions.*

- Other:

B. RATIONALE

1. Purpose/Mission

In accordance with the provisions of Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the UDO, the Planning Director has initiated a text amendment to revise existing regulations and definitions of recreational uses.

While reviewing an issue with the Attorney's office it was determined the County's existing definitions and classification methodology for recreation uses (i.e. relying on the profit/non-profit status of said operation) was not appropriate and inconsistent with acceptable legal practice. The regulation and permitting of recreational uses should be based anticipated impacts of said use rather than on its 'tax status'.

2. Analysis

As required under Section 2.8.5 of the UDO, the Planning Director is required to: *'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'*.

Recreational uses are defined as follows within the UDO:

- *Recreation Use, Non-Profit:* An indoor or outdoor recreation use owned by a not-for-profit corporation, according to the laws of North Carolina.
- *Recreation Use, Profit:* An indoor or outdoor recreation use owned by an entity other than a not-for-profit corporation.

Recreation Use, Non-profit land uses are allowed, through the issuance of a Class B Special Use Permit (i.e. reviewed and acted upon by the Board of Adjustment) in:

1. All residential zoning (i.e. Rural Buffer (RB), Agricultural Residential (AR), Rural Residential (R-1), Low (R-2), Medium Residential (R-3, R-4), and High Intensity(R-5, R-8, and R-13) districts.
2. Commercial zoning (i.e. Local Commercial (LC-1), Neighborhood Commercial (NC-2), Community Commercial (CC-3), General Commercial (GC-4), and Office Institutional (OI)) districts.
3. All industrial (i.e. Light Industrial (I-1), Medium Industrial (I-2), Heavy Industrial (I-3)) districts.
4. Within a Master Planned Development Conditional Zoning (MPD-CZ) district.

Recreation Use, Profit is allowed within the Community Commercial (CC-3), General Commercial (GC-4), and Light Industrial (I-1) zoning districts as a permitted use (i.e. administrative review and approval by staff).

Within the Buckhorn and Eno Economic Development districts both Recreation Use, Profit and Non-profit land uses are only allowed within both the Low and High Intensity general use zoning designations with the review and approval of a Conditional Use (i.e. rezoning and Class A Special Use Permit) application by the BOCC. There are specific recreational land uses, including a golf driving range,

listed as a permitted use of property within these districts.

Staff has been working to address local resident concern(s) over the purported development of commercial shooting ranges. Currently the County has no land use standards governing the development of such uses (i.e. setbacks, development of protective berms to absorb bullets, etc.).

Staff is proposing to overhaul our current regulations by:

- a. Establishing new definitions for recreational uses;
- b. Reviewing the types of recreational land uses permitted in each zoning district and suggesting revisions;
- c. Developing new standards governing the development of recreational land uses; and
- d. Developing standards governing the discharge of firearms from both a commercial business and personal enjoyment standpoint.

The amendments are necessary to address outdated regulations governing the development of recreational land uses, update existing development standards and requirements, complete a review of acceptable recreational land uses throughout the County, and establish land use regulations governing the discharge of firearms.

Nothing within the proposed amendments will impact the development of parks/recreational amenities by Orange County.

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

Land Use Goal 2: Land uses that are appropriate to on-site environmental conditions and features and that protect natural resources, cultural resources, and community character.

Land Use Goal 4: Land development regulations, guidelines, techniques and/or incentives that promote the integrated achievement of all Comprehensive Plan goals.

4. **New Statutes and Rules**

N/A

C. PROCESS

1. **TIMEFRAME/MILESTONES/DEADLINES**

- a. BOCC Authorization to Proceed

May 5, 2015

- b. Quarterly Public Hearing

September 8, 2015. The amendment was reviewed at the September 8, 2015

Quarterly Public Hearing where the following questions/comments were made:

- There was general consensus that proposed amendments to the Buckhorn and Eno Economic Development Districts permitted use table, allowing for recreational facilities to be a permitted use of property within the high intensity zoning designations (i.e. EDB-2 and EDE-2), are acceptable.
- A BOCC member asked why there were different setback standards for gun ranges developed as an accessory use to a residential use of property or a recreational facility.

STAFF COMMENT: Staff recommended a shooting range developed as an accessory use to a residence observe a setback of 300 feet from all property lines. For a shooting range developed as a recreational facility we recommended a setback of 600 feet from all property lines.

The rationale for the different standards is based on the anticipated intensity of use, with a private recreational amenity having a perceived lower potential impact versus a facility designed to be used by the general public (i.e. more weapons being discharged at any given time).

- A BOCC member asked what the typical minimum lot size would have to be to comply with proposed setback standards for a shooting range.

STAFF COMMENT: A residential property would have to be roughly 8 ½ acres in area to accommodate a designated shooting area while a recreational facility would have to be roughly 33 acres to accommodate a non-residential outdoor shooting range.

- A BOCC and Planning Board member asked if the proposed setbacks for a gun range would be sufficient to ensure bullets remain on the property.

STAFF COMMENT: Discharged projectiles can travel upwards of ½ mile or farther depending on the caliber of the weapon.

If our goal is to rely solely on setback standards to ensure discharged projectiles remain on the property, they would have to be more extensive. Staff does not believe this option is consistent with concerns expressed at the public hearing.

This proposal combines required setbacks with additional standards mandating shooting and/or targeting activities be oriented in such a manner to keep projectiles on the property and directed into a permanent backstop. This is intended to mitigate the need for more restrictive setback requirements.

- Both BOCC and Planning Board members suggested hour limitations be established concerning the discharge of firearms on residential property.

STAFF COMMENT: Staff will add language to the proposed text amendment.

- A BOCC member asked if we were being overly restrictive with the proposed amendments as they relate to the discharge of firearms.

STAFF COMMENT: Staff understands the concern. The proposal is an

attempt to address complaints from property owners related to the discharge of firearms on neighboring properties while protecting an individual's right to engage in shooting activity and/or discharge a firearm on their property.

- BOCC and Planning Board members suggested shooting ranges/facilities ought to have similar setback requirements.
- A BOCC member asked staff to invite those individuals who had previously submitted complaints and concerns over the discharge of firearms to the October 7, 2015 Planning Board meeting to express their concerns.

STAFF COMMENT: Staff will send out a meeting notice and copy of revised text under review by the Planning Board.

- A BOCC member suggested revising Section 5.7.2 *Recreational Facilities* of the proposed text amendment to combine recreational uses played on a court into a single category.

STAFF COMMENT: Staff will combine the uses as suggested.

- A BOCC member asked why the proposed text amendments did not address the number of people discharging a firearm at a given moment or limit the number of times a firearm could be discharged in a given time frame.

STAFF COMMENT: Staff indicated such regulations would be difficult to enforce and hard to verify as part of a land use enforcement investigation.

- A Planning Board member expressed concern the amendment would overly restrict the use of private recreational accessory uses. Specifically there was concern over staff's statement a private recreational use could not be used by neighbors/friends in the owner's absence.

STAFF COMMENT: The amendment is an attempt to develop a threshold making it easier to identify instances where a recreational land use is either a private or a public amenity.

As indicated during the public hearing, staff is investigating complaints over the purported establishment of public recreational facilities without required permits (i.e. Class B Special Use Permit). As the ordinance is currently written it is difficult to make a determination either way.

Our goal is not to overly regulate private recreational accessory uses but to ensure we have an appropriate methodology to identify those instances where such uses become, or are truly, a public recreational amenity requiring a heightened permit review and approval process.

- A BOCC member asked for information from the Sheriff's Office outlining what regulations they are able to enforce and how they typically respond to a complaint associated with the discharge of a firearm.

STAFF COMMENT: Please refer to [Attachment 2](#) for the Sheriff's reponse.

c. BOCC Updates/Checkpoints

May 5, 2015 – Approval of UDO Amendment Outline Form

July 1, 2015 – Planning Board Ordinance Review Committee (ORC) (BOCC receives materials)

September 8, 2015 – Quarterly Public Hearing

December 7, 2015 – Receive Planning Board Recommendation

d. Other

N/A

2. PUBLIC INVOLVEMENT PROGRAM

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

a. Planning Board Review:

July 1, 2015 – Ordinance Review Committee (ORC). The ORC reviewed this item at its July 1, 2015 meeting where the following comments/questions were made:

- Could a resident, on his own property, sponsor a club in his name and finance play on the field under this proposal?

STAFF COMMENT: As the Ordinance is currently written, and proposed, the property owner would have to get a special use permit as the proposed recreational land use is intended to serve the needs of the general public or members of a club/organization.

- Could I develop a putting green on my property?

STAFF COMMENT: You can have a recreational facility on your property and use it for recreational purposes, including a putting green.

When a recreational amenity is opened up for public use/access, however, the nature of the use of property changes and becomes more than a simple accessory use. Staff argues it becomes a recreational facility used to satisfy the needs of the general public, which requires a heightened level of permit review to operate.

- Could a farmer donate land to a non-profit organization to allow for the development of a recreational facility?

STAFF COMMENT: Yes but they would have to obtain a Class B Special Use Permit for the use. This is the current requirement and we are not recommending a change to the existing process.

- Is the intent with this regulation to control the development of gun ranges specifically?

STAFF COMMENT: The amendment seeks to make it easier to identify

instances where a recreational land use is a private or a public amenity. The text amendment also proposes the adoption of new development standards for recreational activities, including standards for shooting ranges/facilities.

The proposed amendment is not solely geared to address the regulation, or establishment, of gun ranges.

- Could a local homeowners association develop a recreational land use on HOA owned property for local residents to take advantage of?

STAFF COMMENT: This text amendment will not preclude that. The homeowners association would, however, have to amend the previously approved subdivision final plat to incorporate the new recreation amenity in accordance with the UDO.

- Will this proposed amendment impact County parks?

STAFF COMMENT: No.

October 7, 2015 – The Planning Board reviewed this item at its October 7, 2015 meeting where the following comments/questions were made:

1. Board members were concerned the required backstop included materials which could cause bullets to ricochet (i.e. steel).

STAFF COMMENT: Staff has modified Section 5.7.1 (A) (2) eliminating references to specific materials for a backstop and, instead, require the backstop to be '*projectile proof*'.

2. A suggestion was made that proposed language be modified to require shooting activities to occur in a low lying area of the property as a means of further keeping projectiles on the property.

STAFF COMMENT: As indicated during the meeting relying on topography can be problematic.

On one end of the spectrum you may have a property owner whose land may not have sufficient slope to allow for shooting activities thereby requiring excavation to create same. On the other end of the spectrum topography can be altered after the fact creating a potential Ordinance violation.

From staff's standpoint it would be more prudent to rely on a projectile proof backstop and strongly urge existing topography be taken into consideration with respect to its location rather than to mandate same as a development standard.

3. A comment was made the proposed text amendment did not adequately address skeet shooting.

STAFF COMMENT: Staff has modified the proposal to include language concerning skeet shooting activities.

4. A Board member asked if the regulations would address the types of weapons that could be discharged.

STAFF COMMENT: The County does not have the legal authority to restrict the type of weapon that can be discharged from private property from a land use standpoint.

It needs to be remembered the adoption of land use regulations governing the discharge of a firearm does not impact the enforceability of other local, State, or Federal regulations concerning the discharge of firearms.

If, for example, it would be illegal to discharge a specific class of firearm on private property under State law this amendment does not preempt enforcement of same by the appropriate law enforcement agency.

- 5. There was general concern over proposed standards detailing the number of times per month incidental shooting could occur on a parcel without being considered a regulated shooting activity requiring the development of a backstop.

STAFF COMMENT: Staff understands the concern and has reduced the number of times incidental shooting activities can occur per month from 3 to 2. There needs to be some allowances made for a property owner who inadvertently engages in shooting activities to not be faced with a notice of violation from the County.

Staff will also reiterate the adoption of land use regulations governing the discharge of a firearm does not impact the enforceability of other local, State, or Federal regulations concerning same.

If a property owner is discharging a weapon in such a manner creating a threat to public safety (i.e. a property owner shooting at a neighbor's house) action can be taken to address the problem.

This enforcement action can occur today with or without the adoption of proposed standards.

- b. Advisory Boards:
Orange County Parks Advisory Board
– DEAPR staff. Staff Transmitted
copies of the proposed text
amendments as part of peer review on
July 10, 2015.

As of this date we have not received
any comments.

- c. Local Government Review:
Staff transmitted copies of the
proposed text amendments to our
planning partners in the Towns of
Chapel Hill, Carrboro, and
Hillsborough for their review and
comment on July 10, 2015.

The Orange County Sheriff's office was sent the proposed text amendment on July 10, 2015.

As of this date staff has not received any comments on the proposed amendments from the Sheriff or our planning partners.

_____	_____
_____	_____
_____	_____

d. Notice Requirements

Legal advertisement was published in accordance with the provisions of the UDO.

e. Outreach:

<input checked="" type="checkbox"/> General Public:	Consistent with NC State General Statutes and Orange County Ordinance requirements. At the September 8, 2015 Quarterly Public Hearing the BOCC requested staff invite individuals who previously submitted concerns related to the discharge of firearms to the October 7, 2015 Planning Board meeting. Notices were sent on September 29, 2015 with a copy of the proposed regulations for review at the October Planning Board meeting.
<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

The amendment will revise existing, outdated, regulations governing the categorization and development of recreational land uses and proposes the adoption of new development standards.

E. SPECIFIC AMENDMENT LANGUAGE

Please refer to Attachment 3.

Primary Staff Contact:

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Planning

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**STATEMENT OF CONSISTENCY
OF PROPOSED UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENT
WITH THE 2030 COMPREHENSIVE PLAN**

Orange County has initiated an amendment to the Unified Development Ordinance (UDO) to revise existing regulations governing the development of recreational land uses.

The Planning Board finds:

- a. The requirements of Section 2.8 of the UDO have been deemed complete; and,
- b. Pursuant to Sections 1.1.5, and 1.1.7 of the UDO and to Section 153A-341 of the North Carolina General Statutes, the Board finds sufficient documentation within the record denoting that the amendment **is consistent** with the adopted 2030 Comprehensive Plan.
 1. The amendment is consistent with applicable plans because it supports the following 2030 Comprehensive Plan goals and objectives:
 - Land Use Goal 2: *Land uses that are appropriate to on-site environmental conditions and features, and that protect natural resources, cultural resources, and community character.*
 - Land Use Goal 3: *A variety of land uses that are coordinated within a program and pattern that limits sprawl, preserves community and rural character, minimizes land use conflicts, supported by an efficient and balanced transportation system.*
 - Land Use Goal 6: *A land use planning process that is transparent, fair, open, efficient, and responsive.*
- c. The amendment is reasonable and in the public interest because it:
 1. Establishes a legally defensible regulation based on the impacts of a specific land use rather than on its tax status.
 2. Establishes uniform standards of development for recreational uses serving either as an accessory, or principal, use of property.
 3. Provides measurable thresholds with respect to what constitutes an accessory or principal recreational land use to ensure equitable enforcement of development standards.
 4. Promotes public health, safety, and general welfare by furthering the goals and objectives of the 2030 Comprehensive Plan.

The Planning Board hereby recommends that the Orange County Board of County Commissioners consider adoption of the proposed UDO Text Amendments.

Lydia Wegman, Vice-Chair

Date

TABLE OF PERMITTED USES – GENERAL USE ZONING DISTRICTS																					
* = PERMITTED USE A = CLASS A SPECIAL USE B = CLASS B SPECIAL USE Δ = SUBJECT TO SPECIAL STANDARDS																					
USE TYPE	GENERAL USE ZONING DISTRICTS																				
	RB	AR	R1	R2	R3	R4	R5	R8	R13	LC1	NC2	CC3	GC4	EC5	OI	AS	EI	I1	I2	I3	PID
~ Use may not be permitted as a Conditional Use District; See Section 5.1.4(E) ^ Allowed as more than one principal use if located on a bona fide farm (see Section 6.2.5)																					
Military Installations (National Guard & Reserve Armory) ~											*	*	*		*						
MANUFACTURING, ASSEMBLY & PROCESSING																					
Assembly and Packaging Operations Including Mail Order Houses, But Excluding On-Premises Retail Outlets												*			*			*	*	*	
Industrial, Heavy ~																				*	
Industrial, Light ~																	*	*	*	*	
Industrial, Medium ~																		*	*		
Microbrewery, production only ^	B	B																*	*	*	
Printing & Lithography												*	*	*				*	*	*	
Sawmills ~																*					
Winery, production only ^	B	B																*	*	*	
MEDICAL USES																					
Health Services: Over 10,000 Sq. Ft. ~													*								
Health Services: Under 10,000 Sq. Ft.										*		*	*	*	*						
Hospitals ~													*		*						
Veterinary Clinic		B								*	*	*	*	*	*	*	*	*	*	*	*
Veterinary Clinic, mobile		B	B							*	*	*	*	*	*	*	*	*	*	*	*
Veterinary Hospitals												*	*	*	*	*	*	*	*	*	*
RECREATIONAL USES																					
Botanical Gardens & Arboretums	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Camp/Retreat Center	B	B	B																		
Golf Driving and Practice Ranges		B										*	*					*			
Parks, Public & Non-Profit	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*

TABLE OF PERMITTED USES – GENERAL USE ZONING DISTRICTS																					
* = PERMITTED USE		A = CLASS A SPECIAL USE				B = CLASS B SPECIAL USE				Δ = SUBJECT TO SPECIAL STANDARDS											
USE TYPE	GENERAL USE ZONING DISTRICTS																				
	RB	AR	R1	R2	R3	R4	R5	R8	R13	LC1	NC2	CC3	GC4	EC5	OI	AS	EI	I1	I2	I3	PID
~ Use may not be permitted as a Conditional Use District; See Section 5.1.4(E) ^ Allowed as more than one principal use if located on a bona fide farm (see Section 6.2.5)																					
Recreational Facilities (Non-Profit) ¹	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
Recreational Facilities (Profit)																					
Golf Course	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
RESIDENTIAL USES																					
Dwelling; Mobile Home	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Dwelling; Multiple Family				*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Dwelling; Single-Family	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Dwelling; Two-Family	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Family Care Home	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Group Care Facility	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
Rehabilitative Care Facility										*	*	*	*	*	*	*	*	*	*	*	*
Residential Hotel (Fraternities, Sororities, and Dormitories) ~								A	A	A			A	A							
Rooming House						*	*	*	*						*	*	*	*	*	*	*
TELECOMMUNICATIONS																					
Telecommunication Tower – Stealth (75 feet or shorter)	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Telecommunication Towers (Over 75 feet and under 200 feet)	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B

¹ Staff is eliminating the distinction between profit and non-profit recreation facilities and eliminating references to an entity’s status as a ‘non-profit’ as being a rationale for deciding the review status of a given land use (i.e. staff review, Special Use Permit, etc.). After reviewing the matter with the Attorney’s office staff has determined the ownership status of a recreational land use and/or property owner is not a reasonable means of establishing land use/permitting regulations. Whether or not a recreational facility is a for-profit entity or not the impacts of said development on adjacent property owners will be the same. From this standpoint it makes more sense to establish reasonable land use controls instead of relying on the tax status of a property owner when determining the viability of a project or identifying required permit review processes (i.e. administrative review versus a requiring a special use permit).

TABLE OF PERMITTED USES – ECONOMIC DEVELOPMENT DISTRICTS									
* = PERMITTED USE A = CLASS A SPECIAL USE B = CLASS B SPECIAL USE C = CONDITIONAL USE (REZONING & CLASS A SUP)									
USE TYPE	GENERAL USE ZONING DISTRICTS								
	BUCKHORN EDD		ENO EDD		HILLSBOROUGH EDD				
	EDB-1	EDB-2	EDE-1	EDE-2	EDH-1	EDH-2	EDH-3	EDH-4	EDH-5
# Shall be noted on Zoning Atlas as “Zoning District” – CU (e.g., EDB-2-CU)									
Recreational facilities (Non-Profit)	C#	C#	C#	C#					
Recreational facilities (Profit) ²	C# B	C# *	C# B	C# *					
Repair service, electronic and appliance	C#	C#	*	*					
Research facility		*		*					
Schools, dance, art, and music	*	C#	*	*					
Schools, elementary, middle, and high	A	A	*						
Schools, vocational	C#	C#		*					
Other Services (Hillsborough EDD only)					*		*	*	
TRANSPORTATION									
Bus terminals and garages		C#		*					
Postal and parcel delivery services		*		*					
Rail/bus passenger shelter	*	*	*	*				*	
Surface and structure parking as principal use (When associated with a local or regional transportation goal such as mass transit or park-and-ride)		*		*				*	
Transportation and Warehousing (Sector 48, 49)									*
WHOLESALE TRADE									
Wholesale Trade (Sector 42)									
Durable Goods (see listing below)									*
• Automotive parts and supplies (In an enclosed building)		*		*					

² Staff is recommending changing review processes for recreational facilities in what are considered high intensity economic development districts. We currently allow certain recreational land uses as a permitted use of property in these districts and do not believe it was the intent of the County to require both the issuance of a Class A Special Use Permit and a rezoning to allow for the development of those land uses falling within the recreational facilities designation.

TABLE OF PERMITTED USES – CONDITIONAL ZONING DISTRICTS				
* = PERMITTED USE				
USE TYPE	CONDITIONAL ZONING DISTRICTS			
	ASE-CZ	MPD-CZ	MHP-CZ	REDA-CZ-1
NOTE: Applications for Conditional Zoning Districts must list specific uses for consideration/approval ^: Use shall not be approved on parcels located in the Rural Buffer land use classification, as designated by the adopted Comprehensive Plan.				
Veterinary Hospitals	*	*		
RECREATIONAL USES				
Arts, Entertainment & Recreation (Sector 71)				
Botanical Gardens & Arboretums	*			
Camp/Retreat Center	*			
Golf Driving and Practice Ranges		*		
Guest Ranch	*			
Parks, Public & Non-Profit	*	*		
Recreational Facilities (Non-Profit)		*		
Recreational Facilities (Profit) ³		*		
Golf Course		*	*	
Race Track (Motorized, etc.) and Go-Kart Track Facilities				*
RESIDENTIAL USES				
Dwelling; Mobile Home	*		*	
Dwelling; Multiple Family		*		
Dwelling; Single-Family	*	*		
Dwelling; Two-Family		*		
Family Care Home				
Group Care Facility		*		
Rehabilitative Care Facility		*		
Residential Hotel (Fraternities, Sororities, and Dormitories)				
Rooming House				
TELECOMMUNICATIONS				

³ Recommended changes here are to ensure consistency throughout the UDO.

- (e) A statement for setting forth the length of time for which the request is made. Approval shall not exceed one year.

(2) Standards of Evaluation

- (a) The relationship between the occupants of the single family unit and the mobile home is established.
- (b) There is a certificate from a licensed physician (MD) stating the necessity of direct care.
- (c) The floor plan of the existing single family unit shows there is no reasonable alternative to the mobile home.
- (d) The proposed site plan shows the location and setbacks of the existing single family unit, the mobile home, and driveways and parking areas. The setbacks for all structures meet or exceed the requirements of the district in which the lot is located.
- (e) There shall be adequate lot area for each unit, according to the minimum requirements of the zoning district in which the lot is located.
- (f) Approval of the Orange County Health Department for water and sewerage disposal facilities, or the approval of the appropriate agency from which sanitary sewer and water will be supplied.
- (g) Approval of the application shall not exceed one year. Renewal shall constitute a new application.

5.4.5 Buildings for Temporary Use

(A) Standards for Class B Special Use Permit

(1) Submittal Requirements –

In addition to the information required by Section 2.7, the following information shall be supplied as part of the application for approval of this use:

- (a) Site plan showing all existing and proposed structures on the site, existing and proposed topography at a contour interval of five feet, existing and proposed landscaping, parking areas, access points, any officially designated flood plains, and other site details.
- (b) A description of the exterior materials, color and construction details.
- (c) Statement of proposed use and length of time building will be in use.

(2) Standards of Evaluation –

- (a) The temporary building shall not be used for residential purposes.
- (b) The temporary building shall not be used by operations offering drive-in services.
- (c) The use of the building shall be only for the period of time specified and for the use specified.
- (d) The proposed use is a permitted use in the district in which it is located.

SECTION 5.5: STANDARDS FOR RESIDENTIAL USES

5.5.1 Accessory Structures and Uses

(A) General Standards of Evaluation

- (1) Accessory structures and uses, including recreational uses and amenities,⁴ shall not be located in any required front open space and shall conform to the principal setbacks of the district where located unless otherwise provided in this Section.
- (2) An attached private garage, or carport, not exceeding 12 feet in height, may occupy a portion of the required side open space, provided that this does not result in a required side open space of less than 7% of the lot width, nor a total, when combined with the required side open space of the lot immediately adjacent, of less than eight feet.
- (3) Mobile homes as accessory structures to residential uses are prohibited.

5.5.2 Efficiency Apartment

(A) General Standards of Evaluation

- (1) There shall be no more than one efficiency apartment, whether detached or attached, on any lot.
- (2) The efficiency unit shall contain no more than 800 square feet of gross floor area.
- (3) The residential lot shall meet the minimum lot size requirements of the zoning district in which it is located.
- (4) The efficiency unit shall comply with the N.C. Residential Building Code including minimum light/ventilation and room sizes.
- (5) The efficiency unit shall be accessory to the principal dwelling unit and may be attached or detached.
- (6) The efficiency unit shall be served by an approved water supply and sanitary facilities.
- (7) The efficiency unit shall remain in the same ownership as the primary residence.

5.5.3 Home Occupations

(A) General Standards

(1) Submittal Requirements—

In addition to the completed application form, applicants for a minor or major home occupation shall submit the following to the Planning Department:

(a) Minor Home Occupations

- (i) A plot plan of the property on which the home occupation is to be located. The plot plan shall show:
 - a. The location of the residence and/or accessory building in which the home occupation is to be located in relation to existing property lines and adjacent homes;
 - b. The location, number, and means of access to required off street parking areas; and
 - c. The location and type of required landscaping and/or screening.
- (ii) A floor plan of the residence and/or accessory building in which the home occupation is to be located showing the location, size,

⁴ Staff has always interpreted a recreational use (i.e. pool, basketball court, etc.) to be an customary accessory use to a residential land use. We are adding language here to formalize this interpretation which will require such uses to comply with established dimensional standards (i.e. setbacks).

from adjacent residentially zoned property.

- (4) The site shall be located on a major road, as classified in the Orange County Comprehensive Plan, unless permitted as an ASE-CZ.
- (5) Parking shall not be located in the front yard space.
- (6) Application materials shall include a comprehensive groundwater study, for facilities expected to use more groundwater on an annual basis than an average single family residence (which uses 240 gallons of water per day) built at the highest density the existing zoning district would allow. For example, if the existing zoning district allows a residential density of 1 unit for 2 acres and the proposed use is on a six acre parcel (which could yield 3 residences), the proposed use(s) may use three times the water used by an average single family residence (or 720 gallons per day, on an annualized basis) before a comprehensive groundwater study is required. The water usage rates of any existing use subject to zoning regulations located on the same lot shall be taken into account when determining if a comprehensive groundwater study is required. Said study shall detail:
 - (a) The amount of water anticipated to be used on a daily, weekly, monthly, and annual basis by regulated uses located on the parcel (e.g., water usage by bona fide farm uses is not required to be included);
 - (b) An analysis of the amount of groundwater withdrawal considered to be safe and sustainable in the immediate vicinity; and
 - (c) An analysis of whether other wells in the vicinity of the proposed use are expected to be affected by withdrawals made by the proposed use.

SECTION 5.7: STANDARDS FOR RECREATIONAL USES

5.7.1 Recreational Uses as Accessory Uses⁵

(A) Residential Land Uses⁶

In addition to the requirements contained within this Ordinance, recreational uses developed as an accessory use to a residence shall abide by the following:

(1) General Standards

- (a) Accessory recreational uses shall not be open to the public or serve as a recreation amenity for other lots.⁷
- (b) Amenities, equipment, and/or facilities intended for spectators such as bleachers or public address systems shall not be permitted.⁸

⁵ There have been issues in the past with property owners allowing for the use of recreation amenities on their property to serve others. To address this issue staff is recommending the imposition of various standards to ensure this use does not become some form of commercial operation.

⁶ **Green Underlined** text added to address comments from the September 8, 2015 Quarterly Public Hearing. There was concern the regulations, as written, would prevent a church from developing a recreational amenity for their congregation's use. While staff does not believe this would be the case, we have added language clarifying the section to address the concern.

⁷ Staff is not trying to say a property owner cannot have friends over who use a pool or basketball court. What we are attempting to avoid is the de-facto expansion of an accessory use on a parcel property to serve other lots recreational needs or be open to the public like a non-residential land use can be. Please note this will not prohibit subdivision developer's from establishing a recreational amenity for their projects. That is addressed in Section 7.11 of the UDO.

⁸ Staff has received concerns from various property owners over the years with respect to a private land owners ability to erect amenities, primary athletic field lights, to expand the use of their accessory recreation use. Staff is

(c) Outdoor sports field lighting, as detailed within Section 6.11, shall be prohibited.⁹

(2) Specific Standards¹⁰

(a) Shooting activities¹¹

(i) All shooting or targeting activities, including skeet shooting, not otherwise exempted herein, shall be designed or oriented to keep projectiles on the property.^{12, 13}

(ii) Shooting activities occurring outdoors shall:

a. Be located a minimum of 300 feet from all property lines, rights-of-way, or access easements;

b. Be located a minimum of 1,000 feet from occupied dwelling units external to the property; and

c. Be directed¹⁴ Direct all stationary target shooting activities into a projectile-proof backstop consisting of concrete, steel, earth, wood, or combination thereof¹⁵ a minimum of 15 feet in height and 30 feet in depth.¹⁶

(iii) Shooting activities occurring indoors shall:¹⁷

a. Be located a minimum of 100 feet from all property lines, rights-of-way, or access easements, and

recommending language that would prohibit the installation/use of equipment allowing for the expanded use of a recreation amenity beyond what is considered customary for a residential setting.

⁹ This would prohibit the erection of sports field lights for accessory recreational land uses developed to support a residential recreational facility.

¹⁰ As written staff is still proposing to establish specific standards for target shooting activities as an accessory use to a residence. There was some discussion at the public hearing to eliminate these standards, specifically setback and backstop requirements, and enforce non-residential target shooting activities only.

¹¹ There have been issues associated with the discharge of firearms on private property, focusing on noise and public safety issues. Staff is attempting to establish reasonable land use regulations to address safety concerns by requiring discharged items remain on the subject parcel and for those areas where a gun is discharged to be set distances from a property line and occupied dwelling units.

¹² **Bold Orange Underlined** text added to address October 7, 2015 Planning Board comments the term 'target shooting' did not specifically include or allow skeet shooting.

¹³ **Blue Underlined** was language added in consultation with the County Attorney's office designed to address a concern from the September 8, 2015 Quarterly Public Hearing proposed regulations could restrict the 'incidental' discharge of a firearm. This language has now been deleted.

¹⁴ Language deleted to address concerns from the October 7, 2015 Planning Board meeting that, as written, the ordinance would not allow skeet shooting.

¹⁵ **Green Underlined** text was eliminated to address concerns from the October 7, 2015 Planning Board meeting, specifically staff is eliminating language defining the materials that could constitute an acceptable backstop. In consultation with the County Attorney it was determined projectile proof backstop would be sufficient.

¹⁶ **Green Underlined** text represents a change to address comments from the September 8, 2015 Quarterly Public Hearing and combines what was proposed to be Section(s) 5.7.1 (B) (1) (b) and (c) into 1 section. Staff has decided to add language reducing required setbacks if shooting/targeting activities occur indoors to address BOCC and Planning Board concerns over the possible impacts proposed setbacks would have on a property owner's ability to engage in target shooting activities.

¹⁷ **Green Underlined** text represents additional regulations to address comments from the September 8, 2015 Quarterly Public Hearing to provide greater flexibility for those property owners who choose to erect an indoors target range on their property with respect to required setbacks.

- b. Be designed to keep the shot within the structure.¹⁸
- (iv) All Shooting or targeting activities occurring outdoors shall occur only between the hours of 10:00 a.m. to 6:00 p.m. daily.¹⁹
- (v) Warning signs indicating shooting activities are occurring on the property shall be posted at one hundred-foot intervals along the perimeter of the property in accordance with Section 6.12.5.²⁰
- (vi) A Type B land use buffer, as detailed within Section 6.8, shall be required around the perimeter of the portion of property where outdoor target shooting activities, including skeet shooting, occurs.²¹²²
- (vii) The use of exploding shells, targets, or other similar materials shall be prohibited.
- (viii) Nothing within Section 5.7.1 shall be construed as limiting or otherwise restricting hunting activities, the use of fireworks, the incidental discharge of a firearm, the discharge of a firearm in self-defense, or engaging in target shooting activities on a parcel of property less than 2 days a month.²³
- (b) Motor Cross and Go-Kart Tracks²⁴
- (i) All tracks and/or paths shall be located a minimum of 100 feet from a property line.
- (ii) A track or path shall not cross over active septic fields.
- (iii) A Type B Land Use Buffer, as detailed in Section 6.8, shall be required around the portion of the property where the track is located.
- (B) Non-residential Land Uses**²⁵

¹⁸ Staff is not recommending the establishment of a standard with respect to an indoor projectile-proof backstop. We believe this can be addressed on a case by case basis.

¹⁹ **Bold Green Underlined** text represents additional regulations to address comments from the September 8, 2015 Quarterly Public Hearing where BOCC and Planning Board members recommended limiting the hours which target shooting activities could occur.

²⁰ **Bold Green Underlined** text represents clarifying language requested at the September 8, 2015 Quarterly Public Hearing to ensure erected warning signs are consistent with established regulations.

²¹ **Bold Orange Underlined** text added to address October 7, 2015 Planning Board comments on incorporating specificity for skeet shooting activities.

²² This will require either the erection of a land use buffer, or preservation of existing vegetation, around the area of the property where shooting activities are occurring. Staff is recommending the installation of a buffer regardless of shooting occurring indoors or outdoors as the buffer will assist with the possible reduction of noise occurring from a discharged weapon.

²³ **Bold Blue Underlined** text represents a change made in consultation with the County Attorney's office after the Quarterly Public Hearing and is designed to ensure we are not limiting the lawful discharge of a firearm or otherwise requiring compliance with development requirements for property owners who may engage in incidental target shooting activities.

²⁴ In the late 1990's and early 2000's staff received numerous complaints from local property owners over the use of motorcycles and go-karts on private property. We are amending existing regulations to establish setback and land use buffer requirements to address these concerns.

²⁵ **Bold Green Underlined** text represents a change to address comments from the September 8, 2015 Quarterly Public Hearing clarifying development standards for recreational amenities developed by non-residential land uses such as a church.

In addition to the requirements contained within this Ordinance, recreational uses developed as an accessory use to a non-residential land use shall abide by the following:

(1) Uses shall not constitute Recreational Facilities.

5.7.15.7.2 Recreational Facilities

(A) General Standards of Evaluation

(1) The standards included herein shall be applied to ~~the following for-profit~~ recreational facilities as a principal use of property.²⁶

~~(a) Tennis clubs~~ Sports played on a²⁷;

~~(b) Swim clubs,~~

~~(c) Racquet ball,~~

~~(d) Squash clubs,~~

~~(e) Pitch and putt courses,~~

~~(f) Amusement areas,~~

~~(g) Bowling alleys,~~

~~(h) Skating rinks,~~

~~(i) Shooting ranges,~~

~~(j) Billiard and pool halls,~~ or other similar activities

~~(k) Rope climbing or obstacle courses,~~

~~(l) Go-kart or motor cross track,~~

~~(m) Exercise facilities including aerobic and yoga studios,~~

~~(n) Indoor athletic facilities and~~

~~(o) Other similar uses.~~

(2) The minimum lot area shall be two acres.

~~(3) Facilities may include such features as play and training areas, athletic field lights, public address systems, parking for patrons and staff, storage/office facilities, and restroom/locker facilities.~~

~~(3)(4) No building shall be closer than 20 feet from any right-of-way or property line or than the minimum requirements of the district in which it is located. or 20 feet to the public right-of-way or private property line, whichever is greater.~~

~~(4)(5) Outdoor athletic fields shall comply with the provisions of Section 6.11 and shall be located a minimum of 50 feet from a property line.~~²⁸

~~(6) All outdoor recreational facilities shall utilize a combination of screens, fences, nets, berms, or vegetation to keep equipment on the property.~~²⁹

~~(B)~~

²⁶ **Blue Underlined** text represents a change made in consultation with the County Attorney's office after the Quarterly Public Hearing in an attempt to further distinguish a recreational facility, considered a principal use of property, versus an accessory use.

²⁷ Text moved to the definition of a Recreational Facility in Article 10.

²⁸ This is a new regulation designed to protect adjacent property owners from the glare of outdoor lighting generated by an outdoor recreational facility.

²⁹ This regulation is designed to ensure any equipment used as part of an outdoor facility (balls, etc.) stays on the property.

(B) Standards for Specific Uses³⁰

(1) Shooting Ranges

(a) Shooting ranges, including skeet shooting activities,³¹ ~~not otherwise exempted herein,~~³² shall be designed or oriented to keep projectiles on the property.

(b) Outdoor shooting ranges shall:³³

(i) Be located a minimum of 300 feet from all property lines, street rights-of-way, or access easements;

(ii) Be located a minimum of 1,000 feet from occupied dwelling units external to the property; and

(iii) Have shooting activities Direct all stationary target shooting activities into a projectile-proof backstop consisting of concrete, steel, earth, wood or combination thereof,³⁴ a minimum of 15 feet in height and 30 feet in depth.

(iv) Operate only from 10:00 a.m. to 6:00 p.m. daily.³⁵

(v) Maintain a Type F land use buffer, as detailed in Section 6.8, around the perimeter of the range.

(c) Indoor shooting activities shall:

(i) Be located a minimum of 50 feet from all property lines, street rights-of-way, or access easements;

(ii) Be located a minimum of 500 feet from occupied dwelling units external to the property; and

(iii) Direct shooting activities into a projectile proof backstop to keep the shot within the structure.

(iv) Maintain a Type B land use buffer, as detailed in Section 6.8, around the perimeter of the property.

(d) Nothing in Section 5.7.2 (B) shall be construed as regulating hunting activities or the operation of a shooting range developed for, and exclusively utilized by, local, State, and/or Federal law enforcement agencies.

(e) Nothing in Section 5.7.2 (B) shall be construed as regulating or prohibiting:

i. **Hunting activities or the operation of a shooting range developed for, and exclusively utilized by,**

³⁰ These regulations would govern the development of commercial shooting ranges.

³¹ **Orange Bold Underlined** text added to address concern expressed at the October 7, 2015 Planning Board meeting the ordinance would not allow skeet shooting.

³² **Bold Blue Underlined** text was a change made in consultation with the County Attorney's office after the Quarterly Public Hearing. To address concerns from the Planning Board it has been deleted.

³³ **Bold Green Underlined** text represents a change to address comments from the September 8, 2015 Quarterly Public Hearing to ensure setback/development standards for shooting ranges are similar regardless if they are for private or public use.

³⁴ **Bold Green Underlined** text was eliminated to address concerns from the October 7, 2015 Planning Board meeting, specifically staff is eliminating language defining the materials that could constitute an acceptable backstop. In consultation with the County Attorney it was determined projectile proof backstop would be sufficient.

³⁵ **Bold Blue Underlined** text represents a change made in consultation with the County Attorney's office after the Quarterly Public Hearing to consolidate regulations governing outdoor shooting activities into a central section.

local, State, and/or Federal law enforcement agencies.

ii. The holding of turkey shoots or other similar activities conducted as a fundraiser or community event so long as such activities occur no more than three days in a given calendar year on a parcel of property³⁶ .

iii. The incidental discharge of a firearm, the discharge of a firearm in self-defense, or engaging in target shooting activities on a parcel of property less than 2 days in a given month.³⁷

(2) Outdoor Paintball

(a) Areas where outdoor paintball activities occur shall be a minimum of 50 feet from all property lines, street rights-of-way, or access easements.

(b) A Type B land use buffer, as detailed in Section 6.8, shall be required around the perimeter of the portion of property where outdoor paintball activity occurs.

(3) Pitch and Putt Courses

(a) Pitch and putt areas shall be located a minimum of 40 feet from all property lines, street rights-of-way, or access easements.

(b) A Type B land use buffer, as detailed in Section 6.8, shall be required around the perimeter of the portion of property where pitch and putt course activity occurs.

(C) Standards for Class B Special Use Permit

(1) Submittal Requirements

In addition to the information required by Section 2.7, the following information shall be supplied as part of the application for approval of this use:

- (a) A description of the exact type facility planned, the amount of area, including and number of members or participants expected, a site plan showing siting and size of existing and proposed building.
- (b) Access, parking, service and recreation areas for all planned facilities or existing facilities.
- (c) Plans, and elevation for all proposed and existing structures and descriptions of the color and nature of all exterior materials.
- (d) A landscape plan showing, at the same scale as the site plan, existing and proposed trees, shrubs, ground cover and any other landscape materials.
- (e) A signed statement from the owners or operators that there shall be no activity allowed that will have adverse effects on adjacent property. The statement shall also include a complete list of all recreational activities that will take place on the site.

(2) Standards of Evaluation

³⁶ Staff did not want to inadvertently prohibit what has become a lucrative fundraising opportunity for several local organizations. As a result language was included to allow for turkey shoots and other similar activities to occur.

³⁷ **Bold Blue Underlined** text represents a change made in consultation with the County Attorney's after the Quarterly Public Hearing to ensure we are treating the discharge of a firearm consistently within the UDO.

- (a) The property shall have direct frontage on, and obtain vehicular access from, a public road.³⁸
- ~~(a)~~(b) Lot size shall be adequate for the method of sewage disposal proposed, and for the proposed recreational uses.
- ~~(b)~~(c) The site plan should show the boundaries of the site, the distances to the nearest residential structures, proposed or existing access points, parking and service areas, location of outdoor recreational facilities, and location of existing or proposed buildings.
- ~~(c)~~(d) The landscape plan shall be at the same scale as the site plan and should show how the facilities will be screened from the adjacent properties, in addition to proposed or existing trees, shrubs and ground cover.
- ~~(d)~~(e) Elevations of all structures and buildings. The structure shall be of such a nature as to preserve the residential character of the area.
- ~~(e)~~(f) There are no adverse impacts on the adjacent roads or residential property.

5.7.25.7.3 Golf – Driving and Practice Range

(A) Standards for Class B Special Use Permit

(1) Submittal Requirements

In addition to the information required by Section 2.7, the following shall be submitted as part of the application:

- (a) A site plan showing the following:
- (i) All existing or proposed buildings, tee areas, lawn areas,
 - (ii) Distances to nearest residential structures,
 - (iii) Access road(s) to the site, with an indication of type of proposed surface;
 - (iv) On-site parking and roads, with an indication of type of proposed surface; and
 - (v) All other requirements as indicated in section 2.5.

(2) Standards of Evaluation

- (a) Unless public sewer is proposed to be extended, the adequacy for the method of sewage disposal will be determined by the lot size and soil suitability. Appropriate letters from the Orange County Environmental Health Department, local jurisdictions and/or the State Division of Environmental Management shall be submitted to indicate preliminary approval.
- (b) The landscape plan shall show how the facilities will be screened from the adjacent properties. A Type D 50 foot buffer, as indicated in Section 6.8, shall be observed around the perimeter of the property. This buffer shall be located outside of the required dimensional area indicated in d. below.
- (c) The site plan, as required in Section 2.7, shall be reviewed by the Orange County Recreation and Parks Director.

³⁸ Staff is recommending this change in an attempt to ensure there is adequate access to a recreation facility and to avoid the use of private roadways supporting such activities.

Public Interest Area

Land which contains public or quasi-public uses such as state parks, research forests or known archaeological or historical sites.

Public Safety Hazard and/or Nuisance

Anything, which is injurious to the safety or health of an Orange County neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Public Vehicular Areas

Street in a platted subdivision which are open for vehicular traffic and have been offered for dedication to the public and where the offer for dedication has not been accepted.

Recreation Use, Non-Profit

~~An indoor or outdoor recreation use owned by a not for profit corporation, according to the laws of North Carolina.~~

Recreation Use, Profit

~~An indoor or outdoor recreation use owned by an entity other than a not for profit corporation.~~

Recreation Space

Exterior area appropriately improved for common recreational use. Part of total and livability open space.

Recreation Space Ratio

Recreation space ratio is the minimum square footage of open space in residential areas, suitable by location, size, shape, access and improvements, required for each square foot of gross land area. This area is a public or private exterior area improved for recreation of all residents, having a least dimension of 50 feet, and average dimension of 100 feet and a minimum area of 10,000 square feet.

Recreation Vehicle (RV)

A self-propelled or towed vehicle, qualified to be licensed by the appropriate State Agency, and is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, providing short term recreational living accommodations, designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

Recreational Facility – For Profit Facilities

~~Includes uses such as tennis clubs, swim clubs, racquet ball, squash clubs, pitch and putt courses, amusement areas, bowling allies, skating rinks, shooting ranges, billiard and pool halls, indoor athletic facilities and such similar uses~~ A use of property occurring indoors and/or outdoors providing recreational amenities, activities, or services³⁹ to either the general public or to members of an organization, club, or league for the purpose of leisure, physical fitness, training, competitive activities or for compensation⁴⁰. Activities shall include, but not be limited to: sports played on a court, amusement arcades, bowling alleys, skating rinks, shooting ranges, billiard and pool halls, paintball, rope climbing or obstacle courses, go-kart or motor cross tracks, exercise centers including aerobic and yoga studios, athletic facilities, and gymnasiums.⁴¹

Reference level

The portion of a structure or other development that must be compared to the regulatory flood protection elevation to determine regulatory compliance. For structures within Special Flood Hazard Areas designated as Zone AE, the reference level is the top of the lowest floor.

³⁹ Language within the definition was revised after the public hearing based on comments from the County Attorney's office in an attempt to make enforcement easier.

⁴⁰ **Bold Orange Underlined** text added to address comments from the October 7, 2015 Planning Board meeting.

⁴¹ **Bold Blue Underlined** text represents a change made in consultation with the County Attorney's office after the Quarterly Public Hearing moving language previously found in Section 5.7.1

**ORANGE COUNTY
PLANNING BOARD
ACTION AGENDA ITEM ABSTRACT**
Meeting Date: December 2, 2015

**Action Agenda
Item No. 8**

SUBJECT: Unified Development Ordinance Text Amendment – Sexually Oriented Businesses

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N)

Yes

ATTACHMENT(S):

1. Comprehensive Plan and Unified Development Ordinance Outline Form – Sexually Oriented Businesses (UDO/Zoning 2015-05)
2. Statement of Consistency
3. Proposed UDO Text Amendment(s)

INFORMATION CONTACT:

Michael Harvey, Planner III (919) 245-2597
Craig Benedict, Director (919) 245-2585

PURPOSE: To make a recommendation to the BOCC on Planning Director initiated amendments to the Unified Development Ordinance (UDO) regarding the regulation of sexually oriented businesses.

BACKGROUND: This item was presented at the November 23, 2015 Quarterly Public Hearing (materials available at: http://www.orangecountync.gov/document_center/BOCCAgendaMinutes/151123.pdf).

As indicated during the hearing, the County cannot prohibit sexually oriented businesses outright but is afforded the opportunity to regulate their location and certain operational characteristics in an effort to ensure identified secondary impacts are mitigated. For additional background information please refer to Section B.1 of Attachment 1.

At the public hearing staff provided links to several studies and reports identifying various secondary impacts associated with sexually oriented businesses and how the proposed text amendments addressed them.

Please refer to Section C.1 of Attachment 1 for a synopsis of additional comments made at the public hearing. Please note staff will be working with the County Attorney's office to address concerns related to the proposed definition of *Nudity or a State of Nudity* for presentation and review at the December 2, 2015 Planning Board meeting.

Procedural Information: In accordance with Section 2.8.8 of the UDO any evidence not presented at the public hearing must be submitted in writing prior to the Planning Board's recommendation. Additional oral evidence may be considered by the Planning Board only if it is for the purpose of presenting information also submitted in writing. The public hearing is held

open to a date certain for the purpose of the BOCC receiving the Planning Board's recommendation and any submitted written comments.

Planning Director's Recommendation: The Planning Director recommends **approval** of proposed text amendment and further recommends approval of the:

- i. Statement of Consistency, as contained in Attachment 2, indicating the proposed text amendment is consistent with the adopted Comprehensive Plan, is reasonable, and in the public interest, and
- ii. The text amendment as contained in Attachment 3.

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

SOCIAL JUSTICE IMPACT: The following Orange County Social Justice Goals is applicable to this agenda item:

GOAL: Enable Full Civic Participation

Ensure that Orange County residents are able to engage government through voting and volunteering by eliminating disparities in participation and barriers to participation.

GOAL: ESTABLISH SUSTAINABLE AND EQUITABLE LAND-USE AND ENVIRONMENTAL POLICIES

The fair treatment and meaningful involvement of people of all races, cultures, incomes and educational levels with respect to the development and enforcement of environmental laws, regulations, policies, and decisions. Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.

RECOMMENDATION(S): The Planning Director recommends that the Board:

1. Deliberate on the proposal as necessary,
2. Consider the Planning Director's recommendation, and
3. Make a recommendation on the Statement of Consistency (Attachment 2) and the UDO text amendment (Attachment 3) in time for the **February 2, 2016** BOCC meeting.

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

UDO / Zoning-2015-05

Amendment(s) addressing establishment of land use regulations for sexually oriented businesses.

A. AMENDMENT TYPE

Map Amendments

- Comprehensive Plan – Future 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): Section(s)

1. 5.2.1 *Table of Permitted Uses*,
2. 5.6 *Standards for Commercial Uses*,
3. Article 8 *Nonconformities*, and
4. Article 10 *Definitions*

- Other:

B. RATIONALE

1. Purpose/Mission

In accordance with the provisions of Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the UDO, the Planning Director has initiated a text amendment to establish regulations governing the development of sexually oriented businesses.

As defined within NCGS 14-202.10 a sexually oriented business means, “*Any businesses, or enterprises that have as one of their principal business purposes, or as a significant portion of their business, an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities.*”

Sexually oriented businesses, because of their very nature, are recognized as having potentially objectionable operational characteristics. Regulation of these uses are necessary to ensure adverse secondary effects do not contribute to the blighting of surrounding neighborhoods and to regulate acts, omissions or conditions that could be construed as detrimental to the public health, safety or welfare. This includes ensuring development of such businesses does not create a disincentive for additional economic development in a given area.

Such regulations, however, are required to be content neutral and shall not have the effect of imposing a limitation or restriction on the content of any communicative materials or deny access by adults to sexually oriented materials protected by the US Constitution’s First Amendment. Regulations also cannot be so restrictive as to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

Currently, Orange County does not permit the development of sexually oriented businesses within any general use zoning district. Existing definitions, including adult uses as contained in Article 10 of the UDO, are out of date and inconsistent with State regulations and recent court decisions.

2. **Analysis**

As required under Section 2.8.5 of the UDO, the Planning Director is required to: ‘*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*’.

The amendment(s) are necessary to ensure the County is consistent with provisions of State and Federal law.

The County cannot prohibit sexually oriented businesses outright but is afforded the opportunity to regulate their location and certain operational characteristics in an effort to ensure identified secondary impacts are mitigated as much as possible.

The proposed amendments establish locational criteria for such businesses including mandatory setbacks from identified sensitive uses (i.e. church, school, single-family residence, etc.) while allowing for their development consistent with applicable State and Federal requirements.

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

Land Use Goal 2: Land uses that are appropriate to on-site environmental conditions and features and that protect natural resources, cultural resources, and community character.

Land Use Goal 4: Land development regulations, guidelines, techniques and/or incentives that promote the integrated achievement of all Comprehensive Plan goals.

4. New Statutes and Rules

N/A

C. PROCESS

1. TIMEFRAME/MILESTONES/DEADLINES

a. BOCC Authorization to Proceed

May 5, 2015

b. Quarterly Public Hearing

November 23, 2015

c. BOCC Updates/Checkpoints

May 5, 2015 – Approval of UDO Amendment Outline Form

September 2, 2015 – Planning Board Ordinance Review Committee (ORC)

November 23, 2015 – Quarterly Public Hearing

This item was reviewed at the November 23, 2015 Quarterly Public Hearing where the following comments were made:

- A BOCC member asked why the exposure of the male breast was not included within the definition of nudity proposed for Article 10 of the UDO. There was concern we are assisting in perpetuating a stereotype holding exposure of the male and female breast should be treated differently.

STAFF COMMENT: The proposed definition was taken from other similar ordinances that had survived legal challenges and staff did not want to make significant changes as a result.

Exposure of the male breast is not typically viewed from either a societal or legal perspective as being inappropriate. However, staff will work with the Attorney's office on revising the proposed definition of nudity to address the concern.

- A BOCC member asked if the text amendment would create a land use regulation for nudity. There was a concern the definition could have unintended consequences, specifically on people engaging in swimming activities at private clubs or public pools.

STAFF COMMENT: The proposed definition of *Nudity or a State of Nudity* provides clarification and context to other recommended

definitions associated with sexually oriented businesses, most notably an Adult Cabaret.

Defining the term, in and of itself, does not create a land use regulation allowing Planning staff to regulate nudity. For example the adoption of the proposal does not preclude individuals from swimming, skinny dipping, or sunbathing on private property, walking through their residence(s) in a state of nudity, or swimming in a public pool.

What the definition is designed to do is provide context to other terms defined as being considered a sexually oriented business allowing staff to make the determination if said activity qualifies as a sexually oriented business or not.

- A BOCC member asked if the proposal should include a setback from bars and/or restaurants that serve alcohol.

STAFF COMMENT: Staff believes it would be difficult to argue a bar/restaurant where alcohol is served is a sensitive use whose business would be negatively impacted by the location of a sexually oriented business near them. We do not believe such a regulation would withstand a legal challenge.

As an aside restaurants and bars are not listed as allowable uses within the general use zoning districts (i.e. I-1 and I-2) where sexually oriented businesses are proposed to be allowed.

- A BOCC member commented he was not comfortable with the proposal to restrict/prohibit the sale or consumption of alcohol at a sexually oriented business.
- There was general discussion on where the businesses would be allowed within the County.

February 2, 2016 – Receive Planning Board Recommendation

d. Other

N/A

2. PUBLIC INVOLVEMENT PROGRAM

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

a. Planning Board Review:

September 2, 2015 – Ordinance Review Committee

The ORC met and reviewed this item at its September 2, 2015 meeting where the following comments were made:

- A Board member asked if there was sufficient legal precedent for the establishment of separation requirements.

STAFF COMMENT: State law grants local government the authority to regulate sexually oriented businesses including establishing separation requirements from sensitive uses (i.e. church, school, playground, etc.).

- A Board member asked how many sexually oriented businesses there are in the County and inquired specifically on the status of the adult entertainment club off of NC Highway 86 North.

STAFF COMMENT: There were 2 sexually oriented businesses operating in the County but both are now closed including the facility off of NC Highway 86. If this Ordinance is passed they will be unable to reopen.

- A Board member asked if there were any properties zoned I-2 or I-3 that could accommodate a sexually oriented businesses.

STAFF COMMENT: There are currently no properties zoned I-2 or I-3. There is, however, available land area that could be rezoned to support such development.

- A Board member asked if these types of land uses create adverse economic impacts by scaring away other types of business operations.

STAFF COMMENT: Staff cannot guarantee adjacent property or business owners will be unfazed if a sexually oriented business locates adjacent to them. To some the business is no different than a night club or a video store. To others such businesses offend their sense of decency.

Staff is recommending the medium (I-2) and heavy (I-3) industrial districts as there are typically a lack of sensitive uses in these areas and, for the most part, commercial land uses in these districts will be closed during the time a sexually oriented business is open.

- A Board member asked if sexually oriented businesses create blight.

STAFF COMMENT: Any land use can create blight if not properly maintained. From staff’s standpoint a sexually oriented business creates more significant impacts if not properly regulated.

The ORC materials are available at: http://www.orangecountync.gov/ORC_Sep_2015_Agenda_Package.pdf. Meeting notes can be viewed by utilizing the following link: http://www.orangecountync.gov/9_2_15_ORC_Notes.pdf.

January 6, 2016 – Recommendation

b. Advisory Boards:

N/A

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<hr/>	<hr/>
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c. Local Government Review:

Staff transmitted the proposed amendment to the Towns of Chapel Hill, Carrboro, and Hillsborough for courtesy review on October 21, 2015.

As of this date staff has not received any comment.

Staff and the Attorney have also met with the Sheriff's Office to discuss the proposal. The Sheriff did not express concerns over the establishment of land use regulations.

d. Notice Requirements

Legal advertisement was published on November 11 and 18, 2015 in accordance with the provisions of the UDO.

e. Outreach:

General Public: Consistent with NC State General Statutes and Orange County Ordinance requirements.

Small Area Plan Workgroup:

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

The amendment will establish comprehensive regulations governing the development and operation of sexually oriented businesses consistent with applicable State and Federal law.

E. SPECIFIC AMENDMENT LANGUAGE

Please refer to Attachment 3.

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**STATEMENT OF CONSISTENCY
OF PROPOSED UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENT
WITH THE 2030 COMPREHENSIVE PLAN**

Orange County has initiated an amendment to the Unified Development Ordinance (UDO) to revise existing regulations governing the development of sexually oriented businesses.

The Planning Board finds:

- a. The requirements of Section 2.8 of the UDO have been deemed complete; and,
- b. Pursuant to Sections 1.1.5, and 1.1.7 of the UDO and to Section 153A-341 of the North Carolina General Statutes, the Board finds sufficient documentation within the record denoting that the amendment **is consistent** with the adopted 2030 Comprehensive Plan.
 1. The amendment is consistent with applicable plans because it supports the following 2030 Comprehensive Plan goals and objectives:
 - Land Use Goal 2: *Land uses that are appropriate to on-site environmental conditions and features, and that protect natural resources, cultural resources, and community character.*
 - Land Use Goal 3: *A variety of land uses that are coordinated within a program and pattern that limits sprawl, preserves community and rural character, minimizes land use conflicts, supported by an efficient and balanced transportation system.*
 - Land Use Goal 6: *A land use planning process that is transparent, fair, open, efficient, and responsive.*
- c. The amendment is reasonable and in the public interest because it:
 1. Establishes legally defensible, content neutral, regulations designed to mitigate the identified secondary impacts associated with sexually oriented businesses, including:
 - a. Studies referenced at the November 23, 2015 Quarterly Public Hearing found the clustering of sexually oriented businesses in a given area could attract an undesirable quantity and quality of transients adversely impacting property values, creating blight for adjacent properties, cause an increase in crime and encourage residents and businesses to move elsewhere.

These studies recommended the establishment of setback standards requiring sexually oriented businesses to be separated from identified sensitive uses.
 - b. Studies referenced at the November 23, 2015 Quarterly Public Hearing indicate that alcohol is identified as contributing factor in attracting an undesirable quantity and quality of transients adversely impacting property values, creating blight, and causing an increase in crime. Courts have found, most notably Fay versus

State Board of Alcoholic Control – NC Court of Appeals, local communities have the legal ability to restrict or prohibit the consumption/sale of alcohol.

2. Establishes uniform standards of development for sexually oriented businesses within the County.
3. Promotes public health, safety, and general welfare by furthering the goals and objectives of the 2030 Comprehensive Plan.

The Planning Board hereby recommends that the Orange County Board of County Commissioners consider adoption of the proposed UDO Text Amendments.

Lydia Wegman, Vice-Chair

Date

TABLE OF PERMITTED USES – GENERAL USE ZONING DISTRICTS																				
* = PERMITTED USE		A = CLASS A SPECIAL USE				B = CLASS B SPECIAL USE				Δ = SUBJECT TO SPECIAL STANDARDS										
USE TYPE	GENERAL USE ZONING DISTRICTS																			
	RB	AR	R1	R2	R3	R4	R5	R8	R13	LC1	NC2	CC3	GC4	EC5	OI	AS	EI	I1	I2	I3
~ Use may not be permitted as a Conditional Use District; See Section 5.1.4(E) ^ Allowed as more than one principal use if located on a bona fide farm (see Section 6.2.5)																				
Repair Service Electronic & Appliance										*	*	*	*							
Restaurants: Carry Out											*	*	*	*						
Restaurants: Drive In												*	*	*						
Restaurants: General										*	*	*	*	*						
Retail, Class 1										*	*	*	*	*						
Retail, Class 2											*	*	*	*						
Retail, Class 3												*	*							
Rural Guest Establishment: Bed & Breakfast ^	*	*	*																	
Rural Guest Establishment: Bed & Breakfast Inn ^		B	B																	
Rural Guest Establishment: Country Inn ^		A	A																	
Sexually Oriented Businesses¹																			*	*
Storage of Goods, Outdoor ~														*				*	*	*
Storage or Warehousing: Inside Building													*	*	*			*	*	*
Studio (Art)										*	*	*	*	*	*			*	*	*
Taxidermy ^		B								*	*	*	*	*				*		
Tourist Home					*	*	*	*	*						*					
Wholesale Trade ~												*	*	*	*			*	*	*
Winery with Minor Events ^	B	B																B	B	B
EXTRACTIVE USES																				
Extraction of Earth Products ~		A														A		A	A	A

¹ Staff is recommending the uses be allowed in our medium and heavy industrial districts as a permitted use of property. This is due to the lack of identified sensitive uses (i.e. residential, schools, church, etc.) typically found in those areas of the County where large scale industrial/manufacturing operations are intended for development.

from adjacent residentially zoned property.

- (4) The site shall be located on a major road, as classified in the Orange County Comprehensive Plan, unless permitted as an ASE-CZ.
- (5) Parking shall not be located in the front yard space.
- (6) Application materials shall include a comprehensive groundwater study, for facilities expected to use more groundwater on an annual basis than an average single family residence (which uses 240 gallons of water per day) built at the highest density the existing zoning district would allow. For example, if the existing zoning district allows a residential density of 1 unit for 2 acres and the proposed use is on a six acre parcel (which could yield 3 residences), the proposed use(s) may use three times the water used by an average single family residence (or 720 gallons per day, on an annualized basis) before a comprehensive groundwater study is required. The water usage rates of any existing use subject to zoning regulations located on the same lot shall be taken into account when determining if a comprehensive groundwater study is required. Said study shall detail:
 - (a) The amount of water anticipated to be used on a daily, weekly, monthly, and annual basis by regulated uses located on the parcel (e.g., water usage by bona fide farm uses is not required to be included);
 - (b) An analysis of the amount of groundwater withdrawal considered to be safe and sustainable in the immediate vicinity; and
 - (c) An analysis of whether other wells in the vicinity of the proposed use are expected to be affected by withdrawals made by the proposed use.

5.6.15 Sexually Oriented Businesses

(A) Submittal Requirements

- (1) In addition to the site plan submittal criteria detailed within Section 2.5 of this Ordinance the applicant shall submit proof a license has been issued allowing for the operation of a sexually oriented business in accordance with Section 8-33 of the Orange County Code of Ordinances.**

(B) Standards of Evaluation

- (1) No sexually oriented business(es) shall be located in a building or on a premises where alcohol or alcoholic beverages are sold or in a building or on a premises that allows alcohol or alcoholic beverages to be consumed.**
- (2) Sexually oriented business(es) shall not be located in any building, or portion thereof, that is:**
 - (a) Within 1,000 feet of an existing sexually oriented business.**
 - (b) Within 1,000 feet of a:**
 - (i) Residential land use including any open space established as part of the residential subdivision approval process,**
 - (ii) Church and/or place of worship,**
 - (iii) School (public, private, or specialty),**
 - (iv) Public or private library,**
 - (v) State licensed child care facility, or**
 - (vi) Public park or recreational facility.**
 - (c) Measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building**

or structure used as the part of the premises where a sexually oriented business is conducted to the nearest portion of a building, structure, or open space area of a use listed above.

SECTION 5.7: STANDARDS FOR RECREATIONAL USES

5.7.1 Recreational Facilities

(A) General Standards of Evaluation

- (1) The standards included herein shall be applied to the following for-profit recreational facilities:
 - (a) Tennis clubs,
 - (b) Swim clubs,
 - (c) Racquet ball,
 - (d) Squash clubs,
 - (e) Pitch and putt courses,
 - (f) Amusement areas,
 - (g) Bowling alleys,
 - (h) Skating rinks,
 - (i) Shooting ranges,
 - (j) Billiard and pool halls,
 - (k) Indoor athletic facilities and
 - (l) Other similar uses.
- (2) The minimum lot area shall be two acres.
- (3) No building shall be closer than the minimum requirements of the district or 20 feet to the public right of way or private property line, whichever is greater.

(B) Standards for Class B Special Use Permit

(1) Submittal Requirements

In addition to the information required by Section 2.7, the following information shall be supplied as part of the application for approval of this use:

- (a) A description of the exact type facility planned, the amount of area, including and number of members or participants expected, a site plan showing siting and size of existing and proposed building.
- (b) Access, parking, service and recreation areas for all planned facilities or existing facilities.
- (c) Plans, and elevation for all proposed and existing structures and descriptions of the color and nature of all exterior materials.
- (d) A landscape plan showing, at the same scale as the site plan, existing and proposed trees, shrubs, ground cover and any other landscape materials.
- (e) A signed statement from the owners or operators that there shall be no activity allowed that will have adverse effects on adjacent property. The statement shall also include a complete list of all recreational activities that will take place on the site.

(2) Standards of Evaluation

ARTICLE 8: NONCONFORMITIES

SECTION 8.1: INTENT

8.1.1 Generally

Non-conforming uses shall not be enlarged, expanded, intensified, or altered, except in conformance with this Ordinance.

It is further the intent of this Ordinance that non-conformity shall not be used as grounds for adding other prohibited uses or structures, nor the enlarging by means of extension or expansion, except as specifically provided by this Ordinance.

In the case of requirements related to external factors, such as distance requirements from other specified uses or landscaping requirements dependent upon adjacent property use, the subject parcel shall be considered conforming so long as its continuous use was established first.²

SECTION 8.2: CLASSIFICATION

Non-conformities are classified as:

- (A) Lots (see Section 8.7);
- (B) Uses of land without structures or minor structures (see Section 8.8);
- (C) Uses of major structures and premises (see Section 8.9);
- (D) Structures (see Section 8.10); and/or
- (E) Characteristics of uses (see Section 8.11)

which were lawful but would be prohibited, regulated, or restricted by the enactment of this Ordinance or a subsequent amendment thereto.

SECTION 8.3: COMPLETION OF NON-CONFORMING PROJECTS

8.3.1 Valid Permit Issued

All non-conforming projects on which construction was begun at least 180 days before the effective date of this Ordinance, or any modification thereto, as well as all non-conforming projects that are at least 25% completed in terms of the total expected cost of the project on the effective date of this Ordinance, or any modification thereto, may be completed in accordance with the terms of their permits, so long as these permits were validly issued and remain unrevoked and unexpired. If a development is designed to be completed in stages, this subsection shall only apply to the particular phase under construction.

- (A) Except as provided this Section, all work on any non-conforming project shall cease on the effective date of this Ordinance, or any modification thereto, and all permits previously issued for work on non-conforming projects shall be revoked as of that date. Thereafter, work on non-conforming projects may begin or may be continued only pursuant to a zoning or special use permit issued in accordance with this Ordinance by the Planning Director or board authorized to issue permits for the type of development proposed. The county shall issue such a permit if it finds that the applicant has in good faith made substantial expenditures or incurred substantial binding obligations in some substantial way in reasonable reliance on conditions as they existed before the effective date of this Ordinance, or any modification thereto, and thereby would be unreasonably prejudiced if not allowed to complete the project as proposed. In considering whether these findings may be made, the Planning Director or appropriate board shall be guided by the following:

² Language added to address situations where legal land uses are made nonconforming by external forces. By adding the language the land use will still be considered a legal, conforming, use of property.

ARTICLE 10: DEFINITIONS

SECTION 10.1: DEFINITIONS

For the purpose of this Ordinance, certain terms and words are herein defined and interpreted as follows:

AASHTO

American Association of State Highway and Transportation Officials.

Accessory Structure

A structure that is located on the same lot as a principal structure and houses an accessory use.

Accessory Use

An activity that may or may not be listed in the Permitted Use Table, which is conducted in conjunction with a permitted principal use, but constitutes only an incidental or insubstantial part of the total activity that takes place on the lot and is customary and ancillary to the established principal use of property. Accessory uses shall comply with all setback requirements for the district in which the use is located. For example, an in-ground swimming pool is required to meet all applicable setbacks including any required fencing around the physical pool, the concrete walkway around the pool, and any pump or utilities associated with the operation of the facility.

Adult Uses

~~An establishment which has a majority of its business which excludes minors by reason of age because of the sexually explicit nature of the material. Such establishments include, but are not limited to, adult bookstores, adult theaters (drive-in, picture and mini-picture), adult cabaret, etc.~~

Adult Arcade

~~Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of Specified Sexual Activities or Specified Anatomical Areas.~~

Adult Bookstore

A bookstore:

- ~~(a) Which receives a majority of its gross income during any calendar month from the sale or rental of publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas, as defined in this article; or~~
- ~~(b) Having as a preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas.~~

Adult Cabaret

~~A nightclub, bar, restaurant, theater, concert hall, auditorium or similar commercial establishment that for at least ten percent of its business hours in any day features:~~

- ~~(a) Persons who appear in a State of Nudity; or~~
- ~~(b) Live performances that are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities; or~~

- (c) Films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas; or
- (d) Persons who engage in lewd, lascivious or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

Adult Escort

A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person for the purpose of participating in, engaging in, providing, or facilitating Specified Sexual Activities.

Adult Escort Agency

A person or business that furnishes, offers to furnish, or advertises to furnish adult escorts as one of its business purposes for a fee, tip, or other consideration.

Adult Merchandise

Any product dealing in or with explicitly sexual material as characterized by matter depicting, describing, or relating to Specified Sexual activities or Specified Anatomical Areas.

Adult Motel

A hotel, motel or similar commercial establishment that offers accommodation to the public for any form of consideration and:

- (a) Provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas; and has a sign visible from the public rights-of-way that advertises the availability of this adult type of photographic reproductions; or
- (b) Offers a sleeping room for rent for a period of time that is less than six hours; or
- (c) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than twelve hours.

Adult Patron

Any person who is physically present on the premises of a sexually oriented business and who is not an owner, employee, agent, subcontractor, or independent contractor of said business, or any entertainer or performer at said business.

Adult Video Store

A commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video tapes or cassettes, video reproductions, CD-ROMs, slides, or other visual representations which depict or describe Specified Sexual Activities or Specified Anatomical Areas; or any combination thereof.

Agricultural Processing Facility, Community

~~A facility utilized for the processing of produce and/or other commodities produced by no more than 5 cooperative farm partners for the consumption of others (e.g. small canning operation); Activities shall include, but may not be limited to, canning, dehydrations, washing, cutting or basic preparation of raw produce but does not include processing of live animals (see Meat Processing Facility). May include accessory retail sales of products processed on-site.~~

Agricultural Processing Facility

~~A facility utilized for the processing and packaging of produce and/or other commodities for transport to off-site wholesale or retail establishments. Facilities may be utilized by farm-based producers, restaurateurs, caterers, food entrepreneurs, and the like. Activities shall include, but may not be limited to, canning, dehydrations, washing, cutting or basic preparation of raw produce prior to shipment but does~~

Institutions of higher learning (universities, colleges and technical institutes). On-site faculty development workshops and fellowship training programs may also be provided as part of the organization's purpose.

Non-Residential Development

Development of any land use which is not residential in nature, including uses (such as churches) which are allowed in residential zoning districts.

Non-Residential Floor Area - Inclusions and Exclusions

The sum of areas for non-residential use on all floors of the building measured from the outside faces of the exterior walls, including halls, lobbies, arcades, stairways, elevator shafts, enclosed porches and balconies, and below-grade floor areas used for non-residential access and storages. Not countable as floor area are:

- a) Open terraces, patios, atriums, or balconies.
- b) Any residential space.

Non-Residential Land Area

All land for non-residential development and related uses, including open space, within the district in the case of locations which are controlled by these regulations. Non-residential land area shall not be construed to include lands not beneficial to non-residential use due to location or character, or areas used predominantly for residential purposes.

Nudity or a State of Nudity

The appearance of a human bare buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernibly turgid state even if completely and opaquely covered.

Nursing Home

A facility, licensed by the appropriate state agency for the care of aged or infirmed individuals, that meet the requirements set forth in this Ordinance.

Nutrient Sensitive Waters

Those waters which are so designated in the classification schedule in order to limit the discharge of nutrients (usually nitrogen and phosphorous). They are designated by "NSW" following the water classification.

Obstruction

Includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across, or projecting into any watercourse, which may alter, impede, retard, or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

Office Use

A use of property for professional and clerical activities associated with the operation of a business.

Offices & Personal Services, Class 1

Offices and personal services that attract few customers or clients on premises other than employees, generate low traffic volumes (< 100 trips/day), and have no adverse impacts beyond the space occupied by the building.

Offices & Personal Services, Class 2

Offices and personal services that generate medium traffic volumes (100-400 trips/day), and have no adverse impacts beyond the lot boundaries.

Offices & Personal Services, Class 3

Any approved ground absorption sewage treatment and disposal system other than an approved privy or an approved septic tank system.

Septic Tank System

A subsurface sanitary sewage system consisting of a septic tank and a subsurface disposal field.

Setback

Yard space other than a court unoccupied and unobstructed by any structure or portion of a structure from thirty inches above the general ground level of the graded lot upward, except as specifically provided in these regulations; provided, however, that fences and walls may be permitted in any setback subject to height limitations established generally or for the district and, further provided that poles, posts and other customary accessories, ornaments, furniture and landscaping shall be permitted in any setback if they do not constitute substantial impediments to free flow of light and air across the setback or violate provisions of these or other regulations regarding visibility.

Sexually Oriented Devices

Any artificial or simulated Specified Anatomical Area or other device or paraphernalia that is designed principally for Specified Sexual Activities but shall not mean any contraceptive device.

Sexually Oriented Business

A business which offers its customers or adult patrons any device, activity or demonstration depicting Specified Sexual Activities , or which is intended to appeal to sexual interests, titillation or arousal of the customer or adult patron. A sexually oriented business shall include an adult establishment as in NCGS § 14-202.10(2) and, in addition, without limitation shall include: Adult Arcade, Adult Bookstore, Adult Video Store, Adult Cabaret, Adult Motel, and Adult Escort Agency.

Sign

Any letter, figure, character, mark, plane, point, marquee, design, poster, pictorial, picture, stroke, stripe, line, trademark, reading matter, or illuminated surface which is constructed, placed, attached, painted, erected, fastened or manufactured in any manner so that the same shall be used for the attraction of the public to any place, subject, person, firm, corporation, public performance, article, machine, or merchandise, which are displayed in any manner, including out-of-doors.

Sign, Abandoned

A sign for which no legal owner can be found or any sign face or sign structure that advertises a business not conducted on the premises for over 90 days. In making the determination that a sign advertises a business no longer being conducted, the Planning Director shall consider the following: the existence or absence of a current occupational license, utility service deposit, or account; use of the premises; and relocation of the business.

Abandoned Sign shall also include the following:

- a) Through age and/or obsolescence a sign that no longer conforms to structural or maintenance specifications of Section 6.12, or
- b) Any pole, pylon, or structure expressly installed for the purpose of affixing a sign that bears no sign or copy.

Sign, Advertiser

Any person who is a lessee or owner of a sign, an agent of same, or anyone that has beneficial use of a sign.

Sign, Advertising Display Area

The advertising display surface area encompassed within any polygon that would enclose all parts of the sign. The structural supports for a sign, whether, they be columns, pylons, or a building, or a part thereof, shall not be included in the advertising area. Also known as Sign Area.

- An example of how advertising display area or sign area is calculated is as follows:

Special Event

A commercial activity attracting at least 20 people at any given time, that typically does not involve permanent structures, and does not occur more frequently than seven days in a 30-day period or more than 50 days per year. Examples of special events are craft shows, small festivals, concerts, medical or veterinary clinics, and sites operated by businesses engaged in hosting outdoor social events such as picnics or receptions sponsored by a restaurant or caterer.

Activities which are not included in this definition include:

- a) Events of a personal or non-profit, nature such as family reunions and church activities;
- b) Farm-related or rural events such as horse shows, 4-H events and auctions; and
- c) Fund-raising events for non-profit organizations.

Special Flood Hazard Area (SFHA)

The land in the floodplain subject to a 1% or greater chance of being flooded in any given year as determined in Section 4.3 of this Ordinance, as defined by the base flood elevation. The mapped special flood hazard area approximates the base flood elevation.

Special Flood Hazard Area Overlay District

An overlay district establishing standards for development for properties within identified floodplains.

Special-Purpose Unit of Government

Any special district or public authority.

Special Use

A use which would not be appropriate generally throughout the zoning district or without special study, but which, if controlled as to number, area, location or relation to neighborhood, would be appropriate. Such uses which are listed as Special Uses in the Permitted Use Table, Section 5.2, may be installed and operated only after approval by the Board of Commissioners or by the Board of Adjustment, as appropriate, subject to the general and specific standards.

Specified Anatomical Areas

- (a) Less than completely and opaquely covered human: (i) genitals, pubic region, (ii) buttocks, or (iii) female breast below a point immediately above the top of the areola; or
- (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified Sexual Activities

- (a) Human genitals in a state of sexual stimulation or arousal;
- (b) Acts of human masturbation, sexual intercourse or sodomy; or
- (c) Fondling or other erotic touchings of human genitals, pubic regions, buttocks or female breasts.

Start of Construction

Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling, nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

State Agency

Every department, agency, institution, public authority, board, commission, bureau, division, council, member of Council of State, or officer of the State government of the State of North Carolina.

Telecommunication Facilities, Whip Antenna

A cylindrical antenna that transmits and/or receives signals in 360 degrees.

Telecommunication Facilities, Wireless facility

The set of equipment and network components, exclusive of the underlying wireless support structure or tower, including antennas, transmitters, receivers base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and wireless telecommunications services to a discrete geographic area. This may also be referred to as a Personal Wireless Facility.

Telecommunication Facilities, Wireless facility Stealth

A wireless support structure designed using stealth technology such that its primary purpose is, or visually appears to be, something other than the support of telecommunications equipment, the apparent purpose of the wireless support structure is customarily considered as accessory to a use that is allowed in the zoning district, and the structure and its primary use comply with this Ordinance.

Telecommunication Facilities, Wireless support structure

A new or existing structure, such as a monopole, lattice, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

Telecommunication Facilities, Wireless Telecommunications Facility (WTF), Includes both Telecommunications Site and Personal Wireless Facility

A structure, facility or location designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices. This includes without limit wireless support structures of all types, kinds and structures, including, but not limited to buildings, church steeples, silos, water towers, signs or other structures that can be used as a support structure for antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the facility. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services, and any commercial wireless telecommunication service not licensed by the FCC.

Temporary Residential Mobile Home

A mobile home, intended for residential use for a limited period of time, for purposes of providing for custodial care under a Class B Special Use Permit or providing temporary residential space during the installation of a replacement mobile home or construction of a stick-built or modular residential unit on the same lot, and for 30 days after the issuance of Certificate of Occupancy for the permanent unit. The temporary mobile home is not attached to a permanent or semi-permanent foundation.

Temporary Use Building

A building, not intended for residential use, consisting of one or more modules constructed off the ultimate site of use. The building is also not attached to a permanent or semi-permanent foundation.

Ten-Year Transition Land

Land located in areas that are in the process of changing from rural to urban densities and/or intensities, that are suitable for higher densities and/or intensities and could be provided with public utilities and services within the first 10-year phase of the Comprehensive Plan update or where such utilities and services are already present or planned. Non-residential uses implemented in accordance with small area plans and/or overlay districts may be appropriate.

Touch or Touching

In the context of a sexually oriented business any form of intentional physical, bodily contact regardless of whether exposed or clothed parts of any body are involved.

Tourist Home

A building or group of attached or detached buildings containing, in combination, three to nine lodging units for occupancy for daily or weekly periods, with or without board, and primarily for occupancy by

**ORANGE COUNTY
PLANNING BOARD
ACTION AGENDA ITEM ABSTRACT**
Meeting Date: December 2, 2015

**Action Agenda
Item No. 9**

SUBJECT: Unified Development Ordinance Text Amendment – Display of Vehicles at Motor Vehicle Sales/Rental Land Uses

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N)

Yes

ATTACHMENT(S):

1. Comprehensive Plan and Unified Development Ordinance Outline Form – Display of Vehicles at Motor Vehicle Sales/Rental Land Uses (UDO/Zoning 2015-06)
2. Statement of Consistency
3. Proposed UDO Text Amendment(s)

INFORMATION CONTACT:

Michael Harvey, Planner III (919) 245-2597
Craig Benedict, Director (919) 245-2585

PURPOSE: To make a recommendation to the BOCC on Planning Director initiated amendments to the Unified Development Ordinance (UDO) regarding the display of vehicles at motor vehicle sales/rental businesses.

BACKGROUND: This item was presented at the November 23, 2015 Quarterly Public Hearing (materials available at: http://www.orangecountync.gov/document_center/BOCCAgendaMinutes/151123.pdf).

As indicated during the hearing, there has been an increase in the number of automotive sale/rental business operating within the County and staff has begun receiving complaints related to the storage and display of vehicles (i.e. too many cars being displayed, parking over septic fields, parking in required buffer areas, parking in public road rights-of-way, etc.). Currently, the County limits only the total number of cars that can be parked and/or displayed for an automotive sales business located within the Neighborhood Commercial (NC-2) general use zoning district. Staff is proposing to develop comprehensive regulations designed to limit the overcrowding of automotive sales operations within all general use zoning districts where such land uses are permitted.

Please refer to Section C.1 of Attachment 1 for a synopsis of additional comments made at the public hearing.

Procedural Information: In accordance with Section 2.8.8 of the UDO any evidence not presented at the public hearing must be submitted in writing prior to the Planning Board's recommendation. Additional oral evidence may be considered by the Planning Board only if it is for the purpose of presenting information also submitted in writing. The public hearing is held

open to a date certain for the purpose of the BOCC receiving the Planning Board's recommendation and any submitted written comments.

Planning Director's Recommendation: The Planning Director recommends **approval** of proposed text amendment and further recommends approval of the:

- i. Statement of Consistency, as contained in Attachment 2, indicating the proposed text amendment is consistent with the adopted Comprehensive Plan, is reasonable, and in the public interest, and
- ii. The text amendment as contained in Attachment 3.

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

SOCIAL JUSTICE IMPACT: The following Orange County Social Justice Goals is applicable to this agenda item:

GOAL: ESTABLISH SUSTAINABLE AND EQUITABLE LAND-USE AND ENVIRONMENTAL POLICIES

The fair treatment and meaningful involvement of people of all races, cultures, incomes and educational levels with respect to the development and enforcement of environmental laws, regulations, policies, and decisions. Fair treatment means that no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies.

RECOMMENDATION(S): The Planning Director recommends that the Board:

1. Deliberate on the proposal as necessary,
2. Consider the Planning Director's recommendation, and
3. Make a recommendation on the Statement of Consistency (Attachment 2) and the UDO text amendment (Attachment 3) in time for the **February 2, 2016** BOCC meeting.

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

UDO / Zoning-2015-06

Amendment(s) establishing regulations for automotive sales and rental business addressing the display and advertising of cars for sale

A. AMENDMENT TYPE

Map Amendments

- Comprehensive Plan – Future 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): Section(s)

1. 5.2.1 *Table of Permitted Uses*, and
 2. 5.15 *Standards for Automotive/Transportation Related Uses*
- Other:

B. RATIONALE

1. Purpose/Mission

In accordance with the provisions of Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the UDO, the Planning Director has

initiated a text amendment to establish regulations governing the development and operation of automotive sales.

Staff has seen an increase in the number of automotive sale business operating within the County and has begun receiving complaints related to the storage and display of vehicles being offered for sale, specifically too many cars being placed on a parcel of property blocking or impeding access for both customers and emergency vehicles. In certain instances, cars have been parked in required land use buffer areas killing required landscaping or have been encroaching into adjacent rights-of-way creating additional enforcement problems.

Staff is proposing to develop comprehensive regulations designed to limit the overcrowding of automotive sales operations within all general use zoning districts where such land uses are permitted.

2. Analysis

As required under Section 2.8.5 of the UDO, the Planning Director is required to: *'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'*.

Automotive sales are allowed in the following general use zoning districts as a permitted use (i.e. administrative approval) of property:

1. Neighborhood Commercial (NC-2) with special standards;
2. General Commercial (GC-4);
3. Existing Commercial (EC-5);
4. Existing Industrial (EI);
5. Light Industrial (I-1);
6. Medium Industrial (I-2);
7. Heavy Industrial (I-3);
8. Economic Development Eno High Intensity (EDE-2); and
9. Master Planned Development Conditional Zoning (MPD-CZ) district.

This use is also permitted within the Economic Development Buckhorn Low and High Intensity (EDB-1 and EDB-2) districts with the review and approval of a Conditional Use (i.e. a rezoning and Class A Special Use Permit) application by the BOCC.

Currently, the County limits only the total number of cars that can be parked and/or displayed for an automotive sales business located within the Neighborhood Commercial (NC-2) general use zoning district. It should be noted that staff has an active code enforcement case against an existing business along Highway 70 within the Cheeks Township.

The amendments are necessary to address congestion at automotive sales operations due to too many vehicles being displayed for sale.

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

Land Use Goal 2: Land uses that are appropriate to on-site environmental conditions and features and that protect natural resources, cultural resources, and community character.

Land Use Goal 4: Land development regulations, guidelines, techniques and/or incentives that promote the integrated achievement of all Comprehensive Plan goals.

4. New Statutes and Rules

N/A

C. PROCESS

1. TIMEFRAME/MILESTONES/DEADLINES

a. BOCC Authorization to Proceed

May 5, 2015

b. Quarterly Public Hearing

November 23, 2015

c. BOCC Updates/Checkpoints

May 5, 2015 – Approval of UDO Amendment Outline Form

September 2, 2015 – Planning Board Ordinance Review Committee (ORC)

November 23, 2015 – Quarterly Public Hearing

This item was reviewed at the November 23, 2015 Quarterly Public Hearing where the following comments were made:

- A BOCC member indicated he believed the proposed limit for vehicles displayed within the NC-2, EC-5, and E-1 zoning districts was too low and should be increased.

STAFF COMMENT: Staff has revised the proposed amendment to allow for the display of 32 vehicles on motor vehicle sales/rental businesses within the NC-2, EC-5, and EI general use zoning districts. The original amendment proposed a limit of 25 vehicles in these districts.

- A Planning Board member asked how this amendment would address the storage of vehicles off-site.

STAFF COMMENT: This amendment would not address or impact vehicles being stored on another property or prohibit same. Such storage would be treated as a separate, independent, land use and have to be permitted in accordance with the provisions of the UDO.

- A BOCC member asked what the impetus was for the proposed text amendment.

STAFF COMMENT: The current limit only applies to motor vehicle sales/rental operations located within the NC-2 zoning district. This limit was established consistent with a petition filled by a property owner and acted

upon by the County in 2012.

Since that time staff has seen an increase in the number of vehicles stored at other operations not bound by the 12 vehicle display limit. This has created access management/parking problems at these sites.

Staff determined the limit was too restrictive and saw an opportunity to recommend a modest increase and at the same time extend the regulation to apply to all similar operations in other general use zoning districts. This would address an equity concern staff has had with respect to ensuring all motor vehicle sales/rental operations are treated the same.

- A BOCC member asked if vehicles stored on the property, and screened from view, would be counted as part of the display limit.

STAFF COMMENT: They would not be counted unless parked within the designated vehicle display area for the property. Staff is providing an option allowing for the storage of vehicles not intended or ready for sale/rental on-site.

February 2, 2016 – Receive Planning Board Recommendation

d. Other

N/A

2. PUBLIC INVOLVEMENT PROGRAM

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

a. Planning Board Review:

September 2, 2015 – Ordinance Review Committee

The ORC met and reviewed this item at its September 2, 2015 meeting where the following comments were made:

- A Board member asked how prevalent the problem is.

STAFF COMMENT: We have approximately 5 motor vehicle sales businesses within the County where we have problems with vehicles being stored and displayed throughout the property. The problem this creates is that required land use buffers, customer parking areas, and septic fields are being used to support the display of motor vehicles.

The proposed amendment is designed to assist staff in establishing a methodology to delineate allowable vehicle display areas on properties used to support motor vehicles sales/rental.

- A Board member asked how staff came up with the recommended vehicle limits.

STAFF COMMENT: The typical display area for a vehicle is 288 sq. ft., which includes the required parking area for said vehicle and the portion of drive isle allowing access.

Staff then identified the acceptable levels of intensity for the various base zoning districts with respect to the display of motor vehicle sales/rental.

Ultimately the recommended numbers were designed to allow for approximately 20% of the property to be used in support of motor vehicle display allowing for the remaining area to satisfy setback, office, customer parking, and required land use buffer development.

- Several Board members asked if the proposed text amendment will impact allowable impervious surface area on a given parcel.

STAFF COMMENT: Development of such land uses will have to comply with applicable impervious surface limits based on the Watershed Protection Overlay District where the property is located.

- A Board member asked is staff could quantify the number of motor vehicle sales/rental businesses operating in the County and if pictures of the vehicle display issues could be provided.

STAFF COMMENT: Staff will provide this material at the November 23, 2015 Quarterly Public Hearing.

The ORC materials are available at: http://www.orangecountync.gov/ORC_Sep_2015_Agenda_Package.pdf. Meeting notes can be viewed by utilizing the following link: http://www.orangecountync.gov/9_2_15_ORC_Notes.pdf.

December 2, 2015 – Recommendation

b. Advisory Boards:

N/A

c. Local Government Review:

N/A

d. Notice Requirements

Legal advertisement was published on November 11 and 18, 2015 in accordance with the provisions of the UDO.

e. Outreach:

- General Public: Consistent with NC State General Statutes and Orange County Ordinance requirements.
- Small Area Plan Workgroup:
- 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

The amendment will establish comprehensive regulations governing the number and placement of vehicles being offered for sale at an automotive sales operation in an effort to address overcrowding concerns and eliminate impediments to vehicular ingress/egress from the property.

E. SPECIFIC AMENDMENT LANGUAGE

Please refer to Attachment 3.

Primary Staff Contact:

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Planning

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**STATEMENT OF CONSISTENCY
OF PROPOSED UNIFIED DEVELOPMENT ORDINANCE TEXT AMENDMENT
WITH THE 2030 COMPREHENSIVE PLAN**

Orange County has initiated an amendment to the Unified Development Ordinance (UDO) to revise existing regulations governing the display of vehicles at motor vehicle sales/rental businesses.

The Planning Board finds:

- a. The requirements of Section 2.8 of the UDO have been deemed complete; and,
- b. Pursuant to Sections 1.1.5, and 1.1.7 of the UDO and to Section 153A-341 of the North Carolina General Statutes, the Board finds sufficient documentation within the record denoting that the amendment **is consistent** with the adopted 2030 Comprehensive Plan.
 1. The amendment is consistent with applicable plans because it supports the following 2030 Comprehensive Plan goals and objectives:
 - Land Use Goal 2: *Land uses that are appropriate to on-site environmental conditions and features, and that protect natural resources, cultural resources, and community character.*
 - Land Use Goal 3: *A variety of land uses that are coordinated within a program and pattern that limits sprawl, preserves community and rural character, minimizes land use conflicts, supported by an efficient and balanced transportation system.*
 - Land Use Goal 6: *A land use planning process that is transparent, fair, open, efficient, and responsive.*
- c. The amendment is reasonable and in the public interest because it:
 1. Establishes uniform standards for the display and storage of vehicles motor vehicle sales/rental businesses.
 2. Provides measurable thresholds with respect to the number of vehicles that can be displayed for sale/rent on-site.
 3. Requires display areas to be denoted on a plan for staff review and approval.
 4. Promotes public health, safety, and general welfare by furthering the goals and objectives of the 2030 Comprehensive Plan.

The Planning Board hereby recommends that the Orange County Board of County Commissioners consider adoption of the proposed UDO Text Amendments.

Lydia Wegman, Vice-Chair

Date

TABLE OF PERMITTED USES – GENERAL USE ZONING DISTRICTS																					
* = PERMITTED USE A = CLASS A SPECIAL USE B = CLASS B SPECIAL USE Δ = SUBJECT TO SPECIAL STANDARDS																					
USE TYPE	GENERAL USE ZONING DISTRICTS																				
	RB	AR	R1	R2	R3	R4	R5	R8	R13	LC1	NC2	CC3	GC4	EC5	OI	AS	EI	I1	I2	I3	PID
~ Use may not be permitted as a Conditional Use District; See Section 5.1.4(E) ^ Allowed as more than one principal use if located on a bona fide farm (see Section 6.2.5)																					
Temporary Mobile Home (Use during construction/installation of permanent residential unit and for 30 days following issuance of Certificate of Occupancy)	*	*	*	*	*	*															
AUTOMOTIVE / TRANSPORTATION																					
Bus Passenger Shelter	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Bus Terminals & Garages ~													*					*	*	*	
Motor Freight Terminals ~																		*	*	*	
Motor Vehicle Maintenance & Repair (Body Shop) ~													*	*	*						
Motor Vehicle Repair Garage ~													*	*							
Motor Vehicle Sales / Rental (New & Used) ¹																					
Motor Vehicle Services Stations													*	*	*	*	*		*	*	*
Parking As Principal Use, Surface or Structure													*	*	*						
Petroleum Products: Storage & Distribution ~																		*	*	*	
Postal & Parcel Delivery Services													*	*		*					
UTILITIES																					
Elevated Water Storage Tanks	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
Public Utility Stations & Sub-Stations, Switching Stations, Telephone Exchanges, Water & Sewage Treatment Plants	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Electric, Gas, and Liquid Fuel Transmission Lines	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
Water & Sanitary Sewer Pumping	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Solar Array – Large Facility	B	B	B	B	B	B	B	B	B	B	B	B	B		B	B		B	B	B	B
Solar Array – Public Utility	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A		A	A	A	A

¹ As we are extending vehicle display standards/limits to all districts there is no reason to single out vehicle sales/rentals in NC-2 anymore.

from the property line.

- (3) Hours of operation shall be limited to the hours between 7 a.m. and 7 p.m.
- (4) Site shall have direct access to a major road, as classified in the Orange County Comprehensive Plan, and shall use said road as the primary access, unless approved otherwise in the permit.

5.14.4 Winery, production only

(A) Standards for Class B Special Use Permit or ASE-CZ Zoning District

- (1) If located in an AR or RB zoning district, the winery must be located on a bona fide farm.
 - (a) A winery, production only, that is located on a bona fide farm, and which utilizes primarily crops produced on-site is considered a bona fide farming use and is not subject to zoning regulations.
 - (b) A winery, production only, that does not utilize primarily crops produced on-site, regardless of whether it is located on a bona fide farm, is not considered a bona fide farming use and is subject to the regulations contained in this Ordinance.
- (2) If located adjacent to residentially zoned property, all buildings shall be located a minimum of 100 feet from the property line.
- (3) Application materials shall include a comprehensive groundwater study, for facilities expected to use more groundwater on an annual basis than an average single family residence (which uses 240 gallons of water per day) built at the highest density the existing zoning district would allow. For example, if the existing zoning district allows a residential density of 1 unit for 2 acres and the proposed use is on a six acre parcel (which could yield 3 residences), the proposed use(s) may use three times the water used by an average single family residence (or 720 gallons per day, on an annualized basis) before a comprehensive groundwater study is required. The water usage rates of any existing use subject to zoning regulations located on the same lot shall be taken into account when determining if a comprehensive groundwater study is required. Said study shall detail:
 - (a) The amount of water anticipated to be used on a daily, weekly, monthly, and annual basis by regulated uses located on the parcel (e.g., water usage by bona fide farm uses is not required to be included);
 - (b) An analysis of the amount of groundwater withdrawal considered to be safe and sustainable in the immediate vicinity; and
 - (c) An analysis of whether other wells in the vicinity of the proposed use are expected to be affected by withdrawals made by the proposed use.

SECTION 5.15: STANDARDS FOR AUTOMOTIVE/TRANSPORTATION RELATED USES

5.15.1 Motor Vehicle Sales / Rental (New & Used) ~~in the NC-2 Zoning District~~²

(A) Submittal Requirements

- (1) In addition to the information required by Section 2.5, the site plan shall show the area for the display of vehicles for sale or rental

² Originally the County adopted regulations establishing a specific limit on the display of motor vehicles for sale in the NC-2 zoning district. This amendment establishes a limit on the outdoor display of motor vehicles offered for sale in every zoning district where the land use is permitted.

(B) General Standards

- (1) Property shall have frontage and direct access onto a State maintained roadway.**
- (2) Areas of the property designated for the display of vehicles for sale or rent shall be improved with an all-weather surface (i.e. concrete, asphalt, gravel)³ and shall not be used for any other purpose.⁴**
- (3) Additional vehicles, other than those offered for sale, rent or staff/customer designated parking as required under Section 6.9 of this Ordinance⁵, can be stored on-site and shall be screened from view from adjacent properties and public rights-of-way.⁶ Such vehicles shall not be included in the display limit calculation.⁸**

(C) Standards for the NC-2, EC-5, and E-I Zoning District(s)

- (4) This use shall only be permitted within the Commercial Transition Activity or Commercial Industrial Transition Activity Node land use classifications, as designated on the Land Use Element Map of the adopted Comprehensive Plan.⁹**

- (1) The display of vehicles outdoors shall be limited to 32¹⁰ vehicles per acre of property.¹¹**

(D) Standards for GC-4, I-1, I-2, I-3, EDB-1, EDB-2, and EDE-2.¹²

- (1) The display of vehicles outdoors shall be limited to 45 vehicles per acre of property.¹³**

³ Staff is recommending the area identified on the site plan as serving as the display area for vehicles be improved (i.e. asphalt, concrete, gravel) is to avoid unnecessary disturbance of property as vehicles are moved in and out of the area. A concern we have is constant moving and parking of cars will result in unnecessary disturbance of the ground, kill vegetation serving as a stabilizing mechanism for soil, and increase sediment runoff from the property in contradiction of our regulations.

⁴ We have had problems in the past with identified parking areas for vehicles being displayed for sale or rent being used as primary parking areas for customers and staff. This provision will give staff greater ability to prohibit same and ensure there is adequate display area as well as required parking for patrons/staff.

⁵ **Green Bold Underlined** text added to address a County Attorney request for clarification on what specific vehicles would fall into this specific provision. The concern is the Ordinance provide specific reference to those vehicles that can be stored on-site only with the development of screening.

⁶ **Green Bold Underlined** text added to address a request made at the November 23, 2015 Quarterly Public Hearing for clarification purposes.

⁷ In consultation with the Director, it was determined additional storage area could be allowed on-site for vehicles not intended for sale or rental so long as said storage area was screened from view.

⁸ **Green Bold Underlined** text added to address a request made at the November 23, 2015 Quarterly Public Hearing for clarification purposes.

⁹ This language is recommended for deletion to address a concern from the Attorney's office with respect to establishing land use prohibitions associated with acceptable land uses on the land use categories contained within the Comprehensive Plan.

¹⁰ **Green Bold Underlined** text added to address a request made at the November 23, 2015 Quarterly Public Hearing to increase the number of vehicles that can be displayed at property zoned NC-2, EC-5, and EI.

¹¹ A typical display area for a vehicle is 288 sq. ft., which includes the required parking area for said vehicle and the portion of drive isle allowing access. The proposal would allow approximately 17% of every acre of property to be dedicated to the display of vehicles offered for sale or rent. This regulation does not eliminate the property owner from having to comply with other ratio/dimensional standards contained within the UDO.

¹² This includes the GC-4, I-1, I-2, I-3, and the Buckhorn and Eno Economic Development districts.

¹³ The proposal would allow approximately 30% of every acre of property to be dedicated to the display of vehicles offered for sale or rent. This regulation does not eliminate the property owner from having to comply with other ratio/dimensional standards contained within the UDO.