ORANGE COUNTY BOARD OF COMMISSIONERS
ORANGE COUNTY PLANNING BOARD

QUARTERLY PUBLIC HEARING AGENDA
February 25, 2013
7:00 P.M.
Department of Social Services
Hillsborough Commons
113 Mayo Street
Hillsborough, North Carolina

NOTE: Information is available on-line at the "Meeting Agendas" link at: http://www.orangecountync.gov/ and also in the Planning Department or the County Clerk's Office

NOTICE TO PEOPLE WITH IMPAIRED HEARING: Audio amplification equipment is available on request. If you need this assistance, please call the County Clerk's Office at (919) 245-2130.

A. OPENING REMARKS FROM THE CHAIR

B. PUBLIC CHARGE

The Board of Commissioners pledges to the residents of Orange County its respect. The Board asks its residents to conduct themselves in a respectful, courteous manner, both with the Board and with fellow 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. All electronic devices such as cell phones, pagers, and computers should please be turned off or set to silent/vibrate.

C. PUBLIC HEARING ITEMS

1. **Unified Development Ordinance (UDO) Text Amendment** – To review government-initiated amendments to the text of the UDO to modify existing language to provide additional reference to land disturbance thresholds related to stormwater management standards. The purpose of this amendment is to avoid requiring project applicants to submit multiple, professionally prepared, plans for a single development project.

2. **Unified Development Ordinance (UDO) Text Amendment** – To review government-initiated amendments to the text of the UDO to modify or remove regulations related to the Schools Adequate Public Facilities Ordinance (SAPFO). The purpose of this amendment is to ensure regulations are consistent with recent case law made by the N.C. Supreme Court.

3. **Unified Development Ordinance (UDO) Text Amendment -** To review government-initiated amendments to the text of the UDO to make changes to the section regarding the Planning Board's Rules of Procedure. The purpose of this amendment is to ensure the regulations are consistent with County policies and processes.

D. ADJOURNMENT OF PUBLIC HEARING

ORANGE COUNTY
BOARD OF COMMISSIONERS AND
PLANNING BOARD
QUARTERLY PUBLIC HEARING
ACTION AGENDA ITEM ABSTRACT
Meeting Date: February 25, 2013

Action Agenda
Item No. C.1

SUBJECT: Unified Development Ordinance Text Amendments – Modification of Site Plan Submittal Requirements

DEPARTMENT: Planning and Inspections **PUBLIC HEARING: (Y/N)** Yes

ATTACHMENT(S):

1. Comprehensive Plan and Unified Development Ordinance Amendment Outline Form (UDO/Zoning 2012-016)
2. UDO Amendment Package
3. Memo from the Commission for the Environment (CFE)

INFORMATION CONTACT:

Michael D. Harvey, Planner III (919) 245-2597
Reynolds Ivins, Erosion Control (919) 245-2586
Craig Benedict, Director (919) 245-2575

PURPOSE: To hold a public hearing on Planning Director initiated text amendments to the Unified Development Ordinance (UDO) in regards to the submission of formal site plans for projects requiring stormwater plan approval.

BACKGROUND: On April 17, 2012 the BOCC approved a UDO amendment package incorporating recent stormwater management and nutrient reduction strategies implemented by the State. This included the establishment of land disturbance thresholds for both residential and non-residential projects requiring submittal of formal, engineered, stormwater plans. Please refer to Section B.1 of Attachment 1 for additional information on these thresholds.

This amendment seeks to clarify existing language within the UDO denoting when a formal site plan is required and adds language requiring formal site plan submittal in those instances where proposed land disturbance exceeds established stormwater management thresholds. Staff is also proposing to include language requiring the development of formal stormwater plans, consistent with established land disturbance thresholds, for minor and major subdivisions. Please refer to Section B.2 of Attachment 1 for additional information.

Attachment 2 contains the proposed amendments with additions shown in red text and proposed deletions are shown in red ~~strikethrough~~ text as well as footnotes documenting the rationale for the proposed modification. Attachment 3 contains a memorandum from the CFE, which reviewed the proposal at its January 14, 2013 regular meeting.

Ordinance Review Committee (ORC) Review: The Planning Board ORC reviewed the proposed amendments at its January 9, 2013 regular meeting. The proposed text in Attachment 2 includes modifications made based on comments received at the ORC. Please refer to Section C.2 (a) of Attachment 1 for a summary of the Board member's comments.

Notification Procedural Requirements: Legal ads for the public hearing were placed in a newspaper of general circulation in the County in accordance with Section 2.8.7 of the UDO.

FINANCIAL IMPACT: See Section C.3 in Attachment 1.

RECOMMENDATION: The Planning Director recommends the Board:

1. Receive the proposed amendments to the Unified Development Ordinance as detailed in this abstract and attachments.
2. Conduct the public hearing and accept public, BOCC, and Planning Board comment on the proposed amendments.
3. Refer the matter to the Planning Board with a request that a recommendation be returned to the BOCC in time for the **May 7, 2013** BOCC regular meeting.
4. Adjourn the public hearing until **May 7, 2013** in order to receive and accept the Planning Board's recommendation and any submitted written comments.

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

UDO / Zoning-2012-016

Amendment(s) requiring submittal of formal site plans and stormwater management plans for residential and non-residential projects

A. AMENDMENT TYPE

Map Amendments

☐ Land Use Element Map:
From: ---
To: ---

☐ Zoning Map:
From:- --
To:---

☐ Other:

Text Amendments

☐ Comprehensive Plan Text:
Section(s):

☒ UDO Text:

☐ UDO General Text Changes
☒ UDO Development Standards
☐ UDO Development Approval Processes

Section(s):
1. Section 2.4.1 *Zoning Compliance Permits – Applicability*
2. Section 2.5.2 *Application Requirements*
3. Section 7.6.3 *Land Suitability*

☐ 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 modify existing language requiring the submittal of formal stormwater plans as part of subdivision and development applications.

The State recently implemented stormwater management and nutrient reduction strategies. As part of these strategies, the County recently modified existing regulations mandating the preparation and submittal of formal, engineered, stormwater management plans as part of any development project where proposed land disturbance reached the following thresholds:

Watershed/River Basin	Stormwater – Non-residential	Stormwater – Residential
Cape Fear (includes the Back Creek, Haw River, Cane Creek, Jordan Lake, and University Lake protected and critical watershed overlay districts as well as those properties within the basin not located in a watershed overlay district).	Projects proposing over 21,780 square feet of disturbance are required to submit a stormwater management plan.	Projects proposing over 43,560 square feet of disturbance are required to submit a stormwater management plan.
Neuse (includes Flat River, Little River, Upper and Lower Eno protected and critical watershed overlay districts as well as those properties within the basin not located in a watershed overlay district).	Projects proposing over 12,000 square feet of disturbance are required to submit a stormwater management plan.	Projects proposing over 21,780 square feet of disturbance are required to submit a stormwater management plan.
Roanoke (includes South Hyco Creek protected watershed overlay district).	Projects proposing over 20,000 square feet of disturbance are required to submit a stormwater management plan.	Projects proposing over 43,560 square feet of disturbance are required to submit a stormwater management plan.

These changes were incorporated into the UDO on April 17, 2012. The agenda packet for this meeting can be found utilizing the following link: http://orangecountync.gov/OCCLERKS/120417.htm

Currently there are conflicting requirements within the UDO detailing when a formal, professionally prepared, site plan is required.

For example Section 2.4.1 requires a professionally prepared site plan for single-family developments on property located within the University Lake Protected and Critical Watershed Overlay Districts. Section 2.5.2, the section of the UDO addressing site plan application requirements, specifically exempt single-family development projects from submitting a professionally prepared site plan.

Problems also arise in those instances where a project's proposed overall land disturbance requires submission of a formal stormwater management plan.

Staff does not want there to be conflicting information provided to the public as to when a formal site plan is required nor do we want the staff of Current Planning and Erosion Control to potentially be looking at 2 different sets of plans proposing the development of a given property.

This proposed amendment is designed to:

1. Require formally prepared site plans for those projects exceeding established stormwater disturbance thresholds for residential projects.

   Submittal of formal site plans is already required for all non-residential projects regardless of the proposed land disturbance activity.

2. Incorporate references within various locations of the UDO identifying which land development projects need to comply with these standards in an effort to eliminate confusion and provide definitive application submittal standards.

3. Add language requiring stormwater management plans for minor and major subdivisions where anticipated land disturbance activities would exceed established thresholds.

   Both Planning and Erosion Control staff agree potential problems can be eliminated if there is a formal stormwater management plan approved during the subdivision review and approval process.

2. Analysis

As required under Section 2.8.5 of the Orange County Unified Development Ordinance, 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 proposed amendment is designed to incorporate established stormwater management land disturbance thresholds into existing language within the UDO requiring formal site plan preparation and submittal by an applicant when said thresholds are exceeded.

By modifying existing language we hope to eliminate unnecessary cost for the applicant, with respect to the completion of multiple site plans, and provide sufficient detail to residents, property owners, and developers on when formal site plan preparation is necessary.

The amendment is also designed to provide a 'central site plan' for review to ensure staff is reviewing and taking action on the same document to avoid confusion and unnecessary duplication of effort.

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

This amendment is designed to provide additional references to existing

development standards already contained within the UDO.

4. **New Statutes and Rules**

This amendment is designed to reference compliance with recently adopted modifications to the UDO related to stormwater management and nutrient reduction standards consistent with the following State regulations:

- 15A NCAC 2B. 0277 Falls Lake Stormwater New Development Rule
- 15A NCAC 2B. 0265 and Session Law 2009-484 Jordan Lake Stormwater New Development Rules

C. PROCESS

1. **TIMEFRAME/MILESTONES/DEADLINES**

a. BOCC Authorization to Proceed

November 8, 2012. The BOCC voted unanimously to authorize staff to proceed with the amendment. Board members also requested staff present the proposed amendment to the Commission for the Environment (CFE) for its input. Staff presented this item to the CFE at its January 14, 2013 regular meeting. Please refer to Attachment 3 for additional information.

b. Quarterly Public Hearing

February 25, 2013

c. BOCC Updates/Checkpoints

January 9, 2013 - BOCC members can view materials to be reviewed by the Planning Board's Ordinance Advisory Committee (ORC) as part of the Planning Board materials posted on-line each month. Packet materials can be viewed utilizing the following link: http://orangecountync.gov/planning/documents/PBPacketJan2013.pdf
February 5, 2013 – BOCC members approved the legal advertisement for the February 25, 2013 Quarterly Public Hearing with this item on the agenda.
May 7, 2013 - Receive Planning Board recommendation.

d. Other

2. **PUBLIC INVOLVEMENT PROGRAM**

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

a. Planning Board Review:

January 9, 2013 – Ordinance Review Committee (ORC).

A Planning Board member identified a punctuation error in Section 2.4.1 of the proposed amendment. An error was also identified within the site plan flow chart contained in Section 2.5.2. Staff has modified the proposal accordingly.

There was also a general discussion over staff's recommendation to modify Section 2.4.1 expanding the list of Watershed Protection Overlay Districts requiring a professionally prepared site plan allowing for development. Staff agreed to solicit guidance from the BOCC at the public hearing.

March 6, 2013 – April 3, 2013 (recommendation)

b. Advisory Boards:

Commission for the Environment (CFE) – January 14, 2013. The CFE had no comments related to the proposed amendment. Please refer to Attachment 3 for a memorandum summarizing the CFE's review.

c. Local Government Review:

Courtesy Review – Town(s) of Chapel Hill, Carrboro, Hillsborough, City of Mebane

d. Notice Requirements

Legal advertisement will be published on February 13 and 20, 2013.

e. Outreach:

- ☐ General Public:
- ☐ Small Area Plan Workgroup:
- ☐ Other:

3. FISCAL IMPACT

While these proposed amendments are merely designed to incorporate necessary references with respect to complying with established thresholds, and requiring the submission of formal site plans in the event a stormwater management plan is required, staff had previously identified compliance with these new State required standards will impose additional costs for development projects and require additional staff resources.

Workload for Current Planning and Erosion Control staff to review and approve stormwater management plans required by the rules is expected to increase.

Workload for staff with respect to the inspection of stormwater management features is also expected to increase. This may necessitate an increase in fees charged to developers.

As reported at the February 27, 2012 Quarterly Public Hearing, it is expected that enforcement of the new regulations will require, at a minimum, up to one additional full time employee for Erosion Control with an approximate cost of $65,000.

Staff is continuing to evaluate workload and needs as the process moves forward.

D. AMENDMENT IMPLICATIONS

The amendments are in response to recent modifications to the UDO relating to compliance with stormwater and nutrient management requirements and staff's desire to ensure proper reference for compliance with these aforementioned new standards.

As previously indicated by staff, compliance with these required standards is expected to increase the cost of development and increase staff workload.

E. SPECIFIC AMENDMENT LANGUAGE

Please refer to Attachment 2.

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ATTACHMENT 2

UDO AMENDMENT PACKET NOTES:

The following packet details staff's proposed modifications to existing regulations governing the submittal of professionally prepared site plans for projects requiring stormwater plan approval. These amendments are based modifications to the UDO, approved on April 17, 2012, incorporating State stormwater management and nutrient reduction standards into County regulations.

The intent of the proposal is to incorporate appropriate references to these new development standards to avoid the submission of multiple site plans adding to the overall cost of a development project and creating confusion for the property owner/developer.

As the number of affected pages/sections of the existing UDO are being modified with this proposal staff has divided the proposed amendments into the following color coded classifications:

- Red Underlined Text: Denotes new, proposed text, that staff is suggesting be added to the UDO
- **Red Underlined Bold Text**: Denotes new, proposed text, added to address peer or advisory board comments
- ~~Red Strikethrough Text:~~ Denotes existing text that staff is proposing to delete

Staff has included footnotes within the amendment package to provide additional information/rationale concerning the proposed amendments to aid in your review.

Only those pages of the UDO impacted by the proposed modification(s) have been included within this packet. Some text on the following pages has a large "X" through it to denote that these sections are not part of the amendments under consideration. The text is shown only because in the full UDO it is on the same page as text proposed for amendment or footnotes from previous sections 'spill over' onto the included page. Text with a large "X" is not proposed for deletion.

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

Users are reminded that these excerpts are part of a much larger document (the UDO) that regulates land use and development in Orange County. The full UDO is available online at: http://orangecountync.gov/planning/Ordinances.asp

(D) Amendments initiated by Orange County shall not be subject to time limitations other than those specified by the Board of County Commissioners during the public hearing process.

(E) Evidence not presented at the public hearing may be submitted in writing to the Planning Board for consideration prior to the Planning Board's recommendation to the Board of County Commissioners. The Planning Board may consider additional oral evidence only if it is for the purpose of presenting information also submitted in writing.

2.3.11 Action by Board of County Commissioners

(A) The Board of County Commissioners shall not consider enactment of the proposed amendment until the Planning Board either makes its recommendation or takes no action on the application as prescribed in this section.

(B) In making its decision, the Board of Commissioners shall consider all relevant evidence presented at the public hearing and any submitted written evidence that was considered by the Planning Board in making its recommendation.

(C) The Board of Commissioners, upon receipt of a recommended Comprehensive Plan or portion thereof from the Planning Board, shall consider such recommendations and adopt them by resolution, either unchanged or with modifications.

SECTION 2.4: ZONING COMPLIANCE PERMITS

2.4.1 Applicability

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

(B) Submittal and approval of a site plan (see Section 2.5) is required for issuance of a Zoning Compliance Permit except for:

(1) Single-family detached dwellings and duplexes, and accessory structures to those residential uses ~~provided, however, when such uses are located in the~~developed on property located outside of the Upper Eno Critical, Little River Protected, University Lake and Cane Creek Protected and Critical Watershed Protection Overlay Districts. In these instances a Plot Plan, as detailed within Section 2.4.3 of this Ordinance, shall be required., ~~site plan approval shall be required.~~[1]

~~(a) Single-family detached dwellings and duplexes outside of the University Lake Watershed Protection Overlay District and accessory structures to those residential uses shall be required to submit a Plot Plan (see Section 2.4.3 for Plot Plan specifications).~~

In those instances where the proposed level of land disturbance exceeds established thresholds detailed within Section 6.14.5 of the Ordinance a formal site plan, prepared in accordance with Section 2.5, shall be required for submittal and approval regardless of the proposed land use or Watershed Protection

[1] The existing wording of the UDO has created confusion in the past over when a site plan is required. We have streamlined existing language in an attempt to eliminate confusion and specifically spell out when a plot plan versus a site plan is actually required. Staff is also proposing to add language requiring formal site plans in other Watershed Protection Overlay Districts having similar characteristics to the University Lake Protected and Critical Watershed Protection Overlay Districts in order to establish greater uniformity within the Ordinance. Specifically staff is modifying the UDO to require a formal site plan in those overlay districts where a 6% impervious surface limit in enforced. There will need to be discussion on this item as there are implications to expanding the list, most notably more property owners will be required to secure a professionally prepared site plan than ever before. The BOCC may wish to revise this section in its entirety to limit submittal of site plans in those instances where formal stormwater management plans are required.

Overlay District designation of the subject property.[2] **This site plan may contain all required elements associated with obtaining a Zoning Compliance, Erosion Control, and Stormwater permit as detailed herein,**[3]

(2) Interior renovation or repair of an existing structure, provided the use of the lot and/or structure has not changed.

(C) Issuance of a Zoning Compliance Permit is required prior to beginning the excavation for the construction, moving, alteration, or repair, except ordinary repairs, of any building or other structure, including an accessory structure. The Zoning Compliance Permit shall include a determination that plans, specifications and the intended use of the structure conforms to the provisions of this Ordinance.

(D) Issuance of a Zoning Compliance Permit is required to change the type of use or type of occupancy of any building, or to expand any use on any lot on which there is a non-conforming use. The Zoning Compliance Permit shall include a determination that the proposed use conforms to the provisions of this Ordinance.

2.4.2 Requirements and Conditions

(A) In cases where the development and/or commencement of a land use requires the issuance of a Special Use or a Conditional Use Permit, a Zoning Compliance Permit shall not be issued until the aforementioned permit has been issued by the responsible board in accordance with the review and approval procedures detailed herein.

(B) Issuance of a Special Use or Conditional Use Permit does not negate the requirement for a Zoning Compliance Permit.

(C) Issuance of a Zoning Compliance Permit does not establish a vested right to begin and complete construction or change the use/occupancy of a lot or building should regulations change subsequent to issuance of said permit.

(D) Application for Zoning Compliance Permit shall specify the method of disposal of trees, limbs, stumps and construction debris associated with the permitted activity. Open burning of trees, limbs, stumps, and/or construction debris associated with the permitted activity is expressly prohibited.

(E) No building, structure, or zoning lot for which a Zoning Compliance Permit has been issued shall be used or occupied until the Building Inspector has, after final inspection, issued a Certificate of Occupancy indicating compliance with all the provisions of this Ordinance.

(F) No building, structure, or zoning lot for which a Zoning Compliance Permit has been issued shall be used or occupied until the Orange County Health Department has approved the water supply and sewage disposal systems serving that use.

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[2] There is an existing disconnect between permit submittal requirements for a Zoning Compliance Permit and a Stormwater management plan. Staff of Current Planning and Erosion Control could, essentially, be looking at 2 different proposals as there is not an appropriate reference to the stormwater permitting requirement in this section of the UDO. There is also a disconnect with respect to the required level of site plan detail (i.e. professionally prepared versus scaled plot plan) to obtain a land disturbing permit. Staff is proposing to add language requiring a formal site plan, completed by a land surveyor or engineer, in all instances where proposed land disturbance thresholds require the development of a formal stormwater plan. The hope here is we will avoid the duplication of submittal information and ensure all County review agencies are utilizing and reviewing the same development proposal to avoid unnecessary confusion and error.

[3] The **red bold text** was added to address comments from the January 9, 2013 ORC meeting where members wanted some language encouraging the submittal of a single site plan complying with all zoning and erosion control/stormwater permit requirements.

~~**(G)** Issuance of a Certificate of Occupancy by the Building Official or the approval of a water supply and sewage disposal system by the Health Department shall in no case be construed as waiving any provision of this Ordinance.~~

~~**(H)** Zoning Compliance Permits shall become null and void after 18 months from the date of issuance if a building permit is not applied for or land disturbing activities are not commenced in accordance with the provisions of this Ordinance.~~

2.4.3 Plot Plan Specifications

(A) For development types requiring a plot plan rather than a site plan, the plot plan shall contain the following:

(1) A scaled drawing denoting the length of all property lines,

(2) A north arrow denoting the orientation of the lot and all proposed structures,

(3) The location of the proposed structure(s) and distances from all property lines,

(4) The location of the proposed driveway,

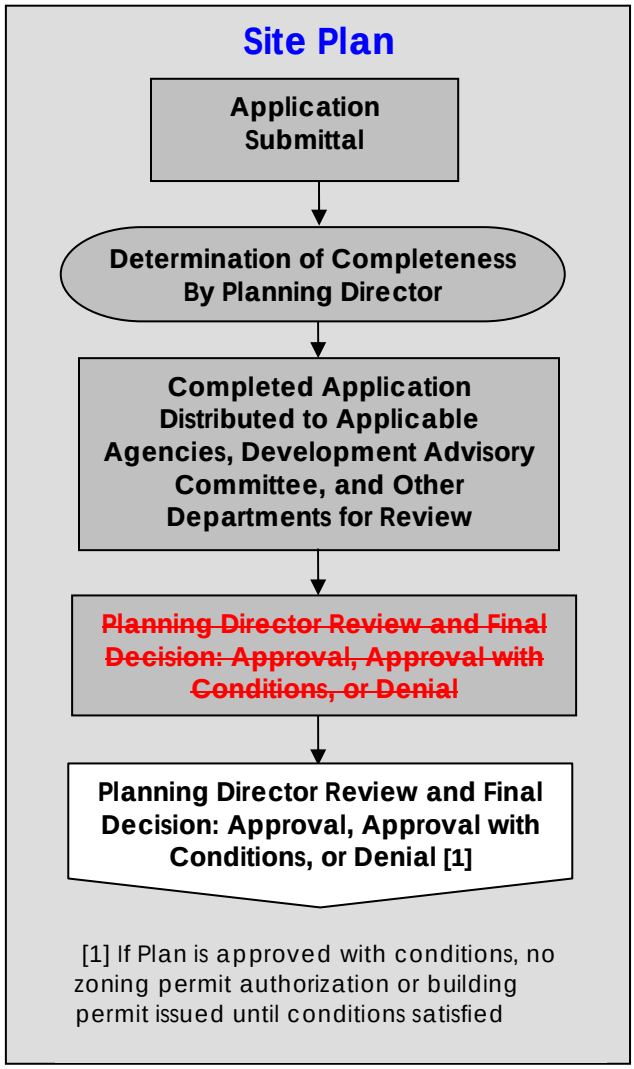
(5) The location of the proposed septic system and proposed drain lines on the property,

(6) The location of the proposed well, and

(7) The location of any protected features on the property (i.e. stream buffers, flood plain, wetlands, etc).

(B) Base plot plans are available from the Planning Department and can be printed for a fee in accordance with the established fee schedule. Applicants may also use other sources of base plot plans provided the requirements of this Section are met.

(1) Planning staff is available to discuss compliance matters but shall not complete plot plans.



SECTION 2.5: SITE PLAN REVIEW

2.5.1 Review and Approval Flow Chart

The review and approval process for a Site Plan is shown in the procedure's flowchart. [4]

2.5.2 Application Requirements

[4] At the January 9, 2013 ORC meeting Planning Board members expressed concern over duplication of language within the flow chart. The language is being deleted.

(A) Each site plan shall be prepared and sealed by an appropriately licensed professional with the following exceptions:

(1) Proposed additions to existing permitted non-residential structures where the use of the structure and lot has not changed and the floor area is not increased more than 25%.

(2) Accessory structures to existing permitted non-residential structures where vehicular use area is not extended and changes to existing grade are not more than one foot in elevation.

~~**(3)** Single family detached dwellings and duplexes, and accessory structures to such uses.~~[5]

~~**(4)**~~**(3)** Large day care homes, as defined in Article 10, Definitions.

~~**(5)**~~**(4)** Rural Guest Establishments with three guestrooms or less - Bed & Breakfasts.

(B) The applicant shall submit to the Planning and Inspections Department:

(1) Three copies of the site plan prepared in accordance with the provisions detailed in this Section. Additional copies may be required depending on the nature and location of the proposed development);.

(2) The completed site plan application form;

(3) A copy of the Orange County tax map with the subject property identified;

(4) Legal documentation, to be approved by the County Attorney, establishing entities responsible for control over common areas and facilities.

(5) Three copies of the Environmental Assessment and/or Environmental Impact Statement, if required under Section 6.16 of this Ordinance.

(6) A statement regarding the method of disposal of trees, limbs, stumps and construction debris associated with the permitted activity. Open burning of trees, limbs, stumps, and/or construction debris associated with the permitted activity is expressly prohibited.

(C) Other items which should be submitted simultaneously, but are not required as part of the site plan application are:

(1) Erosion control and grading plans as necessary to be approved by the Erosion Control Officer for a grading permit,

~~**(1)**~~**(2)** Stormwater management plans as necessary to be approved by the Erosion Control Officer prior to the issuance of a Zoning Compliance Permit, and

~~**(2)**~~**(3)** Building construction plans to be approved by the Building Official prior to issuance of a building permit.

~~2.5.3~~ Plan Specifications

Each site plan shall be drawn at a scale adequate to show required detail and shall contain the following information:

(A) The boundary of the lot(s) to be developed labeled with bearings and distances;

(B) The name, address, and phone number of the applicant and the property owner;

(C) Name of project, vicinity map, north arrow, scale, tax map reference number, date of plan preparation, and subsequent revision dates;

(D) Zoning of the property to be developed and all adjacent zoning and existing adjacent land uses;

[5] Staff is eliminating contradictory language within this section of the UDO.

(2) The estimated cost of the required improvements must be itemized and certified by the applicant's licensed professional engineer or licensed professional surveyor, if the surveyor was the original preparer of the plans for the subdivision.

(3) In the case of minor subdivisions, the subdivider's licensed professional engineer or licensed professional surveyor may provide the itemized cost estimate.

(4) Cost estimates must be based on industry norms within Orange County.

(5) The Planning Director or Planning Board may require a higher guarantee amount when deemed necessary to address higher potential correction costs due to the subdivision's size and site characteristics, but in no event may the amount exceed 25% of estimated construction costs.

(E) The guarantee shall have a term of two years and shall provide an option for annual renewal if the subdivider/developer has:

(1) Arranged for County inspection of the improvements,

(2) Submitted to the County an acceptable estimate of the costs necessary to correct any deterioration or defects discovered by the inspection, and

(3) Increased the amount of the security by the amount of said estimate.

(F) The subdivider/developer shall pay a fee in accordance with the Fee Schedule adopted by the Board of County Commissioners at the time of the initial posting of the guarantee and for each subsequent renewal or extension to cover the County's administrative costs.

SECTION 7.5: SUBDIVISION AGREEMENTS

(A) The subdivider of all minor and major subdivisions shall record a subdivision agreement outlining the limitations associated with the development of created lots at the Orange County Register of Deeds at the same time the Final Plat is recorded.

(B) The purpose of the subdivision agreement is to provide detail on various development limitations that will regulate the overall development of property consistent with the approval of the subdivision.

(C) This subdivision agreement shall, at a minimum, outline the following development criteria for property within the subdivision:

(1) Required development setbacks for lots within the project.

(2) Impervious surface limits for the lots within the development.

(3) The presence of identified environmental features (i.e. stream buffers, flood plain, wetlands, etc) and an explanation on how development of the lot(s) is impacted.

(4) The presence of identified cultural features listed by the North Carolina Heritage Program, or identified in "An Inventory of Sites of Cultural, Historic, Recreational, Biological, and Geological Significance in the Unincorporated Portions of Orange County" or "Inventory of the Natural Areas and Wildlife Habitats of Orange County, North Carolina".

(5) Identification of soil and septic limitations, if any, for each lot.

(6) Access restrictions for the project and individual lots.

(7) Limitations on land uses.

(8) Maintenance requirements for all roadways as well as references to the project's road maintenance agreement, if required.

SECTION 7.6: GENERAL DESIGN STANDARDS

The avoidance of congestion and overcrowding and the creation of conditions essential to public health, safety and the general welfare may be best accomplished through the application of design standards

providing for the distribution of population and traffic, safe and coordinated street systems, approved water supply and sewage disposal systems, usable lots and conformance to plans for Orange County as recommended by the Planning Board and adopted by the Board of Commissioners. The following general requirements and principles of land subdivision shall be observed:

7.6.1 Minimum Lot Size

(A) All lots shall contain the minimum lot area required by Article 3 of this Ordinance and shall comply with all applicable development standards.

(B) Any lot which provides an easement for individual septic disposal for use by a separate lot shall contain an additional 20,000 square feet to accommodate the septic easement.

7.6.2 Residential Density

The allowable density on a given parcel of property proposed for subdivision shall comply with the residential maximum density requirements in Section 4.2.4.

7.6.3 Land Suitability

(A) In reviewing subdivision proposals, the Planning Department and Planning Board shall consider the overall design of the subdivision with the suitability of the land for development to insure that the platting and development of the subdivision will not create a danger to the health, safety, and welfare of Orange County residents.

(B) Land suitability shall be determined by an investigation of conditions including but not limited to flood prone areas, soil drainage, drainage patterns, slope, historic sites, maximum anticipated levels of land disturbance for the project and all proposed individual lots, and unique natural areas. The investigations shall be carried out by the Planning Board, the Planning Department, or other agencies or individuals having the appropriate technical expertise.

(C) Special Flood Hazard Areas shall be considered during the review process.

(D) Soils shall be evaluated for suitability or provisional suitability for septic tanks according to guidelines established in the Laws and Rules for Ground Absorption Sewage Disposal Systems, incorporated herein by reference.

(1) Each lot that does not contain a suitable building site shall be designated on the plat as being of restricted development potential and by instrument recorded in the Orange County registry as specifically prescribed by Section 7.14.3(E)(1) of this Ordinance.

(E) Drainage

(1) Soil suitability, including slope and drainage, shall also be evaluated according to soil characteristics indicated by the Orange County Soil Survey and topography indicated by the U.S. Geological Topographic Maps.

(2) Each lot shall contain a suitable building area safe from inundation and erosion.

(3) Sanitary sewer systems, septic tank drainfields, water systems, wells, and adjacent properties shall be protected from inundation by surface water.

(4) Roads, driveways and utilities shall be protected from damage caused by improper stormwater management.

(5) Mechanical devices, drainage easements, natural buffers, large lots, and/or other technical means may be used to achieve these drainage objectives. Natural drainageways are a preferred means of stormwater run-off removal. The characteristics (including capacity) of natural drainageways shall be protected.

(6) Runoff levels from the 25-year storm after the site is developed shall not be greater than the rate of runoff on the same site in its natural state.

(7) In cases where anticipated land disturbance for the subdivision and the proposed lots will cumulatively exceed established thresholds denoted within Section 6.14.5 of this Ordinance, a formal stormwater management plan shall be required as part of the application submittal.[6]

(F) Resource Protection

(1) Applications for subdivision shall be evaluated by the Planning Department and Planning Board for potential impairment of habitat of rare and endangered species or unique natural areas.

(2) A strategy shall be developed to protect resources listed by the North Carolina Heritage Program, or identified in "An Inventory of Sites of Cultural, Historic, Recreational, Biological, and Geological Significance in the Unincorporated Portions of Orange County" or "Inventory of the Natural Areas and Wildlife Habitats of Orange County, North Carolina".

(a) The strategy shall provide protection of identified natural and cultural resources from impacts which could result from development of the subdivision, and shall include one or more of the following:

(i) Dedication of conservation easements,

(ii) Restrictive covenants prohibiting clearing or disturbance of the resource areas,

(iii) Dedication of resource areas to Orange County,

(iv) Clustering of lots to minimize land disturbance and preserve the special features of the property,

(v) Other restrictions or development options which provide an adequate level of protection.

(3) The Planning Department shall review available documentation of the particular site and determine if the proposed strategy adequately protects the identified resources.

(4) Maps, studies, and reports which are relevant to this section shall be maintained by the Planning Department.

SECTION 7.7: LOTS

7.7.1 Generally

All lots shall conform to all of the requirements of this Ordinance for the zoning district and any overlay district in which they are located.

7.7.2 Shape and Orientation

(A) The shape and orientation of lots shall be appropriate to the location of the subdivision and the development intended.

(B) Interior lot lines extending from a street should be approximately perpendicular or radial to the street right of way line.

(C) Lot lines shall be located to permit efficient installation and maintenance of utility lines on utility easements, to maximize buildable area, and, where applicable, to provide a suitable area for septic systems.

[6] Staff would prefer comprehensive stormwater management plans rather than multiple plans, multiple systems, on individual lots that all have to be inspected by Erosion Control on a semi annual basis and maintained by individual property owners. Through this process staff is hoping to encourage neighborhood wide stormwater management plans to avoid unnecessary development and maintenance costs on individual property owners and encourage a comprehensive approach to stormwater and nutrient management.

Attachment 3

ORANGE COUNTY

Department *of* Environment,
Agriculture, Parks & Recreation

MEMORANDUM

TO: Michael Harvey, *Current Planning Supervisor*

FROM: Rich Shaw, *DEAPR Land Conservation Manager*

DATE: January 16, 2013

SUBJECT: CFE Consideration of Proposed UDO Amendment Requiring Stormwater Management Plan with the Site Plan Application

---

Thank you for attending the January 14 meeting of the Commission for the Environment (CFE) to explain proposed changes to the Unified Development Ordinance (UDO) that would require submittal of formal site plans and stormwater management plans for residential and non-residential development projects.

CFE members were interested to learn more about the County's existing regulations that were recently modified (April 2012) to address the State-mandated stormwater management and nutrient reduction strategies. They now understand the County requires the preparation and submittal of engineered stormwater management plans as part of development projects where land disturbance reaches certain thresholds.

You explained the proposed amendments would require that the stormwater management plan be submitted along with the formal site plan, thereby improving the coordinated review of the project by departments and avoiding some of the time and expense of having to modify the site plan at a later date.

The CFE expressed its appreciation for your briefing and your responses to questions. There were no adverse reactions or issues raised by CFE members.

Again, thank you for efforts to involve the CFE in the consideration of this proposed amendment to the UDO.

cc: David Neal, CFE Chair

Orange County Department of Environment, Agriculture, Parks & Recreation
PO Box 8181, Hillsborough, NC 27278
Phone: (919) 245-2510 Fax: (919) 644-3351

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ORANGE COUNTY
BOARD OF COMMISSIONERS AND
PLANNING BOARD
QUARTERLY PUBLIC HEARING
ACTION AGENDA ITEM ABSTRACT
Meeting Date: February 25, 2013

Action Agenda
Item No. C.2

SUBJECT: Amendments to Unified Development Ordinance Text – Modify or Remove Regulations Related to the Schools Adequate Public Facilities Ordinance

DEPARTMENT: Planning and Inspections **PUBLIC HEARING: (Y/N)** Yes

ATTACHMENT(S):

1. Comprehensive Plan/Future Land Use Map and Unified Development Ordinance (UDO) Amendment Outline Form (UDO/Zoning-2013-01)
2. Amendment Packet

INFORMATION CONTACT:

John Roberts, County Attorney, 919-245-2318
Craig Benedict, Planning Director, 919- 245-2592
Perdita Holtz, Planner III, 919-245-2578
Michael Harvey, Planner III, 919-245-2597

PURPOSE: To hold a public hearing on Planning Director initiated text amendments to the Unified Development Ordinance to incorporate changes to regulations related to the Schools Adequate Public Facilities Ordinance (SAPFO).

BACKGROUND: The County Attorney, through discussions with the attorneys for Carrboro, Chapel Hill, and Hillsborough, and a review of the recent Supreme Court decision in Lanvale Properties v. Cabarrus County, which struck down as unauthorized by law Cabarrus County's adequate public facilities ordinance, has determined that development regulations related to the Schools Adequate Public Facilities Ordinance in Orange County and its municipalities should be amended.

In August 2012 in the case of Lanvale Properties v. Cabarrus County the North Carolina Supreme Court struck down Cabarrus County's adequate public facilities ordinance ("APFO"). Although the majority focused on the fee aspect of Cabarrus County's ordinance they struck down the entire ordinance, which included provisions for delaying construction until school facilities could meet development demand. In striking down the ordinance the Court held "Without expressing an opinion on the policy merits of APFOs, we stress that absent specific authority from the General Assembly, APFOs that effectively require developers to pay an adequate public facilities fee to obtain development approval are invalid as a matter of law."

This holding appears to leave room for APFOs that do not impose a fee but rather delay development until such time as there are adequate school facilities to support the development (which is how orange County's ordinance is written) . However, the Supreme Court refused to consider a petition arguing that fact and asking the Court to modify its holding by severing the fee provision of the Cabarrus County APFO and allowing the other provisions to stand.

The attorneys for Chapel Hill, Carrboro, Hillsborough, and Orange County met to discuss the Court's holding and the ramifications of the Court's refusal to consider the petition to modify its decision. At the meeting, the consensus among the attorneys was that the Schools Adequate Public Facilities Ordinance ("SAPFO") and its accompanying memoranda should be amended to remove the enforcement provisions but that it could be left in place as a policy document primarily to monitor development activity and develop enrollment projections to assist in school CIP planning. This would involve eliminating the possibility that a Certificate of Adequate Public School Facilities ("CAPS") would be denied. The existing process would remain in effect however there would be no possibility of halting development based on lack of a CAPS. Rather, in situations where there was not adequate capacity in the schools, the school board would approve CAPS and would report to the local government partners that capacity had been exceeded and new school facilities are needed to meet demand.

Attachment 1 contains additional information and analysis on these amendments and Attachment 2 contains the proposed amendments in a "track changes" format (red text for proposed additions and red ~~strikethrough~~ for proposed deletions). Unless otherwise noted on a page, only pages with proposed changes are included.

Notification Procedural Requirements

Legal ads for the public hearing were placed in a newspaper of general circulation in the county in accordance with Section 2.8.6 of the Unified Development Ordinance.

FINANCIAL IMPACT: See Section C.3 in Attachment 1.

RECOMMENDATION: The Planning Director recommends the Board:

1. Receive the proposed amendments to the Unified Development Ordinance as detailed in this abstract and attachments.
2. Conduct the public hearing and accept public, BOCC, and Planning Board comment on the proposed amendments.
3. Refer the matter to the Planning Board with a request that a recommendation be returned to the BOCC in time for the **April 9, 2013** BOCC regular meeting.
4. Adjourn the public hearing until **April 9, 2013** in order to receive and accept the Planning Board's recommendation and any submitted written comments.

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

UDO / Zoning-2013-01

Modify or remove regulatory requirements in the UDO related to the Schools Adequate Public Facilities Ordinance (SAPFO)

A. AMENDMENT TYPE

Map Amendments

☐ Land Use Element Map:
From: ---
To: ---

☐ Zoning Map:
From:- --
To:---

☐ Other:

Text Amendments

☐ Comprehensive Plan Text:
Section(s):

☒ UDO Text:
☒ UDO General Text Changes
☐ UDO Development Standards
☒ UDO Development Approval Processes
Section(s): 2.14.1, 2.15.5, 6.19, and 7.14.3

☒ Other: Schools Adequate Public Facilities Memorandum of Understanding (need to amend is currently being evaluated by legal staffs; will be done later in 2013 if necessary)

B. RATIONALE

1. **Purpose/Mission**

To remove the remove the ability of the school districts to deny a Certificate of Adequate Public Schools (CAPS). The County Attorney, through discussions with the attorneys for Carrboro, Chapel Hill, and Hillsborough, and a review of the recent Supreme Court decision in Lanvale Properties v. Cabarrus County, which struck

down as unauthorized by law Cabarrus County's adequate public facilities ordinance, has determined that development regulations related to the Schools Adequate Public Facilities Ordinance should be amended.

2. Analysis

As required under Section 2.8.5 of the Unified Development Ordinance, 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 following information is offered:

These amendments are necessary in order to ensure Orange County's regulations comply with recent case law made by the N.C. Supreme Court.

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

The Schools Adequate Public Facilities Ordinance is addressed on page 8-42 of the Comprehensive Plan. Objective E-1 also pertains to the SAPFO.

4. New Statutes and Rules

Lanvale Properties, LLC and Cabarrus County Building Industry Association v. County of Cabarrus and City of Locust, 731 S.E. 2d 800 (2012).

C. PROCESS

1. TIMEFRAME/MILESTONES/DEADLINES

a. BOCC Authorization to Proceed

December 11, 2012

b. Quarterly Public Hearing

February 25, 2013

c. BOCC Updates/Checkpoints

February 5, 2013 – Approval of legal ad
April 9, 2013 – receive Planning Board recommendation

d. Other

2. PUBLIC INVOLVEMENT PROGRAM

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

a. Planning Board Review:

March 6, 2013 (recommendation)

b. Advisory Boards:
N/A

c. Local Government Review:
This item was briefly discussed at the Assembly of Governments meeting on December 6, 2012.

The SAFOTAC (a committee comprised of planning directors and school staff) discussed the issue at its January 28, 2013 meeting.

The schools system superintendents were provided this information via communication from the County Attorney in January 2013.

d. Notice Requirements

Legal advertisement published on February 13 and 20 in the News of Orange and The Herald Sun.

e. Outreach:

- ☐ General Public:
- ☐ 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 FY2012-13 Departmental funds budgeted for this purpose. Existing Legal and Planning staff included in the Departmental staffing budget will accomplish the work required to process this amendment.

D. AMENDMENT IMPLICATIONS

Approval of this amendment will remove the Certificate of Adequate Public Schools (CAPS) denial provision as part of the development approval process when school capacity is exceeded.

E. SPECIFIC AMENDMENT LANGUAGE

See Attachment 2. Proposed additions are shown in red text and proposed deletions are shown in red ~~strikethrough~~ text.

Primary Staff Contact:
John Roberts, County Attorney, 919-245-2318

Craig Benedict, Planning Director, 919-245-2592

SECTION 2.13: EXEMPT SUBDIVISIONS

2.13.1 Generally

(A) Persons proposing divisions of land that do not constitute a subdivision must request a determination of an exempt subdivision status with the Planning Director. Activities that do not constitute a subdivision are found in Section 7.2.1.

(B) One copy of the final mylar plat and three paper copies of the plat shall be submitted with the request for a determination for an exempt subdivision.

(C) Exempt subdivisions shall comply with all applicable non-plat requirements of this Ordinance.

2.13.2 Review and Action

(A) Following receipt of a request for a determination of an exempt subdivision status, the Planning Director shall make a determination of the land division's exempt or nonexempt status.

(B) If the Planning Director determines that the proposed land division does not constitute a subdivision, the Planning Director shall certify the proposed land division as exempt and include the necessary statement on the plat certifying same.

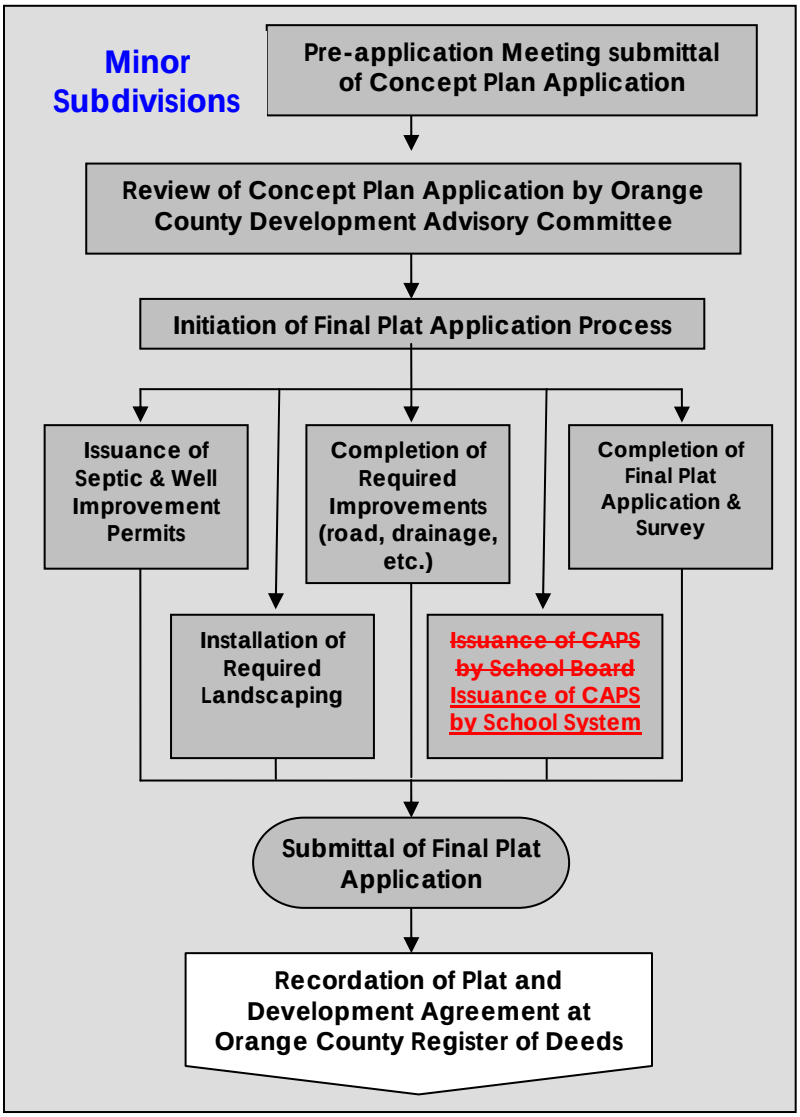
(C) If the Planning Director determines that the proposed land division constitutes a subdivision, the applicant shall be informed of such in writing and shall be required to submit the appropriate Subdivision application.

SECTION 2.14: MINOR SUBDIVISIONS

2.14.1 Review and Decision Process Flow Chart

Review and approval of Minor Subdivision applications shall adhere to the process detailed herein. The applicant shall demonstrate compliance with the development standards contained in Article 7 of this Ordinance.[1]

[1] Staff is modifying the language to eliminate reference to the 'School Board' issuing a CAPS certificate. School system staff have been, and will continue to, issue the appropriate documents as required by the UDO.



2.14.2 Concept Plan

The applicant shall prepare a sketch plan of the proposed subdivision and schedule an appointment with the Planning Department for initial review and consultation. During this initial meeting the Planning Department shall advise the subdivider or his/her authorized agent of the regulations pertaining to the proposed subdivision, of any obvious changes required in order to comply with the provisions of this Ordinance, and the procedures to be followed in the preparation and submission of the Concept Plan.

(A) Application Requirements

(1) Applications shall be submitted on forms provided by the Planning Department in accordance with Section 2.2 of this Ordinance.

(2) Applications shall include:

(a) Two copies of the scaled Concept Plan, drawn to the specifications outlined in Section 7.14.1.

(b) A vicinity map showing the location of the subdivision in relation to the existing street or highway system.

(c) A soils classification map for the property.

(d) A topography map of the property.

(c) Deny the application.

(4) If the Planning Director approves the application with conditions, such conditions shall be reasonable and shall seek to insure compliance with applicable regulations.

(5) If the Planning Director approves the application with conditions or denies the application, the reasons for such decision shall be stated in writing to the applicant.

(F) Actions Subsequent to Approval

(1) If the application is approved or approved with conditions, the applicant shall submit a reproducible mylar original of the Final Plat to the Planning Director for endorsement within one year of Final Plat approval.

(2) The Planning Director shall obtain all required certification signatures and shall endorse approval of the approved Final Plat on the reproducible mylar original after all other certification signatures have been obtained. The Planning Director shall prepare the Declaration of Restrictions.

(3) The Planning Director shall notify the applicant when all required certification signatures have been obtained and County Attorney review is complete. The applicant shall then make an appointment with the Planning Director to have the approved plat and any associated documents necessary to assure conformance with regulations recorded in the Office of the Register of Deeds. The approved plat and any associated documents must be recorded within 90 days after the Planning Director's endorsement of approval.

(4) The Planning Director shall accompany the applicant to the Register of Deeds Office to ensure the approved plat and any required documents are recorded in the correct order and to fill in the book and page references, where applicable. Documents shall be numbered in the order they are to be recorded. The order is as follows:

(a) Approved plat,

(b) Road Maintenance Agreement, if required,

(c) Declaration of Restrictions,

(d) Homeowners/Property Owners' Association documents, if required, and

(e) Any other associated documents.

(5) If the Final Plat is not recorded within the specified time period, the Final Plat is void.

(6) The Planning Director may extend the deadline for recordation, provided the applicant can demonstrate a good faith effort to comply with the deadline, but for reasons beyond his/her control, fails to meet the requirements for recordation within the specified period.

(7) All Final Plats shall conform to drawing specifications and certification requirements for Final Plats contained in Section 7.14.3 of this Ordinance.

(8) Recordation of the approved final plat, and any required auxiliary documentation shall be with the advice and consent of the Planning Director.

2.15.5 Certificate of Adequacy of Public School Facilities

~~No approval of a major subdivision preliminary plat or a minor subdivision final plat for a residential development shall become effective unless and until a Certificate of Adequacy of Public School Facilities (CAPS) for the project has been issued by the relevant School District.~~

~~See Section 6.19 for standards related to CAPS.~~ A Certificate of Adequacy of Public School Facilities (CAPS) shall be issued by the relevant School District in accordance with Section 6.19 for major and minor subdivision projects.[2]

SECTION 2.16: SUBDIVISIONS IN THE ECONOMIC DEVELOPMENT, COMMERCIAL, AND/OR COMMERCIAL-INDUSTRIAL NODES

(A) All subdivisions in the Economic Development, Commercial and/or Commercial-Industrial Nodes, as identified in the Comprehensive Plan, shall submit an application in accordance with the requirements specified in Section 2.15.3(B).

(B) Initial review of all subdivisions in the Economic Development, Commercial and/or Commercial-Industrial Nodes shall be performed by the Planning Department.

(C) Following review by the Planning Department all subdivisions shall follow the major subdivision preliminary plat approval procedures specified in Section 2.15.3.

(D) All roads in the Nodes identified in (A) above are required to be public and constructed to North Carolina Department of Transportation standards.

(E) Final plat approvals shall follow the final plat approval procedures in Section 2.15.4.

(F) Additional Requirements for Hillsborough Economic Development District:

(1) When a MPD-CZ rezoning petition is approved, and the tract that is subject of said rezoning is proposed to be subdivided, all provisions of Article 7 shall be satisfied.

(a) The applicant may obtain approval of the subdivision simultaneously with the approval of the rezoning if sufficient information (i.e. lot lines, lot size, etc) is shown on the site plan or at a later time.

(b) The subdivision shall be consistent with the terms of the MPD-CZ and Special Use Permit, Class A (as applicable) that is approved along with the rezoning petition.

(c) If the Master Plan and Special Use Permit, Class A (as applicable) that is approved along with the MPD-CZ rezoning petition establishes density, floor area, impervious surface, or similar limitations on the tract that is rezoned or any portion thereof, the subdivision final plat that creates lots out of any portion of the tract so encumbered shall indicate on the face of the plat with respect to each lot such limitations or restrictions as are necessary to ensure compliance with the Master Plan and MPD-CZ rezoning approval.

(i) For example, if the Master Plan associated with a MPD-CZ approval shows a ten-acre portion of the tract approved for retail development with a maximum floor area of 100,000 square feet, then if that ten acre area is subdivided, each lot so created shall show on the face of the plat the maximum building area that can be constructed on that lot.

SECTION 2.17: VACATION OF RECORDED PLATS AND ROAD ABANDONMENT

2.17.1 Generally

(A) Lots Unsold

The owner of a parcel subject to an approved plat may vacate the plat at any time before any lot in the plat is sold. The plat is vacated when a signed, acknowledged instrument

[2] As a CAPS now has to be issued, and cannot be denied, there is no need for language within the UDO requiring the issuance of said document before approval of a project.

SECTION 6.19 ADEQUATE PUBLIC FACILITIES: SCHOOLS

6.19.1 Purpose

The purpose of this Section is to ensure that, to the maximum extent practical, approval of new residential development is coordinated with the construction of new school facilities ~~will become effective only when it can reasonably be expected~~ so that adequate public school facilities will be available to accommodate such new development.

6.19.2 General Provisions

(A) Memoranda of Understanding

(1) There are two Schools Adequate Public Facilities Memoranda of Understanding, hereafter referred to as "the MOUs" or "the MOU" as the context requires, each relative to one of the two school districts in the County.

(2) Parties to the two agreements are as follows:

(a) Chapel Hill-Carrboro School District- The Town of Chapel Hill, Town of Carrboro, Orange County, and Chapel-Hill Carrboro City Board of Education.

(b) Orange County School District- Town of Hillsborough, Orange County, and Orange County Board of Education.

(B) For purposes of this Section, the terms "building capacity" and "school membership" shall have the same meaning attributed in the MOUs.

(C) The Chair of the Board of County Commissioners or any member temporarily acting as Chair may, in his or her official capacity, administer oaths to witnesses in any hearing before the Board of County Commissioners concerning a special exception ~~or an appeal of School District denial of a CAPS~~.

6.19.3 Applicability

(A) The provisions of this Section shall apply to the entirety of the County lying outside of the following:

(1) The municipalities therein,

(2) The extraterritorial planning jurisdiction, if any, of the municipalities therein and

(3) The Joint Planning Area Transition Area, if any, of the municipalities therein.

(B) The Chapel Hill-Carrboro School District and the Orange County School District are each declared an overlay district in order to implement Schools Adequate Public Facilities as prescribed in this Section. Within the Chapel Hill-Carrboro School District Overlay District and within the Orange County School District Overlay District, the provisions of this Section apply.

6.19.4 Service Levels

(A) As provided in the MOUs, adequate service levels for public schools shall be deemed to exist with respect to a proposed new residential development if, given the number of school age children projected to reside in that development, and considering all the factors listed in the MOU, projected school membership for the elementary schools, the middle schools, and the high schools within the School District ~~will~~ should not exceed the following percentages of the building capacities of each of the following three school levels:

TABLE 6.19.4.A: SCHOOL SERVICE LEVELS	
Elementary School	105%
Middle School	107%
High School	110%

6.19.5 Certificate of Adequate Public School Facilities

(A) Subject to the remaining provisions of this Article, no approval of a site plan, special use permit, a major subdivision preliminary plat or a minor subdivision final plat for a residential development shall become effective unless and until a Certificate of Adequate Public School Facilities (CAPS) for the project has been issued by the School District.

(B) A CAPS shall not be required for a general use or special use rezoning or for a master land use plan. However, even if a rezoning or master plan is approved, a CAPS will nevertheless be required before any of the permits or approvals identified in subsection (A) of this section shall become effective, and the rezoning of the property or approval of a master plan provides no indication as to whether the CAPS will be issued. The application for rezoning or master plan approval shall contain a statement to this effect.

(C) A CAPS must be obtained from the School District. The School District will issue ~~or deny~~ a CAPS in accordance with the provisions of the MOUs.

(D) A CAPS attaches to the land in the same way that development permission attaches to the land. A CAPS may be transferred along with other interests in the property to which such CAPS is issued, but may not be severed or transferred separately.

6.19.6 Expiration of Certificates of Adequate Public School Facilities

A CAPS issued in connection with approval of a site plan, special use permit, a major subdivision preliminary plat or a minor subdivision final plat shall expire automatically upon the expiration of such permit approval.

6.19.7 Exemption From CAPS

(A) In recognition of the fact that some new development will have a negligible impact on school capacity, a CAPS shall not be required for the following:

(1) Residential developments restricted by law and/or covenant for a period of at least 30 years to housing for the elderly and/or adult care living and/or adult special needs;

(2) Residential developments restricted for a period of at least 30 years to dormitory housing for university students.

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

6.19.8 Previously Approved Projects and Projects Pending Approval

(A) Except as otherwise provided herein, the provisions of this Section shall only apply to applications for approval of site plans, special use permits, major subdivision preliminary plats or minor subdivision final plats that are submitted for approval after the effective date of this Section.

(B) The provisions of this Section shall not apply to amendments to site plans, special use permits, major subdivision preliminary plats or minor subdivision final plats issued prior to the effective date of this Section so long as the approvals have not expired and the

proposed amendments do not increase the number of dwelling units authorized within the development by more than 5% or five dwelling units, whichever is less.

(C) Special Exceptions

(1) The Board of County Commissioners shall issue a special exception to the CAPS requirement to an applicant whose application for approval of a site plan, special use permit, a major subdivision preliminary plat or a minor subdivision final plat covers property within a planned unit development or master plan project that was approved prior to the effective date of this Section, if the Board of County Commissioners finds, after an evidentiary hearing, that the applicant has:

(a) Applied to the School District for a CAPS and the application has been denied,

(b) In good faith made substantial expenditures or incurred substantial binding obligations in reasonable reliance on the previously obtained planned unit development or master plan approval, and

(c) Would be unreasonably prejudiced if development in accordance with the previously approved development or plan is delayed due to the provisions of this Section.

(2) In deciding whether these findings can be made, the Board of County Commissioners shall consider the following, among other relevant factors:

(a) Whether the developer has installed streets, utilities, or other facilities or expended substantial sums in the planning and preparation for installation of such facilities which were designed to serve or to be paid for in part by the development of portions of the planned unit development or master planned project that have not yet been approved for construction;

(b) Whether the developer has installed streets, utilities, or other facilities or expended substantial sums in the planning and preparation for installation of such facilities that directly benefit other properties outside the development in question or the general public;

(c) Whether the developer has donated land to the School District for the construction of school facilities or otherwise dedicated land or made improvements deemed to benefit the School District and its public school system;

(d) Whether the developer has had development approval for a substantial amount of time and has in good faith worked to timely implement the plan in reasonable reliance on the previously obtained approval;

(e) The duration of the delay that will occur until public school facilities are improved or exist to such an extent that a CAPS can be issued for the project, and the effect of such delay on the development and the developer.

(3) The decision of the Board of County Commissioners involving a special exception application under Section 6.19.8(C) is subject to review by the Orange County Superior Court by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 30 days after a written copy of the decision of the Board of County Commissioners is delivered to the applicant and every other party who has filed a written request for such copy with the Clerk to the Board of County Commissioners at the time of its hearing on the application for a special exception. The written copy of the decision of the Board of County Commissioners may be delivered either by personal service or by certified mail, return receipt requested.

6.19.9 Information Required From Applicants~~Appeal of School District Denial of a CAPS~~

(A) The applicant for a CAPS shall submit to the School District all information reasonably deemed necessary by the School District to issue a CAPS under the provisions of the MOU.

(B) An applicant for a CAPS special exception shall submit to the Board of County Commissioners all information reasonably deemed necessary by the Board of County Commissioners to determine whether a special exception should be granted as provided in Section 6.19.8(C).

(C) A copy of a request for a CAPS special exception shall be served on the superintendent of the School District. Service may be made by personal delivery or certified mail, return receipt requested.

~~**(A)** The applicant for a CAPS which is denied by the School District may, within 30 days of the date of the denial, appeal the denial to the Board of County Commissioners.~~

~~**(B)** The appeal shall be heard by the Board of County Commissioners at an evidentiary hearing before it. At this hearing the School District will present its reasons for the denial of the CAPS and the evidence it relied on in denying the CAPS. The applicant appealing the denial may present its reasons why the CAPS application should have, in its view, been approved and the evidentiary basis it contends supports approval.~~

~~**(C)** The Board of County Commissioners may do one of the following:~~

~~**(1)** Affirm the decision of the School District,~~

~~**(2)** Remand to the School District for further proceedings in the event evidence is presented at the hearing before the Board of County Commissioners not brought before the School District, or~~

~~**(3)** Issue a CAPS.~~

~~**(D)** The Board of County Commissioners will only issue a CAPS if it finds that the CAPS should have been issued by the School District as prescribed in the MOU.~~

~~**(E)** A decision of the Board of County Commissioners affirming the School District may be appealed by the applicant for a CAPS by proceedings in the nature of certiorari and as prescribed for an appeal under Sections 6.19.8(C)(3) and 6.19.2(C)of this Ordinance.~~

~~**6.19.10 Information Required From Applicants**~~

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~~**(A)** The applicant for a CAPS shall submit to the School District all information reasonably deemed necessary by the School District to determine whether a CAPS should be issued under the provisions of the MOU.~~

~~**(B)** An applicant for a CAPS special exception or an applicant appealing a CAPS denial by the School District shall submit to the Board of County Commissioners all information reasonably deemed necessary by the Board of County Commissioners to determine whether a special exception should be granted as provided in Section 6.19.8(C) or for the hearing of an appeal of a School District denial of a CAPS as provided in Section 6.19.9.~~

~~**(C)** A copy of a request for a CAPS special exception or of an appeal of a School District denial of a CAPS shall be served on the superintendent of the School District. Service may be made by personal delivery or certified mail, return receipt requested.~~

This certification is not an Improvement Permit or an approval for septic system on any of the lots. Subsequent changes to the lots may affect the ability to obtain Improvement Permits and/or Construction Authorizations."

~~(g) Where lots have been approved for recordation by either the Orange County School System or the Chapel Hill/Carrboro School System the following statement and endorsements shall appear on the final plat:~~

~~I hereby certify that the lots shown on this plat have been approved by the _____ School System for recordation prior to [Insert date] in accordance with the Schools Adequate Public Facilities Ordinance. _____~~

~~Chair Date~~

~~_____ _____~~

~~Secretary Attest Date~~

~~SEAL~~ [3]

~~(h)~~(g) All certificates and endorsement signatures on the Final Plat, except those of the County Manager, Planning Board Chair, Planning Director and Environmental Health Officer shall be notarized by the statement of a Notary Public entered on the Final Plat. The Notary Public statement shall be shown in substantially the following form:

"North Carolina _____ County

I, a Notary Public of the County and State aforesaid, certify that _____ personally appeared before me this day and acknowledged the execution of the foregoing certificate. Witness my hand and seal this ____ day of _____, 20___.

"Seal or Stamp Notary Public

My Commission expires _____

(4) Certificate of Improvements

(a) If the required improvements are completed prior to the submission of the Final Plat, then one of the following certificates shall be shown on the plat and followed by the County Manager's signature:

"The County Manager hereby certifies that all improvements required by the Orange County Subdivision Regulations have been installed as specified by the approved Preliminary Plat for _____ Subdivision and that said improvements comply with Orange County specifications."

County Manager: _____ Date: _____

[3] This provision, presented at the November 24, 2003 Quarterly Public Hearing and approved by the BOCC in February 2004, was added based on a staff generated amendment in an attempt to ensure there was documentation that a CAPS had been issued by the appropriate school system on the actual plat. There is no requirement within SAPFO or the MOU's relating to the issuance of CAPS requiring the 'school system' to sign plats indicating same. From our standpoint it is not necessary given the fact there is a CAPS certificate issued by the appropriate school system. It should be noted the Towns of Chapel Hill and Carrboro do not require the school system to sign a plat. From our standpoint this is not a necessary requirement and only serves to delay and unnecessarily complicate the recordation process.

ORANGE COUNTY
BOARD OF COMMISSIONERS AND
PLANNING BOARD
QUARTERLY PUBLIC HEARING
ACTION AGENDA ITEM ABSTRACT
Meeting Date: February 25, 2013

Action Agenda
Item No. C.3

SUBJECT: Amendments to Unified Development Ordinance Text: Revise Section 1.6.5 – (Planning Board) Rules of Procedure

DEPARTMENT: Planning and Inspections **PUBLIC HEARING: (Y/N)** Yes

ATTACHMENT(S):

1. Comprehensive Plan/Future Land Use Map and Unified Development Ordinance (UDO) Amendment Outline Form (UDO/Zoning-2013-02)
2. Amendment Packet

INFORMATION CONTACT:

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

PURPOSE: To hold a public hearing on Planning Director initiated text amendments to the Unified Development Ordinance to revise Section 1.6.5 – (Planning Board) Rules of Procedure to be consistent with current County processes and procedures.

BACKGROUND: The Board of County Commissioners adopted a general advisory board policy document in 2012 and policies and procedures for the Planning Board in November 2012. This was part of an effort to standardize operations of the numerous boards which advise the BOCC. Because the UDO has a specific section relating to the Planning Board's Rules of Procedure, the section needs to be updated in order to be consistent with current County processes and procedures.

Attachment 1 contains additional information and analysis on these amendments and Attachment 2 contains the proposed amendments in a "track changes" format (red text for proposed additions and red ~~strikethrough~~ for proposed deletions).

Notification Procedural Requirements

Legal ads for the public hearing were placed in a newspaper of general circulation in the county in accordance with Section 2.8.6 of the Unified Development Ordinance.

FINANCIAL IMPACT: See Section C.3 in Attachment 1.

RECOMMENDATION: The Planning Director recommends the Board:

1. Receive the proposed amendments to the Unified Development Ordinance as detailed in this abstract and attachments.
2. Conduct the public hearing and accept public, BOCC, and Planning Board comment on the proposed amendments.
3. Refer the matter to the Planning Board with a request that a recommendation be returned to the BOCC in time for the **April 9, 2013** BOCC regular meeting.
4. Adjourn the public hearing until **April 9, 2013** in order to receive and accept the Planning Board's recommendation and any submitted written comments.

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

UDO / Zoning-2013-02

Amendment to revise Section 1.6.5 – (Planning Board) Rules of Procedure

A. AMENDMENT TYPE

Map Amendments

☐ Land Use Element Map:
From: ---
To: ---

☐ Zoning Map:
From:- --
To:---

☐ Other:

Text Amendments

☐ Comprehensive Plan Text:
Section(s):

☒ UDO Text:
☒ UDO General Text Changes
☐ UDO Development Standards
☐ UDO Development Approval Processes
Section(s): 1.6.5

☐ 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 text amendments to change the section of the UDO pertaining to the Planning Board's Rules of Procedure. The change is necessary to reflect the general advisory board policy document and the specific Planning Board policies and

procedures recently adopted by the BOCC. Section 1.6.5 now conflicts with the process utilized by the BOCC.

2. Analysis

As required under Section 2.8.5 of the Unified Development Ordinance, 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 following information is offered:

This text amendment is necessary to ensure that County policy documents and regulations are consistent with one another.

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

No direct linkage to the Principles, Goals, and Objectives of the Comprehensive Plan. This amendment is proposed in order to engage in "good housekeeping" by ensuring the Ordinance does not conflict with current County processes and procedures.

4. New Statutes and Rules

The BOCC adopted an Advisory Board Policy in 2012 and adopted specific Planning Board Policies and Procedures in November 2012.

C. PROCESS

1. TIMEFRAME/MILESTONES/DEADLINES

a. BOCC Authorization to Proceed

December 3, 2012

b. Quarterly Public Hearing

February 25, 2013

c. BOCC Updates/Checkpoints

February 5, 2013 – Approval of legal ad
April 9, 2013 – receive Planning Board recommendation

d. Other

2. PUBLIC INVOLVEMENT PROGRAM

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

a. Planning Board Review:

March 6, 2013 (recommendation)

b. Advisory Boards:
N/A

c. Local Government Review:
N/A

d. Notice Requirements

Legal advertisement published on February 13 and 20 in the News of Orange and The Herald Sun.

e. Outreach:

- ☐ General Public:
- ☐ 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 FY2012-13 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

No implications. The proposed amendments are solely a 'housekeeping' item resulting from advisory board policies recently adopted by the BOCC.

E. SPECIFIC AMENDMENT LANGUAGE

See Attachment 2. Proposed additions are shown in red text and proposed deletions are shown in red ~~strikethrough~~ text.

Primary Staff Contact:
Perdita Holtz

Planning Department

(919) 245-2578

pholtz@orangecountync.go

(E) Advise the Board of County Commissioners concerning the use and amendment of means for carrying out plans;

(F) Exercise such functions in the administration and enforcement of various means for carrying out plans that the Board of Commissioners may direct;

(G) Perform other related duties that the Board of County Commissioners may direct;

(H) Approve and recommend for adoption by the Board of County Commissioners a Comprehensive Plan for the development of the county, as well as amendments thereto; and

(I) The Planning Board, working with the Planning Director, shall from time to time, at intervals of not more than five years, examine the provisions of this Ordinance and the location of Zoning District boundary lines and shall submit a report to the Board of County Commissioners recommending changes and amendments, if any, which are desirable in the interest of public health, safety, and general welfare, mindful of the intent expressed in Subsection 1.1.5.

1.6.4 Staffing

(A) The Planning Director, under the direction of the County Manager or his/her designee, shall serve as the professional staff to the Planning Board and shall be primarily responsible for completing any work product necessary to assist the Board in carrying out its duties.

(B) The Board of County Commissioners must approve all work assignments or projects requested by the Planning Board outside of work product associated with this Ordinance prior to the commencement of work.

1.6.5 Rules of Procedure

~~The Planning Board shall adopt rules of procedure for the conduct of its affairs. The rules shall be maintained in the office of the Planning Director. Except as otherwise expressly stated in this Ordinance, the rules adopted by the Planning Board shall provide for:~~

(A) ~~Selection of officers, specifically a Chair and Vice Chair, whose term of office shall be one year, with eligibility for re-election.~~

(B) ~~Attendance requirements.~~

(C) ~~Establishment of a quorum, which shall be a majority of the appointed members, to allow the Board to conduct business.~~

(D) ~~Establishment of a monthly, at a minimum, date and time for a regular meeting.~~

(E) ~~A procedure for calling special meetings as the need of the Board requires.~~

The Planning Board shall conduct of its affairs in accordance with the “Orange County Board of County Commissioners Advisory Board Policy” and the “Planning Board Policies and Procedures”.

1.6.6 Notification of Meetings

All meetings shall be open to the public. The Planning Director shall cause notices to be given as required under:

(A) Article 33-C, Chapter 143 of the North Carolina General Statutes;

(B) 143-318.11 of the North Carolina General Statutes; and

(C) Article 2 of this Ordinance.