

**ORANGE COUNTY BOARD OF COMMISSIONERS
ORANGE COUNTY PLANNING BOARD**

QUARTERLY PUBLIC HEARING AGENDA

February 19, 2015

7:00 P.M.

Richard Whitted Meeting Facility
300 West Tryon Street
Hillsborough, NC 27278

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 incorporate recent changes in State law with respect to the review and permitting of temporary health care structures.
2. **Unified Development Ordinance (UDO) Text Amendment** - To review government-initiated amendments to the text of the UDO to modify sign regulations within certain Activity Nodes.

D. ADJOURNMENT OF PUBLIC HEARING

E. BOCC WORK SESSION ITEMS

1. **Public Hearing Process for Comprehensive Plan and UDO-Related Items** – To discuss and give clear direction to staff on whether (and, if so, how) the existing public hearing process for Comprehensive Plan, Unified Development Ordinance, and Zoning Atlas matters should be revised.
2. **Private Road and Access Standards** - To receive an update and provide guidance on options for addressing various private road access concerns.

3. **The Edge Development Project in Chapel Hill** – To receive a report on a proposed development project known as “The Edge” located in the Town of Chapel Hill’s planning jurisdiction on Eubanks Road at Interstate 40.

F. ADJOURNMENT OF BOCC WORK SESSION

**ORANGE COUNTY
BOARD OF COMMISSIONERS AND
PLANNING BOARD
QUARTERLY PUBLIC HEARING ACTION AGENDA ITEM ABSTRACT**
Meeting Date: February 19, 2015

**Action Agenda
Item No. C-1**

SUBJECT: Unified Development Ordinance Text Amendment Related to Temporary Health Care Structures

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N)

Yes

ATTACHMENT(S):

INFORMATION CONTACT:

- | | | | | | |
|---|---|----------------------------|----------------|--------------------------|----------------|
| <ol style="list-style-type: none"> 1. Comprehensive Plan and Unified Development Ordinance (UDO) Amendment Outline Form and Session Law 2014-94 2. Proposed Text Amendments 3. Ordinance Review Committee Notes 4. Temporary Health Care Structures Informational Handout | <table border="0"> <tr> <td>Ashley Moncado, Planner II</td> <td style="text-align: right;">(919) 245-2589</td> </tr> <tr> <td>Craig Benedict, Director</td> <td style="text-align: right;">(919) 245-2575</td> </tr> </table> | Ashley Moncado, Planner II | (919) 245-2589 | Craig Benedict, Director | (919) 245-2575 |
| Ashley Moncado, Planner II | (919) 245-2589 | | | | |
| Craig Benedict, Director | (919) 245-2575 | | | | |

PURPOSE: To hold a public hearing on a Planning Director initiated Unified Development Ordinance (UDO) text amendment regarding proposed standards for temporary health care structures to be added into Sections 5.5 *Standards for Residential Uses* and 10.1 *Definitions of the UDO*.

BACKGROUND: On August 1, 2014, the North Carolina State Legislature adopted regulations regarding the permitting of temporary health care structures in the state. These regulations allow for temporary health care structures, 300 square feet or less, to be permitted as an accessory use in any single family residential zoning district on lots zoned for single family detached dwellings if all the regulatory provisions outlined in Session Law 2014-94 are met. As a result, staff is proposing to modify sections of the UDO to address the review and permitting of temporary health care structures in order to be consistent with North Carolina General Statutes.

This item was presented for review and comment at the December 3, 2014 Ordinance Review Committee. Attachment 3 includes draft summary notes from that meeting. Additional agenda materials are available at <http://www.co.orange.nc.us/planning/planningboard.asp>.

Attachment 1, the Amendment Outline Form approved by the BOCC on November 18, 2014, provides additional background information on the proposal. Proposed text amendment language can be found in Attachment 2 within a "track changes" format (red text for proposed additions). Attachment 4 includes a schematic, images, and features of a temporary health care structure.

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.

Joint Planning Area (JPA) Agreement

The opportunity for comment by the JPA partners (Towns of Chapel Hill and Carrboro) is required for all UDO text amendments that may affect the RB (Rural Buffer) zoning district. Since temporary health care structures will be permitted as an accessory use to a detached single family dwelling in the RB district, the proposed text amendments were submitted to the JPA partners for review and comment on January 14, 2015. To date, no comments have been received.

FINANCIAL 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 FY2014-15 Departmental funds budgeted for this purpose. Existing planning staff included in the Departmental staffing budget will accomplish the work required to process this amendment.

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

1. Receive the proposed amendments to the UDO 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 7, 2015** BOCC regular meeting.
4. Adjourn the public hearing until **April 7, 2015** 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) AMENDMENT OUTLINE

UDO / Zoning-2014-13
Temporary Health Care Structures

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):
- 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 incorporate recent changes in State Law, specifically Session Law 2014-94, related to the review and permitting of temporary health care structures.

This item was presented at the December 3, 2014 Ordinance Review meeting for

Board review and comment. Following this meeting, staff made one minor revision to the text amendment regarding signage pertaining to the advertisement of a temporary health care structure.

1. **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 amendments are necessary to ensure the permitting of a temporary health care structure is consistent with recent changes in State Law. Session Law 2014-94, adopted August 1, 2014, defines a temporary health care structure as a transportable residential structure providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person that is primarily assembled at a location other than its site of installation, is limited to one occupant who shall be the mentally or physically impaired person, has no more than 300 gross square feet, and complies with the North Carolina State Building Code.

The Session Law modifies standards related to the placement of a temporary health care structure including, but are not limited to, the following:

1. Only one temporary health care structure shall be allowed on a lot or parcel of land.
2. Temporary health care structures shall not require a Special Use Permit or be subjected to any other local zoning regulations beyond those imposed upon other accessory use structures.
3. Temporary health care structures shall comply with all setback requirements and any maximum floor area ratio limitations that apply to the primary structure.
4. Any person proposing to install a temporary health care structure must obtain a permit and may be charged a fee up to \$100 and a yearly renewal fee up to \$50.
5. A temporary health care structure may be required to connect to water, sewer, and electric utilities and comply with all applicable state laws, local ordinances, and additional regulations.
6. No signage shall be permitted onsite or on the exterior of the temporary health care structure.
7. All temporary health care structures shall be removed within 60 days in which the physical or mentally impaired person is no longer receiving care or is no longer in need of assistance.

Based on regulations set forth in Session Law 2014-94, the proposed amendment will address the review and permitting of temporary health care structures in order to be consistent with State Law. A copy of Session Law 2014-94 can be found at the end of this form.

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

3. **New Statutes and Rules**

Session Law 2014-94 *An Act Relating To Zoning Provisions For Temporary Health Care Structures*

C. PROCESS

1. **TIMEFRAME/MILESTONES/DEADLINES**

- a. BOCC Authorization to Proceed

November 18, 2014

- b. Quarterly Public Hearing

February 19, 2015

- c. BOCC Updates/Checkpoints

February 19, 2015 – Quarterly Public Hearing
April 7, 2015 – 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:

December 3, 2014 – Ordinance Review Committee
March 4, 2015 – Recommendation to the BOCC

- b. Advisory Boards:

- c. Local Government Review:

The proposed text amendments were submitted to the JPA Partners on January 14, 2015. To date, no comments have been received.

- d. Notice Requirements

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

e. Outreach:

 General Public: Small Area Plan Workgroup: Other: Materials were distributed to other County Departments and/or Divisions that may be interested or affected, including Building Inspections, Aging, Health, Environmental Health, Social Services, Emergency Services, and Tax/Land Records**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 FY2014-15 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

Language within the Unified Development Ordinance will be consistent with recent modification to State Law. The amendments will classify temporary health care structures as an accessory use to single-family dwellings which means they can be placed on the same lot as a single-family dwelling, subject to the standards proposed in Section 5.5.9. A process to review, permit, and monitor compliance of these structures will need to be developed by a multi-departmental team concurrent with ordinance adoption.

E. SPECIFIC AMENDMENT LANGUAGE

See Attachment 2 for proposed language.

Primary Staff Contact:

Ashley Moncado

Planning Department

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amoncado@orangecountync.gov

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

SESSION LAW 2014-94
HOUSE BILL 625

AN ACT RELATING TO ZONING PROVISIONS FOR TEMPORARY HEALTH CARE STRUCTURES.

The General Assembly of North Carolina enacts:

SECTION 1. Part 3 of Article 18 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-341.3. Zoning of temporary health care structures.

A county exercising powers under this Article shall comply with G.S. 160A-383.5."

SECTION 2. Part 3 of Article 19 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-383.5. Zoning of temporary health care structures.

(a) The following definitions apply in this section:

- (1) Activities of daily living. – Bathing, dressing, personal hygiene, ambulation or locomotion, transferring, toileting, and eating.
- (2) Caregiver. – An individual 18 years of age or older who (i) provides care for a mentally or physically impaired person and (ii) is a first or second degree relative of the mentally or physically impaired person for whom the individual is caring.
- (3) First or second degree relative. – A spouse, lineal ascendant, lineal descendant, sibling, uncle, aunt, nephew, or niece and includes half, step, and in-law relationships.
- (4) Mentally or physically impaired person. – A person who is a resident of this State and who requires assistance with two or more activities of daily living as certified in writing by a physician licensed to practice in this State.
- (5) Temporary family health care structure. – A transportable residential structure, providing an environment facilitating a caregiver's provision of care for a mentally or physically impaired person, that (i) is primarily assembled at a location other than its site of installation, (ii) is limited to one occupant who shall be the mentally or physically impaired person, (iii) has no more than 300 gross square feet, and (iv) complies with applicable provisions of the State Building Code and G.S. 143-139.1(b). Placing the temporary family health care structure on a permanent foundation shall not be required or permitted.

(b) A city shall consider a temporary family health care structure used by a caregiver in providing care for a mentally or physically impaired person on property owned or occupied by the caregiver as the caregiver's residence as a permitted accessory use in any single-family residential zoning district on lots zoned for single-family detached dwellings.

(c) A city shall consider a temporary family health care structure used by an individual who is the named legal guardian of the mentally or physically impaired person a permitted accessory use in any single-family residential zoning district on lots zoned for single-family detached dwellings in accordance with this section if the temporary family health care structure is placed on the property of the residence of the individual and is used to provide care for the mentally or physically impaired person.

(d) Only one temporary family health care structure shall be allowed on a lot or parcel of land. The temporary family health care structures under subsections (b) and (c) of this section shall not require a special use permit or be subjected to any other local zoning requirements beyond those imposed upon other authorized accessory use structures, except as



otherwise provided in this section. Such temporary family health care structures shall comply with all setback requirements that apply to the primary structure and with any maximum floor area ratio limitations that may apply to the primary structure.

(e) Any person proposing to install a temporary family health care structure shall first obtain a permit from the city. The city may charge a fee of up to one hundred dollars (\$100.00) for the initial permit and an annual renewal fee of up to fifty dollars (\$50.00). The city may not withhold a permit if the applicant provides sufficient proof of compliance with this section. The city may require that the applicant provide evidence of compliance with this section on an annual basis as long as the temporary family health care structure remains on the property. The evidence may involve the inspection by the city of the temporary family health care structure at reasonable times convenient to the caregiver, not limited to any annual compliance confirmation, and annual renewal of the doctor's certification.

(f) Notwithstanding subsection (i) of this section, any temporary family health care structure installed under this section may be required to connect to any water, sewer, and electric utilities serving the property and shall comply with all applicable State law, local ordinances, and other requirements, including Part 5 of this Article, as if the temporary family health care structure were permanent real property.

(g) No signage advertising or otherwise promoting the existence of the temporary health care structure shall be permitted either on the exterior of the temporary family health care structure or elsewhere on the property.

(h) Any temporary family health care structure installed pursuant to this section shall be removed within 60 days in which the mentally or physically impaired person is no longer receiving or is no longer in need of the assistance provided for in this section. If the temporary family health care structure is needed for another mentally or physically impaired person, the temporary family health care structure may continue to be used, or may be reinstated on the property within 60 days of its removal, as applicable.

(i) The city may revoke the permit granted pursuant to subsection (e) of this section if the permit holder violates any provision of this section or G.S. 160A-202. The city may seek injunctive relief or other appropriate actions or proceedings to ensure compliance with this section or G.S. 160A-202.

(j) Temporary family health care structures shall be treated as tangible personal property for purposes of taxation."

SECTION 3. G.S. 130A-250 is amended by adding a new subdivision to read:

"(14) Temporary family health care structures under G.S. 153A-341.3 or G.S. 160A-383.5."

SECTION 4. G.S. 131D-2.1(10) reads as rewritten:

"(10) Multiunit assisted housing with services. – An assisted living residence in which hands-on personal care services and nursing services which are arranged by housing management are provided by a licensed home care or hospice agency through an individualized written care plan. The housing management has a financial interest or financial affiliation or formal written agreement which makes personal care services accessible and available through at least one licensed home care or hospice agency. The resident has a choice of any provider, and the housing management may not combine charges for housing and personal care services. All residents, or their compensatory agents, must be capable, through informed consent, of entering into a contract and must not be in need of 24-hour supervision. Assistance with self-administration of medications may be provided by appropriately trained staff when delegated by a licensed nurse according to the home care agency's established plan of care. Multiunit assisted housing with services programs are required to register annually with the Division of Health Service Regulation. Multiunit assisted housing with services programs are required to provide a disclosure statement to the Division of Health Service Regulation. The disclosure statement is required to be a part of the annual rental contract that includes a description of the following requirements:

- a. Emergency response system;
- b. Charges for services offered;
- c. Limitations of tenancy;

- d. Limitations of services;
- e. Resident responsibilities;
- f. Financial/legal relationship between housing management and home care or hospice agencies;
- g. A listing of all home care or hospice agencies and other community services in the area;
- h. An appeals process; and
- i. Procedures for required initial and annual resident screening and referrals for services.

Continuing care retirement communities, subject to regulation by the Department of Insurance under Chapter 58 of the General Statutes, and temporary family health care structures, as defined in G.S. 160A-383.5, are exempt from the regulatory requirements for multiunit assisted housing with services programs."

SECTION 5. G.S. 160A-442(2) reads as rewritten:

"(2) "Dwelling" means any building, structure, manufactured home or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith, except that it does not include any manufactured home or mobile home, which is used solely for a seasonal vacation purpose. Temporary family health care structures, as defined in G.S. 160A-383.5, shall be considered dwellings for purposes of this Part, provided that any ordinance provision requiring minimum square footage shall not apply to such structures."

SECTION 6. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

SECTION 7. This act becomes effective October 1, 2014, and applies to temporary family health care structures existing on or after that date. No county or city may impose a fee as authorized by Section 1 and Section 2 of this act on any temporary family health care structure existing on that date.

In the General Assembly read three times and ratified this the 25th day of July, 2014.

s/ Tom Apodaca
Presiding Officer of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 11:55 a.m. this 1st day of August, 2014

Attachment 2

UDO AMENDMENT PACKET NOTES:

The following packet details the proposed text amendment to incorporate recent changes in State Law with respect to temporary health care structures. The amendment package will modify Sections 5.5 and 10.1 of the UDO to accommodate the new standards.

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 Text:** Denotes new, proposed text, that staff is suggesting be added to the UDO
- **Green Text:** Denotes modifications made following the December 3 ORC meeting.

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 modification.

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>

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 type facility planned, the number of occupants, and the development schedule.
- (b) A site plan showing existing and proposed contours. Proposed buildings, parking, access, service, recreation, landscaped and screened areas.
- (c) Other criteria as set forth in sections 6.2.11 and 6.3.
- (d) A statement concerning the provision of public services which shall include fire, police and rescue protection.

(2) Standards of Evaluation –

- (a) Adequate parking, access and service areas are provided for the site.
- (b) Parking, service areas and buildings are adequately screened from adjacent residential uses.
- (c) Improved recreational facilities are provided for occupants.
- (d) Other criteria as set forth in sections 6.2.11 and 6.3.
- (e) Letters from public service agencies attesting to the adequacy of the provision of public services such as fire, police and rescue.

5.5.9 Temporary Health Care Structures

(A) General Standards

(1) Submittal Requirements

In addition to the information required in Section 2.4, Zoning Compliance Permits, the following information shall be supplied as part of the application for approval of this use:

- (a) Documentation as to the relationship between the occupant of the temporary health care structure and the occupant(s) of the existing single family dwelling. One of the following types of relationships must exist:
 - (i) First or second degree relative – a spouse, lineal ascendant, lineal descendant, sibling, uncle, aunt, nephew, or niece and includes half, step, and in law relationships
 - (ii) Relationship by marriage
 - (iii) Legal guardian relationship designated by Court of Law.
- (b) Certification in writing from a North Carolina licensed physician stating the necessity of direct care for an mentally or physically impaired individual.

(2) Standards of Evaluation

- (a) An existing single family residential dwelling must be located on the same parcel as the temporary health care structure. Temporary health care structures are classified as an accessory use to single family detached dwellings.
- (b) No more than one temporary health care structure per lot shall be permitted.
- (c) Temporary health care structures must meet all standards contained in Section 5.5.1, Accessory Structures and Uses.

- (d) Occupancy of a temporary health care structure shall be limited to one mentally or physically impaired individual, who is a North Carolina resident and requires assistance with two or more activities of daily living.
- (e) No signage or advertisement promoting the temporary health care structure shall be permitted on the exterior of the temporary health care structure or on the property
- (f) A temporary health care structure shall be required to connect to water, wastewater, and electric utilities serving the principal structure on the property.
- (g) The Orange County Health Department, or the agency that provides sanitary sewer and water services, shall approve water and wastewater disposal facilities.
- (h) All applicable state and local approvals and permits shall be procured including, but not limited to, a zoning compliance permit, building permits, and health department approval.
- (i) Approval of the application shall not exceed one year. Annual renewal shall require a new application and recertification from a licensed physician stating the necessity of direct care.
- (j) Any approved temporary health care structure shall be removed no later than 60 days after the time the mentally or physically impaired person is no longer receiving care or is in need of assistance. If the structure is needed for a different impaired individual, the temporary health care structure may continue to be used or be reinstated on the property within 60 days of its removal, subject to the requirements of this Ordinance.
- (k) The caregiver shall allow inspections of the property by the County at times convenient to the caregiver, during reasonable hours, and upon prior notice for compliance purposes.
- (l) A permit for a temporary health care structure shall be revoked by the Planning Director due to failure of the applicant to comply with any of the above provisions.

SECTION 5.6: STANDARDS FOR COMMERCIAL USES

5.6.1 Nightclubs, Bars and Pubs

(A) General Standards for Evaluation

- (1) Buildings for nightclubs, bars and pubs shall not be located within 200 feet of a residence

5.6.2 Massage Business

(A) General Standards for Evaluation

- (1) Must comply with the Ordinance for the Control of Massage and Massage Establishments
- (2) The submittal of construction plans for all existing and proposed buildings housing the massage business. The construction plans shall include floor plans and cross sections showing the proposed use of all portions of such buildings.
- (3) For existing buildings, certification by the Orange County Building Inspector that the structure(s) complies with the North Carolina Building Code and all related construction codes.

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 Health Care Structure

A transportable residential structure facilitating a caregiver's provision of care for a mentally or physically impaired person that is primarily assembled offsite, is limited to one occupant, has no more than 300 gross square feet, and complies with applicable standards of the North Carolina State Building Code. Temporary health care structures shall not be installed on a permanent foundation. Temporary health care structures are classified as an accessory use to single family detached dwellings.

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.

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 transients, as distinguished from rooming houses, in which occupancy is primarily by residents rather than transients.

Traffic Generation: Low

Uses which generate an average of less than 200 vehicle trips per day.

Approved 2/4/15

**SUMMARY NOTES
ORANGE COUNTY PLANNING BOARD
DECEMBER 3, 2014
ORDINANCE REVIEW COMMITTEE**

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

MEMBERS PRESENT: Peter Hallenbeck (Chair), Cheeks Township Representative; Herman Staats, At-Large, Cedar Grove Township; James Lea, Cedar Grove Township Representative; Tony Blake, Bingham Township Representative; Laura Nicholson, Eno Township Representative; Paul Guthrie, At-Large Chapel Hill Township; Bryant Warren, Hillsborough Township Representative;

STAFF PRESENT: Craig Benedict, Planning Director; Perdita Holtz, Special Projects Coordinator; Ashley Moncado, Special Projects Planner; Tina Love, Administrative Assistant II;

AGENDA ITEM 1: CALL TO ORDER

AGENDA ITEM 2: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENTS – To review and comment upon revisions to the UDO to allow temporary healthcare structures in all residential zoning districts. This amendment is in response to North Carolina Session Law 2014-94.
PRESENTER: Ashley Moncado, Special Projects Planner

Ashley Moncado review abstract.

Paul Guthrie: Does it implicitly say they can be considered as part of the water and waste water system for approval of this permit?

Ashley Moncado: That is a gray area, Michael Harvey isn't here but that and another portion in the state statute that they provide 'may' regarding connection to the water or sewer and that is an area we have discussed and gone back and forth about because this is a little vague. They leave that open ended for the counties and cities. That is something we may have to look at and discuss.

James Lea: Is it possible to find out how these units are connected in a rural setting?

Ashely Moncado: That is more environmental health, if you were going to put a house on a property or an accessory structure. They would have to connect to the septic and it would have to have the capacity to do that.

Perdita Holtz: A temporary setup could be several years.

Tony Blake: But if you have an RV, you don't have to do that sort of thing. You don't have to extend your system for an RV.

Laura Nicholson: Does say one person, what about a spouse?

Ashley Moncado: This is permitted for one person only.

Pete Hallenbeck: Any other comments or questions? Ok, we'll adjourn.

AGENDA ITEM 10: ADJOURNMENT:

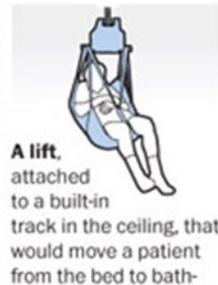
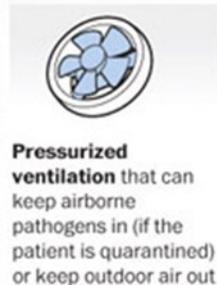
Temporary Health Care Structures

A mobile, modular unit designed to be temporarily placed on a caregiver's property for rehabilitation and extended care of an impaired relative.

What a home next to home might look like:



Some potential features



Information provided is based on a MEDCottage unit <http://www.medcottage.com/products.php>

**ORANGE COUNTY
BOARD OF COMMISSIONERS AND
PLANNING BOARD
QUARTERLY PUBLIC HEARING ACTION AGENDA ITEM ABSTRACT**
Meeting Date: February 19, 2015

**Action Agenda
Item No.** C.2

SUBJECT: Unified Development Ordinance Text Amendment - Sign Regulations

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N)

Yes

ATTACHMENT(S):

1. Comprehensive Plan and Unified Development Ordinance Outline Form - Sign Amendments (UDO/Zoning 2015-01)
2. Future Land Use Element Map
3. Matrix of Sign Regulations
4. Proposed UDO Text Amendment(s)

INFORMATION CONTACT:

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

PURPOSE: To hold a public hearing on Planning Director initiated Unified Development Ordinance (UDO) text amendments regarding sign regulations.

BACKGROUND: The Board of County Commissioners (BOCC) approved the Comprehensive Plan and Unified Development Ordinance Outline Form (Attachment 1) for this item at its January 22, 2015 regular meeting.

There has been an increase in inquires and interest with respect to development of large-scale commercial operations within the county. Staff is concerned current sign regulations do not offer a suitable distinction between allowable signage for projects developed in urbanizing areas versus rural areas and do not take into consideration the size of the parcel being developed or the amount of road frontage the parcel has.

There is also a noticeable lack of clarity within the UDO addressing the development of large-scale properties with multiple tenants necessitating the need for a larger, freestanding sign, advertising local businesses, and on what constitutes a blinking/flashing sign leading to enforcement concerns.

The proposed amendment seeks to address these concerns. For more background information please refer to Section B.1 of Attachment 1.

Staff has provided a table outlining how other surrounding jurisdictions address signage in Attachment 3. Proposed amendments are contained in Attachment 4.

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

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

1. Receive the request,
2. Conduct the Public Hearing and accept public, BOCC, and Planning Board comments.
3. Refer the matter to the Planning Board with a request that a recommendation be returned to the BOCC in time for its **April 7, 2015** regular meeting.
4. Adjourn the public hearing until **April 7, 2015** 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) AMENDMENT OUTLINE

UDO / Zoning-2015-01

UDO Text Amendment(s) clarifying the allowable sign area for projects in identified Activity Nodes and regulations governing the use of electronic signs

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 6.12 *Signs* and
 2. 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 text amendment(s) to modify existing regulations governing allowable signage.

There has been an increase in inquires and interest with respect to development of

large-scale commercial operations within the County, with an emphasis on property located within the:

- a. Commercial Transition,
- b. Commercial-Industrial Transition, and
- c. Economic Development Transition

Activity Nodes (please see [Attachment 2](#) for a copy of the Future Land Use Map of the Comprehensive Plan for additional detail).

Current sign regulations limit the total allowable square footage for freestanding and wall signs for most non-residential general use zoning districts to 32 square feet (8 feet by 4 feet in size) regardless of the properties location (in or outside of an Activity Node), size of parcel, or amount of road frontage.

There is a concern that current regulations do not offer a suitable distinction between development within various identified Activity Nodes (i.e. more urban areas of the County) and rural areas allowing for a sign of suitable size to accommodate a non-residential project on a larger parcel of property.

The 'one-size fits all' sign limit may, in fact, be a deterrent to non-residential development in the aforementioned Activity Nodes.

There is also a noticeable lack of clarity within the UDO addressing the development of large-scale properties with multiple tenants necessitating the need for a larger, freestanding sign, advertising local businesses and on what constitutes a blinking/flashing sign leading to enforcement concerns.

The proposed amendment(s) seek to address these concerns.

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 amendments are necessary to address current concerns over advertising needs for development within the urban areas of the county (i.e. the Commercial Transition and Commercial-Industrial Transition Activity Nodes) and clarify the prohibition on the use of blinking/flashing signage by incorporating new definitions into the UDO.

Staff will also be using this amendment process to incorporate an interpretation relating to the use of digital displays by gas stations. Historically gas stations have displayed gas prices through an internally/externally illuminated reader board. These displays create unnecessary glare for motorists. We have allowed gas stations to incorporate digital reader board displays to advertise gas prices, reducing glare and eliminating issues of light trespass either through cracked message boards allowing undiffused light to escape or misaligned external light fixtures creating glare for motorists.

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

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

d. PROCESS

1. TIMEFRAME/MILESTONES/DEADLINES

a. BOCC Authorization to Proceed

January 22, 2015 – The BOCC authorized staff to proceed with the amendment.

b. Quarterly Public Hearing

February 19, 2015

c. BOCC Updates/Checkpoints

January 26, 2015 – Planning Board members were sent the proposed amendment via e-mail for review and comment as there was no January 2015 Planning Board Ordinance Review Committee meeting.
February 19, 2015 – Quarterly Public Hearing.
April 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:

January 26, 2015 – Planning Board members were e-mailed the amendment packet for initial review and comment.
March 4, 2015 – Recommendation.

b. Advisory Boards:

N/A

c. Local Government Review:

N/A

d. Notice Requirements

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

e. Outreach:

General Public: _____

Small Area Plan Workgroup: _____

Other: _____

3. FISCAL IMPACT

Modification of existing language will not require the outlay of additional funds by the County. Processing of the amendment shall be handled by staff utilizing existing budgeted funds.

e. AMENDMENT IMPLICATIONS

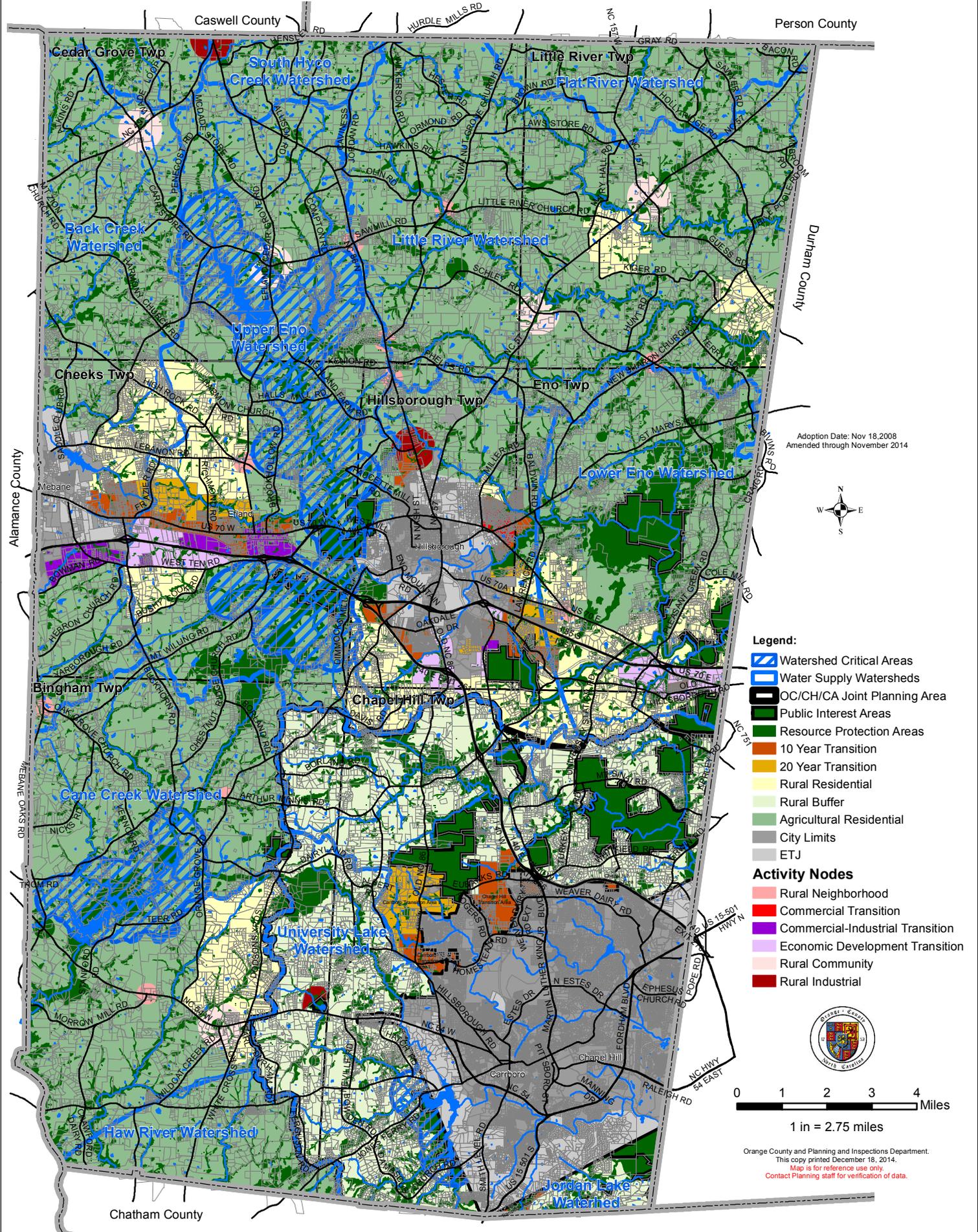
The amendment will allow for larger freestanding and wall signs for projects in identified Activity Nodes where there is adequate road frontage necessitating the development of additional advertising space and clarify what constitutes a blinking/flashing sign to aid in enforcement efforts.

f. SPECIFIC AMENDMENT LANGUAGE

Please refer to Attachment 4.

Primary Staff Contact:
 Michael D. Harvey
 Planning
 (919) 245-2597
 mharvey@orangecountync.gov

Future Land Use Map of the Orange County Comprehensive Plan



Adoption Date: Nov 18, 2008
Amended through November 2014

- Legend:**
- Watershed Critical Areas
 - Water Supply Watersheds
 - OC/CH/CA Joint Planning Area
 - Public Interest Areas
 - Resource Protection Areas
 - 10 Year Transition
 - 20 Year Transition
 - Rural Residential
 - Rural Buffer
 - Agricultural Residential
 - City Limits
 - ETJ
- Activity Nodes**
- Rural Neighborhood
 - Commercial Transition
 - Commercial-Industrial Transition
 - Economic Development Transition
 - Rural Community
 - Rural Industrial



0 1 2 3 4 Miles
1 in = 2.75 miles

Orange County and Planning and Inspections Department.
This copy printed December 18, 2014.
Map is for reference use only.
Contact Planning staff for verification of data.

Jurisdiction	Number of Permitted Free-standing Signs	Free-standing Sign Size limit(s)	Free-standing Sign Setbacks	Free-standing Sign Height Limits	Number of Permitted Wall Signs	Wall Sign Size limit(s)	Other Wall Sign Regulations
Orange County	1 sign per property per street front ¹	<ul style="list-style-type: none"> • Most Non-residential districts sign is limited to 32 sq. ft. in area, • Buckhorn and Eno EDD² districts can have sign up to 75 sq. ft. in area. • Hillsborough EDD based on acreage of site for ground/monument sign as follows: <ul style="list-style-type: none"> 1.50 sq. ft. sign area for property less than 5 acres, 2.100 sq. ft. sign area for property 5-20 acres, 3.150 sq. ft. sign area for property over 20 acres 	<ul style="list-style-type: none"> • 10 ft. setback property line/right-of-way 	<ul style="list-style-type: none"> • 24 ft. from finished elevation at base of sign to top of sign. • Buckhorn/Eno EDD: height limit of 12 ft. • Hillsborough EDD: height limit based on size of sign as follows: <ol style="list-style-type: none"> 1. 50 sq. ft. sign has a height limit of 6 feet, 2. 100 sq. ft. sign has a height limit of 8 feet, 3. 150 sq. ft. sign has a height limit of 10 feet 	1 sign per building wall/façade per street front ³	<p>1 square foot of sign for every ½ foot of building length facing a public street</p> <ul style="list-style-type: none"> • Most non-residential districts sign is limited to 32 sq. ft. in area • Buckhorn and Eno EDD districts can have sign up to 75 sq. ft. in area. • Hillsborough EDD wall sign limited to 32 sq. ft. unless frontage exceeds 64 ft. In this case you get ½ additional sign area with the ultimate cap on the wall sign being 100 sq.ft. 	Sign shall not protrude 12 inches from the fact of the building.

¹ For parcels having frontage on 2 streets/roadways we would allow for an additional free-standing sign (Section 6.12.12 (A) (4) (a) of the UDO)

² EDD stands for Economic Development District

³ As with free-standing signs, we allow multiple wall signs on building facades that have frontage along 2 streets/roadways.

Jurisdiction	Number of Permitted Free-standing Signs	Free-standing Sign Size limit(s)	Free-standing Sign Setbacks	Free-standing Sign Height Limits	Number of Permitted Wall Signs	Wall Sign Size limit(s)	Other Wall Sign Regulations
Durham County	1 per property/per street front	<p>For non-residential land uses in non-residential zoning districts:</p> <ul style="list-style-type: none"> • 32 square feet in area when the frontage is less than 150 feet, • 80 square feet in area when the frontage is 150 feet or more. <p>For non-residential land uses in residential zoning districts:</p> <ul style="list-style-type: none"> • For lots with a frontage of less than 150 linear feet, the sign shall not exceed 12 square feet in area. <p>For lots with a frontage of 150 linear feet or more, the sign shall not exceed 32 square feet in area.</p>	<ul style="list-style-type: none"> • Sign 32 sq. ft. or less, minimum five ft. setback from property line, • Sign exceeding 32 sq. ft., minimum 10 ft. setback, • When adjacent to residential property, minimum 12 ft. setback required in all instances. 	<ul style="list-style-type: none"> • Non-residential districts - 16 ft. height limit. • Non-residential uses in residential district – 12 ft. • 40 ft. sign ht. allowed based on property location and land use. 	1 sign per building wall/façade per street front	<ul style="list-style-type: none"> • Minimum wall sign is 25 sq. ft. (i.e. for buildings with less than 167 sq. ft. of wall area) • Sign cannot exceed 15% of the total wall area on which it is mounted 	<ul style="list-style-type: none"> • Sign shall not extend more than 12 inches from the wall of building, • Sign may extend up to 12 inches into a public right-of-way.

Jurisdiction	Number of Permitted Free-standing Signs	Free-standing Sign Size limit(s)	Free-standing Sign Setbacks	Free-standing Sign Height Limits	Number of Permitted Wall Signs	Wall Sign Size limit(s)	Other Wall Sign Regulations
Wake County ⁴	Maximum of 2 signs per individual use (this includes a wall and freestanding sign)	<ul style="list-style-type: none"> For non-residential land uses 100 sq. ft. of sign area allowed. For residential uses (i.e. subdivision sign) 32 sq. ft. of sign area allowed. Signs for non-residential land uses located in a residential zoning district, limit is 32 sq. ft. of sign area allowed. 	<p>Cannot be located within an identified site triangle – location varies per district and adjacent property use (i.e. residential)</p> <p>Typical requirement in commercial area: 50 ft. from a residence (100 ft. if illuminated).</p>	<ul style="list-style-type: none"> 30 ft. from finished elevation at base of sign to top of sign for a pole sign. 12 ft. for a ground sign 	You are allowed 2 signs per property/project. 1 of these can be a wall sign.	100 sq. ft.	Depends on district.

⁴ Wake County is currently in the process of revising existing sign regulations

- (H) The design of light fixtures and structural supports must be compatible with the architecture of the principal building(s) and identification signs.
- (I) Where building faces are illuminated, lighting fixtures must be integrated within the architectural design of the buildings.
- (J) Ground-mounted lighting fixtures must be weather-proof and vandal resistant.
- (K) **Hillsborough EDD**
In addition to the standards established above, the following standards shall apply within the Hillsborough EDD:
- (1) Lighting must be high efficiency lighting systems and lighting levels must be reduced during non-use hours to promote energy conservation.
 - (2) 12:1 minimum/maximum glare ratio.
 - (3) Maximum footcandles = 80

SECTION 6.12: SIGNS

6.12.1 Purpose and Intent

The purpose of this Section is to regulate the type, placement and physical dimensions of all signs in the interest of public health, safety and welfare, while recognizing the need for signs within the business community.

It is the intent of this section to regulate signs on a per lot basis in conjunction with the zoning designation of the lot as described on the current tax roll whether a sign is directly visible from a street right-of-way or not.

6.12.2 **Off-Premise Commercial/Outdoor Advertising Signs**¹

The provisions of this Article establish standards and review criteria relating to the location, erection, maintenance, lighting, setbacks, and use of signs. This includes regulations pertaining to off-premise commercial also known as outdoor advertising (i.e. Billboards) signage.

The regulation and permitting of outdoor advertising is also subject to State requirements, including the State Outdoor Advertising Control Act, and Federal requirements. In cases where there is a conflict between County regulations and State or Federal regulations, relating to the location, erection, maintenance, lighting, setbacks and use of outdoor advertising signage, the corresponding State or Federal law shall take precedent.

In cases where there is no applicable State/Federal standard, then existing County regulations shall be enforced.

6.12.3 General Requirements

- (A) No sign of any type nor any part thereof shall be erected, painted, posted, reposted, placed, replaced, or hung in any zoning district except in compliance with these regulations.
- (B) No person shall erect or maintain a sign, and no property owner shall allow a sign to be erected or maintained on his property except in conformity with these regulations.
- (C) A Zoning Compliance Permit approved in accordance with the provisions of this Ordinance shall be required prior to erecting a sign, unless otherwise permitted.

¹ Staff is adding language to ensure terminology is consistent within the UDO when referencing billboards, which we currently define as 'Off-premise Commercial' signs. We are also adding a definition of Outdoor Advertising, referencing our local classification, in Article 10.

- (A) Signs erected by a governmental agency to regulate, control, or direct vehicular or pedestrian traffic;
- (B) Legal notices, warnings, regulatory or informational signs erected by a public agency;
- (C) Signs required by law;
- (D) "No trespassing" signs, not exceeding six square feet in area;
- (E) Real estate signs, not exceeding four square feet in area;
- (F) Flags, emblems or insignia of any national, state or political subdivision;
- (G) Property number signs not exceeding two square foot in area and bearing only address numbers of premises or other identification of premises not having commercial connotations;
- (H) Holiday decorations in season that do not contain or display a commercial message;
- (I) Signs on trash receptacles, indicating the owner or party responsible for maintenance;
- (J) Hazardous chemical identification/notification signs on residential and non-residential structures;
- (K) Signs on newspaper boxes;
- (L) Private drive signs, one per drive entrance, not exceeding two square feet in area, with the message content limited to the words "Private Drive" and the address of any residences utilizing the private roadway;
- (M) Security and warning signs posted on private property warning the public against trespassing, or similar messages, provided that any such sign does not exceed two square feet in area; and
- (N) Political Signs, in accordance with the following standards:
 - (1) Political Signs are allowed in all zoning districts.
 - (2) A Zoning Compliance Permit shall not be required to allow for the placement of a political sign on private property.
 - (3) There shall be no limit to the number of political signs that can be placed on private property so long as the placement of these signs complies with the provisions of this Ordinance and the signs do not create a public safety hazard.
 - (4) Within residential zoning districts, political signs shall not exceed nine square feet in area or four feet in height.
 - (5) Within non-residential zoning districts, political signs shall not exceed the maximum allowable sign area permitted for freestanding signs.
 - (6) Political signs shall only be erected 90 days prior to the established date of a general election, school board election, referendum, special election, primary, or other similar political activity.
 - (7) Political signs shall be removed within 21 days after an election.
 - (8) Political signs shall be allowed within rights-of-way of the State highway system only in accordance with State law.
 - (9) Political signs shall not be allowed on telephone poles, utility poles, trees, other similar natural objects, and other signs or sign structures.

6.12.6 Prohibited Signs

The following signs are prohibited in all zoning districts:

- (A) Advertising signs resembling traffic signals, traffic signs, emergency vehicles' flashing lights, non-governmental sanctioned signs utilizing the words 'stop', 'slow', 'caution',

'danger', or any sign that is likely to be misconstrued by the traveling public as being official governmental signs or emergency warnings or which by their distracting nature create a hazard to motorists;

- (B) Signs, except for off-premises signs allowed under this Section, advertising an activity, business, product or service no longer conducted on the premises upon which the sign is located. Such signage shall be removed within 90 days from the date of termination of such activity. Upon failure of the owner to remove such signs within the prescribed time, the Planning Director shall take appropriate legal action to have such sign removed;
- (C) Flashing, blinking, pulsating, signs or signs with moving parts ~~except for signs showing time of day and temperature that are part of an approved sign advertising a permitted business activity on a parcel of property;~~²
- (D) Signs with electronic moveable copy, scrolling messages, or other similar electronic displays designed to change/display different advertising message(s) more than once an hour or a maximum of 6 times in a 24 hour period.³ The use of electronic displays in off-premise commercial signs is specifically prohibited except in accordance with the provisions of this section.⁴
- (E) Signs, other than traffic, governmental, street name signs, political signs erected in accordance with State law, or other official governmental or public agency sign, shall not be permitted within any street right-of-way;
- (F) Roof signs;
- (G) Snipe signs;
- (H) Beacon lights, animated signs, trailer signs and snipe signs;
- (I) Portable signs, unless approved for a special event in accordance with Section 6.12.11(D);
- (J) Signs supported in whole or in part by water, gas, air, or could otherwise be designated as inflatable signs; Individuals erecting an inflatable sign shall be subject to an immediate notice of violation and shall be required to remove the sign within the time frame it would normally take to deflate the sign, unless approved for a special event in accordance with Section 6.12.11(D);
- (K) Signs mounted on a single pole or mast;
- (L) Signs that contain rotating sign panels or objects;
- (M) Signs that obstruct ingress and egress to any door, window, fire escape, stairway, ladder, or other opening intended to provide light, air, ingress, or egress for any room or building; and
- (N) Signs that violate any provision of any law of the State of North Carolina relative to outdoor advertising.
- (O) Signs erected on telecommunication facilities or support structures other than safety notification(s) and those required by State or Federal regulations.⁵

² On advice from the County Attorney's office we are deleting this language to address a concern existing language is not content neutral. You cannot specific the content of a sign even if it is just 'time/temprature'.

³ We need a standard as to what constitutes changeable copy to ensure proper enforcement while allowing some opportunity for said advertising display to be altered during the course of a day.

⁴ Section 6.12.2 establishes the County's limitations with respect to the regulation of off-premise/outdoor advertising (i.e. billboards). We will continue to ban the use of electronic outdoor advertising so long as said ban is consistent with applicable State and Federal regulations in accordance with NCGS 136-131.2.

⁵ From time to time staff has received requests to place advertising signs on telecommunication facilities. To date we have forbidden such placement. Staff believes it is necessary to amend the UDO to include a specific prohibition to avoid uncertainty.

(a) Sites shall be limited to one portable sign per right-of-way frontage. However, there shall be no more than two portable signs permitted on-site at one time.

(b) Signs shall be limited to 16 square feet in area, per sign face.

(c) Signs shall be located in accordance with Section 6.12.3(F).

(5) **Inflatable Signs**

(a) No more than one inflatable sign shall be permitted on-site at one time.

(b) Inflatable signs shall not exceed 25 feet in height.

(c) Signs shall be located a minimum of 25 feet from all property lines.

(6) Special Event Displays may only be erected for a two week period and must be removed within five days following the event.

(E) Signs Advertising Agricultural Products Produced on the Premises

(1) Shall not exceed 32 square feet.

(2) Shall be limited to two signs per parcel.

(F) Temporary Construction and Financial Institution Signs

(1) Shall not exceed 24 square feet in area, per sign;

(2) May not to exceed two signs per building site;

(3) Signs shall be erected only after a Building Permit authorizing construction on-site has been issued; and

(4) Signs must be removed within seven days after construction work has been completed and the certificate of occupancy has been issued.

(G) Directional/Informational Signs

(1) May be displayed on parcels of property utilized for non-residential purposes.

(2) May not exceed two square feet in area.

(3) May contain corporate logos or other similar graphical displays so long as they provide some necessary information to patrons (i.e. entrance and exit locations, one-way entrance ways, drive through entranceways, ATM location, etc.).

(4) A maximum of three directional/informational signs may be displayed on a non-residential parcel of property.

(H) Temporary Real Estate Signs, in excess of four square feet in area

(1) One sign shall be permitted per building site, not to exceed 24 square feet in area.

(2) Signs shall not be placed within any public street right-of-way.

(3) Signs must be removed after property has been transferred.

(I) Landmark Signs

Signs shall be erected only after the historical significance of the particular site has been verified and that proposed location of the sign has been approved by the Orange County Planning Department and all other related agencies (i.e. NC Department of Transportation).

6.12.12 Signs Permitted in Specific Zoning Districts

The following signs shall be permitted in the zoning districts indicated, in accordance with all other provisions of this Section and specific standards for each sign established herein:

(A) On-Premise Commercial Signs

- (1) These signs shall comply with all state and county building codes and the National Electric Code. Clearance of signs is required from high voltage power lines and signs shall be located in such a way that they will maintain horizontal and vertical clearance of all overhead electrical conductors in accordance with the National Electric Code specifications, provided that no sign shall be installed closer than ten feet horizontally or vertically from any conductor or public utility guy wire.
- (2) On-premise commercial signs shall be permitted within the following zoning districts: LC-1, NC-2, CC-3, GC-4, EC-5, OI, EI, I-1, I-2, I-3, AS, MPD-CZ, MHP-CZ and all of the Economic Development zoning districts.
- (3) ~~All~~ On-premise commercial signs shall be setback a minimum ten feet from ~~the front, side, and rear~~ all property lines ~~or and~~ the edge of any existing or projected street right-of-way line ~~whichever is greater~~. Signs greater than 32 square feet, as allowed herein, shall be setback an additional 5 feet.⁶ In cases where a property abuts a residential zoned parcel of property, the side or rear yard setback requirement shall be doubled.
- (4) **Number of Signs Permitted**
 - (a) One on-premise commercial sign shall be permitted per parcel. However, one additional on-premise commercial sign may be permitted for parcels with frontage on more than one right-of-way in accordance with the provisions of this Section.
 - (b) Under no circumstances shall more than one three-dimensional sign be permitted on-site.
 - (c) For multi-tenant buildings and/or sites permitted as a conditional use or conditional zoning district, additional on-premise commercial signs or sign area may be permitted by the Board of County Commissioners with the approval of a master sign plan.
- (5) **Height of Signs**
 - (a) Pole signs shall be limited to a height of 24 feet with a mandatory ground clearance of eight feet from the normal or finished grade elevation of the property at the base of the sign. Pole signs shall be mounted on 2 posts or masts.⁷
 - (b) Ground signs shall not exceed six feet in height from the normal or finished grade elevation of the property at the base of the sign
- (6) **The allowable area for on-premise commercial signs shall be determined as follows:**
 - (a) Single or double-faced signs shall not exceed 32 square feet in area, per sign face except for parcels zoned CC-3, GC-4, O/I, I-2, I-3, AS, and MPD-CZ that:
 - (i) Are larger than 40,000 square feet in area, and
 - (ii) Has more than 300 feet of linear frontage along a NC Department of Transportation (NC DOT) maintained roadway

⁶ Staff is recommending the imposition of a larger setback in those instances where a larger free-standing sign is allowed.

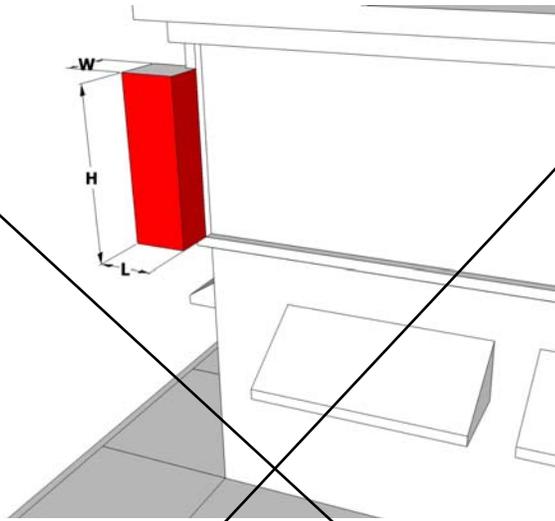
⁷ This requirement is currently referenced within the definition section of the UDO. We are moving it here as regulation(s) are more appropriate within the various, applicable, sections rather than being contained within definitions.

In these instances signs shall not exceed 64 square feet in area per sign face.⁸

(b) For parcels within Economic Development district(s), allowable sign area shall be in accordance with Section 6.12.14 of this Ordinance.⁹

~~(b)(c)~~ Three-dimensional signs shall not exceed a maximum volume of 54 cubic feet with no dimension exceeding six feet.

Figure 6.12.12.A.6: Three-Dimensional Sign Allowable Volume



NOTE: $L \times W \times H$ may not exceed 54 cubic feet with no dimension exceeding 6 feet.

- (7) An on-premise commercial sign may contain a changeable copy sign as defined in this Ordinance. However, the total sign area, including the area of changeable copy, shall not exceed the maximum allowable area established in Section 6.12.12(A)(6)(a) above.
- (8) No on-premise commercial sign shall be oriented in such a manner as to be directly visible from a major transportation corridor as established in this Ordinance.

(B) Off-Premise Commercial Signs

- (1) These signs shall comply with all state and county building codes and the National Electric Code. Clearance of signs is required from high voltage power lines and signs shall be located in such a way that they will maintain horizontal and vertical clearance of all overhead electrical conductors in accordance with the National Electric Code specifications, provided that no sign shall be installed closer than ten feet horizontally or vertically from any conductor or public utility guy wire.

⁸ This would only allow larger signs on property located in the 'urban' areas of the County (i.e., along US Highway 70, the Efland-Mebane-Buckhorn area, Hillsborough and Eno EDD's) and would not include rural nodes (i.e. Rural Neighborhood, Industrial, etc.). The typical width of a non-residential general use zoning district (i.e. amount of road frontage) is approximately 75 feet. A larger sign shall only be allowed if the project is located within an identified Activity Node, where we encourage large-scale non-residential development, and the lot has sufficient road frontage to accommodate a larger sign yet be proportional to the property.

⁹ We are establishing the necessary reference(s) to the provisions of the UDO regulating allowable sign area within our various Economic Development districts.

- (2) Off-premise commercial signs (billboards) shall be permitted within the GC-4, EC-5, I-1, and I-2 zoning districts.
- (3) No electric tap outs allowing for an independent light source to receive power shall be allowed.
- (4) Off-premise commercial signs shall be considered the principal use of property. There shall be no additional principal uses allowed on the same parcel. Off-premise commercial signs shall not be permitted as accessory uses.
- (5) No off-premise commercial sign shall be located closer than 200 feet to the right-of-way of major thoroughfares (i.e. US 70, NC 86, NC 40, and NC 57) and 600 feet to the right-of-way for all other thoroughfares and streets.
- (6) The height of an off-premise commercial sign shall not exceed 25 feet from the grade of the right-of-way or surface grade beneath the sign, whichever is less. The clearance of an off-premise sign shall not be less than eight feet from the grade of the right-of-way or surface grade beneath the sign, whichever is less.
- (7) Off-premise commercial signs shall be limited to 480 square feet of sign area.
- (8) In no case shall an off-premise commercial sign be located closer than 1,000 feet to an existing off-premise commercial sign.
- (9) Off-premise commercial signs are prohibited within the Major Transportation Corridor (MTC) overlay district.
- (10) No person may, for the purpose of increasing or enhancing the visibility of any off-premises commercial sign, damage, trim, destroy, or remove any trees, shrubs, or other vegetation in the following locations:
 - (a) Within the right-of-way of any public street or road, unless the work is done pursuant to the express written authorization of the North Carolina Department of Transportation;
 - (b) On property that is not under the ownership or control of the person responsible for such work, unless the work is done pursuant to the express authorization of the property owner where the vegetation is located; and,
 - (c) In any area where such vegetation is required to remain under a permit issued in accordance with this Ordinance.

(C) Wall Signs

- (1) Shall either be mounted or painted on a building.
- (2) Wall signs may be internally illuminated and shall comply with all applicable state and county building codes and the National Electric Code.
- (3) Wall Signs shall be permitted within the following zoning districts: LC-1, NC-2, CC-3, GC-4, EC-5, OI, EI, I-1, I-2, I-3, AS, MPD-CZ and all of the Economic Development zoning districts.
- (4) All wall signs shall be offset a minimum of ten feet from the corner of the building on which it is mounted.
- (5) Wall signs shall not protrude more than 12 inches from the face of building on which it is mounted.
- (6) Number of Signs Permitted
 - (a) Only one wall sign shall be permitted per building facade. In cases where a building is located on a corner lot, an additional wall sign may be permitted on the building wall facing the second street right-of-way, subject to the requirements of this Ordinance.

(b) For multi-tenant buildings permitted as a conditional use or conditional zoning district additional wall signs may be permitted by the Board of County Commissioners.

(7) The allowable sign area shall be determined as follows:

One square foot of sign area for every ½ foot of building length facing a public right-of-way, not to exceed 32 square feet except for parcels zoned CC-3, GC-4, O/I, I-2, I-3, AS, and MPD-CZ that:

(i) Are larger than 40,000 square feet in area, and

(ii) The structure has more than 100 linear feet of building length facing a public right-of-way, and

(iii) Has more than 300 feet of linear frontage along a NC Department of Transportation (NC DOT) maintained roadway

In these instances signs shall not exceed 64 square feet in area per sign face.

(8) A changeable copy sign may be utilized as a wall sign.

(9) Wall signs shall not extend above the soffit, parapet, or eave line of the building to which it is attached.

(10) For parcels within Economic Development district(s), allowable sign area shall be in accordance with Section 6.12.14 of this Ordinance.

(D) Projecting Signs

(1) Projecting signs shall be mounted on a building.

(2) Projecting signs may be internally illuminated and shall comply with all applicable state and county building codes and the National Electric Code.

(3) Projecting signs shall be permitted within the following zoning districts: LC-1, NC-2, CC-3, GC-4, EC-5, OI, EI, I-1, I-2, I-3, AS, MPD-CZ and all of the Economic Development zoning districts.

(4) Projecting signs shall adhere to the minimum setback requirements established for all structures within the zoning district in which it is located.

(5) Only one projecting signs shall be permitted per building facade even in cases of a building located on a corner lot.

(6) The allowable sign area shall be determined as follows:

(a) One square foot of sign area for every ½ foot of building length, facing a public right-of-way, not to exceed 32 square feet in area.

(7) Projecting signs shall clear sidewalks and pedestrian paths by a height of at least ten feet above finished grade.

(8) Projecting signs shall not extend above the soffit, parapet, or eave line of the building to which it is attached.

(9) Projecting signs shall not be located at the corner of a building except at right angles to the building façade.

(E) Window Signs

(1) Window signs shall be permitted within the following zoning districts: LC-1, NC-2, CC-3, GC-4, EC-5, OI, EI, I-1, I-2, I-3, AS, MPD-CZ and all of the Economic Development zoning districts.

(2) Window signs shall be limited to a maximum of 30% of the total window area where the sign is to be located.

- (3) Window signs may be utilized for advertising specials or sales within the business, or displaying the name and other pertinent business information associated with the principal use.
- (4) Signs may be etched, painted or otherwise attached to be made a permanent addition to the pane of glass.

(F) Awning Signs

- (1) Awning signs shall be permitted within the following zoning districts: LC-1, NC-2, CC-3, GC-4, EC-5, OI, EI, I-1, I-2, I-3, AS, MPD-CZ and all of the Economic Development zoning districts. See Section 6.12.14(E) for additional standards for Awning Signs located in Economic Development Districts.
- (2) Awning Signs shall be located above the main entrance to a nonresidential land use and shall contain the name of the use.
- (3) Awning Sign area shall be limited to a maximum of 50% of the total awning area erected over the entrance of a nonresidential land use. Where an awning sign is utilized at a multi-use development, the amount of sign area shall be computed as part of the overall sign area allotted to wall signs, not to exceed 50% of the total awning area.

(G) Drive-Through Menu Signs

- (1) Applicants must establish to the satisfaction of the Planning Director that a drive-through menu sign is considered a customary accessory use to the principal business on the property and is necessary for the normal operations of the commercial operation.
- (2) Signs shall be limited to 32 square feet in area.
- (3) No external illumination shall be permitted.
- (4) A land use that utilizes such a sign shall also be permitted an independent speaker box, no greater than 12 square feet in area with a height no greater than four feet.

6.12.13 Sign Standards for Specific Uses

In addition to the requirements contained herein, the following land uses shall adhere to these additional standards:

(A) Changeable Copy Signs Utilized by Churches or Public Entities

- (1) Shall not exceed 32 square feet in area.
- (2) Bulletin boards/reader boards may be internally illuminated.

(B) Service Stations/Gas Station

- (1) Signs may be erected above gas pumps subject to the following standards:
 - (a) No internal or external illumination shall be permitted;
 - (b) Signs shall be limited to four square feet in area; and
 - (c) Signs must advertise items for sale on the property. Under no circumstances may a sign advertise a sale, activity, business, or product not associated with the principal use of property.
- (2) Signs may be erected on the canopy covering gas pumps subject to the following standards:
 - (a) Advertising material shall be limited to trademarks, logos, and the name of the service station or other similar display.
 - (b) Such displays shall be limited to six square feet of area.

(3) The advertisement of gas prices may be displayed electronically as part of an approved on-premise sign.

(C) Yard Sales/Garage

- (1) Signs shall be erected on the property where the sale is taking place.
- (2) Signs shall be limited to four square feet of area.
- (3) No off-site displays shall be permitted.
- (4) Signs shall be removed no later than sunset of the day the event occurs.

(D) Institutional Uses and Private Parks Located within Residential Zoning Districts

- (1) One ground and one wall sign shall be permitted;
- (2) Maximum sign area shall be 32 square feet per sign face, and
- (3) No ground sign shall exceed six feet in height.

(E) Home Occupations

- (1) The Home Occupation shall have a valid Zoning Compliance Permit issued by Orange County;
- (2) There shall only be one sign limited to eight square feet in area and four feet in height;
- (3) Such sign shall not be illuminated by any means;
- (4) Sign shall not be located within any public street right-of-way, sight visibility triangle, easement, vehicular area or other similar area; and
- (5) The sign message shall be limited to the business name and telephone number.

(F) Parks, Public and Non-profit; Recreational Facilities, Non-Profit; Recreational Facilities, Golf Courses; and Recreational Facilities, Profit

(1) Purpose and Intent

- (a) Unlike signs for non-residential development(s), signs for recreational land uses are intended to serve a different function and purpose. Signs within these types of land uses are intended to provide essential information concerning:
 - (i) Rules and regulations governing the operation of the facility;
 - (ii) Educational information identifying unique aspects of the facility, the property itself, or significant environmental features that are located on the property; and
 - (iii) Identification of sponsors or public/private partnerships that are responsible for the development, upkeep, and maintenance of existing recreational amenities.
- (b) While some of this information could be construed as being advertising material, the County views such signs as identifying those responsible for the existence of the facility and allows for recognition of entities that have entered into partnerships with the operator of the facility to provide local residents with recreational opportunities.

(2) Applicability

- The regulations included herein govern the erection of signs at the following:
- (a) Parks, Public and Non-profit,
 - (b) Recreational Facilities, Non-Profit,
 - (c) Recreational Facilities, Golf Courses, and

- (viii) An informational kiosk may contain the name, logo, or slogan of a sponsor that is responsible for the development/upkeep/maintenance of the recreational amenity subject to the following limitations:
 - a. The name and/or logo of a sponsor shall not take up more than 20% of the total kiosk area.
 - b. No other advertising material shall be permitted on the kiosk.
- (e) Directional Signs
 - (i) Shall be allowed in an effort to provide information to visitors on the location of recreational amenities or offices located on the property.
 - (ii) Directional signs shall be limited to six square feet in area.
 - (iii) Directional signs shall not include any advertising material.
 - (iv) All directional signs shall be ground mounted signs not exceeding seven feet in height.
 - (v) All directional signs shall be located a minimum of five feet from any active recreational activity field or one feet from any established nature or man-made trail, and shall be set back a minimum of ten feet from all property lines,
- (f) Scoreboards
 - (i) One scoreboard, not to exceed 144 square feet, shall be permitted for each athletic field

6.12.14 Additional Standards for Economic Development Districts

In addition to the overall sign standards established herein, the following specific standards shall apply in the Economic Development Districts:

(A) General Standards

- (1) A sign plan must be submitted and approved as part of the comprehensive site plan or master plan.
- (2) For multiple use sites or buildings, unified directional/informational signs and the use of coordinated individual wall signs is the preferred approach to business identification.
- (3) Sign colors must not be overpowering but must accent the building which the sign identifies or on which it is mounted.
- (4) The light from an illuminated sign must not be permitted to shine into any road right-of-way or across property lines.
- (5) In addition to the prohibited signs in Section 6.12.6, the following types of signs are prohibited in the Economic Development Districts: off premises advertising signs, billboards, inflatable, and portable signs.

(B) Identification Signs

- (1) **Freestanding Identification On-premise Commercial Signs**¹⁰

¹⁰ Staff is modifying existing language to ensure we are using consistent language throughout the UDO when identifying a sign.

- (a) Only one ~~freestanding identification on-premise commercial~~ sign is permitted for each development. However, a second sign may be permitted where a site has more than one vehicular entrance on different sides of the building.
- (b) A ~~freestanding identification on-premise commercial~~ sign must be placed perpendicular to approaching vehicular traffic so that it is clearly visible and does not obstruct the view of any other identification or information sign.
- (c) A ~~freestanding identification on-premise commercial~~ sign must be located at least 10-feet from any property line or driveway.

(2) Buckhorn EDD & Eno EDD Only

The following criteria shall govern the number, size, and height of identification signs in the Buckhorn and Eno EDDs:

TABLE 6.12.14.B.3: BUCKHORN AND ENO EDD IDENTIFICATION SIGN STANDARDS	
Maximum Number of Signs	3 per use
Maximum Number of Freestanding-On-premise Commercial Signs	1 per use
Maximum Total Square Footage of All Signs	200 sq. ft.
Maximum Size of Any Sign	75 sq. ft.
Maximum Height of Any Sign	12 ft. ¹¹

(C) Directional/Informational Signs

In lieu of the requirements contained in Section 6.12.11(G), the following requirements shall apply to Directional/Informational signs located in Economic Development Districts:

- (1) Information signs must be placed perpendicular to approaching traffic so that they are visible and legible.
- (2) Signs must be located outside of the site visibility triangle.
- (3) Information signs must be positioned to avoid confusing backgrounds, particularly when they are intended to direct vehicular traffic on or to-and-from the site.
- (4) Information signs may be placed no closer than six feet to the edge of a road or drive, and, in no case, may they be located within a street right-of-way unless they are erected by a governmental agency.
- (5) Information signs may not exceed four feet in height.
- (6) Information signs may not contain advertising material or exceed six square feet in area.

(D) Temporary Signs

- (1) Temporary signs may be used for construction and real estate information, and future tenant identification, in accordance with the provisions of this Section.

(E) Awnings

- (1) The form and color of the awnings must be consistent.
- (2) A minimum eight-foot vertical clearance must be maintained.

¹¹ We are keeping the height of signs erected within our Economic Development Districts the same. From our standpoint there was a conscious decision by the County to have different allowable signs heights for projects in and outside of Economic Development districts and we are going to preserve this distinction.

Open Burning Of Trees, Limbs, Stumps And Construction Debris Associated With The Permitted Activity

The disposal of limbs, stumps and construction debris associated with the permitted activity by means of outdoor fires.

Open Space - (flexible development)

"Primary Conservation Areas" and "Secondary Conservation Areas", as defined in Section 7.13, which are preserved through conservation easements or other restrictions in a flexible development subdivision.

Open Space - (land use intensity)

- A. Open space is the total horizontal area of uncovered open space plus half the total horizontal area of covered open space subject to limitations set forth below.
- B. Uncovered open space is total gross land area not covered by buildings, plus open exterior balconies and roof areas improved as recreation space.
- C. Covered open space is usable open space closed to the sky, but having two clear unobstructed open or partially open sides. Partially open sides is to be construed as 50% or more. Examples of covered space are covered balconies, covered portions of improved roof areas, or space under buildings supported on columns or posts or cantilevered. The square footage countable as covered open space shall not exceed the square footage of the open space sides.

Open Space Ratio

The minimum square footage of open space required for each square foot of gross land area. This area includes parking and vehicular access areas and it can also include balconies, and roofs improved for recreation.

Outdoor Advertising

[See Sign, Off-premise Commercial](#)

Outdoor Advertising Industry

The organizations that provide outdoor displays or display space on a lease or rental basis.

Outdoor Lighting

Installation of lighting equipment, whether attached to poles, building structures, the earth, or any other location to allow for the illumination of a building and exterior area(s) within the confines of a defined property line. Included are open air spaces on a property, which are under a roof or other cover and not fully enclosed such as a canopy, pavilion, drive-through bay, or parking deck.

Outdoor Lighting, Cutoff Fixture

A fixture shielded or constructed in such a manner that no more than 2 ½% of the total light emitted by the fixture is projected above the horizontal plane of the fixture.

Outdoor Lighting, Direct Light

Light emitted directly from the lamp, off of the reflector diffuser, or through the refractor or diffuser lens, of a luminaire.

Outdoor Lighting, Fixture

The assembly that houses the lamp or lamps and can include all or some of the following parts: a housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and/or a refractor or lens.

Outdoor Lighting, Flood Lamp

A form of lighting designed to direct its output in a specific direction with a reflector formed from the glass envelope of the lamp itself. Such lamps are so designated by the manufacturers and are typically used in residential outdoor area lighting.

A sign structure advertising an establishment, merchandise, service, or entertainment that is not sold, produced, manufactured, or furnished at the property on which said sign is located. This definition includes billboards and other similar outdoor advertising mechanisms.

- Example of an off-premise commercial sign includes:



Sign, Off-Premise Religious

A sign located off the property of a religious facility intended to provide directional information as to the location of a specific religious facility. Such signs shall only be erected at major roadway intersections and contain the name and address of the facility as well as a directional arrow to provide motorists an idea of which road is necessary to access the facility.

Sign, On-Premise Commercial

A sign that pertains to the use of the premises where it is located and can include pole mounted and/or ground; monument signs. On-Premise Commercial Signs can contain changeable copy or a reader board so long as the total square footage allowed for the sign is not exceeded.

~~For the purpose of this ordinance, pole mounted signs shall not be permitted. Pole mounted signs shall be considered signs mounted on a single pole or mast rather than on two posts or poles or ground mounted.~~¹²

- Examples of on-premise commercial signs include:



Sign Owner

A person recorded as such on official records. ~~The owner of property on which a sign is located is presumed to be the owner of the sign unless facts to the contrary are officially recorded or otherwise brought to the attention of the Planning Director (e.g., a sign leased from a sign company).~~

Sign, Pole

A sign that is elevated above the ground by ~~one or more~~ upright supports placed upon the ground and not attached to any part of a building.

Sign, Political

~~For the purposes of this Ordinance, a sign used in connection with a local, state, or national election or referendum.~~

Sign, Portable

¹² Standard moved to Section 6.12.12 (5) (a)

**ORANGE COUNTY
BOARD OF COMMISSIONERS
ACTION AGENDA ITEM ABSTRACT
Meeting Date: February 19, 2015**

**Action Agenda
Item No. E.1**

SUBJECT: Potential Revisions to the Existing Public Hearing Process

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N)

No

ATTACHMENT(S):

INFORMATION CONTACT:

- | | | |
|---|--|------------------------------|
| 1. Process Flow Charts Recommended by the Planning Board | Perdita Holtz, Planner III
Craig Benedict, Director | 919-245-2578
919-245-2592 |
| 2. September 8, 2014 Quarterly Public Hearing Minutes | | |
| 3. November 6, 2014 BOCC Meeting Minutes | | |
| 4. Planning Board Meeting Minutes – October 8, November 5, and December 3, 2014 | | |

PURPOSE: To discuss and give clear direction to staff on whether (and, if so, how) the existing public hearing process for Comprehensive Plan, Unified Development Ordinance, and Zoning Atlas matters should be revised.

BACKGROUND: This topic was heard at the September 8, 2014 quarterly public hearing and additional background is available in the agenda materials: <http://orangecountync.gov/occlerks/140908.pdf> with minutes included in Attachment 2 of this abstract. The public hearing was adjourned to November 6, 2014 to allow time for staff and the Planning Board to consider the matter. The agenda materials for November 6 are available at: <http://www.orangecountync.gov/occlerks/141106.pdf> and minutes are included in Attachment 3. At the November 6 meeting, the BOCC received a progress report and closed the public hearing since it became evident that a new public hearing process would have to be started if changes to the existing public hearing process are desired.

The Planning Board extensively discussed this matter at its meetings on October 8, November 5, and December 3, 2014. Meeting Minutes for these meeting are included in Attachment 4 and agenda materials for Planning Board meetings are available at: <http://orangecountync.gov/planning/planningboard.asp>. The flow charts included in Attachment 1 depict the processes that capture the Planning Board discussion of what the processes should be for Legislative and Quasi-Judicial items if the existing process is changed.

Staff has recommended that there be two processes – one for legislative items and one for quasi-judicial (and those few instances where there is a mix of legislative and quasi-judicial components, such as with conditional use zoning districts) – and the Planning Board has

concur with this recommendation since there are different legal requirements for the two types of reviews/approvals.

Remarks on Possible Review Processes

Legislative

The possible process for legislative items illustrated in Attachment 1 has several advantages over the existing process:

- Nearby property owners will be notified about proposed map amendments earlier than currently occurs through first class mailed notifications and posted signs for the Planning Board meeting, which would occur prior to the public hearing.
- The public could speak at both the Planning Board meeting and the later BOCC public hearing.
- A quorum of Planning Board members would no longer be required to hold a BOCC public hearing, but Planning Board members would be encouraged to attend the public hearings.
- The public hearing would be closed the night of the hearing and the BOCC could do one of the following:
 - Defer a decision to a later BOCC meeting date (items would no longer be listed on the public hearing portion of the later BOCC agenda and the public could make oral comments).
 - Refer an application back to the Planning Board for further review.
 - Make a decision at the conclusion of the hearing (this would allow the current process to move more quickly for items that are not particularly controversial).
- Because the requirement for written comments is removed and the public hearing is closed the night of the hearing, the hearing no longer would need to be continued to a date/certain so the awkward process of having items listed on the public hearing portion of the BOCC agenda but with no additional comments accepted would no longer occur.

Quasi-Judicial

Quasi-judicial matters differ from legislative items in that only sworn testimony from experts is supposed to be heard at the public hearing for quasi-judicial matters, which means that the opinions of typical residents (unless they are experts in a particular subject matter) is not supposed to be considered in the quasi-judicial decision. The Planning Board believes that it should be involved in making a recommendation to the BOCC on quasi-judicial matters and the flowchart in Attachment 1 reflects this. Some advantages of the possible process over the existing process include:

- The Planning Board meeting could be viewed as a “dry run” for the later BOCC public hearing and anyone would be able to address the Planning Board, although non-expert speakers would be informed that their comments could not be a basis for decision at the formal public hearing.
 - The discussion at the Planning Board meeting could highlight areas for interest for the BOCC to question expert witnesses about at the formal public hearing.
- A quorum of Planning Board members would no longer be required to hold a BOCC public hearing, but Planning Board members would be encouraged to attend the public hearings.
- The public hearing would be closed the night of the hearing and the BOCC could do one of the following:
 - Defer a decision to a later BOCC meeting date (would be necessary if additional information was requested by the BOCC at the public hearing).

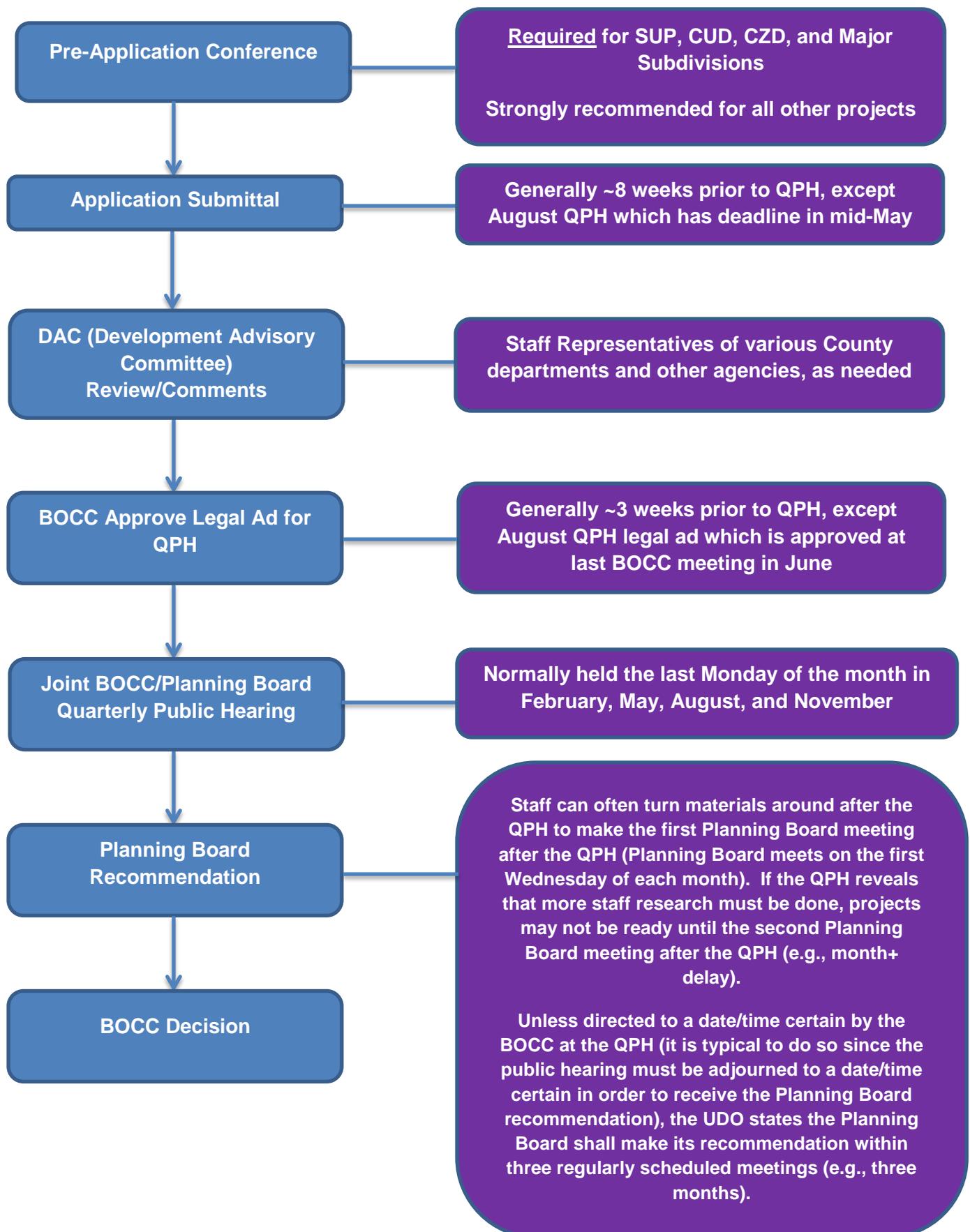
- Refer an application back to the Planning Board for further review.
- Make a decision at the conclusion of the hearing (this would allow the current process to move more quickly for items that are not particularly controversial).

FINANCIAL IMPACT: There is no direct financial impact in discussing this matter and giving direction to staff. Existing staff will accomplish the necessary work associated with topic.

RECOMMENDATION: The Planning Director recommends the Board discuss whether the existing public hearing process should be revised and, if so, give clear direction to staff on what the process should be.

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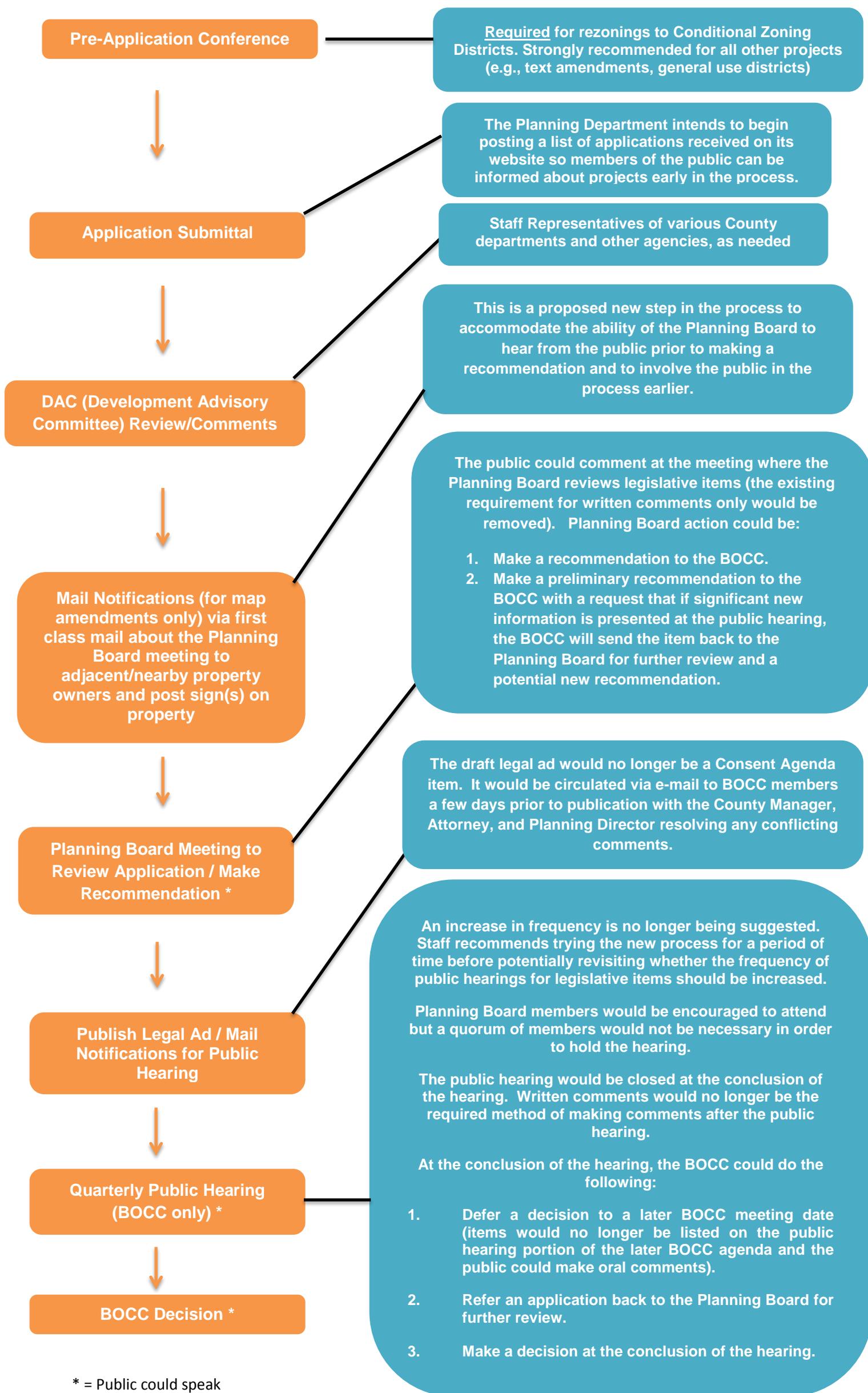
Existing Review Process for non-County-initiated actions that require a BOCC public hearing



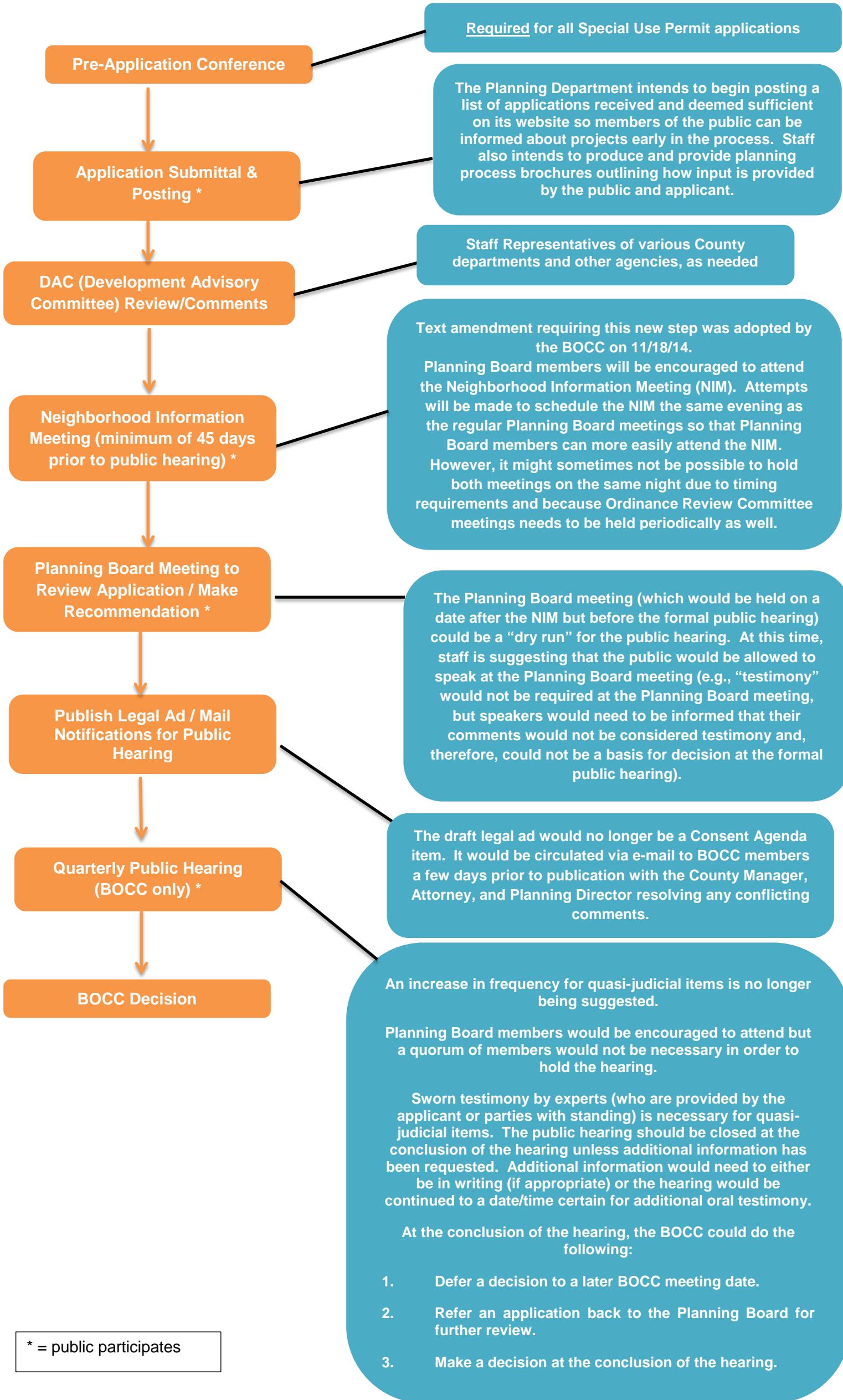
The timeframe from Application Submittal to BOCC Decision is similar for the Existing Process and Proposed Process (a minimum of 4-5 months). From a time perspective, the primary difference between the existing process and the proposed process is the greater number of application due dates per year. There are currently 4 due dates per year, which means that if someone is ready to apply and the application due date is still 2 months away, the application can be submitted but action towards a decision would be on hold for 2 months. If there were a more frequent application deadline and public hearing schedule, the process would be more efficient for some applicants.

In recent years, Orange County's timeframe from application deadline dates to decision compares favorably to most local governments in North Carolina. One of the main differences is that most other local governments have a monthly public hearing cycle rather than the quarterly public hearing cycle Orange County adheres to. Additionally, the practice of having the BOCC approve the legal ad for the public hearings adds additional time (approximately 3 weeks, much more for the August QPH) to the front-end of the schedule since the application deadline date must be early enough to place the legal ad approval item on a BOCC agenda prior to newspaper ad deadline dates.

Possible Review Process for Legislative Items



Possible Review Process for Quasi-Judicial Items



* = public participates

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APPROVED 10/7/2014

**MINUTES
ORANGE COUNTY BOARD OF COMMISSIONERS
QUARTERLY PUBLIC HEARING
September 8, 2014
7:00 P.M.**

The Orange County Board of Commissioners met with the Orange County Planning Board for a Quarterly Public Hearing on September 8, 2014 at 7:00 p.m. at the Whitted Building, in Hillsborough, N.C.

COUNTY COMMISSIONERS PRESENT: Chair Barry Jacobs and Commissioners Mark Dorosin, Alice M. Gordon, Earl McKee, Bernadette Pelissier, Renee Price and Penny Rich

COUNTY COMMISSIONERS ABSENT:

COUNTY ATTORNEY PRESENT: James Bryan (Staff Attorney)

COUNTY STAFF PRESENT: County Manager Bonnie Hammersley and Deputy Clerk to the Board David Hunt (All other staff members will be identified appropriately below)

PLANNING BOARD MEMBERS PRESENT: Chair Pete Hallenbeck and Planning Board members, Lisa Stuckey, Herman Staats, James Lea, Paul Guthrie, Tony Blake, Laura Nicholson, and Lydia Wegman

PLANNING BOARD MEMBERS ABSENT: Andrea Rohrbacher, Maxecine Mitchell, H.T. "Buddy" Hartley, Bryant Warren

A. OPENING REMARKS FROM THE CHAIR

Chair Jacobs called the meeting to order. He noted the following items at their places:
- White Sheets from Michael Harvey regarding item C-4
- Power Point slides for items C-1, C-2 and C-5

B. PUBLIC CHARGE

Chair Jacobs dispensed with the reading of the Public Charge.

C. PUBLIC HEARING ITEMS

- ~~1. **2030 Comprehensive Plan and Unified Development Ordinance (UDO) Text Amendments and Zoning Atlas Amendments** - To review government-initiated amendments to the text of the Comprehensive Plan and UDO and to the Zoning Atlas to establish two new zoning overlay districts in the Efland area.~~

~~Perdita Holtz presented the following PowerPoint slides:~~

~~**Comprehensive Plan Text, Unified Development Ordinance Text, and Zoning Atlas Amendments for Two New Zoning Overlay Districts in the Efland Area**~~

~~Quarterly Public Hearing
September 8, 2014
Item C.1~~

~~**Process Background**~~

- ~~• Former proposal heard at November 2012 quarterly public hearing
-Denied by BOCC in February 2013
-1 year waiting period required for a new application in cases of denial~~

- 5. Unified Development Ordinance (UDO) Text Amendment** - To review government-initiated amendments to the text of the UDO to change the existing public hearing process for Comprehensive Plan-, UDO-, and Zoning Atlas-related items/amendments.

Perdita Holtz said she would like to note that this amendment would not affect other existing public hearing processes for other departments. She reviewed the following PowerPoint slides:

Public Hearing Process Changes

Quarterly Public Hearing

September 8, 2014

Item C.5

Purpose of Amendment

- To change the current public hearing process for Comprehensive Plan, Unified Development Ordinance, and Zoning Atlas Amendments
- Discussed at September 9, 2013 BOCC work session after quarterly public hearing agenda
 - Staff received direction on some points at this meeting, although not unanimous
- On February 24 and May 27, 2014 quarterly public hearing agendas but postponed due to time constraints

Statutory Requirements

- Statutes require that the planning board be given the opportunity to review and comment on amendments, and that public hearings be held with notification in compliance with statutes. Local government can decide:
 - When planning board recommendation occurs (before or after public hearing)
 - How frequently public hearings are held
 - Other process components such as whether the Planning Board holds its own public hearing

Proposal

- End the current joint quarterly public hearings with the Planning Board
- Create the opportunity for a minimum of 8 planning-related public hearings per year
- Planning Board would provide a recommendation after the public hearing
- Policy decision to end practice of having the BOCC approve the legal advertisements (would shave 3 weeks off of review process due to agenda deadline dates, much more for the first hearing after the summer break)
- An alternative could be to circulate the draft ad via e-mail instead of making it a Consent Agenda item

Existing & Proposed Processes

Designation of Public Hearing Dates

- A minimum of 8 meetings would be designated for planning-related public hearings each year when the BOCC adopts its meeting calendar for the next year
- Internal changes to current agenda-setting processes
 - Little ability to remove public hearing items that were filed by deadline dates
 - Legal advertisements would be run in advance of agenda review dates (both Attorney/staff and Chair/Vice-Chair) in order to meet statutory requirements

Ancillary Points

- Current process of having all planning-related public hearings on segregated agendas likely results in more predictable BOCC regular meetings
 - Sometimes planning-related items can generate a great deal of public interest and comments
 - Possibility of having several planning-related public hearings on an agenda, depending on when applications are received
 - Could affect the amount of time available during a meeting for non-planning items
 - Since Special Use Permit quasi-judicial process tends to be more time consuming than legislative (text amendments, rezonings) items, could potentially limit SUP items to fewer agendas per year.

- Currently, public hearing agendas are posted to the website at least 10 calendar days prior to the public hearing
- BOCC agendas are generally posted 4 calendar days prior to the meeting date
 - Fewer number of days for interested persons to have information in final form
- Requirement for written comments after oral public hearing (current requirement not proposed for change)
 - Allows interested persons to submit written comments to the Planning Board
 - Ensures Planning Board meeting does not become a de facto second public hearing
 - Particularly important to avoid in quasi-judicial matters (Special Use Permits)
 - Ensures BOCC is aware of additional comments
- Continuation of Public Hearings to date/time certain
 - Case law in the mid-2000s resulted in legal advice to adjourn to a date/time certain unless the public hearing is closed the night of the hearing
 - Closing comments the night of the hearing would mean that no written comments could be accepted after the hearing and interested persons could not address the Planning Board
 - Could not close hearing if additional information is requested at the public hearing
- BOCC agenda language when accepting Planning Board recommendation and any written comments
 - Currently, listed under "Public Hearings" section but with note that no additional comments are accepted
 - If the County wants to maintain the existing process of allowing written comments after the public hearing, but avoid potential confusion about an item being listed as a "Public Hearing," a new Section could be added to BOCC agendas that would not use the words "public hearing"
 - However, additional comments could not be made (persons could not sign up to speak on matters listed in this section)

Planning Board Ordinance Review Committee

- Reviewed on January 8, 2014
- Generally supportive of changes
- Meeting Notes included in QPH package
 - One member had concerns about the (existing) requirement of accepting only

- written comments after the public hearing (e.g., no oral-only comments at Planning Board meeting when a recommendation is made)
- Discussion starts on line 88 of meeting notes

Public Notification & JPA Review

- Completed in accordance with Section 2.8.7 of the UDO
 - Newspaper legal ads for 2 successive weeks
- Amendment package sent to JPA partners on January 13, 2014 since new process would affect any requests related to the Rural Buffer
 - To date, no comments have been received

Effective Date

- The effective date of the amending Ordinance should be a specific date so submittal deadline schedules can be published
 - Staff recommends beginning new process with 2015 meeting calendar, so January 1, 2015 effective date

Recommendation

- Receive the proposal to amend the Unified Development Ordinance.
- Conduct the Public Hearing and accept public, BOCC, and Planning Board comment on the proposed amendment.
- Refer the matter to the Planning Board with a request that a recommendation be returned to the Board of County Commissioners in time for the **November 6, 2014** BOCC regular meeting.
- Adjourn the public hearing until **November 6, 2014** in order to receive and accept the Planning Board's recommendation and any submitted written comments.

Perdita Holtz noted that some of the process components are included in the Unified Development Ordinance (UDO) as part of the procedure, but some things are just policies that are not written into the ordinance.

She said the flow chart represents only the currently proposed process, but there was also some discussion of having the Planning Board make a recommendation before the Public Hearing, or having two separate public hearings for the Planning Board and the Board of County Commissioners.

Perdita Holtz said the September meeting used to be held in August, and there is still a reference in the UDO to an August meeting date. She said this administrative change will need to be made at some point, even if no other changes are made.

Perdita Holtz said part of the internal change to the agenda-setting process is that notifications would have to be mailed before the Chair/Vice Chair agenda meeting.

Referring to the last slide of ancillary points, Perdita Holtz said the language change regarding written comments would be a policy type decision that would not be written into the UDO.

Perdita Holtz said that if the County were to drop the requirement for accepting only written comments after the oral public hearing, that it would be prudent to only do this for legislative matters and not for quasi-judicial matters. She said it would be necessary to look at how this change might affect processes, as a fair number of applications are both legislative and quasi-judicial in nature. She noted the confusion related to this with the past process for the Buckhorn Village project.

Chair Jacobs said when this first came up he was very supportive of making changes and incorporating flexibility. He said the more he thought about it, and considering the four hour

solar array public hearing, he is definitely opposed to having these items on the Commissioner's regular meeting schedules. He said it is very hard to predict what will generate a public reaction, and it is hard to plan when there is no way to know when something may blow up.

He said it is reasonable to have the Planning Board comment after the Commissioners have a public hearing. He said the rest of this just makes things more complicated.

Chair Jacobs pointed out on page 85 that staff states the Orange County's typical review timeframe of 4-5 months compares favorably to other North Carolina local governments. He said the current process is not a burden to the development community.

Commissioner Dorosin said, as someone who has been pushing this kind of change, he takes Commissioner Jacobs points well. He said his original concern with the current process is that a public hearing is held and comments are taken, then these are sent to the Planning Board for a meeting and discussion. He said the Planning Board comes back with its recommendations, and then another Public Hearing is held with no actual public comments. He said the renaming of this hearing is fine, but what is missing in the proposal is the fundamental sequence of things.

Commissioner Dorosin suggested that the Planning Board should have a public hearing or open meeting with notices to invite the public and take comments. He said after this the Planning Board can submit its recommendation to the County Commissioners, who will then hold a public hearing with public input. He said the public hearing could then be closed, and a vote would be taken. He said this sequence would maximize the opportunity for public input. He said whether this is done in one meeting or quarterly is a different question, but that is not the main issue.

Commissioner Rich agreed with Commissioner Dorosin's suggestion, and she said this is the way she has done it in the past. She said she also agrees with Chair Jacobs.

Commissioner Pelissier said she is not sure where she stands on the sequence, but her main concern is the timing. She said she does not want to base everything on the one meeting that took four hours for the special use permit. She does not think this would happen if the changes were made to the special use permit process.

She said part of what motivated this was the issue of not having quorums, which could be addressed by not requiring the Planning Board to be part of the public hearing. She said there were also grave concerns that some of the simple projects had to wait so long for approval because they had to wait for the quarterly public hearings. She said the goal is to balance having a process that is not onerous but allows for public input. She is interested in having greater opportunity than quarterly public hearings.

Commissioner Gordon said she has no objections to changing the process. She wants to follow the principles of making sure the public has enough notice to find out what is going on and to formulate their comments.

Commissioner Gordon said there should not be a minimum of 8 hearings, but there should be a maximum of 8 hearings. She referenced information on page 96 regarding the potential meeting dates, which stated that there were only seven months when hearings were feasible, and she said this information seems to point to no more than 8 possible dates. She said there was also information stating that if these hearings are part of the regular meeting, the required notice is only 4 days, which is worse than the usual 10 days for public hearings.

She agrees with Chair Jacobs that it makes the meetings unpredictable if you have public hearing items that have to be scheduled in.

Commissioner Gordon said she did not even think about the internal timing changes until she saw the information about publishing notices prior to attorney, chair and vice-chair review. She said this change would not be wise.

She thinks it would be a good idea for the Commissioners to have some kind of review of the advertisements for the timing.

Commissioner Gordon said she would argue for the Planning Board to consider items after the public hearing with the Board of Commissioners. She said if the Planning Board makes the recommendation before the hearing, then they will have to confine themselves to more technical comments. She said the official notice that gets attention is the one listing when the Commissioners hold their public hearing, so you would get the public input here, and then the process would be closed under the proposed process.

Commissioner Price said she agrees that the public might be better served if the hearings are held more than quarterly. She said she has no problem with taking the legal advertisements off of the consent agenda if there is another way to get approval from the Commissioners. She said if they are going to do away with the joint public hearing, she feels that it is even more important to get the Planning Board recommendation after the public hearing. She said some of the recommendations may become null and void after the public hearing.

Commissioner Price asked about the phrasing change for the public hearing title. She asked why not just call it "close public hearing."

Perdita Holtz said staff was trying to avoid using the words "public hearing" in the title.

Commissioner Price said she understood the point of letting the public know that this was the deadline for written comment. She thinks it needs to be simpler than what has been recommended.

Chair Jacobs said if there are some items that would not be difficult to consider as part of a regular agenda, there is no reason why that cannot be done now. He said the planning director can consult with the manager to determine which items can go on the regular agendas. He is just concerned about the larger items.

He said the advertisements can be approved by email.

Chair Jacobs said the issue of where the Planning Board fits in is somewhat of a philosophical question. He said when he was on the Planning Board, it was very important that they got the last word with the Commissioners. He said this setup gives the Planning Board more weight, as they get to hear and weigh everything before commenting to the Board. He said part of this process is making a decision about the role of the Planning Board, as this proposal would allow the public to have the final word to the Commissioners. He said he is willing to listen to the argument, but it is hard for him to think of doing it differently.

James Bryan said these public hearings can be very confusing. He said there are two separate decisions, the legislative decisions and the quasi-judicial systems. He said it may be a philosophical distinction, but there is also a legal distinction. He said these should be looked at separately. He said neither the Planning Board nor the written comments should be involved in the quasi-judicial decisions. He said written comments are hearsay and should have no value in these situations. He said the only thing that can be considered is the evidence presented at the quasi-judicial hearing.

Commissioner Rich asked if the public comes to the Planning Board meetings

Pete Hallenbeck said this ranges from 0 to 20 members of the public, but there is no trend.

Commissioner Rich said she thinks this is a problem. She thinks that when the Planning Board is discussing what will be presented, the public should be there.

Commissioner Rich said there is something wrong when we are calling something a public hearing when it is not a public hearing.

Commissioner McKee said he agrees that the public should be involved in the Planning Board meetings, but most of the public knows that the final decision is made here.

Most of the public knows that the final decision is made by the Board of County Commissioners

Commissioner Dorosin said if you said the culture could be changed to encourage people to go to the Planning Board hearings. He said he has talked to a lot of people on different advisory boards, and he has heard the opinion that the elected officials yield undue

influence. He said it seems that having the Planning Board make a recommendation after listening to the public and the Commissioners is putting the thumb on the scale of what is expected, if the Board is seeking the Planning Board's independent analysis.

Commissioner Dorosin questioned whether the Planning Board could be an expert at the quasi-judicial hearing. He said they are the expert witnesses for the UDO and he feels this would be relevant testimony.

Lisa Stuckey said this is her 4th year on the Planning Board. She said staff members are the experts, but the board members do not have a long enough term to be considered experts.

Lisa Stuckey said the Planning Board struggles to get a quorum at these meetings, and she said that the planning board could not have a public hearing on a quasi-judicial matter. She questioned whether it is really fair to the public to make them go through two public hearings.

Commissioner Dorosin said he does not think it is fair to call the public back to a second public hearing where they cannot talk.

Lisa Stuckey said she understands this but she is not sure that adding another public hearing in front of the Board's public hearing changes anything. She said the Planning Board is not the final decision maker.

Tony Blake said he is on the planning board representing his neighbors. He feels that the neighborhood information meetings might augment the Planning Board quite a bit, if they are broad enough.

He said he is not a rubber stamp and he does not feel bound to the Board's opinions. From his perspective the Board is not putting their thumb on the scale.

Lisa Stuckey said the Planning Board usually does not know what the Board of Commissioners thinks. She said there is discussion, but it is rare that there is a consensus.

Paul Guthrie said this is a complicated issue because of the various functions within the relationship. He said the number one question is what the Board wants from their Planning Board, and how they want it to function. He said he has asked a lot of questions about these proposed changes. He thinks that well managed citizen advisory groups serve an important role. He thinks a better definition of what the Commissioners want from the Planning Board and planning staff would be helpful, along with building a process that continues to bring information from citizens about what is important to them.

Pete Hallenbeck said the quorum problems have been bad this year. He thinks it would be helpful if the Planning Board did not have to have quorum at the hearings. He said it is human nature for people to want to deal with decision makers and not middle managers, but he does think it would help if the Planning Board could take input from the public.

He views the Planning Board role as a little bit of Planning Department oversight. He said their role is also to provide community feedback.

Pete Hallenbeck said it seems that synergy has been shattered by this item, and Commissioner input is low, which makes it hard to come up with something. He said every time they try to streamline this process there are too many unknowns.

Lydia Wegman said it is burdensome to expect the public to attend two different public hearings. She said the Commissioners are the decision makers and they will get more people, and more focused comments than at the Planning Board meetings. She encouraged them to allow opportunity for the public to speak. She said she hopes that she, as a Planning Board member, would have an opportunity to hear everything the Commissioners hear before making a recommendation.

Commissioner Gordon said the key question is the role of the Planning Board. She said to get the Planning Board recommendation before the public hearing would only provide technical comments. She said this would not provide the benefit of the experienced Planning Board members going over the issues. She believes it would be better to get the Planning Board recommendation after they have heard all of the information.

Commissioner Dorosin said a lot of time has just been spent talking about how to engage people earlier in the process, and he thinks that engaging them with the Planning Board early in the process is part of this. He asked if the public hearing could be left open and could include the Planning Board's recommendation, as well as any public input. He said this is more honest and sincere. He asked the attorney if this could be done.

James Bryan said the Board has broad discretion over legislative decisions.

Commissioner Rich asked why the Board closes the public hearing to comments.

Perdita Holtz said she is not sure why this is done. She said this is how it is written, and it predates anyone on the staff. She said this would be a policy change with some minor text amendments, and staff would need to work with the attorney's office regarding those items with a re-zoning and a special use permit. She said this needs to be looked at closely.

Commissioner Rich said she understands not having the public hearing all over again, but that's the part that doesn't make sense.

Perdita Holtz said the problem arose in the mid-2000's. She said it used to be that the public hearing was just open and there was always a requirement for written comments only after the oral public hearing. She said the UDO would have to be re-written to state that this is no longer a requirement.

Commissioner Price said she likes to go home at a reasonable hour, but she also likes to hear what people say. She said she was on the Planning Board for an extended period of time, and people would come to meetings and express their opinions. She said quorum was rarely an issue. She said there were times when the board disagreed with the Commissioners, and she would support the Planning Board hearing from the public before making a decision. She said if it is the pleasure of the Board to hear other comments on the day that the public hearing is closed, she is for this as well.

Commissioner Pelissier said she would like to hear the Planning Board recommendation after the public comments. She said when she was on the Planning Board, no one really thought about what the Commissioners thought. She said the Planning Board was there to give advice, and as a Commissioner she looks to this advice when making land use decisions.

She asked planning staff if they have been able to predict which will be the difficult decisions and which will not.

Planning Board member James Lea left at 9:42 p.m.

Perdita Holtz said no, not necessarily. She said staff would have to toss a coin. She said obviously text amendments take longer to discuss.

Commissioner Pelissier said the legislative decisions are easier to incorporate into the meetings, but the quasi-judicial decisions are more of an issue. She is not sure how to address it, but she would like some consideration to not having these boxed in to so few dates. She would like to see more than a quarterly option.

Commissioner McKee said he wishes he could say if it isn't broke, don't fix it, but this is broken. He agreed with Commissioner Dorosin's comment about taking public comment at the later meeting. He also agrees with Chair Jacobs' comments about time management and trying to figure out how long these meetings are going to be. He said he is confused, and he thinks all of what he has heard is reasonable.

He suggested that the current framework should be maintained, and the Board can tweak it to make it more public friendly. He suggested maintaining the quarterly public hearings due to the necessity of quasi-judicial decisions. He said maybe there will be other controversial items that don't belong in a regular meeting. He said the Board should just tweak the things that need to change, and if those tweaks don't work, they can be changed back.

Perdita Holtz said planning staff often does not know that an application is coming until right at application deadlines, which are based on the public hearing process. She thinks that the attorney would disagree that it is okay to have two different processes for judicial and legislative processes, but not for quasi-judicial items or legislative items.

Chair Jacobs said he is not sure this is at a good place to even be referred to the Planning Board. He thinks there needs to be more discussion between the planning director, manager, and attorney. He said someone needs to walk through the process and make some projections.

He said the Board has heard that there needs to be more public participation, and there is discussion about the ultimate role of the Planning Board. He said there are issues that staff needs to talk about before this comes back for a public hearing.

Chair Jacobs said maybe a better job can be done of publicizing this discussion of the process to encourage public input.

Commissioner Gordon said she would like to see this go back to the Planning Board to see what they come up with.

Craig Benedict said he agrees that he needs to speak with the manager and the attorney's office to glean some direction. He said there is an opportunity for conversation at the upcoming dinner with the Planning Board. He agrees that there is not a consensus. He sees that the public input at the end is a big issue, and this could be modified.

Commissioner Pelissier said she would also like to refer this back to the Planning Board. She said two broken items have been identified, and one of them is a public hearing that cannot be held due to a lack of Planning Board quorum. She said the other issue is allowing the public to make comments at the final decision meeting.

Craig Benedict said this room offers the Planning Board members the opportunity to watch the televised meeting if they were unable to attend.

Chair Jacobs said he also did not hear anyone disagree with the idea of looking at the public hearing notices through email.

Commissioner Gordon said she would like to move the manager's recommendation.

Chair Jacobs asked if the manager has any input.

Bonnie Hammersley said she would be happy to work on this with staff and the Planning Board. She said she and the attorney have some ideas of things that can be implemented. She said focus groups could be formed in order to gather information. She said she also has some ideas based on other places she has worked.

A motion was made by Commissioner Gordon, seconded by Commissioner McKee for the Board to: Refer the matter to the Manager, staff and Planning Board with a request that a recommendation be returned to the BOCC in time for the **November 6, 2014** BOCC regular meeting.

Adjourn the public hearing until **November 6, 2014** in order to receive and accept the Planning Board's recommendation and any submitted written comments, as well as the recommendation of the manager and staff.

Chair Jacobs noted that the motion creates a deadline for the Planning Board to bring back information by November 6th.

Commissioner Gordon said this allows two months, and if that is not enough, it can be continued.

Bonnie Hammersley said she thinks this is possible.

Commissioner McKee asked if the timing could be changed to the first meeting in February.

Commissioner Gordon said she would like to be involved in the discussion.

Commissioner McKee said this seems like a tight timeline.

Commissioner Gordon asked the manager if she feels something can be pulled together by November 6th.

Bonnie Hammersley said she will respect the opinions of the Planning Board, who look a little unsure of that timing. She said her thought was that the planning staff and the manager

could work on this and then bring options to the Planning Board to consider for presentation to the Commissioners. She said staff can support whatever level of urgency the Planning Board wants to work with.

Perdita Holtz said that the next planning board meeting is October 8th.

Chair Jacobs said he would suggest that a compromise way of looking at this is to bring back an interim recommendation by November 6th, with no expectation that it will be completely done.

Bonnie Hammersley said this could be a progress report.

Chair Jacobs said this does not change the motion.

VOTE: UNANIMOUS

D. ADJOURNMENT OF PUBLIC HEARING-CHAIR

A motion was made by Commissioner McKee, seconded by Commissioner Gordon to adjourn the meeting at 10:02pm.

VOTE: UNANIMOUS

Barry Jacobs, Chair

David Hunt
Deputy Clerk to the Board

APPROVED 1/22/2015

**MINUTES
BOARD OF COMMISSIONERS
REGULAR MEETING
November 6, 2014
7:00 p.m.**

The Orange County Board of Commissioners met in regular session on Thursday, November 6, 2014 at 7:00 p.m. at the Whitted Building, in Hillsborough, N.C.

COUNTY COMMISSIONERS PRESENT: Chair Jacobs and Commissioners Mark Dorosin, Alice M. Gordon, Earl McKee, Bernadette Pelissier, Renee Price and Penny Rich

COUNTY COMMISSIONERS ABSENT:

COUNTY ATTORNEYS PRESENT: John Roberts

COUNTY STAFF PRESENT: County Manager Bonnie Hammersley, Assistant County Managers Clarence Grier, Cheryl Young and Clerk to the Board Donna Baker (All other staff members will be identified appropriately below)

NOTE: ALL DOCUMENTS REFERRED TO IN THESE MINUTES ARE IN THE PERMANENT AGENDA FILE IN THE CLERK'S OFFICE.

Chair Jacobs called the meeting to order at 7:02 p.m.

1. Additions or Changes to the Agenda

Chair Jacobs reviewed the following list of items at the Commissioner's places:

- Pink Sheet - Revision for Item 11a - Advisory Board on Aging Appointments
- PowerPoint Slides for Item 5a - 2030 Comprehensive Plan Future Land Use Map Amendment
- PowerPoint Slides for Item 5b - Zoning Atlas Amendment – Related to Town of Hillsborough Extraterritorial Jurisdiction (ETJ) Relinquishment
- Monthly Report from the Planning Division

Chair Jacobs recognized Bonnie Hammersley, who introduced Elections Director Tracy Reams.

Tracy Reams gave a brief presentation and update on the 2014 election night. She said everything went well for Orange County, and early voting had a record turnout of 23,195 voters. She said the County offered 303 hours of voting, and there was also record turnout on Election Day with 52,663 ballots cast and a turnout of 48.24 percent. She said results came in quickly on election night, and Orange County was one of the first large counties to report. She said the County was able to recruit and train over 200 volunteers, and she commended her staff members.

Commissioner Rich asked if there were any specific problems her staff had to address with voters, such as questions about polling sites or identification requirements.

Tracy Reams said they had both visual and printed materials available during early and regular voting.

Tracy Reams said there were very detailed instructions given to workers, and there were signs made to communicate requirements. She said there were 155 provisional ballots cast.

- Reviewed the differences between Rural Residential (R-1) and Agricultural Residential (AR) and consistency with County plans.
- Recommended unanimously that the BOCC approve the amendment as presented at public hearing (Attachment 4, Draft PB Minutes).

Consistency Statement

In response to a new opinion issued by the N.C. Court of Appeals in July 2014, the

- Planning Board has provided a written recommendation to the BOCC addressing plan consistency (Attachment 5, pp. 24-25); and
- The BOCC must also approve a consistency statement (Attachment 6, pp. 26-27).
-

Manager's Recommendation

- Receive the Planning Board Statement of Consistency and recommendation of approval.
- Close the public hearing.
- Adopt the BOCC Statement of Consistency (Attachment 6, pp. 26-27).
- Adopt the ordinance (Attachment 7, pp. 28-29) approving the zoning atlas amendment.

A motion was made by Commissioner Gordon, seconded by Commissioner Price to:

1. Receive the Planning Board Statement of Consistency and recommendation of approval;
2. Close the public hearing;
3. Adopt the BOCC Statement of Consistency (Attachment 6); and
4. Adopt the ordinance (Attachment 7) approving the zoning atlas amendment.

Commissioner Dorosin said he will vote against this for same reasons stated in the previous motion.

VOTE: 6-1 (Commissioner Dorosin)

c. Unified Development Ordinance Text Amendment – Public Hearing Process Changes – Interim Report and Closure of Hearing

The Board opened the public hearing, received the information contained in this abstract and attachments, and closed the public hearing on a Unified Development Ordinance (UDO) text amendment that proposed changes to the public hearing process (presented at the September 8, 2014 Quarterly Public Hearing).

Perdita Holtz said this item was heard at the September 8th quarterly public hearing and was referred to the Planning Board. She said this has been discussed extensively, and the flowchart in attachment 2 outlines a new process for legislative items. She said this process captures what the Planning Board discussed in October.

Perdita Holtz said last night the Planning Board discussed a potential new process for quasi-judicial items, and although there is no flowchart, this would generally follow the cadence of the attachment 2 flowchart.

She said the reason for the recommended closure of the public hearing is because the proposed public hearing is likely to change enough to necessitate re-advertising it for a new presentation at a future public hearing date.

Commissioner Rich asked if any members of the public were in attendance while the Planning Board discussed this.

Perdita Holtz said no.

Commissioner Rich said she does not feel that there has been enough outreach to the public regarding this process.

Chair Jacobs noted that the discussion is not ending, just being deferred to another date.

Commissioner Rich asked for an explanation on the reason for deferring it.

Chair Jacobs said the Board would advertise the public hearing, and if significant changes are being made, there would be extraordinary efforts to make sure the public is aware of what is being proposed.

Commissioner Rich said that is her point - that there may need to be more effort made to put the information out there about these changes.

Commissioner Gordon said if this is changed, it is important to make sure the public has as much opportunity to comment as possible. She recommends that no conclusion should be made at the end of a regular public hearing, because this was often the first time that issues are articulated.

She said that to her it does not seem helpful to distinguish between quasi-judicial special use permit hearings and the legislative hearings if that means re-zonings do not have enough time. She agrees that it takes longer for a special use permit if you are going to try to get expert testimony. She would like to make sure that there will be plenty of time for re-zonings, especially for hearings involving conditional zoning districts since they involve a relatively new process.

Commissioner Gordon said she was interested to see that there was no recommendation to increase the number of hearings, and if there were to be an increase, she thinks seven meetings would work.

Commissioner Gordon said the main point is that the public needs more time to comment than just a few days. She likes the idea of posting information when an application comes in that meets the ordinance requirements.

She said she wonders about the issue of not requiring the Planning Board to attend the public hearings. She values the input of the Planning Board, and they offer public perspective as well as expertise.

Commissioner Gordon said this is a process that can be tweaked, as long as the basics, such as making sure the public has sufficient time for providing input, are in place. She said the public hearing is when the information needs to come out, and this needs to be followed by some time to think about the issues before voting.

Commissioner Price said she is a little confused on this process. She said this will not be resolved until sometime in 2015, and there is no mechanism right now to assure when and how the public will be involved.

Bonnie Hammersley said she has attended the last two Planning Board meetings, and she intends to be involved in this process. She said when this comes forward she will make sure everyone is informed about this process. She said if it is the will of the Board, this will be well advertised if it goes forward. She said this hearing is being closed because of the anticipation of significant changes that will require future public input.

Commissioner Price echoed what Commissioner Gordon said. She feels the Planning Board should be a part of the public hearings.

Commissioner Dorosin said he had some questions about the flow chart. He said the current process is that a public hearing is held, and the public speaks; then the Planning Board is sent away and instructed to come back with a recommendation; then the public does not have an opportunity to comment on the Planning Board's comments; then there is possibly another meeting for this to come back to the Board of County Commissioners. He said this seems problematic, and this was the concern he originally expressed.

Commissioner Dorosin said it appears that the flow chart has addressed his concerns about this structure for legislative items.

He read through the flow chart as shown on page 18 of the abstract. He said the idea of this is not to eliminate the public input at all, but it is to make the process more equitable and streamlined. He said one of the changes is that as soon as an application comes in, there will be some sort of public notification or report.

Perdita Holtz said that is correct.

Commissioner Dorosin said the next substantive change he sees is that there will be a round of mail notifications to direct neighbors about Planning Board meetings for map amendments. He said the people attending will have opportunity to make comments and suggestions, and it is almost like a mini public hearing at the Planning Board.

Perdita Holtz said that is correct.

Commissioner Dorosin said someone could come to the Planning Board meetings now, but what is different is the provision of first class mail notification to nearby property owners.

Perdita Holtz said currently the Planning Board does not discuss applications before the public hearing, and this would be a new change to increase public participation at this level. She said this moves the discussion up in the process, so that the Planning Board discussion occurs before the public hearing.

Commissioner Dorosin asked if the notification was previously an agenda item voted on by the Board.

Perdita Holtz said the legal ad was an agenda item.

Commissioner Dorosin said the notification will not be on the agenda, assuming this is acceptable to the Board.

Commissioner Dorosin asked if there is any legal requirement that the Board has to vote on this.

John Roberts said no.

Commissioner Dorosin said the proposal does not say that the Planning Board cannot participate in the public hearing; it just states that a quorum will not be required.

Perdita Holtz said this is correct.

Commissioner Dorosin said the public hearing, as laid out in the proposal, would be the last step before a decision is made, whenever that may occur. He asked if there will be any reference back to the Planning Board.

Perdita Holtz said it could be the Board of County Commissioners' purview to send something back to Planning Board if something new comes forward at the public hearing. She said the public hearing would be closed, and then the item sent back to the Planning Board.

Commissioner Dorosin asked if the Board could also have the option to send something back to the Planning Board while still keeping the public hearing open. He does not want to have public hearings where the public cannot speak.

Perdita Holtz said for legislative items, it is required that a public hearing is held, and it is not precluded that the public cannot comment before or after the public hearing. She said it is the County's Unified Development Ordinance (UDO) that specifies written comments only being allowed after a public hearing.

Commissioner Dorosin said it seems like this is getting close to a resolution. He agrees that the critical aspect is public participation, and he is in favor of the streamlining with targeted outreach early in the process. He said he not as wedded to the suggestion of not making a decision on the same night that it is presented at the public hearing. He can see both sides of this issue, and he is not sure it needs to be a matter of policy. He said there will be times when an issue is fully vetted by the time of the public hearing.

Perdita Holtz said if the concern is to get rid of the non-speaking public hearing, then the way to do this is to remove the requirement for only having written comments after a public hearing.

Commissioner Dorosin asked what the basis was for this rule.

Perdita Holtz said she believed that this was set up in the 1980's so that the Board of County Commissioners would be informed about anything that went on after the public hearing.

Craig Benedict said the reason for this rule was to insure that their legislative and quasi-judicial procedures were the same. He said the goal was to have some point in time where the testimony coming in could be stopped to allow for a decision based on a finite amount of information. He said the new suggestion is to have a legislative procedure that can be wide open the whole time. He said for the quasi-judicial items, there will probably be some point in time where that testimony has to stop.

Commissioner Pelissier said overall there are a lot of good things in the proposed new process, but she is confused about the lack of increase in the frequency of the quarterly public hearings. She said this would not accomplish the goal of speeding the process for applications that are "no brainers."

Perdita Holtz said there were concerns expressed by the Board of County Commissioners about the possibility of putting quarterly public hearings on regular agendas. She said the current suggestion is to try this new process prior to taking that next step.

Commissioner Pelissier asked if the UDO would have to be changed in order to change the process.

Perdita Holtz said yes.

Commissioner Pelissier said the recommendation to close the public hearing tonight does not preclude the Board from taking some action based on what has already been heard and discussed; but it is an iterative process, and there would need to be another public hearing in order to make changes other than what has been discussed.

Perdita Holtz said one of the more substantive changes that would require a second public hearing was removing the proposed language about having up to 8 public hearings per year. She said if the Commissioners still want to pursue this, then perhaps there would not be a need for a second public hearing.

Commissioner Rich asked if an additional meeting is being added after the notifications go out and the Planning Board meeting is held.

Perdita Holtz said it is just another opportunity for the public to comment to the Planning Board.

Perdita Holtz said one of the items in the 5th box on the flowchart talks about the fact that the Planning Board action could be to make a recommendation or to make a preliminary recommendation and ask the Board of Commissioners to send it back to the Planning Board if anything significant happens.

Commissioner Rich said she wonders if that is actually speeding things up, or if it is just adding another repetitive step.

Perdita Holtz said it could add a step to more controversial items where it may be sent back to the Planning Board. She said it is really just flipping when the Planning Board meeting occurs. She said, with this proposal there would be no Planning Board meeting after the public hearing for many legislative items. She said for more complicated issues, this would add another opportunity for the public to comment.

Commissioner Rich said if this process is adopted, it is important to make these changes clear to the public in order to have as much involvement as possible.

Commissioner Gordon said she wanted to add a historical note about the legal advertisement. She there was a case where the Board was sued over a deficient legal

advertisement. She said this may be why the Board of County Commissioners reviews the ad, and she likes the way this process is done now.

Commissioner Gordon said she wanted to make sure that all property is being posted, and people are being notified by certified mail.

Perdita Holtz said this is not going away. She said the requirement for certified mail is only for developer initiated applications.

Commissioner Gordon said there used to be more development applications. The economy may be the reason there are currently not as many development applications and therefore relatively fewer quasi-judicial public hearings.

Commissioner Gordon said her suggestion about waiting to vote is in reference to the first time a major public hearing is held. She said it is okay to decide something tonight for this item.

She said the Board needs to be careful about having too many categories of hearings, each with a different process, because it might be confusing to the public.

Commissioner Price said the flow chart states that the public can come to the Planning Board prior to the public hearing. She asked if these comments will then be entered into the record of the public hearing.

Perdita Holtz said the record only relates to the quasi-judicial process, but not the legislative process. She said the flow chart in the packet is related to the legislative process.

Commissioner Price asked if this flow chart would be the same for both.

Perdita Holtz said there would be a slightly different flowchart for quasi-judicial, but it would follow the same general cadence.

Commissioner Price asked if the public would be invited to speak at the Planning Board meeting.

Perdita Holtz said the public would not be invited to speak, but there would possibly be an opportunity for comment. She said all of this has not been worked out.

Commissioner Price said she is just concerned with the Board having an opportunity to see these comments.

Perdita Holtz said there is not really a record of comments at public hearings for legislative items. She said the comments show up in the minutes, just as comments show up in the Planning Board minutes.

Commissioner Price referred to item 1 in the bottom blue section of the flowchart on page 18. She asked when the public would be making comments if the item is not to be listed in the meeting agenda.

Perdita Holtz said it would be listed as a regular item or a consent agenda item, but it would not be listed under the public hearing section.

Commissioner Price said if it is on the consent agenda, the Commissioners may not know that there is someone in the audience who wants to speak.

Perdita Holtz said the public can sign up, or the Chair can ask if anyone wishes to speak before the consent agenda.

Chair Jacobs said he has never seen a planning item on the consent agenda.

Commissioner Pelissier said the recommendation is to stick with the quarterly public hearings. She said this proposal solves the public input issue but not the timing issue. She sees that the roadblock is that you have to provide information 10 days before a quarterly public hearing, whereas you only have 4 days if a public hearing is added to a regular meeting. She questioned whether it might be possible, for legislative public hearings, to provide information on the website 10 days before, and then incorporate it in the agenda 4 days before.

Perdita Holtz said there is no actual requirement to have it available 10 days in advance, but that is the practice that Orange County has had for 20 years.

Commissioner Pelissier said she would like to find a way to do this. She would like to find a way to have the legislative public hearing items be more frequent than just quarterly.

Perdita Holtz said it would be possible to have a section of the website that would allow for complete items to be listed ahead of the agenda.

Commissioner Pelissier said she would like to try the new process with the 8 public hearings and see how it goes.

Commissioner Gordon said it seems to her that Commissioner Pelissier's comments about the notices for public hearings are well taken. She said it is important with legislative items, like re-zonings, to give 10 days of notice for the public hearings.

Commissioner Rich agreed with Commissioner Pelissier. She said there are some public hearings that can be added to agenda items. She would like to leave this option open.

Chair Jacobs summarized that there had been comments and concerns regarding the following items:

- Timing of public hearings
- Provision of advanced notice of public hearings
- Capturing public comments
- Number of public hearings
- Rendering of decisions subsequent to public hearings
- Advertisement comments from Board of County Commissioners

Chair Jacobs said Commissioner Gordon made good points about giving notice and having a deliberate process. He said there needs to be more discussion about time between public hearings and rendering a decision.

Chair Jacobs said Commissioner Dorosin made some good points about the public engagement and the improvement in this. He referred to the final blue box in the flow chart and said this reminds him of the concept plans that are sent to the Planning Board for preliminary analysis and report. He said the Planning Board sends this report back to the Commissioners, and then if it is straightforward there is no need to send it back to the Planning Board. He said there are some items that are just very clear, and those could be on the regular Commissioner agenda.

Chair Jacobs said Commissioner Rich and Commissioner Price were both talking about thinking through what we hear as part of the public hearing process, and whether people have had an adequate opportunity to address the Board. He said the flip side is that we don't want to ask people to come more times than necessary. He said this needs to be combed out a little more.

He said his recollection is that staff reported that Orange County's review process is not any slower than neighboring jurisdictions. He said this process would potentially allow the Planning Board to take itself out of this process, but there is nothing that precludes that.

Chair Jacobs said this proposal is generally an improvement but there have been some points raised that the Board may want to isolate more.

Chair Jacobs said he is most concerned about there being more public access to the decision making process as well as the Board receiving that information in order to know what people are thinking.

Commissioner Rich referred to Chair Jacobs comment about the option for putting a public hearing on the agenda. She asked if this has ever happened, where it has come from the Planning Board.

Chair Jacobs said none have come from the Planning Board. He said he is saying that box 5 on the flowchart would accommodate a way to do this.

Commissioner Gordon said she is not sure Chair Jacobs got all of the major points. She said she wants to make sure to look through the minutes to capture all of these.

Chair Jacobs asked if there were any members of the public who would like to speak.

PUBLIC COMMENT: NONE

A motion was made by Commissioner McKee, seconded by Commissioner Rich to: Receive the information contained in this abstract and attachments; and Close the public hearing. (This is being recommended because the proposed text amendments are expected to be heard again at a future Quarterly Public Hearing, so there is no need to adjourn the public hearing to a date/time certain. Closure of the hearing is necessary to ensure the text amendment is not considered a withdrawal, which requires a yearlong waiting period before amendments on the same topic can be considered again.)

VOTE: UNANIMOUS

d. North Carolina Community Transportation Program Administrative and Capital Grant Applications for FY 2016

The Board conducted an annual public hearing on the North Carolina Community Transportation Program (CTP) grant application by Orange Public Transportation (OPT) for FY 2016 and considered approving the grant application that includes adopting a resolution authorizing the applicant to enter into an agreement with the North Carolina Department of Transportation (NCDOT), authorized the County Attorney to review and complete the necessary certifications and assurances, and authorized the Chair to sign.

Peter Murphy reviewed the following background information from the abstract:

BACKGROUND: Each year, the NCDOT Public Transportation Division accepts requests for administrative and capital needs for county-operated community transportation programs. OPT is eligible to make application for both administrative and capital funding.

The current year FY 2015-approved application includes \$185,604 in administrative funding and \$482,489 in capital funding for replacement vehicles with total expenses equaling \$668,093.

The **total CTP funding request for FY 2016 is \$166,765** for community transportation administrative expenses and an additional **\$232,286 for capital expenses**. This draft grant application is made for expenses totaling **\$399,051**.

Grant funds for administrative purposes will continue to be used to support overall transit systems management and operations and will continue to promote general ridership. Grant funds for capital items include the replacement of three (3) buses exceeding their useful life mileage thresholds in OPT's fleet. A public hearing (Attachment 3) is requested with the opportunity for public discussion and comment before the Board takes action on the resolution (Attachment 1). The acceptance of these grant funds requires compliance with the annual certifications and assurances, for which the signature pages are attached (Attachment 2). The attached signature pages are for the certifications and assurances for FY 2014. The FY 2016 certifications and assurances signature pages are very similar to those for FY 2014; however, the County has not yet received them from NCDOT. When received, they will be forwarded to the County Attorney and Chair for review and signatures.

MINUTES
ORANGE COUNTY PLANNING BOARD
OCTOBER 8, 2014
REGULAR MEETING

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MEMBERS PRESENT: Peter Hallenbeck (Chair), Cheeks Township Representative; Lisa Stuckey, Chapel Hill Township Representative; James Lea, Cedar Grove Township Representative; Herman Staats, At-Large, Cedar Grove Township; Tony Blake, Bingham Township Representative; Laura Nicholson, Eno Township Representative; Paul Guthrie, At-Large Chapel Hill Township; Andrea Rohrbacher, At-Large Chapel Hill Township; Buddy Hartley, Little River Township Representative; Maxecine Mitchell, At-Large Bingham Township; Bryant Warren, Hillsborough Township Representative;

MEMBERS ABSENT: Lydia Wegman-At-Large Chapel Hill Township;

STAFF PRESENT: Craig Benedict, Planning Director; Michael Harvey, Current Planning Supervisor, Tom Altieri, Comprehensive Planning Supervisor, Perdita Holtz, Special Projects Coordinator, Tina Love, Administrative Assistant II

OTHERS PRESENT: Bonnie Hammersley, County Manager; James Bryan, Staff Attorney; Andrew Vanard

HANDOUTS GIVEN: *(email from Lydia Wegman concerning Item 10 which is attached at the end of the minutes)*

AGENDA ITEM 1: CALL TO ORDER AND ROLL CALL

AGENDA ITEM 2: INFORMATIONAL ITEMS

- a) Planning Calendar for October and November
- b) Dinner meeting with BOCC & quarterly public hearing on November 24, 2014

**AGENDA ITEM 3: APPROVAL OF MINUTES
SEPTEMBER 3, 2014 REGULAR MEETING**

MOTION by Paul Guthrie to approve the September, 2014 Planning Board minutes. Seconded by Buddy Hartley.
VOTE: UNANIMOUS

AGENDA ITEM 4: CONSIDERATION OF ADDITIONS TO AGENDA

AGENDA ITEM 5: PUBLIC CHARGE

Introduction to the Public Charge

The Board of County Commissioners, under the authority of North Carolina General Statute, appoints the Orange County Planning Board (OCPB) to uphold the written land development laws of the County. The general purpose of OCPB is to guide and accomplish coordinated and harmonious development. OCPB shall do so in a manner which considers the present and future needs of its citizens and businesses through efficient and responsive process that contributes to and promotes the health, safety, and welfare of the overall County. The OCPB

Approved 11/5/14

325 MOTION by Bryant Warren to approve the statement of consistency. Seconded by Lisa Stuckey.

326 VOTE: UNANIMOUS

327

328

329 **AGENDA ITEM 10: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENT:** To either provide input or make
 330 a recommendation to the BOCC on government-initiated amendments to the text of the UDO
 331 to change the existing public hearing for Comprehensive Plan, UDO, and Zoning Atlas related
 332 items/ amendments. This item was heard at the September 8, 2014 quarterly public hearing.

333 **Presenter:** Perdita Holts, Special Projects Coordinator

334

335 *Perdita Holtz reviewed abstract*

336

337 Craig Benedict: What I put on the Board here is what we presently have. We usually give the Planning Board a
 338 briefing on what is coming up at the public hearings, this is kind of informal. We did have the joint public hearing here
 339 and then this was referred back to the Planning Board and then back to the Commissioners for action. As you
 340 answer these questions, we'll find out, does the Planning Board make recommendations here or do they make
 341 recommendation somewhere else? We will draft it up, as you come to some sort of consensus, we'll try to sketch
 342 something up for clarity.

343

344 Pete Hallenbeck: I am not going to read what is in attachment one, I'll just make a couple of quick comments. First
 345 we are going through something different here, it's not a text amendment or something laid out for us. It's an
 346 opportunity to say what we're thinking. With that comes the obligation to try to get our thoughts organized. I think the
 347 main thing is the joint meetings were a problem just because of the quorum and I think you could move that so they
 348 are not joint meetings. However, I think you can, somewhere between require and strongly urge, have the Planning
 349 Board members attend. I think it is really important, since we are giving recommendations, to have as many people
 350 as we can present to hear what is going on because there is such a difference between reading something and
 351 hearing someone present it. There is talk in the meeting about holding the Planning Board either before or after. I
 352 think Planning Board before I like a lot, Planning Board after the decision is like closing the barn door after the horse
 353 is gone. I'm not quite sure what we'd do, that was discussed. I think citizen notification which is in here is a good
 354 deal and it would be nice if that notification includes a description of the process so people know what to do. Part of
 355 what happened in the solar project is people were scrambling with the time they had and they weren't sure what the
 356 next steps were and also the dates. I think when you combine what we just voted on with the 45 day and you add in
 357 the changes we are looking at now and if that notification spells out what is going to happen, it should be a different
 358 picture than what we had before. I like treating legislative quasi-judicial mixes as quasi-judicial and that led to those
 359 recommendations. So you can sort of see what I am thinking from that attachment one. What we'll do here is just go
 360 around the room and take input that anyone would like to pass on to the Commissioners.

361

362 Perdita Holtz: I forgot to mention that Lydia Wegman sent an email earlier today about her views. I wanted to make
 363 sure it got into the minutes that I did distribute her email.

364

365 Pete Hallenbeck: Yes and we should put her comments into the minutes since she is not here. She also talked
 366 about it the Planning Board should be at the public hearing and she talked about how they should be required to
 367 attend the public hearing. We're seeing everybody wrestle with the same details.

368

369 Paul Guthrie: You took the first part of what I was going to acknowledge and suggest everybody read it carefully.
 370 Lydia is a very smart person and has been in this business a long time. I must admit that I've thought a lot about this
 371 issue and I really wasn't a 100% percent sure where I was going with it so I decided to make it simple. We are in
 372 business for one reason and that is to work for the County Board of Commissioners, present them with our
 373 understanding of issues and, where appropriate, make recommendations as we gather as citizens in the County. I
 374 would caution us as we shape this don't violate that particular rule and if you decide that it's necessary to change
 375 that rule in a significant manner, then you need to decide whether the Planning Board is relevant. I would just say
 376 that this is a very fundamental issue that needs to be carefully considered and I understand where the concern
 377 comes and it is legitimate concern in terms of the quorum/non-quorum issue. It seems to me we ought to be able to

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378 deal with that issue without tearing up the relationship of what a citizen advisory board is to the elected leaders of this
379 County. I think we should think in that line as we work on the process.

380
381 Pete Hallenbeck: I agree we need to find a way to get people there but we need to find a way to do it that doesn't
382 penalize people who come to a meeting if we don't have enough people there. That might be the best way to put it.

383
384 Laura Nicholson: I have a lot of comments, in light of the timeline that we were given to consider this I wonder if we
385 can't divide it. It seems like there are a few things that are easy and specific and there are a few things that are really
386 squishy so if could just get through some of the specifics. In regard to the quorum, I obviously haven't been here
387 long enough to understand why the quorum was ever an issue but it just seems like a communication thing. If we've
388 made it clear that you are supposed to be at as many monthly meetings and you can and be at the quarterly public
389 hearing, and are given insufficient notice, and we double check to make sure there's enough people there, I don't
390 see it as an issue. I think it is a little insane to do this whole roundabout to change this whole process that seems
391 important because we can't get our act together internally and I think it could be fixed internally so it doesn't have to
392 be this whole big process. And the frequency of public hearings, I don't know if that is something that is really
393 specific and easy to figure out or not but I'm just curious if we couldn't just divide it. So talk about a few things we
394 can iron out tonight and a few things we go back and ask for more time to figure out.

395
396 Pete Hallenbeck: Again, it strikes me how to get people there because I think there's agreement that's really
397 important but if we make mistakes and people can't show up for whatever reason, how do you keep that from
398 throwing everything off track? We do serve at the pleasure of the Commissioners so they could certainly come up
399 with some club and stick approach to make everybody come to the meetings but I would leave that decision to them.

400
401 Bryant Warren: Reading this I'm a little concerned with, I feel like it is on the step of dissolving the Planning Board
402 and just going straight to the County Commissioners. I'll apologize I did miss the public hearing last month, I got my
403 days mixed up and thought it was the next night. But it is very seldom that I'll miss a public hearing or a meeting. I
404 will make sure I'm here and I don't understand how the Planning Board can make a recommendation to the BOCC
405 before the public hearing is being held because I really think they need to be involved in the public hearing in order to
406 make an adequate recommendation to the BOCC. I think we can do something, I only been on the Board for a
407 couple of months now so I don't know what went on in the past regarding the quorums. I do feel like if you're a
408 member of the Planning Board then it is your obligation to make sure you attend the meetings. I think what we need
409 to do is stress that we need to keep things the way they are, continue the public hearing, continue with the Planning
410 Board playing a very big role in it so they can make the recommendations they need to, because evidentially, if they
411 don't, then you might as well dissolve the Planning Board and not even have it. That's my recommendation.

412
413 Pete Hallenbeck: One challenge that came out of this whole discussion that hit me was during the quarterly public
414 hearing, I referred to citizens that want to go to the top they want to go to the decision makers and sometimes it's
415 hard to get citizens to come to an advisory board, they want to talk to the Commissioners. Part of the reason for
416 making sure that this notification process tells people about the Planning Board is to give them more opportunities for
417 input. The before and after comes down to what Craig has up on the board. We have a public hearing then Planning
418 Board then BOCC action. I think that's good I think that's critical and I think the Planning Board has to get input so
419 they can make the recommendation to the Commissioners. When I talk about having a Planning Board meeting after
420 what I am talking about is once the Board of County Commissioners has made decision, I don't think there is any role
421 for further input from the Planning Board. I do think it's critical and would even say they shouldn't make a decision
422 before the Planning Board has had an opportunity to make a recommendation. Any time the Commissioners have
423 the option of doing it and just saying wow, this is just too much to handle all this input, they can kick it back to the
424 Planning Board and we can talk it over and it will come up at the next meeting, they have that option. So, yes if the
425 impression that the Planning Board is somehow being diminished in its role, no I don't want that. I do want to make
426 sure we don't hold up the citizens that show up and I'd like to find a way to encourage citizens to come to the
427 Planning Board to get their concerns known earlier. Part of that is what I'm talking about in here about the Planning
428 Board meeting with the public if the public could come to these meetings, it is a bit of a dry run. The other thing that
429 came up in that meeting is another problem we've always had which is would that we had a crystal ball to predict the
430 no-brainers from the ones that are going to be controversial. If we can get citizens to come to the Planning Board

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431 with input earlier, we can get a better feel of what is going on. The Commissioners can see that when they read the
 432 minutes and I think those are ways the Planning Board can be more engaged than it is now.

433
 434 Bryant Warren: The problem with that is they want to meet with the top people and by having a joint public hearing
 435 appearing with both then they are both getting the information and people are showing up for it.

436
 437 Pete Hallenbeck: I wouldn't be surprised if it continues in the same way but I also don't want to penalize people who
 438 want to learn how the systems works and try to get the most out of it. So if they have a 45 day notice and they come
 439 to the Planning Board and they're organized and they come to us and say here's the concern and talk about it then
 440 the Commissioners can read it. That's the closest we're going to come to that no-brainer crystal ball. They will be
 441 much more informed, the Commissioners will, than if all this just hits them for the first time.

442
 443 Bryant Warren: Right now we have one every 4 months, if it goes to every 2 months, is there not some way if we
 444 need another public hearing we can call one or do we have a time frame that would keep us from doing that.

445
 446 Craig Benedict: The Unified Development Ordinance does set out a public hearing specific dates of 4 a year. We
 447 can amend the UDO to say there are other times we can consider amendments. As Perdita put up there, there are
 448 three types of hearing, the legislative ones are typically a little bit easier. There is a good possibility we could move
 449 some of those legislative items to a regular meeting and have some more opportunities for them. We know that the
 450 quasi-judicial are usually the ones that are a little bit more labored because of the testimony and that would probably
 451 clog up a regular meeting so having the quarterly public hearings isolated for them will probably remain a good idea.
 452 We can consider regular Commission meetings to have a public hearing.

453
 454 Bryant Warren: I know a lot of developers want to get it out, get it to the public, and get it back as quickly as they can
 455 so they can start generating money from it. That's probably what we're trying to do is to accommodate some of them
 456 so I don't see anything wrong with it.

457
 458 Pete Hallenbeck: We have the full spectrum of the developers would love a two month process and a lot of citizens
 459 would like a nine month process. What you're talking about with additional meetings, I know Commissioner Jacobs
 460 was concerned that if you put additional public hearings on the normal Commissioner calendar, that's where the
 461 crystal ball for the no-brainers comes in. You would hate to put, for example, that solar project on the end of a
 462 budget meeting cause it would take too long, you really won't be doing the citizens any service, everybody would be
 463 tired by the time it was midnight and probably wouldn't accomplish what you wanted. If you know, that crystal ball,
 464 that this was going to be a 30 minute with no problem.

465
 466 Herman Staats: Pete, so I understand correctly, the process that is on the white board now, is what we currently
 467 use?

468
 469 Pete Hallenbeck: Correct.

470
 471 Herman Staats: Am I understanding you to say that we should have an additional Planning Board meeting with the
 472 public and if so where in that process do you propose to put it?

473
 474 Pete Hallenbeck: The question is the first item, these quarterly public hearing are on a certain schedule but we meet
 475 every month. There's an opportunity to have that 45 day notice and have people come to a Planning Board meeting
 476 and get citizen feedback quicker and then that feedback can be presented at the next available quarterly public
 477 hearing it is unlikely that the Commissioners would decide at that time but that's where the no-brainer, crystal ball
 478 comes in. It is far more likely that they will take that citizen input and kick it back to the Planning Board. We would
 479 also be at that meeting, however the carrot and stick approach the Commissioners work out for getting us there.

480
 481 Lisa Stuckey: So if I'm a citizen and I am bringing something forward, you're suggesting that there be a public
 482 hearing in front of the Planning Board and then a public hearing in front of the Board of County Commissioners and
 483 then it comes back to the Planning Board.

484

Approved 11/5/14

485 Craig Benedict: Maybe it doesn't have to go here afterwards. There are differences between the legislative and

486

487 Lisa Stuckey: But wait, because they were saying they wanted to give people a third or fourth opportunity to speak
488 without question when it came back, as a former member of the school board, every time you hold a public hearing,
489 you will get people to come and the more anxious they are about the outcome, the more they will come and they the
490 longer they will talk. It is just a lot of time. I am not passing judgment on whether or not they should be allowed to,
491 it's just a tremendous amount of time for the boards.

492

493 Craig Benedict: There could be different processes for legislative versus quasi-judicial. The reason we have a
494 process now to just have written testimony after this public hearing is because you're trying to set a point in time
495 where the record is closed, let's make a decision, and if we keep on opening things up very late in the process then it
496 doesn't end. That was part of the reason, especially for quasi-judicial matters, for legislative matters, the
497 Commissioners can choose to let them hold it in three minutes, don't repeat what we've heard here. They can
498 diplomatically say that.

499

500 Lisa Stuckey: It won't work.

501

502 Craig Benedict: Also it shows in the agenda package that the Commissioners, when they have this public hearing
503 over here, they can do three things; they could close the public hearing, this is what we are suggesting as potential
504 options. They could close the public hearing this night and they can set a date to make a formal vote on it, or if it is
505 contentious they could send it back to the Planning Board to return then for a date certain, or one that has never
506 worked well in the past is they can actually decide that night, close the public hearing and say we have enough
507 testimony to decide. That has always been a lot for them but over the many years there's been a few where they
508 thought that were very simple, one was actually a school site for the Orange County school that was an SUP and
509 they needed to get it built and they wanted to approve it there but the process didn't allow them to do that at that
510 time, to vote the same night. It had to go back.

511

512 Bryant Warren: So you're talking about on the public hearing that is joint now it will not be a joint public hearing, it
513 would be just the Commissioners?

514

515 Craig Benedict: That would be just the Commissioners and as the Chair said, we would suggest the Planning Board
516 attend here or they could watch it on Granicus or they could watch a video of it or they could look at the minutes.
517 *(referring to board)* This would not be a formal, this isn't the formal public hearing here, it's just a point where we can
518 let people know in a neighborhood information meeting that the Planning Board is going to be hearing this item. It is
519 what's called a Planning Board hearing, formal hearing will always stay with the Commissioners that's what state
520 laws says.

521

522 Bryant Warren: I don't think you're going to get as many people showing up for just a public hearing with the
523 Planning Board as you're going to get to show up for the Commissioners and Planning Board combined.

524

525 Craig Benedict: It's true, the Planning Board and staff may be able to answer some questions here at this pre-
526 meeting. At this crystal ball meeting. Even at this point here, we're going to be educating the public because that's
527 what the Commissioners suggested. Let them know about what process we're going through, is it legislative, is it
528 quasi-judicial let them know what levels of input there are, is it going to be formal expert or can it be anecdotal i.e.,
529 we don't think that fits the neighborhood. We can do a lot of education here, having something early where the public
530 can be invited. It probably would be a lot more attendance at Planning Board meetings than you've had in the past.
531 It still goes to the formal public hearing, let's call that the legal public hearing. Then the Commissioners have the
532 opportunity to decide at that point to bounce it back or to themselves two weeks hence.

533

534 Perdita Holtz: This Planning Board meeting where he crossed off formal review, the Planning Board recommendation
535 meeting, where there would be notices that actually went out and the property would get posted with a sign to let
536 people know that the Planning Board meeting was happening, it would not be a formal public hearing, it would just be
537 a Planning Board meeting with changing the way we notify the public about Planning Board meetings so that people
538 would know the Planning Board meeting was happening, they would be able to come and speak, it wouldn't have to

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539 be written comments only and at the conclusion of that meeting the Planning Board would make a recommendation
 540 on whether they thought the application should be approved or not, on legislative items. Craig is a little bit mixing
 541 legislative and quasi-judicial together. Then the item would go to public hearing with the Planning Board
 542 recommendation. At the public hearing the BOCC could decide, man there's so many people here that maybe didn't
 543 talk at the Planning Board meeting; we really should kick it back to the Planning Board for them to consider this other
 544 information that came out at the public hearing. Or, the BOCC could decide this is one of those no-brainers, the
 545 people who have been on the Planning Board before will remember the discussion about no-brainers, this is a no-
 546 brainer, we can close the public hearing tonight and we can just vote on it, or they can say, well, you know the
 547 Planning Board gave us a recommendation, nothing major has come out but I want to mull this over more and the
 548 BOCC can say let's schedule it for a later meeting.

549

550 *Loss of recording device/full memory- approximate 7 to 9 minutes lost.*

551 *[There was some discussion about how notices about the Planning Board meeting would be sent via first class mail*
 552 *to adjacent property owners and a sign would be posted on the affected property, in the case of map amendments].*

553

554 Pete Hallenbeck: It is important that the notifications be a blend of the dry legal requirements of notification and a
 555 nice human readable, ok guys here's how it's going to work- we're going to have to this meeting here's what you can
 556 do, this is an opportunity for you, so it explains the process and people know what is going on.

557

558 Tony Blake: I have a couple of comments; I don't know how much power we really have. I think we're maybe
 559 assuming that we have more power than we do here. We are really looking at the UDO and deciding whether or not
 560 a project meets the criteria of the UDO, we can't just all of a sudden say, no we don't like that, and the second part of
 561 it is, I think we're all here to represent some part of the County. I represent Bingham because I live there and
 562 because I have other contacts in the community and it seems to me that we should be part of the notification list for
 563 any public information session in our area of representation. We should be at least as strongly encouraged to attend
 564 that public information meeting on behalf of the Planning Board and all the Planning Board members be encouraged
 565 to attend any public information meeting as that somewhat cloudy crystal because I think you can tell from a public
 566 information meeting how many people show up as to what kind of a response you're going to get and what the real
 567 concerns and questions are that need to be addressed up front. I don't really understand the quasi-judicial role we
 568 have, I understand that we stand up there and give testimony but if our power is limited to interpreting the UDO and
 569 trying make whatever changes proposed fits within the UDO and it either does or it doesn't and staff is far more
 570 versed in the UDO than I am. I find their recommendations are pretty bang on. All of what I have to say in a quasi-
 571 judicial way is hearsay, right?

572

573 Pete Hallenbeck: The role of the Planning Board is this oversight, are we meeting the requirements of the UDO.
 574 Yes, you're right, but that's a level of detail you have to have. I would point out, though, that there's also a document
 575 called the Comprehensive Plan. If the UDO is the rules, the left brain, the Comprehensive Plan is the heart and soul,
 576 it's the right brain part of it. There are times when we've reviewed things and it's met all of the requirements but then
 577 you'll find something in the Comprehensive Plan that's not right and I think it's not power per say but it's a very valid
 578 role of the Board is to point this out. An example of that is the Comprehensive Plan encourages that all subdivisions
 579 have sidewalks and yet every time we run into it there is no money for sidewalks and DOT doesn't want it. There is a
 580 conflict there and we don't have power over that but we can certainly point it out and I think that's also true with
 581 representing the areas you're from.

582

583 Tony Blake: Yeah, but I don't find that to be quasi-judicial in essence. You can point it out in a quasi-judicial hearing
 584 but it's not some...

585

586 Pete Hallenbeck: Quasi-judicial is such a different beast because people get sworn in and there's testimony. It really
 587 changes the game a lot and our role in quasi-judicial is very strict.

588

589 Lisa Stuckey: We're supposed to be the judge in a quasi-judicial, aren't we?

590

591 James Bryan: In quasi-judicial, it's the governing board- the deciding body that is the judge. From a legal
 592 perspective, for planning boards' involvement, it's dangerous. Especially, how we have it where you close the public

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593 hearing and then you have the statements. I think that's right before appeal, for a number of reasons, I don't know if
 594 the Board really wants to get into all of that but my recommendation would be that because of all of the legal
 595 concerns with all that let one board handle it, the Board of Adjustment, that's all they do and then you also have a
 596 corollary to that because when the public goes to these meetings and they want to know, look I'm a neighbor and I'm
 597 against this, quasi-judicial they can't say anything. That's objectionable, you're not supposed to allow them to go and
 598 speak to that. So if you have one board where they know, oh Board of Adjustment that's when I have to have my
 599 expert there to testify and any time you go before the Board of County Commissioners or the Planning Board, that's
 600 when I'm allowed to give my opinion because they do policy and legislative matters. It's clear for the public.

601
 602 Lisa Stuckey: So, the quasi-judicial, and I guess the mix will move out of the Planning Board?

603
 604 James Bryan: That would be my recommendation.

605
 606 Perdita Holtz: Well, the legislative part of the mix would not but we need to figure out what we want to do for
 607 legislative versus quasi-judicial before we tackle that funny beast of the mix.

608
 609 Lisa Stuckey: But quasi-judicial is leaving us.

610
 611 Bonnie Hammersley: No, as the County Manager I have to speak. The issue tonight is some kind of
 612 recommendation from this Board to the County Board of Commissioners, they make the final determination. One
 613 thing I would want to add thought as you all talked about your power or your worth, this Board is a highly valued
 614 board in county government and is in all the counties I've been in. The County Board of Commissioners depend on
 615 you greatly for your recommendations and what you do and so I want you for that but no determination has been
 616 made on what is going to happen. That's what this discussion is about. It would be a recommendation to the County
 617 Commissioners and whether the Commissioners would agree with that, they would make the final determination and
 618 I don't know what that is.

619
 620 Maxecine Mitchell: I'm sitting here thinking I want to share in my own way, when I decided to be on this Planning
 621 Board, I came to represent my community. I don't feel comfortable in any decision we make, I have to be there to
 622 hear what the people have to say. I sit here every month and hear the staff from their perspective and I get a good
 623 understanding on their challenges, what they are trying to do as a whole, I then like to come to the public hearing
 624 meeting and I cautiously listen to the people. Within the decisions we make to the UDO and the Comprehensive
 625 Plan when we have a chance that helps me to figure out if it a good thing for the community. Then my
 626 recommendation that I give to the County Board of Commissioners, I'm looking at it from the community perspective
 627 because I have to live here. You may not live in my neighborhood, in my area, and I don't want rules making it hard
 628 for me to enjoy the life here in Orange County. I take this very seriously so I don't want whatever we do, I want to
 629 hear from the public, as well as coming here every month and hearing from the Planning Board and hearing the
 630 County Commissioners and what they want and make it all work the best we possibly can. I understand the legal
 631 process but for me that's top concern because we have to live here in Orange County so we have to keep it where
 632 people can enjoy the County and not feel like they want to move to Durham or Alamance County, that's the way I see
 633 it and I want to find the best way to say that in the decisions we make. I try my best to show up to the public hearings
 634 and I go to work at 12 at night and the night of that long meeting, I left that meeting and went right to work because
 635 that's my commitment to the citizens of Orange County to be there. I think that staff and the Board of Commissioners
 636 get benefit from it.

637
 638 Pete Hallenbeck: One good thing coming from this discussion is that it's an interesting opportunity for everyone to
 639 think about the role of the Planning Board and I think we are all basically on the same page. If anyone has another
 640 rule they think is critical.

641
 642 Paul Guthrie: I mentioned one and that is the fact that we provide the Board of Commissioners with a screen with
 643 which they can filter through information as they deal with some very tough issues.

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645 Pete Hallenbeck: Yes, with a blend of the feedback and the community and public input. Also I think there is
 646 representation of the areas and there is also that everybody here has a diverse skill set and drawing on both of those
 647 really helps with these opinions that we can give the Commissioners.
 648

649 Tony Blake: Is it safe to say that any quasi-judicial process is preceded by a legislative?
 650

651 Perdita Holtz: In quasi-judicial matters it depends on how you're zoned on whether you have to get a Special Use
 652 Permit and so at some point zoning was applied to the property but you can't say that it precedes it by a month or a
 653 year of something like that.
 654

655 Tony Blake: No, what I'm saying is the maybe when we run up against this situation where we think, maybe the
 656 County is being too heavy handed but we don't really have the power to do anything but interpret the facts against
 657 the UDO and it either is or it isn't, right? Michael is the oracle on that, we have a handoff or a way to pass along to a
 658 more powerful body, the Board of Adjustment or the Board of Commissioners whoever it is and say here's our
 659 legislative view to take into your quasi-judicial. I don't know.
 660

661 Perdita Holtz: No, it's not for most of the types of Special Use Permits that we see. The only time that there's a
 662 legislative component is if there is a rezoning associated with also needing a Special Use Permit and that happens in
 663 the case of some subdivisions when you get larger subdivisions in the rural area.
 664

665 Tony Blake: Yeah, I was thinking of that dog kennel up on 70 where they weren't really in compliance. They wanted
 666 to do something, they couldn't do something without being in compliance first and then being in compliance was too
 667 expensive. It really got dicey and at the end of the day, basically, we were told we couldn't do anything outside of the
 668 UDO but at the same time it didn't qualify for the Board of Adjustment and so there was this limbo thing and then it
 669 was thrown over to the County Commissioners who changed the decision.
 670

671 Perdita Holtz: Yes, that really was a messy one.
 672

673 Tony Blake: That's the kind of situation I'm thinking of that it just really seems like we could be more graceful.
 674 Changing gears here if we got in early at the community information meetings and tried to make that at least as
 675 important as attending the quarterly public hearings for the representatives of that group to bring back to the Planning
 676 Board I think that would go a long way towards your crystal ball.
 677

678 Pete Hallenbeck: Two things here, on page 72 there's that summary and that Perdita came up with and 88% of the
 679 time things are legislative and 3% of the time it is a mix. You never want to ignore a minority of cases but you also
 680 don't want to optimize the system on one low probability parameter. Also, Tony, I wanted to comment and this will
 681 sort of speak to what Maxecine was talking about, I like the idea that you notify Planning Board members if there is
 682 neighborhood information meeting in their district. I think that's a great thing to do.
 683

684 Michael Harvey: With all due respect, I think that the policy should be that every Planning Board member gets
 685 notified and they can choose to attend if they can or cannot. That way everybody benefits. As neighborhood
 686 meetings are scheduled the Planning Board gets notified and every member has an opportunity to attend.
 687

688 Tony Blake: I would agree.
 689

690 Michael Harvey: The reason I saying it that way is if Tony Blake can't show up, maybe other members can and the
 691 fact that Tony was not able to show up on a given evening. I think if you're asking staff to make sure you're notified
 692 of every NIM then we can just do that as a policy.
 693

694 Pete Hallenbeck: You're right on the money, that's more functional and easier to implement.
 695

696 Paul Guthrie: I have a question for those of us who live in the County but are under Chapel Hill planning
 697 management, how do we get notified? Because most of the planning of what that has done is under Chapel Hill's
 698 Planning Board. There was a point in time in the past the County Commissioners made a recommendation for

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699 appointment to the Chapel Hill Planning Board, from the area in which I live in, and the first thing that happened, it
 700 happened to be me as the nominee, and the first thing that happened was Chapel Hill Planning Board and the
 701 Council decided to eliminate that position so I think that we need to talk about those fringe areas that are in the
 702 extraterritorial jurisdiction and see if we can get the process working there too. I'm in the southeast corner of the
 703 County and it is going to be one of the big growth areas in a very small area over the next few years, I'm afraid, and
 704 there is a lot going on but you usually have to read about it in the newspaper to find out about it.

705
 706 Perdita Holtz: So you're suggesting that we work with Chapel Hill Planning's Department for them to overhaul their
 707 practices on how they notify?

708
 709 Paul Guthrie: No, I'm just saying it would be nice to know when those things are going on or how many newspapers I
 710 need to subscribe to.

711
 712 Perdita Holtz: It's Chapel Hill's planning jurisdiction and we don't necessarily always know what is going on.

713
 714 Pete Hallenbeck: I think the key thing is, you being in Chapel Hill, if there's any neighborhood information meetings,
 715 you'll find out about it in the County because Michael's suggestion was right on the money. It's easy to implement
 716 and everybody's informed.

717
 718 Buddy Hartley: I feel like the process we have now is working. The question is can we get a quorum at the public
 719 hearing. That's the question. The process is working, staff is doing their job. Staff is giving us the information for
 720 whatever is taking place and we are recommending to the Board of County Commissioners, whether they like our
 721 recommendation or not, they do what they want to do. So, I do like the fact of possibly having the public being able
 722 to come to us before the public hearing but then the question is are we going to have a quorum at the public hearing.
 723 I don't see a big problem with that we just need to let staff know in advance if we cannot make that meeting so they
 724 know. We should be able to get a quorum at the public hearing.

725
 726 Perdita Holtz: Well it's really far in advance because the legal ad gets published and notices get sent out, the legal
 727 ad is due to the paper like three weeks before the public hearing.

728
 729 Buddy Hartley: So we want to be able to have a quorum at the public hearing, we either do or we don't.

730
 731 Lisa Stuckey: Aside from the time somebody was late, and I was one of them one time, it's been very close. There
 732 were other meetings, I can think of two others, maybe three, where we were waiting for people to come.

733
 734 Maxecine Mitchell: But I usually get an email and if not an email somebody calls. Does not everybody get that same
 735 thing as a reminder?

736
 737 Perdita Holtz: Yes, Tina sends out emails asking about quorum.

738
 739 Maxecine Mitchell: I have it on my calendar but when I get the email I remember, that's right I do have a public
 740 hearing.

741
 742 Buddy Hartley: And she does call.

743
 744 Maxecine Mitchell: Yes, if she doesn't hear from me, she'll call. I just wondering, is that not working for everybody to
 745 remember that there's a public hearing?

746
 747 Perdita Holtz: Often we call because enough people have said no, and so it's getting very close on whether we're
 748 going to have quorum and so now we're scrambling to get on the phone with people who haven't responded to see if
 749 they can show up or not.

750
 751 Pete Hallenbeck: You can put a lot of procedures in place but the bottom line is we had a lot of trouble and if it
 752 happens again something has got to change. I would ask, it's not clear to me, what the value of having a true joint

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753 meeting where the Planning Board has a quorum versus requiring Planning Board members to attend and if you
 754 have bad attendance then the Commissioners can do something about it, like say thank you for your service but
 755 you're not cutting it. We're going to be there and we're going to hear the public hearing input. The commissioners
 756 certainly have the ability while we're there, even if it's not a joint meeting, to ask if there are any comments from the
 757 Planning Board. It's well within their purview so I just don't see that dropping the official joint with a quorum
 758 requirement, I don't think that will change the process a whole lot. What it will do is not hold up a meeting where you
 759 have 100 citizens there.

760

761 Craig Benedict: From what I'm hearing from the discussion, there seems to be somewhat of a role of the Board in a
 762 differentiation between how they act on a legislative matter, where they can hear opinions left and right, they can
 763 hear the community and they can see the site versus the quasi-judicial nature where your role is more structured.
 764 Not that we are making any determinations tonight, but maybe when we do this interim report, maybe there are two
 765 different processes that we follow for legislative matters versus a quasi-judicial and right now they're clustered
 766 together and maybe we should take a look at the role of the Board on a legislative matter and how we get input
 767 versus a quasi-judicial matter follow a different tract. Does that sound reasonable?

768

769 Pete Hallenbeck: In general, what I'm hearing, and I realize there is variation everywhere, is everybody agrees there
 770 is great value in having the Planning Board at the quarterly public hearing. The challenge is if you don't have a
 771 quorum, we don't want that to derail anything. I am also hearing people are happy with this concept that the Planning
 772 Board can take citizen input so we can get that sooner and hopefully that combined with the 45 days will just make
 773 everything go better. Most of what we've been talking about is for the legislative processes which are 88% of the
 774 time. The quasi-judicial is a different process and we need to work on knowing what our role is in that. That may be
 775 something staff and the attorney can work on to educate us on that a little bit better but again 88% of the time it is
 776 legislative and it would be great to also notify all Planning Board member of any neighborhood information meeting
 777 that is going on so we have a chance to get out there and see what is going on. Those are the main points I'm
 778 pulling out. Is there anything major anyone can think of?

779

780 Laura Nicholson: So, is the idea that we will have quorum and we'll all just internally say we are going to be better
 781 about getting quorum or was there some barrier that maybe some of us that are new don't understand why we
 782 couldn't get a quorum before?

783

784 Pete Hallenbeck: My personal opinion is to drop the quorum requirement because we've blown it two or three times
 785 and if we blow it one more time, it is just, it's getting to the point it's not excusable and that's also based on the fact
 786 that if we can just impress upon people how important it is to be there, it's not clear what the quorum is doing and the
 787 Commissioners can still ask Planning Board members who are present for comments and input.

788

789 Laura Nicholson: It's just funny that you're saying we need to make sure that we all know that it's really important to
 790 be there but it's not a requirement. If it's really important to be there it should be a requirement.

791

792 Pete Hallenbeck: It should but then when you don't have it, we were lucky that we had only a 30 minute delay. What
 793 would happen if you had a meeting and you didn't have quorum and you tell all these people I'm sorry we just don't
 794 have the people, we'll try this again in three months.

795

796 Laura Nicholson: I agree I just don't see how we can't have a quorum.

797

798 Lisa Stuckey: Why don't we ask staff, what's the problem? Do we know why people haven't shown up? What's
 799 been the issue?

800

801 Perdita Holtz: I think it just depends on the personalities that you have on the Board. How seriously people take their
 802 position.

803

804 Tina Love: There has never been a time when staff went to the meeting without a quorum. I have never left work at
 805 the end of the day that staff didn't have a quorum. If I haven't heard from you, I get on the phone and I call you and I
 806 keep on calling until I reach you, and I'm sorry about that, but we have to ensure there is a quorum. Then staff gets

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807 to the meeting and for whatever reason, and things do come up last minute but there just isn't a quorum. I don't
808 know what other process we can do to fix that.

809
810 Tony Blake: Send the Orange bus.

811
812 Maxecine Mitchell: For me, I know we get a copy of the calendar every month, I put it on my personal calendar and
813 an alarm goes off and I say hey you've got a meeting. I don't care if it's an hour before, I'll throw on my clothes and
814 get up here because I've made up in my mind I'm committed and I know it's part of my responsibility on the Board. If
815 something comes up, an emergency, the first thing I try to do, I'm calling from South Carolina when my sister passed
816 away to say she passed I can't make it. Things like that, you can't help but if you're here you should be making it to
817 the meeting. I think it doesn't have to be a rule we just have to be committed and show up unless it is out of our
818 control.

819
820 Laura Nicholson: I just think if the quorum isn't a rule then we're making ourselves seem less important. Like we
821 can't make it to a quorum, we've already embarrassed ourselves by not being there so let's just not hold ourselves
822 accountable and I think we should hold ourselves accountable by saying there has to be a quorum.

823
824 Pete Hallenbeck: If the quorum requirement were effective, we would never have not had a quorum and I see this as
825 the price of failure of value of success and the price of failure having the quorum is we hold up the public. The value
826 of success is we have a quorum, the meeting starts but after that I don't see a lot of difference because the
827 Commissioners can still ask our opinion and we are still there to get input. I think that's why I come down on the side
828 of dropping the quorum requirement. It's just that simple weighing of the price of failure and the value of success. I
829 don't see any difference in the outcome.

830
831 Tony Blake: What's the reason for the joint meeting?

832
833 Pete Hallenbeck: I think Laura's right on the money, it does bring the Planning Board out, it makes it part of the
834 process, it give value to it, adds importance to it. By the same reason if we don't show up it makes it look like the
835 Planning Board isn't important it doesn't care and the people are not there and you're holding up the citizens.

836
837 Laura Nicholson: Is it possible that it was a communication issue, so for example, I knew I was going to be ten
838 minutes late so I emailed Tina but I don't know if she got my email so maybe it's that we need cell phone numbers of
839 staff so that we can call people and say hey, I'm going to be late or this came up or maybe it's just because I'm new.

840
841 Tina Love: One other thing we need is alternative numbers, cell phone numbers for Planning Board.

842
843 Laura Nicholson: So I see it as a communication issue that is holding up the quorum process and if we just over
844 communicate rather than under communicate it will solve itself.

845
846 Perdita Holtz: It really wasn't the issue of someone being ten minutes late and calling. It was people having full
847 calendars and just not making it to the meeting.

848
849 Laura Nicholson: And they don't know that in advance?

850
851 Perdita Holtz: I don't want to speculate on when people know in advance.

852
853 Laura Nicholson: I'm new so I can't comment but to me it seems simple you're supposed to be there, you're there
854 and if you're not you tell somebody.

855
856 Perdita Holtz: That's a wonderful outlook.

857
858 Pete Hallenbeck: Sometimes just the ebb and flow of life just doesn't work out.

859

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860 Buddy Hartley: Things come up and when things come up, you contact staff and you let them know, I can't make this
 861 meeting for whatever reason. Everyone won't be able to always make meetings and if that happened with 3 or 4
 862 people for the same meeting, you might not have a quorum.

863
 864 Lisa Stuckey: It's not a regularly scheduled meeting for us, it's an odd meeting and I think that's part of the problem
 865 and it's on a Monday instead of Wednesday when we normally meet. Honestly when you're talking about going to
 866 more meeting I wonder how many Planning Board members can really go to those neighborhood meetings.

867
 868 Perdita Holtz: I'm a little fuzzy on a certain aspect of what you've discussed tonight; I hear that you want to attend
 869 the public hearing whether those are quorumed or not quorumed that you want to attend to hear the public.

870
 871 Lisa Stuckey: But if they change it and they're doing it six or eight times a year, are we really committed to that?
 872 I would be extremely skeptical.

873
 874 Perdita Holtz: That is a question at this time, I don't really think they are going to be changing the frequency but
 875 that's just my feeling from what we've heard.

876
 877 Bonnie Hammersley: I will support Perdita on that. One of the things we have is for the November 24th quarterly
 878 public hearing we don't have any agenda items and so it's difficult to try to justify adding more meetings so right now I
 879 don't see that being the will of the Board to change it.

880
 881 Perdita Holtz: I hear that you want to attend the public hearing what I'm fuzzy on is I've also heard that you want to
 882 do public meeting where the public can come to the Planning Board meeting and comment beforehand. There would
 883 be an official agenda item, we would send out notices to any affected property owners and they could come and talk
 884 with you. At that point, would you all make a recommendation at that Planning Board meeting and then attend the
 885 public hearing or do you still want to wait to make the recommendation after the public hearing? We're just talking
 886 about legislative not quasi-judicial for this. What I am trying to clear on, because I have to write something up for the
 887 BOCC, is you want to attend the public hearing and you also want to have a pre-meeting where the public can come
 888 and attend. If it involved a piece of property the public is going to get mailed notices and we are going to put notices/
 889 a sign saying come to the Planning Board meeting and let them know what you think. At that meeting will you all
 890 make a recommendation prior to the public hearing or do you want to wait until after the public hearing to make a
 891 recommendation?

892
 893 Pete Hallenbeck: I think we can no more guarantee we can make a recommendation than the Commissioners can
 894 guarantee they can make a decision at the quarterly public hearing much as happened with the solar project. I think
 895 the best the Planning Board can do is to provide feedback based on our knowledge on the communities we come
 896 from and maybe comment on what people say and yes there is a bit of a challenge there because there may be time
 897 when all we can do is except that input and frankly there won't be a whole lot we can say that is terribly intelligent
 898 other than thank you for the input.

899
 900 Perdita Holtz: So after the public hearing you want to make a recommendation still so my concern is that on
 901 legislative items, that do not have a neighborhood information meeting, you are now adding an additional meeting
 902 before the public hearing that is going to make the process longer. I want to make sure that.

903
 904 Pete Hallenbeck: I don't think I was saying it that way.

905
 906 Perdita Holtz: You're having a Planning Board meeting that we are going to send out notices.

907
 908 Craig Benedict: We'll send out the letter out and decide.

909
 910 Perdita Holtz: No, they're saying they don't want to decide, I know that is what we talked about two weeks ago but
 911 this is not what's being talked about tonight. They want to wait to decide until after the public hearing.

912

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913 Herman Staats: My own personal feeling about making a recommendation is what I said earlier, if you have
 914 opportunity for public input but no one comes then yes we can make recommendations based on the written
 915 guidelines but you still don't have public input. So the whole goal of us discussing this tonight was to increase and
 916 have a better access to public input but if they don't come then we're not increasing public input. I thought this whole
 917 process came up of how do we get more feedback from the public and how do we get them involved.

918
 919 Perdita Holtz: That's one part of it.

920
 921 Maxecine Mitchell: Right now, I'm going to go with leaving things the way they are right now.

922
 923 Perdita Holtz: Increasing the public involvement, that's certainly one part of it Herman, about increasing the public
 924 involvement however, the increasing of public involvement is really pertinent to quasi-judicial matters and so I am
 925 trying to nail down more of what you are all thinking about the legislative matters and we're going to have to tackle
 926 quasi-judicial at some other time.

927
 928 Pete Hallenbeck: Yes, I agree, just talking legislative and I think I agree with Herman that if we can make a
 929 recommendation or decision, we will but there may be circumstances where we just can't.

930
 931 Michael Harvey: Is the concern that not enough citizens are interested in showing up and you're going to make a
 932 recommendation in a vacuum.

933
 934 Pete Hallenbeck: No, if nobody shows up and they have met all the requirements for what they are trying to do and it
 935 meets the UDO, I say we make a decision and say yes, we're all for this. I think the times where we wouldn't make a
 936 decision would be like the solar array.

937
 938 Paul Guthrie: It's not judicial, we're not encumbered on that solution that we have something, nobody shows up, we
 939 have a question about it, we could send that to the Commissioners and it could be incorporated in the call for the
 940 public hearing.

941
 942 Pete Hallenbeck: Yes, all that is possible and again it's part of being an advisory board there

943
 944 Tony Blake: Let me just suggest just opposing the whole thing for just a second here. Why not add, and I think other
 945 boards have this thing that they have sort of a County Commissioner liaison. Why not require that liaison to be here
 946 for quasi-judicial, no quasi-judicial right? Then they can carry that feedback back to the other County
 947 Commissioners.

948
 949 Pete Hallenbeck: We're going to stick with the legislative, quasi-judicial is a very strict process.

950
 951 Perdita Holtz: There are reasons there's not a BOCC liaison for the Planning Board and I don't think there is going to
 952 be.

953
 954 Pete Hallenbeck: I think the changes we're talking about is we have the 45 days, we're just saying let the public
 955 come and present input either in writing or verbally at the Planning Board meeting that's part of the notification they
 956 get. We will discuss it there will be times when we can make a recommendation and there will be times when we'll
 957 just throw our hands up and there will probably be times when we go, we don't really want to get near this thing and
 958 we kick it back to the Commissioners.

959
 960 Paul Guthrie: Would that be mandatory or just advisory? Could we simply say you may wish to come to a Planning
 961 Board meeting prior to the public hearing?

962
 963 Pete Hallenbeck: Yes, but part of this is to explain the process, is that exact language. You're not required but if you
 964 care to this is great as it gives us better input sooner, the Commissioners read your feedback before the quarterly
 965 public hearing. That explanation should enough to let a citizen realize how the process works.

966

Approved 11/5/14

967 Paul Guthrie: Probably a good idea.

968

969 Laura Nicholson: To me there is just some things that seem really cut and dried and there are some things that are
970 really squishy. Is there a way we can delineate that and say these things we agree on and bring a recommendation
971 on these things and these things we still want to talk about more, is that a possibility?

972

973 Pete Hallenbeck: Part of why I tried to say it's important to be at the QPH not wild about the quorum and you're
974 comments you really think the quorum will help. The Planning Board taking citizen input, it sounds like everybody is
975 good with that and more input is good. We realize this is legislative that is 88% of what we see, all Planning Board
976 members get notification of any neighborhood information meetings and we realize that the quasi-judicial is a
977 problem for another day we need more education as there are very strict rules. That's ok because we've just dealt
978 with 88% of what we deal with and I would say that's the summation of what we are putting before the
979 Commissioners along with this process.

980

981 Craig Benedict: Chair, based on the direction the Commissioners gave the manager and the attorney and staff is this
982 interim report is not going to make decision so, that interim report will say probably some things are easier to achieve
983 and some things are a little bit harder so I think in essence we are going to get some ideas on which way we can
984 move with it. Where's there's some clarity and which areas might need a little more time. That's why they said the
985 November 6th meeting wouldn't have everything done by then. We'll let them know where we are in the process that
986 we were getting consensus on some areas and we are also determining that there are differences, clear differences,
987 on how the Board's role is for quasi-judicial versus legislative and how we get community input that might take a little
988 longer.

989

990 Pete Hallenbeck: That's also why we're not going to vote tonight on this and what we recommend. We've talked
991 they get to sludge through it and see what we're thinking and it goes on from there. Ok, the last item on the agenda,
992 I'll entertain a motion to adjourn

993

994

~~995 **AGENDA ITEM 11: COMMITTEE/ADVISORY BOARD REPORTS:**
996 a. Board of Adjustment~~

997

998

~~999 **AGENDA ITEM 12: ADJOURNMENT:**~~

1000

~~1001 **MOTION** by Bryant Warren to adjourn. Seconded by Buddy Hartley.~~

~~1002 **VOTE: UNANIMOUS**~~

1003

1004

1005 *Email from Lydia Wegman:*

1006

1007 **From:** Lydia Wegman [mailto:lnwegman@gmail.com]

1008 **Sent:** Wednesday, October 08, 2014 2:12 PM

1009 **To:** Perdita Holtz

1010 **Subject:** Re: October Planning Board Materials

1011

1012 Hi Perdita,

1013

1014 Thanks for that helpful explanation of the status of the recommendations on the public hearing process. I am very
1015 sorry to be missing the discussion tonight. As a new member of the Board, I feel I would benefit from hearing the
1016 views of the folks who have served on the Board longer than I. I do, however, have two thoughts to offer, which are
1017 laid out in the next paragraph. In addition to that, I plan to read the minutes of tonight's discussion and then offer my
1018 thoughts on the conclusions reached, if any. I know this is not the best way to engage in discussion, but given that I
1019 am out of town, I think it's the best I can do.

1020

Approved 11/5/14

1021 Here are my views on two issues for tonight's meeting: First, I do not think the Board of Adjustment should handle
1022 Class A SUPs. I think those should continue to come to the BOCC and to the Planning Board for a recommendation
1023 to the BOCC. I feel that decisions on these SUPs concern the way in which the county is using the precious land
1024 within its boundaries and those decisions should be left to the elected, not appointed, officials. I think it's important
1025 for the Planning Board to offer its views to the BOCC. My second thought is that the the Planning Board should
1026 make its recommendations to the BOCC after the conclusion of the public hearing, as is done now. I think the
1027 Planning Board should be required to attend the public hearing and am not sure why there has been such a problem
1028 with attendance at the quarterly hearings. Is there really such a problem? If so, I suggest that the Planning Board be
1029 asked to solve it. I don't think the solution is to cut the Board out of that process. But even if the Board is not
1030 required to attend the public hearing, it should be required to listen to the hearing before offering its views to the
1031 BOCC. The information at a public hearing is in my view essential to helping the Board thoughtfully consider what
1032 recommendation to make.

1033
1034 I hope these views can be considered at tonight's meeting. Thanks very much. I look forward to hearing about the
1035 discussion at the meeting.

1036
1037 Lydia
1038

Pete Hallenbeck, Chair

MINUTES
ORANGE COUNTY PLANNING BOARD
NOVEMBER 5, 2014
REGULAR MEETING

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

MEMBERS ABSENT: Peter Hallenbeck (Chair), Cheeks Township Representative; Herman Staats, At-Large, Cedar Grove Township;

STAFF PRESENT: Craig Benedict, Planning Director; Michael Harvey, Current Planning Supervisor, Perdita Holtz, Special Projects Coordinator, Tina Love, Administrative Assistant II

OTHERS PRESENT: Bonnie Hammersley, County Manager; James Bryan, Staff Attorney;

AGENDA ITEM 1: CALL TO ORDER AND ROLL CALL

AGENDA ITEM 2: INFORMATIONAL ITEMS

- a) Planning Calendar for October and November
- b) Dinner meeting with BOCC & quarterly public hearing on November 24, 2014 has been cancelled
- c) Chapel Hill ETJ Expansion Request

Craig Benedict gave an overview of the ETJ expansion request. Subject area JPA vs ETJ land use regulations and financial investment representation future long term planning.

Craig Benedict: There is an area of the Joint Planning Area of Orange County, Chapel Hill and Carrboro in the transition area. In order to fund certain infrastructure improvements, Chapel Hill would be able to contribute more if it was part of their ETJ. That request will be going to the BOCC on November 18.

Lisa Stuckey: I was on a committee that worked to get the sidewalks in with DOT and there were 3 jurisdictions, Chapel Hill, County and Carrboro as I recall and it was a mess. To me this seems to simplify things.

Tony Blake: This goes from the town operation center all the way south.

Craig Benedict: This is about a 1,000 acre area and would include the whole section of the Joint Planning area that is north and west of Chapel Hill.

Tony Blake: Do those residents have a say in this?

Craig Benedict: There is a public notice requirement that the City has put out and they have come forward and said they are in agreement with this proposal.

Approved 12/3/14

161 ~~MOTION made to approve the report and work plan presented by Craig Benedict by Andrea Rohrbacher. Seconded~~
 162 ~~by Laura Nicholson.~~
 163 ~~VOTE: Unanimous~~

164
 165
 166 **AGENDA ITEM 8: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENT:** To continue discussion and
 167 provide input on government-initiated amendments to the text of the UDO to change the
 168 existing public hearing process for Comprehensive Plan-, UDO-, and Zoning Atlas-related
 169 items/amendments. This item was heard at the September 8, 2014 quarterly public hearing
 170 and was discussed at the October 8 Planning Board meeting. Discussion is expected to focus
 171 on the quasi-judicial process.

172 **Presenter:** Perdita Holtz, Planning Systems Coordinator

173
 174 *Perdita Holtz reviewed PowerPoint Chart*

175
 176 Paul Guthrie: If there is a different presentation at the BOCC from what was given to this Board, what would
 177 happen?

178
 179 Perdita Holtz: If it were significant, we could say this is a significant difference, you may wish to send it back to the
 180 Planning Board and the BOCC would decide.

181
 182 Paul Guthrie: If you want to catch up to speed on what happened, where would you get that?

183
 184 Perdita Holtz: It is on video and eventually minutes are done by the County Clerk's office but they are not done
 185 within two days. It usually takes a couple of weeks at least.

186
 187 Lydia Wegman: The Planning Board meeting would occur first. Most of the public will probably blow off the Planning
 188 Board meeting. If they come to the BOCC and make a presentation that the Planning Board didn't see or consider,
 189 how will the BOCC know they are seeing something the Planning Board didn't see that might be significant and
 190 change the recommendation?

191
 192 Perdita Holtz: There would be a report that tells the BOCC who spoke at the Planning Board meeting. Also, staff
 193 could let the BOCC know if something significant is being raised at the public hearing that wasn't at the Planning
 194 Board meeting. Then the BOCC could decide if it should go back to the Planning Board.

195
 196 Paul Guthrie: Worst case scenario, would it be possible for this Planning Board de nova after that decision to say we
 197 didn't hear any of that?

198
 199 Perdita Holtz: That would depend on if the BOCC made a decision the night of the hearing or not.

200
 201 Paul Guthrie: There are 99 times out of 100 you would never have a problem but it is that one time it could be sticky.

202
 203 Lydia Wegman: It says the public hearing will be closed at the conclusion and written comments would no longer be
 204 required for making comments after the hearing. If the public hearing is closed, what would be the forum for making
 205 comments?

206
 207 Perdita Holtz: On a legislative items, anybody can comment anytime. The current process is that the public hearing
 208 is left open for written comments.

209
 210 Lydia Wegman: If the public hearing is closed then what does it mean to submit comments in any form?

211
 212 Perdita Holtz: For legislative items, the public hearing is a statutory requirement that you hold a public hearing but
 213 you can receive comments before and after that formal hearing.

214

Approved 12/3/14

- 215 Lydia Wegman: If the BOCC has already made the decision, there is no opportunity for anyone to make comments.
216
- 217 Perdita Holtz: They should comment before the public hearing at the Planning Board or at the public hearing.
218
- 219 Lydia Wegman: What is the purpose of having this additional opportunity for comment after the public hearing is
220 closed.
221
- 222 Perdita Holtz: There isn't an additional opportunity via statutes, people can continue to comment. It is not like a
223 quasi-judicial process.
224
- 225 Craig Benedict: In the three cases the BOCC can decide, if they defer their decision, any input that comes from the
226 citizens can still be considered. If it gets referred back to the Planning Board, the citizen can still provide comment.
227 The only case it would not work is if the BOCC heard everything they thought they needed to decide that night.
228
- 229 Tony Blake: Where along this process line is the community information meeting?
230
- 231 Perdita Holtz: The information meeting 45 days ahead of time is associated with Special Use Permit applications
232 which are not legislative but are quasi-judicial.
233
- 234 Michael Harvey: Neighborhood meetings are also for major subdivision and fire stations.
235
- 236 Tony Blake: That is a localized place to make comments and the Planning Board rep should be notified and invited
237 to that meeting. This seems to cry out for a Neighborhood Information Meeting.
238
- 239 Perdita Holtz: We were kind of looking at it as the Planning Board meeting would be the prelude to the public
240 hearing.
241
- 242 Tony Blake: They are involved by the applicant. You are making the distinction that these are not text amendments.
243 The Neighborhood Information Meeting is more important for something like this that is not a text amendment than a
244 Special Use Permit.
245
- 246 Perdita Holtz: The whole point of having the Neighborhood Information Meeting for the Special Use Permit is so
247 people can understand that is a very special process and that you will have to hire experts to represent you.
248
- 249 Tony Blake: A concrete example is the Mountains to Sea Trail. I would think that sort of process would be valuable
250 there.
251
- 252 Perdita Holtz: I think that DEAPR is holding meetings on the Mountains to Sea Trail.
253
- 254 Tony Blake: I am getting pounded by this new gas pipeline.
255
- 256 Michael Harvey: The BOA held a public hearing on the gas line proposal which was advertised and notifications
257 were sent. We were on tenuous ground as to whether the hearing was required but we had the hearing and went
258 through the process.
259
- 260 Bonnie Hammersley: I met with PSNC's representatives with the Chair and Vice Chair and how we can inform
261 people better about those issues.
262
- 263 Paul Guthrie: Having managed the acquisition of trails for snow mobiles and hiking, etc. in Wisconsin I can tell you
264 that it would be good to keep a master file of all communications that come in whether they are timely or not for
265 information.
266
- 267 Lisa Stuckey: Going back to the discussion of the suggestion to change our process, if it's related to the change,
268 now is the time. Perdita, do you need a vote or consensus?

Approved 12/3/14

269
 270 Perdita Holtz: For a consensus that says this flowchart captures the discussion at last month's Planning Board
 271 meeting.
 272
 273 Laura Nicholson: I like the flowchart and I think it does capture what we have been talking about. When you get to
 274 the last bubble it gets wordy. It says Planning Board members would be encouraged to attend, could we say
 275 expected to attend so it sounds more like we care about being there.
 276
 277 Lisa Stuckey: In the description of the Planning Board's responsibilities and what people see when they are thinking
 278 about applying to the Planning Board, it doesn't mention the quarterly public hearings, it mentions only the monthly
 279 meetings.
 280
 281 Laura Nicholson: I agree. If it is in there as an expectation then the idea is that you should know that upfront.
 282
 283 Lisa Stuckey: Now there is a quarterly public hearing, people have been making comments at our meeting, the
 284 process hasn't been explained to them, we are expanding the number of times a person can comment from only the
 285 quarterly public hearing to our meeting in a more formalized way, the public hearing, they have another chance to
 286 speak. We are expanding the number of times people can speak; do you think it will slow the process?
 287
 288 Perdita Holtz: On controversial items, possibly.
 289
 290 Buddy Hartley: I like the setup. It does do what we have talked about for years.
 291
 292 Lisa Stuckey: Is there a consensus?
 293
 294 Lydia Wegman: People need to understand if the BOCC makes a decision that night, it is over. People need to
 295 understand upfront that is a possibility.
 296
 297 Tony Blake: I agree with the caveat that if you are changing zoning there should be a public information meeting.
 298
 299 Perdita Holtz: That would make the process longer.
 300
 301 Lisa Stuckey: In the letter that goes out, notifying the people of the Planning Board meeting, there could be a note of
 302 encouragement that if you have questions or concerns, attend and make your feelings known.
 303
 304 Laura Nicholson: At the bottom bubble, it says the public hearing will be closed at the conclusion of the hearing and
 305 written comments will no longer be made. You say hearing a lot and you are talking about written comments would
 306 no longer be required, you might want to say solely written comments wouldn't be required.
 307
 308 Perdita Holtz: This flowchart is for people who are somewhat familiar with the process, so they can make decisions
 309 about changes from the existing process, it's not to be distributed to lay people who know nothing about how the
 310 process works.
 311
 312 Andrea Rohrbacher: From my experience, no matter how hard you try, you will have someone who says I didn't
 313 know.
 314
 315 Perdita Holtz: Moving on to the quasi-judicial process. Reviewed abstract. Three questions that may frame the
 316 discussion. One, do you think the Planning Board should make recommendation on quasi-judicial. Two, if you
 317 decide you want to continue to make a recommendation, when would that occur? Three, if the Planning Board is no
 318 longer attending the public hearings as an official board, what would the Planning Board meeting be?
 319
 320 Paul Guthrie: Does the BOCC feel they need a buffer?
 321
 322 Perdita Holtz: I don't know what the BOCC feels.

Approved 12/3/14

323
324 Paul Guthrie: It may be a little bit of a pain if we have to look at a million items but it could serve a useful purpose
325 and it could expedite the process.
326
327 Tony Blake: 99.99% of the time, staff is correct that it meets or doesn't meet....but there are cases where there is
328 something they are not aware of.
329
330 Lisa Stuckey: But we can't receive that information.
331
332 Tony Blake: If staff says it meets this checklist and you know otherwise, that is not testimony....
333
334 Lisa Stuckey: When we go through the checklist, is that before or after the public hearing?
335
336 Perdita Holtz: After the public hearing.
337
338 Lisa Stuckey: The Planning Board is not allowed to take additional testimony so we can't insert things we have
339 heard.
340
341 Craig Benedict: You can ask questions. You can ask the applicant to provide information.
342
343 Lisa Stuckey: Can you ask a member of the public who spoke?
344
345 Craig Benedict: You have the right to cross examine anyone at the hearing.
346
347 Lisa Stuckey: If we don't have a quorum and we come back to our meeting, are we allowed to go forward with the
348 checklist? If a quorum of the Planning Board is not required at the public hearing, can we proceed?
349
350 Lydia Wegman: What would be the role of the Planning Board after the public hearing?
351
352 James Bryan: From a legal standpoint, the public hearing, as the trial, once that is closed, there will be no other
353 comments considered by the Board except for the Board talking among themselves and to their attorney. My belief
354 now is the current process, if we have a written comment after the hearing is closed, it should not be considered from
355 a legal perspective.
356
357 Lydia Wegman: The way it is set up now, any comment that comes in after the public hearing are a problem?
358
359 James Bryan: Yes.
360
361 Lydia Wegman: Your concern is whatever comments are coming in have to come in at the public hearing or before
362 the public hearing?
363
364 James Bryan: At the public hearing, at the trial because everything the Board hears, all the parties, which is a legal
365 term, anything the Board hears, I get to hear it being spoken to them, I get to question whoever speaks it to the
366 Board.
367
368 Paul Guthrie: Does that also preclude the BOCC in considering the trial of discussing it? You used the analogy of
369 the jury system. A jury can discuss in its own quarters. Who is the jury?
370
371 James Bryan: The BOCC. After the public hearing is closed, the only words they can hear are what they heard at
372 the hearing. As a practice, in some jurisdictions, there is no planning board meeting. Other jurisdictions have it set
373 up where it goes to the planning board first and they have a mock hearing. A dry run.
374
375 Lydia Wegman: Also an opportunity for citizenry to have information about what is required.
376

Approved 12/3/14

377 James Bryan: Every jurisdiction is different. This place has a lot of educated folks and a lot of money which is
378 different than others that don't have those things.

379
380 Maxecine Mitchell: We are pretty much serving as a double check to the staff to make sure the applicant did
381 everything according to the rules and laws of the County who, if they meet them and let them move forward so if a
382 project happens in my area, I can know and prepare my neighbors.

383
384 Michael Harvey: Staff is preparing a script based on the evidence entered into the record and testimony at the
385 hearing. Some items are based solely on the testimony of the public hearing.

386
387 Bryant Warren: Being on the Hillsborough Planning Board, this is totally different. We met then the Planning Board
388 met and made recommendations. This sounds different and if we are not going to be in the public hearing, just the
389 BOCC, then they will have the final say then there is nothing we can do about it. We can have an information
390 meeting prior to that. I don't really see any place for a Planning Board in this process.

391
392 Perdita Holtz: Special Use Permits applications will have a Neighborhood Information Meeting 45 days ahead of the
393 public hearing.

394
395 Bryant Warren: What about having that informational meeting at the Planning Board meeting and let them be there.

396
397 Perdita Holtz: We will look at that but sometimes the way the schedule works in quarters and having ORC Ordinance
398 Review meetings sometimes, we might not be able to do everything in one night. There can be a scheduling difficulty
399 when you have more than one meeting.

400
401 James Lea: It sounds like there is plus to making recommendations or just having quasi-judicial meetings.

402
403 Tony Blake: In this way our role is to inform more than represent.

404
405 Perdita Holtz: Should that pre-meeting with the Planning Board be the Neighborhood Information Meeting together?

406
407 Lisa Stuckey: In these cases, the folks are hiring lawyers so this is more expense to them. Maybe the lawyer is at
408 the neighborhood meeting and then to our meeting and then they will do the public hearing.

409
410 Lydia Wegman: In your list you say if the Planning Board continues to make a recommendation so are you assuming
411 there is a room as a legal matter to make a recommendation if the Planning Board meeting occurs before the
412 meeting of the BOCC?

413
414 James Lea: It sounds like we are not making recommendations.

415
416 James Bryan: You have the public hearing. The first person to speak is staff who introduces it, reviewing the packet,
417 and one item will be the Planning Board recommendation.

418
419 Lydia Wegman: The Planning Board could hear whatever we are hearing from the public from the applicant and
420 make a recommendation prior to the public hearing that would go into the record that the BOCC would consider?

421
422 James Bryan: Right. The BOCC can't make a decision based on that recommendation. But it could prompt them to
423 ask the right questions.

424
425 Tony Blake: Wouldn't staff do that anyway?

426
427 Paul Guthrie: Prior to the formal legal hearing, could this group discuss the project and appear as a witness for
428 information at the legal hearing?

429
430 James Bryan: It depends on the facts but in general, no. I would object.

Approved 12/3/14

431
432 Bryant Warren: You said if the Planning Board wanted to be at the informational meeting and they had questions
433 about it and they wanted staff to bring it to the BOCC during the quasi-judicial hearing, would that be a
434 recommendation? As long as it is presented to the BOCC.
435
436 James Bryan: There is a difference between hearing it and using it as a basis for the decision.
437
438 Lisa Stuckey: Do we clarify things or muddy the waters? They can hear it but not base anything on it.
439
440 James Bryan: Attorneys will do that. Give you background information, sort of context for it.
441
442 Tony Blake: Even presenting new facts that are not in evidence, that is not sufficient?
443
444 James Bryan: Right.
445
446 Lydia Wegman: A recommendation could be considered by the BOCC if I understand correctly.
447
448 Paul Guthrie: Are staff communications directly to the BOCC privileged?
449
450 James Bryan: No.
451
452 Paul Guthrie: So they are considered just another testifier?
453
454 James Bryan: Anytime that staff sends anything to the BOCC it is called a work product and under the public records
455 of law that is available. If it is quasi-judicial, staff isn't supposed to be talking to the Board about the particular
456 question at hand. You deal with it by divulging the communication at the hearing so everyone knows.
457
458 Paul Guthrie: The recommendation of staff to the BOCC has to be done as a witness format?
459
460 James Bryan: Yes. Again, the statutes aren't the best in the world. The conventional thinking is that you have a
461 board that acts as judges and anyone there has to be a party to it.
462
463 Maxecine Mitchell: My understanding from what I've heard, legally we really have no say but we can put information
464 out that would make the BOCC look more in depth at what they are presented. I am ok to say if the Planning Board
465 makes the recommendation. I guess I would go with before. If the Planning Board continues to make
466 recommendations, we don't really need to be at the public hearing meeting.
467
468 Bryant Warren: If we get the information from the informational meeting, we make recommendations to staff and
469 they can give it to them. I don't see the need for us to be at the public hearing.
470
471 Andrea Rohrbacher: For question one, I would say, yes, we still should make a recommendation and for question
472 two it should be before the public hearing and attendance at the official meeting where all the testimony is being
473 presented would be optional for the Planning Board.
474
475 Paul Guthrie: On one hand, I think one of the positive roles of this Board is that it can begin to articulate the
476 sentiment of both itself and people it deals with on issues of public concern. On the other hand, the way this system
477 is set up the way we have been talking about, the only way we can do it is at a very early stages of the process or
478 outside the confines of this Board and this Board's responsibility. I don't think that helps the public decision process
479 at all. I have great problems with the recommendation but I am not sure there is anything else to do.
480
481 Buddy Hartley: In the process where we haven't got to the public hearing yet, we would have seen the application,
482 correct?
483

Approved 12/3/14

484 Perdita Holtz: You normally don't see the application until it goes out in the quarterly public hearing materials now.
485 We are 99.99% sure we are adding the neighborhood informational meeting 45 days ahead of time.

486
487 Buddy Hartley: I think it is fine to make it before. Basically we see if everything meets the criteria and we make the
488 recommendation.

489
490 James Lea: Item one I would say I would say yes and item number two I would say before and item three I don't
491 know.

492
493 Laura Nicholson: Yes on item one, before on item two, I just think we have a responsibility to our townships, the only
494 way we could influence or affect anything is before.

495
496 Tony Blake: We are not really making a recommendation but making a suggestion. I wouldn't mind having the
497 opportunity of making a recommendation. I would also like to say that the Planning Board needs to know about this
498 stuff earlier in the process so that when someone puts a sign out there and we get a call from someone in the
499 community we don't have to say we don't know what you are talking about.

500
501 Perdita Holtz: One of the things we could institute as part of the neighborhood information process is to email you all
502 the notice that is going out to the public.

503
504 Tony Blake: Even some more background on the project.

505
506 Perdita Holtz: I think there will start being information on the website and we can provide a link.

507
508 Tony Blake: Question one, yes; question two before; question three I think we need more information earlier.

509
510 Lydia Wegman: I do think the Planning Board should be making recommendations on quasi-judicial matters and I do
511 think the recommendation should occur before the public hearing along the lines of what we are talking about. I am
512 concerned about having an informed recommendation. There needs to be a process between the Neighborhood
513 Information Meeting and the public hearing for the Planning Board to make a recommendation. The only concern I
514 have about the Planning Board not being at the public hearing is if the BOCC should want to take more time to
515 consider and continue the public hearing so if the BOCC wanted the Planning Board to offer more input subsequent,
516 there would need to be a way for the Planning Board members to hear what went on at the public hearing.

517
518 Perdita Holtz: There have always been issues where some people make it to the public hearing but the same people
519 don't make it to the Planning Board meeting.

520
521 Lisa Stuckey: I don't think we should make recommendations. I don't think going through that process up until now
522 has been productive, we rely on staff if they meet all the requirements, we have to recommend it be approved. It
523 seems a very artificial process. The real thing happens at the public hearing.

524
525 Paul Guthrie: Could a member or members of this group that have discussed this prior to any of the formal legal
526 steps be subpoenaed by the applicant to testify at the hearing.

527
528 James Bryan: Yes. It is very rare but the chair gets to decide and you get to appeal that to the whole Board and they
529 have subpoena power and if you don't show up, the Court of Justice can require you to get a contempt of court.

530
531 Tony Blake: Can we be deposed in the legal sense?

532
533 James Bryan: The subpoena will most likely require you to show up at the hearing and they you will be ask
534 questions.

535
536 Bonnie Hammersley: I wanted to say on behalf of the County Board of Commissioners that on the 24th there is not
537 going to be a quarterly public hearing because there aren't any items and also no dinner because there is no

Approved 12/3/14

538 meeting. They wanted to extend to you that at any time you want to schedule a meeting like that in 2015, they would
539 love to spend that time with you.

540

541

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

543 a. Board of Adjustment

544

545 Michael Harvey: The BOA approved the PSNC pipeline. We will have a meeting in December for an appeal. Local
546 residents are appealing a decision by the County to rescind a notice of violation involving a gun range.

547

548

549 **AGENDA ITEM 12: ADJOURNMENT:**

550

551

Pete Hallenbeck, Chair

MINUTES
ORANGE COUNTY PLANNING BOARD
DECEMBER 3, 2014
REGULAR MEETING

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MEMBERS PRESENT: Peter Hallenbeck (Chair), Cheeks Township Representative; Herman Staats, At-Large, Cedar Grove Township; James Lea, Cedar Grove Township Representative; Tony Blake, Bingham Township Representative; Laura Nicholson, Eno Township Representative; Paul Guthrie, At-Large Chapel Hill Township; Andrea Rohrbacher, At-Large Chapel Hill Township; Buddy Hartley, Little River Township Representative; Bryant Warren, Hillsborough Township Representative; Lydia Wegman-At-Large Chapel Hill Township;

MEMBERS ABSENT: Lisa Stuckey (Vice-Chair), Chapel Hill Township Representative; Maxecine Mitchell, At-Large Bingham Township;

STAFF PRESENT: Craig Benedict, Planning Director; Perdita Holtz, Special Projects Coordinator; Ashley Moncado, Special Projects Planner; Tina Love, Administrative Assistant II; Steve Brantley, Economic Development Director;

OTHERS PRESENT: Bonnie Hauser

AGENDA ITEM 1: CALL TO ORDER AND ROLL CALL

AGENDA ITEM 2: INFORMATIONAL ITEMS
a) Planning Calendar for December and January
• Elect Chair and Vice-Chair for the year in January.

**AGENDA ITEM 3: APPROVAL OF MINUTES
NOVEMBER 5, 2014 REGULAR MEETING**

MOTION by Bryant Warren to approve the October 8, 2014 Planning Board minutes with additional information. Seconded by Laura Nicholson.

VOTE: UNANIMOUS

AGENDA ITEM 4: CONSIDERATION OF ADDITIONS TO AGENDA

AGENDA ITEM 5: PUBLIC CHARGE

Introduction to the Public Charge

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

Approved 2/4/15

162 Bonnie Hauser: If I go to Mebane or another community versus Orange County what is the time table to get
163 something approved in another place versus Orange County?

164
165 Steve Brantley: I think Mebane approved Morinaga within 60 to 90 days and had Mebane not annexed Morinaga, it
166 still could have gone on here but it would have taken them longer to go through the process which in Orange County
167 would have been....

168
169 Craig Benedict: What Steve mentioned was pre-zoning where zoning has certain uses permitted by right which
170 means review can be a staff function and if it was a staff function we would match the same time frame that Mebane
171 would have. If they have to go through a rezoning process where they have to change or up zone it from the base
172 zoning that is probably 4 to 5 months of process and a developer may not want to go through the site plan process
173 concurrent with this legislative rezoning process.

174
175
176 **AGENDA ITEM 8: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENT:** To continue discussion and
177 provide input on government-initiated amendments to the text of the UDO to change the
178 existing public hearing for Comprehensive Plan, UDO, and Zoning Atlas related items/
179 amendments. This item was heard at the September 8, 2014 quarterly public hearing and was
180 discussed at the October 8 and November 5 Planning Board meetings.

181 **Presenter:** Perdita Holts, Special Projects Coordinator

182
183 *Perdita Holtz reviewed abstract*

184
185 Paul Guthrie: I think the flowchart pretty much portrays the conversation, I am still concerned about how some of this
186 will work. We may not find that out until we do it.

187
188 Pete Hallenbeck: I read the minutes and this certainly seems to align with it. The problem is that at the quarterly
189 public hearing the commissioners went in all different directions of opinions and at some point we have to just let
190 them decide. The other problem is the concept that some people only want to deal with the decision makers so no
191 matter what process you put in place some people will want to just wait and talk with the commissioners. We will at
192 least have a system where people can come to the Planning Board and express their concerns early; we can only do
193 as good as the feedback we get from people.

194
195 Lydia Wegman: How do you reconcile that with you hearing that the County Commissioners want the Planning
196 Board to attend the quarterly meetings?

197
198 Pete Hallenbeck: That's a decision they have to make. My interpretation of that is because it is currently a joint
199 meeting and if the rules change on that then they'll have to give us guidance.

200
201 Lydia Wegman: Then what is the point of the Planning Board? How significant has this quorum problem been?

202
203 Pete Hallenbeck: We've had two events in the last year of so where the meeting was held up and one 3 or so years
204 ago there was over a 30 minute hold up.

205
206 Lydia Wegman: Isn't it a simpler solution to make sure the Planning Board members know they are expected to
207 attend rather than change the whole process.

208
209 Perdita Holtz: It depends a lot on who is on the Planning Board and what commitment they have. Some people had
210 jobs where they had to travel a lot and that Monday night meeting was difficult for them. It varies depending on who
211 is on the Planning Board.

212
213 Pete Hallenbeck: I think the fact that we've had two problems in the last year or so and we made it clear and it
214 happened again so I don't know what more could be done.

215

Approved 2/4/15

216 Laura Nicholson: I brought it up in a previous meeting and the consensus was it is easier to fix it this way. Judging
 217 by the push back I think there are things going on the new members don't always get.
 218

219 Lydia Wegman: I am stating for the record my main problem is having the Planning Board offer its view before the
 220 public hearing is problematic. The Planning Board will never be sufficiently informed to offer a well-considered view
 221 without having heard the presentations at the BOCC meetings.
 222

223 Pete Hallenbeck: I understand, we are all wrestling with this problem. At least this mechanism has a way where the
 224 Commissioners can identify that this one is going to take a while, etc.
 225

226 Perdita Holtz: In this process it would also allow the lay person to actually speak to the Planning Board, in a lot of
 227 communities if you are not an expert at the quasi-judicial hearing, you don't get to speak. If Orange County were
 228 ever to perhaps be sued over that, we might adopt that type of attitude about it too. This process would allow the lay
 229 person to come to the Planning Board and speak their concerns and why.
 230

231 Lydia Wegman: You're right Perdita but I'll just note that because of the public hearing, the layperson's testimony is
 232 irrelevant. It would have to be made very clear to the lay person that while they might speak at the Planning Board
 233 that because it is quasi-judicial, by the time it's before the Board of County Commissioners, only expert witnesses
 234 can give testimony.
 235

236 Pete Hallenbeck: Again, with the solar project as a reference, if there were interaction with the Planning Board while
 237 the developers were here there are a lot of questions, answers, interchanges that just can't happen at a quasi-judicial
 238 setting and the resident have an opportunity to get better organized so that when you went quasi-judicial and you
 239 have to swear in you have experts and it's much more focused.
 240

241 Lydia Wegman: The three most critical elements in that was the staff could not make a recommendation.
 242

243 Craig Benedict: Nor the Planning Board.
 244

245 Lydia Wegman: Nor the Planning Board, they are the most critical ones and they are the only ones in fact which the
 246 case if it ever went to court would be considered. The key one was 'the use will maintain or enhance the value of
 247 contiguous property'. In the case of the solar application, there was an appraisal offered by the solar company and I
 248 bet that appraiser, even if he showed up, would have come and said whatever he was going to say to the Planning
 249 Board and at the public hearing they have a new appraisal and a new appraiser which no one had seen before. And
 250 there would be nothing that could have been done.
 251

252 Pete Hallenbeck: There's another example, they showed this picture of these panels that were further away than
 253 what was planned with trees there and claimed that was equivalent and so to have that opportunity to do that in
 254 advance...
 255

256 Lydia Wegman: The advance doesn't necessarily stop the applicant from showing up with new information that is
 257 crucial to the decision.
 258

259 Pete Hallenbeck: I think it is a great way to think through the ramifications of the process because we have an
 260 example to look at. Those are the discussion you can have when you're not constrained by the quasi-judicial
 261 process and the benefit there if we had this discussion is the residents would have an opportunity to see and get
 262 feedback from the Planning Board and staff and all of that would help them to make a better presentation.
 263

264 Lydia Wegman: It is disingenuous to the community to pretend that what the Planning Board and staff can offer an
 265 opinion on the 3 most crucial elements. I think that is a flaw in the process.
 266

267 Perdita Holtz: That's under state law, it's not something we can change. In some communities the Planning Board
 268 doesn't hear the quasi-judicial matters at all.
 269

Approved 2/4/15

270 Paul Guthrie: It seems to me that if this process will work at all, this Board may have a bigger responsibility because
 271 we have one shot to raise the critical questions that need to be considered in the decisions and that doesn't happen
 272 in the joint session now where we sit there and listen to something until 11 o'clock at night and then by the time it's
 273 over we can't even remember what the questions are that you really think need to be considered. I think we have an
 274 obligation if this becomes practice to think through how we communicate through staff to the Board of County
 275 Commissioners on issues that need to be dealt with by the Commissioners at the time of testimony. The Boards that
 276 I have seen operate in this County only occasionally rise to that level. The staff rises to it but I'm not sure the boards
 277 do and we need to think about that as a Board.

278
 279 Perdita Holtz: Probably what will happen is that the Planning Board minutes will become part of that public hearing
 280 packet.

281
 282 Craig Benedict: We would accent anything different that occurred in the application from the original material. We do
 283 accent any new information, any change in information that has occurred from the original application and evidentiary
 284 material that comes forward.

285
 286 Pete Hallenbeck: Ok, so the action for tonight is?

287
 288 Perdita Holtz: Is there consensus that this flowchart captured the quasi-judicial discussion.

289
 290 **MOTION** by Paul Guthrie that the flowchart captured the Planning Board discussion of the quasi-judicial process.
 291 Seconded by Buddy Hartley.

292 **VOTE: UNANIMOUS**

293
 294 Lydia Wegman: Let me clarify. I am voting to say the flowchart captures what we've talked about, I am not saying I
 295 agree with it just to be clear.

296
 297
 298 ~~AGENDA ITEM 9: COMMITTEE/ADVISORY BOARD REPORTS:~~
 299 ~~a. Board of Adjustment~~

300
 301
 302 ~~AGENDA ITEM 10: ADJOURNMENT:~~

303
 304 ~~MOTION by Bryant Warren to adjourn. Seconded by Tony Blake.~~

305 ~~VOTE: UNANIMOUS~~

Pete Hallenbeck, Chair

**ORANGE COUNTY
BOARD OF COMMISSIONERS
ACTION AGENDA ITEM ABSTRACT
Meeting Date: February 19, 2015**

**Action Agenda
Item No. E.2.**

SUBJECT: Private Road and Access Standards

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N)

No

ATTACHMENT(S):

1. Emergency Access to Trail Systems at Orange County Parks – Draft Goal and Objectives
2. Planning Board Comments

INFORMATION CONTACT: (919)

Abigaile Pittman, Transportation/Land Use Planner, 245-2567
Michael Harvey, Current Planning Supervisor, 245-2597
Tom Altieri, Comprehensive Planning Supervisor, 245-2579
Craig Benedict, Planning Director, 245-2592

PURPOSE: To receive an update and provide guidance on options for addressing various private road access concerns.

BACKGROUND: The 2014 Work Plans for both the Orange Unified Transportation Board (OUTBoard) and Planning Board identified the need to review private road and access standards. This review was predicated on addressing concerns, as identified by emergency service personnel and various advisory boards, related to the accessibility of public and private property in the event of an emergency.

On May 20, 2014, the Board of County Commissioners (BOCC) authorized Planning staff to proceed with this multi-department/advisory board review of private road access and trail system standards and develop options for consideration. On December 9, 2014, staff provided the BOCC with a summary of stakeholder input and requested to place this item on an upcoming agenda for presentation and prioritization of possible actions.

A summary of the issues and possible regulatory changes are contained within Attachment(s) 1 and 2.

Current Unified Development Ordinance (UDO) Regulations – Road Development

The County's private road standards are found within in Sections 7.8.4 and 7.8.5 of the UDO summarized as follows:

1. The standards and specifications for private roads apply to subdivision in the County depending on whether it is a Class A or B road:

TABLE 7.8.5.D BASIC STANDARDS AND SPECIFICATIONS FOR PRIVATE ROADS				
	CLASS A	CLASS B		
Max. Number of Lots	12	2	3	5
Right-of-Way Width	50 ft.	50 ft.	50 ft.	50 ft.
Travel-Way Width	18 ft.	No Standard	12 ft.	12 ft.
Road Maintenance Agreement Required	Yes	Yes	Yes	Yes
Maintenance Responsibility	Property Owners	Property Owners	Property Owners	Property Owners

Notes:

- a. Class B private roads serve 1 to 5 lots or dwelling units; however, subdivisions with two lots or dwelling units may be served by a shared driveway.
 - b. Class A private roads serve 6 to 12 lots or dwelling units.
 - c. Both Class A and Class B private roads may be graveled.
2. Roads constructed to NCDOT standards for all subdivisions having 13 or more lots. NCDOT's Minimum Construction Standards for Subdivision Roads may be found at the following link:
<http://orangecountync.gov/planning/documents/SubdivisionManualJanuary2010.pdf>

The County's two-tiered approach to requiring private roads was originally intended to allow an affordable development option for small subdivisions of no more than 5 lots.

It should be noted North Carolina General Statutes exempt certain types of subdivisions from the County's subdivision review process:

1. The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the County, including private road justification standards, as detailed within the UDO.
2. The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved.
3. The public acquisition by purchase of strips of land for widening or opening streets.
4. The division of a tract in single ownership of the entire area of which is no greater than two acres into not more than three lots if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the County, as detailed within the UDO.

Lots created via the exempt process do not have to comply with established road development standards as detailed herein regardless of the number of lots proposed.

Summary of Concerns: Problems have been reported by the County's Emergency Services Department and the Volunteer Fire Departments regarding emergency vehicle access on private roads. The narrow width of the Class B road has presented public safety issues as it does not provide adequate access for emergency services vehicles, and thus impacts response times. There have also been issues for emergency vehicle access on roadways serving exempt subdivisions due to road width issues, and admittedly our regulations cannot address the issue because of the exemption.

NCDOT Public Road Construction Standards: Long-term maintenance costs of private roads have led to many requests for NCDOT to accept these roads into the State-maintained system. The construction standards for NCDOT acceptance are higher than the County's private road standards and are typically prohibitively expensive to overcome.

Subdivision roads with a right-of-way dedicated, recorded, or with preliminary approval from a county planning board dated after September 30, 1975 will not be added to the State system unless the road is built to the minimum construction standards of the Division of Highways. The minimum State construction standard is 18 feet of pavement, depending on the classification of the roadway, within a 50-foot right-of-way.

Additional information regarding NCDOT construction standards can be found at: <http://orangecountync.gov/planning/documents/SubdivisionManualJanuary2010.pdf>

Possible Options for addressing Issues within the UDO: In reviewing the various issues, the OUTBoard, Planning Board, and Emergency Services personnel recommended the following options.

These suggestions are grouped into 2 categories, specifically those best handled through a UDO amendment and those not. To provide an appropriate level of service for emergency services vehicles and ensure the provision of adequate public safety protection, Planning staff believes the following options for revisions to the standards of the UDO should be considered:

1. Do away with the Class B private roads and allow only the Class A private roads, which requires a minimum 18-foot travel-way.

STAFF COMMENT: we have no particular concerns associated with this possible amendment option.

2. Allow subdivisions with up to three lots or dwelling units to be served by a shared driveway, subject to provision of a minimum driveway width, maximum driveway length, and a turnaround area that can accommodate Emergency Services vehicles. (The UDO currently allows two lots or dwelling units to be served by a shared driveway.)

STAFF COMMENT: we have no particular concerns associated with this possible amendment option.

3. Develop a requirement that all newly created lots have access to a complying road (either private or public).

STAFF COMMENT: There are potentially negative consequences, most notably for lots created via the exempt subdivision process, related to this option including:

- a. *Individual property owners will bear the brunt of the cost for roadway improvements rather than the developer,*
- b. *The following scenario must be kept in mind:*

- i. *A property owner takes their 200 acre tract of land and creates, through the exempt subdivision process,*

a total of 20 individual lots all 10 acres in size accessed via a private roadway 12 feet in width.

- ii. Lots are sold or otherwise conveyed.*
- iii. Individual property owners will be required, if this standard is adopted, to upgrade the roadway to secure zoning permits authorizing construction on their property. This would include upgrading the roadway to a public street once certain development thresholds are met based on number of existing homes served by the respective road.*
- iv. Individual property owners will have to rely on their neighbors' willingness to 'dedicate' the necessary right-of-way/easement to accommodate roadway improvements. If they fail to do so the road cannot be improved to the appropriate standard and Planning staff would be required to deny permits authorizing development.*

The effect of the standard may mean some lots become undevelopable due to County regulations and, it could be argued, that a taking of property development rights has occurred without 'just compensation'.

Fire Council comments that could also be addressed through UDO amendments *(Planning staff has no particular concerns associated with any of the following amendment options):*

1. Cul-de-sacs: Increase the minimum clearing width for all proposed cul-de-sacs to accommodate emergency vehicle access/staging within Section 7.8.5 (D) (10) of the UDO. There is currently no 'minimum clearing width' separate from the development of the actual, improved, travel area. This is something staff would verify before the subdivision is recorded.
2. Drainage pipes under driveways: Section 7.8.5 (D) (9) could be amended to establish a minimum width for all drain pipes of 16 feet, to address the concern of trucks being 'hung up' when attempting to access/leave a property.
3. Gates/Walls: With respect to required widths and setbacks for gates/privacy walls, regulations could be adopted to require minimum travel widths and stacking areas to accommodate the Fire Council's concerns. Staff would need to determine where such regulations would best fit within the UDO.
4. Pull-over Areas: Private road standards could be amended to include emergency pull off areas as suggested by the Fire Council. Staff will have to take into consideration the impact such a requirement would have on current impervious surface policies, as such a standard would increase the impervious surface area on a site and could possibly impact overall developability.

5. Private Bridges: There are currently no existing standards governing the development of a 'bridge'/stream crossing. Such crossings are permitted in accordance with Section 6.13.6 (C) (4) of the UDO. Staff is still reviewing this request.
6. Tree Clearance on Driveways: While the County may need a reference to a tree clearing requirement for subdivision projects to ensure emergency vehicular access, and reference such requirements in recorded road maintenance agreements for all subdivisions, the UDO may not be the most appropriate location for a County standard. (Also see #2 in next subsection.)

Possible Options for addressing Issues outside the UDO: Several comments do not appear to have either a land use component or lend themselves to a land use enforcement proceeding. Although possibly beyond the purview of the Planning and Inspections Department, staff reports these additional items as follows:

1. Locked gates: There is no land use issue related to a property owner choosing to secure his/her property. There is, however, a public safety concern. A separate policy/ordinance within Chapter 14 Emergency Services of the Orange County Code of Ordinances could be written.
2. Tree Clearance on Driveways: As with locked gates, there is no clear land use issue associated with this matter. A separate policy/ordinance as indicated in #1 above could be established to address this issue.
3. Road Identification: There is already a road naming policy enforced by the Land Records division of the Tax Administration office that could be reviewed and revised to address this matter.
4. District Issues with Road Conditions: This issue is beyond the scope of any one department or agency. From staff's perspective there could be a County policy for addressing access and maintenance in those circumstances where there is an older development that does not comply with County and/or NC DOT regulations.

The biggest concern Planning staff hears, with respect to this issue, is from residents of older subdivisions, with no home owners association, trying to address road maintenance issues and/or lack of financial participation amongst neighbors.

Staff Options for Addressing Comments Regarding Emergency Access for Trail Systems:

1. Trail Systems: There are currently no standards for emergency access for trail systems in the UDO. On occasion, emergency service personnel has a need to access people using trails at Orange County parks and nature preserves administered by the Department of Environment, Agriculture, Parks and Recreation (DEAPR). The draft goal and objectives (Attachment 1) could be implemented and considered by the BOCC in the future as a matter of County policy for the planning and development of future parks or for incorporation into the UDO. It may provide a more flexible approach, responsive to the site-specific environmental issues of individual park sites, if a matter of policy.

FINANCIAL IMPACT: Existing Staff has accomplished the work thus far on this project and will complete any remaining work that is authorized by the BOCC.

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

1. Accept the update,
2. Discuss the concerns and options as necessary, and
3. Provide staff with feedback on any potential regulatory amendments.

Attachment 1

Emergency Access to Trail Systems at Orange County Parks

Draft Goal and Objectives

The following are draft goals and objectives for accommodating emergency service personnel gaining access to people using trails at Orange County parks and nature preserves administered by the Orange County Department of Environment, Agriculture, Parks and Recreation (DEAPR).

Orange County parks that currently have trails are Efland-Cheeks Park, Cedar Grove Park, Fairview Park, River Park, and Little River Regional Park and Natural Area. The Jones Creek Greenway connects Lake Hogan Farms with Morris Grove Elementary School. Future trails are being designed for the future Blackwood Farm Park, Hollow Rock Access Area, and at the Seven Mile Creek Preserve.

These draft goal and objectives are intended for review and comment by the Parks and Recreation Council, the Emergency Services Department, and the Orange Unified Transportation Board.

Overarching Goal: Trail systems will be designed and constructed to accommodate the maximum enjoyment of trail users, however, in doing so, there will be considerations for topography, sedimentation and erosion control, the avoidance of sensitive natural and cultural resources, public safety, and the provision of staging areas for vehicles to access trail users in times of emergency.

Objective #1 – Trails will be constructed and maintained with a minimum clearance width of six feet (even if width of the trail tread is narrower) and a minimum clearance height of eight feet. [Single-track bike trails at Little River Park may have sections less than six feet of clearance.]

Objective #2 – Trail networks greater than one mile in total length will be marked with periodic signs that specify distances from trailheads and with GPS reference points for users to identify their location along the trail.

Objective #3 – Trails will be shown on maps displayed on kiosks located at trailheads, and maps will be available from the park office (for parks that have an office) and from the DEAPR Central Recreation Center in Hillsborough.

Objective #4 – Emergency Service vehicles will have access to trails in such a way that larger vehicles can reach staging areas identified within the park (and on maps) and smaller all-terrain vehicles (e.g., Gator) can access most sections of the trail. Staging areas will be located where feasible within close proximity (approximately ¼ mile) to any point along the trails. Keys to any gates/ bollards

Attachment 1

will be provided to the appropriate Emergency Services provider(s) and will be available from the park office (for parks that have an office).

Objective #5 – Each park containing a trail network will develop an Emergency Action Plan, including protocol and procedures for trail-related emergencies.

Attachment 2

EXCERPT FROM MINUTES – SEPTEMBER 3, 2014 PLANNING BOARD MEETING

AGENDA ITEM 9: REGULAR AGENDA

UNIFIED DEVELOPMENT ORDINANCE PRIVATE ROAD AND ACCESS

STANDARDS: To receive information about a current multi-department advisory board project involving the review of private road and access standards and to receive the Board's comments.

Abigaile Pittman presented abstract.

Lisa Stuckey: Would the pullover roads apply just to 18 foot wide roads?

Abigaile Pittman: It would apply to any one way road.

Paul Guthrie: What is the definition of a private road?

Abigaile Pittman: One that is not accepted for public maintenance. Not built to public maintenance standards.

Paul Guthrie: There are no use standards or number of properties attached to define it; it has to do strictly with the shape and construction of the road.

Abigaile Pittman: Yes.

Pete Hallenbeck: A private road is one that NCDOT does not maintain.

Paul Guthrie: Any existing non-public road servicing more than one household is grandfathered until an effort is made to do some sort of planning development.

Abigaile Pittman: The new regulations are not retroactive.

Paul Guthrie: What would trigger on that situation this proposal?

Michael Harvey: Someone coming in and trying to subdivide any of those existing lots. There are two dual issues here. We have an addressing ordinance that is enforced by Orange County Land of Records via the attorney's office that spells out road serving x number of lots or certain size has to be name. That is part of the ordinance. County subdivision regulations have been adopted over the years. We didn't get private road standards until 1998-2000 so the County has a history of subdivision development some of which have been done under different standards. We also have several properties in the County that have exercised their right under the general statute to develop their property or subdivide their property through the exempt subdivision process. By state law, we have no review authority and cannot hold them to any specific requirements identified in our subdivision standards.

Abigaile Pittman: The standard we are recommending to address those exempt subdivisions is to develop a requirement that all newly created lots have access to a complying road, public or private, for emergency responders.

Attachment 2

Tony Blake: I do want to have this discussion around water supply at some point.

Lisa Stuckey: I do think it would be a good idea to say that if you have a gate we can't get through, there should not be any discussion about who owes what for whom.

Craig Benedict: It is important how we differentiate what would go in the UDO and what needs to be handled by other ordinances.

Paul Guthrie: In the emergency access to trails systems, there are two sides to it, one is providing the access points but the trails may not be able to accommodate the size vehicles we have. We may need smaller vehicles.

Pete Hallenbeck: I like the three lots on the driveway.

Craig Benedict: You will probably need a road name.

Pete Hallenbeck: We have a few roads in Efland we cannot get the fire trucks down. With the pullovers, anyone who had to go through a 1700 foot road would appreciate those pullovers.

**ORANGE COUNTY
BOARD OF COMMISSIONERS
ACTION AGENDA ITEM ABSTRACT
Meeting Date: February 19, 2015**

**Action Agenda
Item No. E.3**

SUBJECT: "The Edge" Proposed Development Project in the Town of Chapel Hill's Planning Jurisdiction

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N)

No

ATTACHMENT(S):

INFORMATION CONTACT:

1. Area Map
2. Block Plan and Conceptual Site Plans
3. Key Discussion Topics
4. Transportation Notes

Craig Benedict, Director 919-245-2592

PURPOSE: To receive a planning based report on a proposed development project known as "The Edge" located in the Town of Chapel Hill's planning jurisdiction on Eubanks Road at Interstate 40.

BACKGROUND: The review of this project was based in the Joint Planning Area planning courtesy review process area. Although economic development and finance are familiar with the proposal, their direct involvement was not requested at this stage. The Town of Chapel Hill has received a Special Use Permit (SUP) application for a proposed development project known as "The Edge" located on 53.75 acres on Eubanks Road at the Interstate 40 off ramp. Portions of the project were located in Chapel Hill's JPA Transition Area but is now part ETJ and part Town limits. The land use map is noted as "Mixed Use - Office Emphasis" in this area. County planning staff has determined the proposed project is generally consistent with this land use classification if the project is predominantly non-residential. The prior JPA land use text did not have percentages of the mix but described this as an "Office/Institutional Area".

The application materials state that current market demands in this suburban location limit the ability to bring the project to fruition if office is to be the predominant use. The zoning code and Special Use Permit process employed for this project offers a great deal of project mix (i.e. amount of non-residential versus residential) flexibility. The application proposes the following minimum and maximum use percentages:

	<u>Minimum</u>	<u>Maximum</u>
Residential	43%	75%
Commercial	15%	44%
Office	6%	29%

The project could include 23 or more low to mid-rise buildings (multi-family, commercial/retail, office, bank, and hotel) with 600,000 to 837,000 square feet of floor area.

See Chapel Hill staff's 'Key Discussion Topics' attachment 3. The Town of Chapel Hill's staff report is available at: <http://www.townofchapelhill.org/home/showdocument?id=24598> and site plans can be viewed at <http://www.townofchapelhill.org/home/showdocument?id=24596> with application materials available at <http://www.townofchapelhill.org/home/showdocument?id=24597>. Although lengthy, the staff report and application materials contain a wealth of information about the proposed project.

The SUP application includes four conceptual site layouts. This is different from the Town's typical SUP application which usually includes only a single layout. The idea is to provide the parameters under which the site will be developed, establishing minimum and maximum floor areas, build-to lines, block frontage percentages, building heights, etc. and as the final densities, users, building footprints and tenant requirements are identified, the developer will work closely with Town staff to provide final plans that meet not only the requirements of the development but also the vision of the Town and the applicable ordinances.

County Planning Comments

County Planning staff is focusing on the aspects of the project that have a more direct effect on the County and its residents and as noted earlier, the jointly developed land use plan of the general area near the intersection of I-40 and MLK. An interesting note is that this site is proximate to the 'population center' of Orange County. This means the shortest cumulative drive distance to a central point based on population countywide.

Schools Adequate Public Facilities Ordinance

A Certificate of Adequate Public Schools (CAPS) must be issued by Chapel Hill-Carrboro City Schools prior to issuance of a Zoning Compliance Permit for any phase proposing residential dwelling units. A maximum of 806 multi-family (MF) dwelling units are being proposed.

At current expected student generation rates of 0.07 students per unit, approximately 56 students.

However, it should be noted that the County contracted with a consultant last year to study student generation rates in newer housing types (defined as constructed within the past 10 years) and the preliminary results of the study is showing higher student generation rates in newer MF housing (0.20 student per multi-family unit).

At these preliminary rates, 161 students would be expected from 806 multi-family units. Project specific MF that have been built have shown a wide array of student impacts from extremely low (i.e. 1 or 2 students per 100 units) to as high as single family at approximately 73 students per 100. This variation is related to number of bedrooms, location and how and who the developer markets the project.

Transportation Improvements Proposed

The application materials included information on proposed transportation improvements:

- Widening Eubanks Road in both directions
- Installing two new 4-way traffic signals on Eubanks Road
- Adding additional turn lanes to each leg of the existing traffic signal at the Eubanks

Road/MLK intersection

- Modifications to both the ingress and egress routes from the park-and-ride lot and BRT program.

Orange County Transportation Staff Comments

The North-South corridor should be shared by multiple transit agencies, including Orange Public Transit (420 Route), Triangle Transit, and Chapel Hill Transit (Interlining). The location of a northern terminus park and ride lot for connection to any future BRT in the MLK corridor should be considered during the review of the EDGE development. Keeping the proximity of the existing park and ride lot (downsized or structural) would facilitate 2 strong retail opportunities: one, allow commuters to shop nearby before return to exurbia and two, allow students from campus and MLK areas to shop and use retail and restaurants creating transit demand nodes at both north and south ends promoting efficiency.

Stormwater

The project is located in the Jordan Lake Unprotected Watershed and the Town of Chapel Hill enforces its stormwater regulations within its municipal limits. However, County staff may suggest increasing mitigation of stormwater impacts. While the development will be required to preserve stream buffers and install best-management type post-development stormwater management facilities, primarily for peak flow attenuation and nutrient export reduction, the County would be interested in assisting in one or more of the following:

1. Upgrading the proposed stormwater management facilities to a higher level of nutrient reduction, such as including bio-retention or stormwater wetlands, with the goal of reaching or beating export limits recognized by Orange County (2.2 pounds per acre nitrogen & 0.82 pounds per acre phosphorus), without compensatory mitigation.
2. Evaluating a portion of the adjacent property for an off-site regional stormwater management facility that would have a net neutral or positive impact on water quality, when contrasted with existing conditions.

The benefits which the applicant may realize include reduction in compensatory mitigation or, in the case of option 2, some potential for increased on-site development. In the case of the latter, Orange County would encourage Chapel Hill to ensure that this “additional capacity” would not be utilized to press the nutrient limits but rather to actually improve the outcome.

Affordable Housing

The applicant is voluntarily proposing to allocate land for 50 affordable on-site multi-family rental units and agrees to pursue funding to bring the units to fruition. This would be equivalent to 7% - 13% (depending on the final mix) of the new housing created within the project. Financing approval for up to 50 affordable units would be pursued for a period of no less than 5-years after SUP approval, and land allocated for the new affordable units would be held for this use during the period. If financing were awarded, the proposed development would target renters earning less 80% of less of the area median income and would remain affordable for 15 – 30 years, depending on the requirements of the funding agency. If Low Income Housing Tax Credits or bond financing is awarded, the project could serve households earning less than 60% of the area median income.

I-40 Road Buffer

Chapel Hill had inquired about Orange County’s Major Transportation Corridor buffer. The applicant had requested clearing near I-40 for additional visibility. While Orange County allows 50% clearing in certain circumstances in the various types of buffers we enforce, we do not allow clearing in the stream buffers.

Other Services

Orange County has been in the process of developing estimates of county service impacts. Adding residents to the county is expected to result in some impact to governmental services provided by Orange County. Examples of such services include social services, health services, library services, and emergency management services. Although this specific human service cost may be minimal, school impacts are appreciable. Due to the potential variability of housing and student generation, no impacts were financially totaled as part of this abstract but staff has the information if necessary. The revenues and employment gained are definitely positive. Because the proposed development will be annexed and be within the Town of Chapel Hill's municipal units, the Town will provide police and fire protection to the development.

FINANCIAL IMPACT: There is no financial impact to receive a report. If approved and developed, the proposed project would add to the tax base and retail would produce sales tax. The project would also require governmental services, some of which are provided by Orange County. The exact dollar amounts related to the tax base increase and the governmental services have not been calculated due to the variability in the mix of uses in the project. The applicant has not asked for county financial participation to date.

RECOMMENDATION(S): The Manager recommends the Board receive the staff presentation.

LAND PARCEL SUMMARY

PIN	ACREAGE	OWNER
9880084202	29.57	PARKWEST LLC
9880076840	1.97	MORRIS IV, LLC
9880071883	2.89	MORRIS IV, LLC
9870990117	14.44	MORRIS IV, LLC
9870987045	2.46	ROBERT BERNICE SPARROW REVOCABLE TRUST
9870987294	2.42	ROBERT BERNICE SPARROW REVOCABLE TRUST
TOTAL	53.75	

GENERAL NOTES

- PIN'S AND PROPERTY INFORMATION FROM ORANGE COUNTY GIS.
- BOUNDARY FROM SURVEY BY MCADAMS CO. COMPLETED NOVEMBER 2011 AND UPDATED JULY 2013.

LEGEND

- 1,000' REQUIRED NOTIFICATION BOUNDARY
- CORPORATE LIMITS
- PROJECT AREA
- JPA JOINT PLANNING AREA



THE JOHN R. MCADAMS COMPANY, INC.
2805 Meridian Parkway
Durham, North Carolina 27715
License No.: C-0285
(800) 755-5646 • McAdamsCo.com

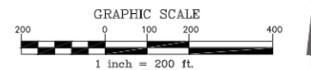
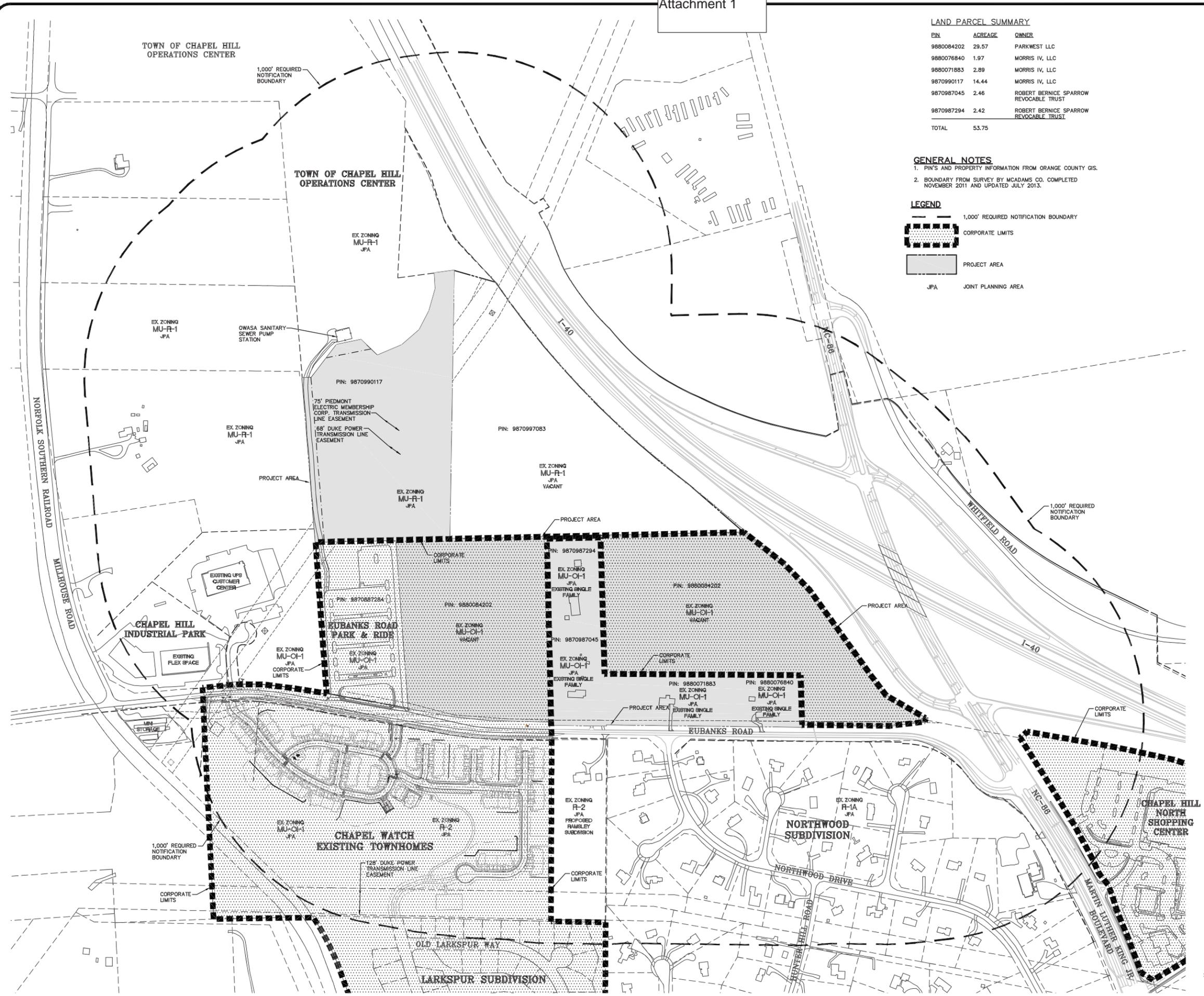


REVISIONS:
 05-25-14 REV PER TOWN COMMENTS
 09-22-14 REV PER TOWN COMMENTS

DEVELOPER:
 NORTHWOOD RAVIN
 4819 EMPEROR BOULEVARD, SUITE 320
 DURHAM, NC 27703
 CONTACT: ADAM GOLDEN
 PHONE: 919-354-3886

the EDGE
 CHAPEL HILL, NORTH CAROLINA
 AREA MAP

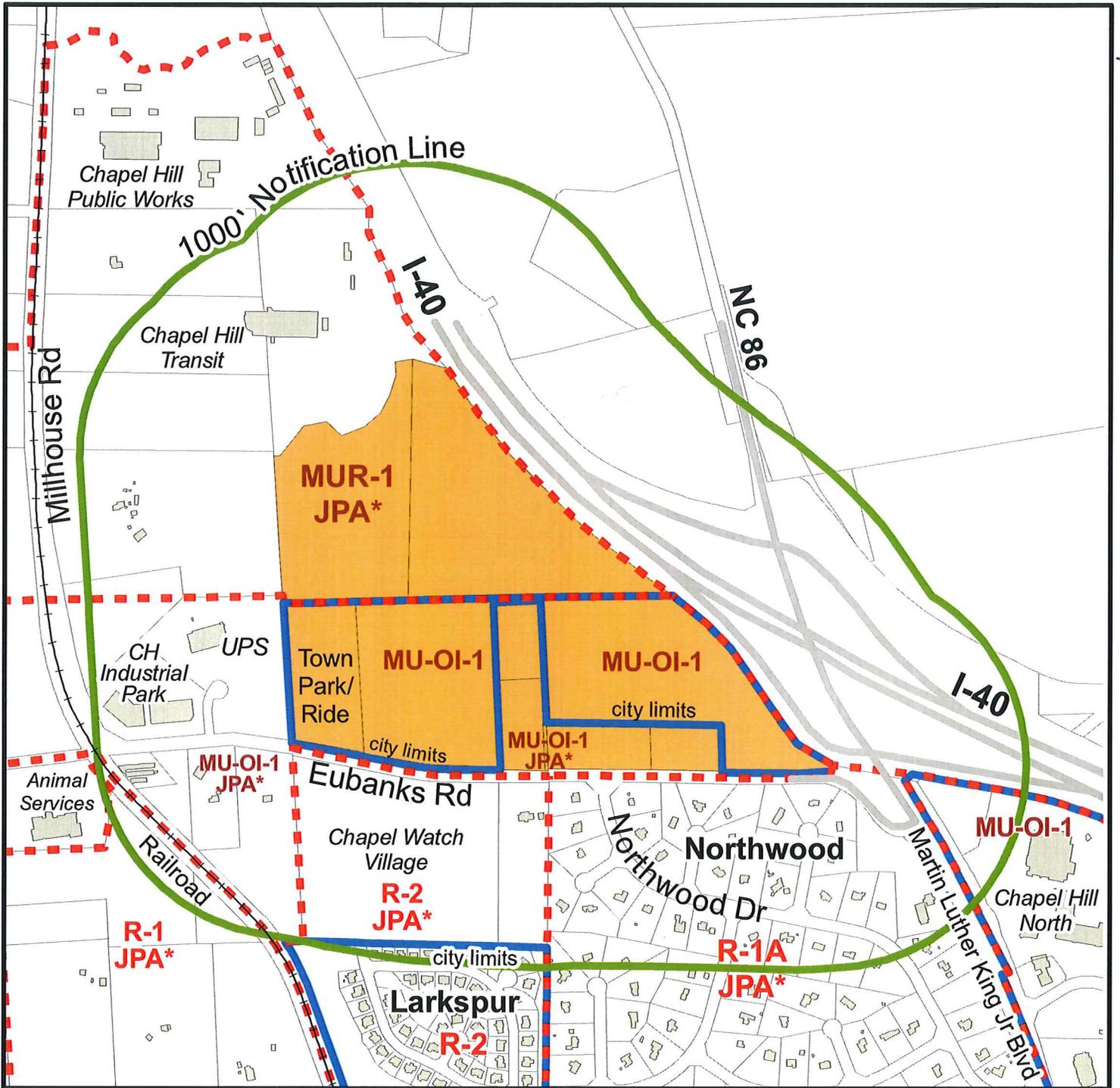
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 PLANNAME: RAV13000-AM1
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 DRAWN BY: -
 SCALE: 1"=200'
 DATE: 02-25-14
 SHEET NO.: C-1



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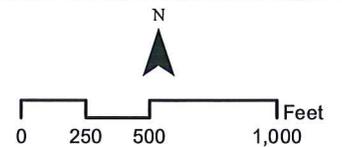


Area Map Eubanks Road Development



	Eubanks Rd Development
	Chapel Hill Zoning
	Chapel Hill City Limits

* JPA: Joint Planning Area



GIS Map prepared by
Town of Chapel Hill
Planning Department
April, 2011

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125 N. Harrington St. Raleigh, NC 27603 919/833-6413 919/836-1280 FAX ClineDesignAssoc.com



Northwood Ravin The Edge Chapel Hill, North Carolina

Special Use Permit

Not For Construction

PROJECT: 013050 DATE: 02.25.2014

REVISIONS: DATE

Resp. to 1st Review 05.23.2014

Resp. to 2nd Review 09.22.2014

DRAWN BY: BG/JMM CHECKED BY: ML

Block Plan

C-4

Attachment 2

LEGEND: PROPOSED VEHICULAR CIRCULATION, TENTATIVE VEHICULAR CIRCULATION, PROPOSED GREENWAY TRAIL, VILLAGE GREEN - POTENTIAL LOCATION, RCD, RCD IMPACT, STREAM, FLOODPLAIN, FLOODWAY, WETLAND

- NOTES: 1. FINAL BLOCK LAYOUT, VEHICULAR CIRCULATION, FLOOR AREAS, MIX OF USES, BUILDING HEIGHTS AND PARKING AREAS ARE TO BE DETERMINED BY THE APPLICANT DURING PREPARATION OF FINAL PLANS (ZCP).

Table: The EDGE - Eubanks Road Site Data Table - Chapel Hill. Columns: Site Area, Area in RCD, Eubanks Road, etc.

Table: Mix of Uses - LUMO Section 3.5.1. Columns: Residential, Commercial, Office, etc.

Table: Proposed Parking - LUMO Section 5.9. Columns: Multi-Family, Retail, Hotel, Office.

Table: Impervious Area - LUMO Table 3.8-1. Columns: Per centage, Acres, Square Footage.

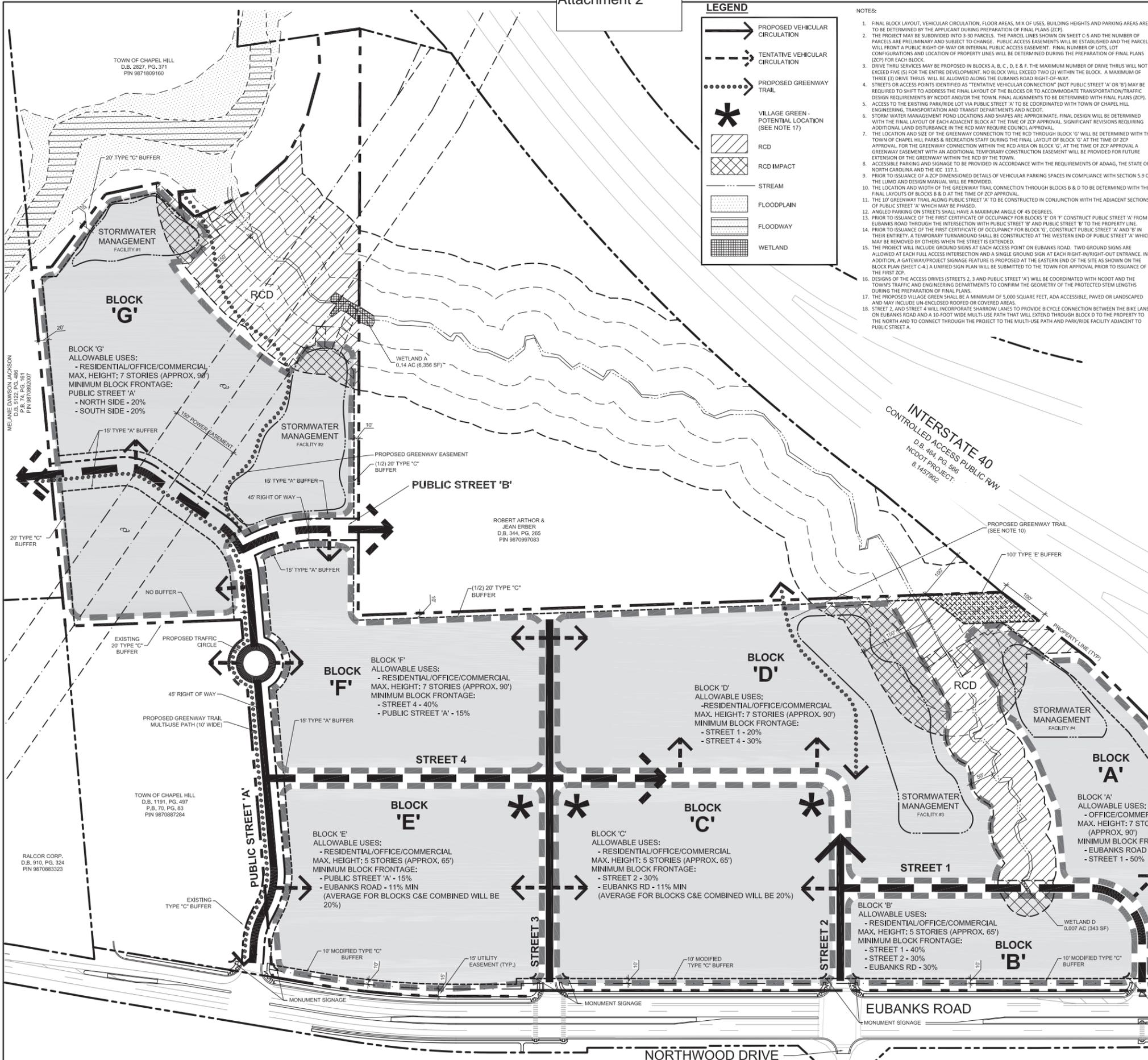
Table: Building Height - LUMO Table 3.8-1. Columns: MU-D-1, MU-R-1.

Table: Landscape Buffers - LUMO Section 5.6. Columns: MU-D-1, MU-R-1.

Table: Tree Canopy Coverage - LUMO Section 5.7.2. Columns: MU-D-1, MU-R-1.

Table: Recreation Area - LUMO Section 5.5. Columns: Rec. Space Ratio, Project Area.

Table: 50' MODIFIED TYPE 'E' BUFFER. Columns: Buffer Type, Property Line.



Block Plan 01 Scale: 1" = 100'



Northwood Ravin The Edge Chapel Hill, North Carolina

Special Use Permit

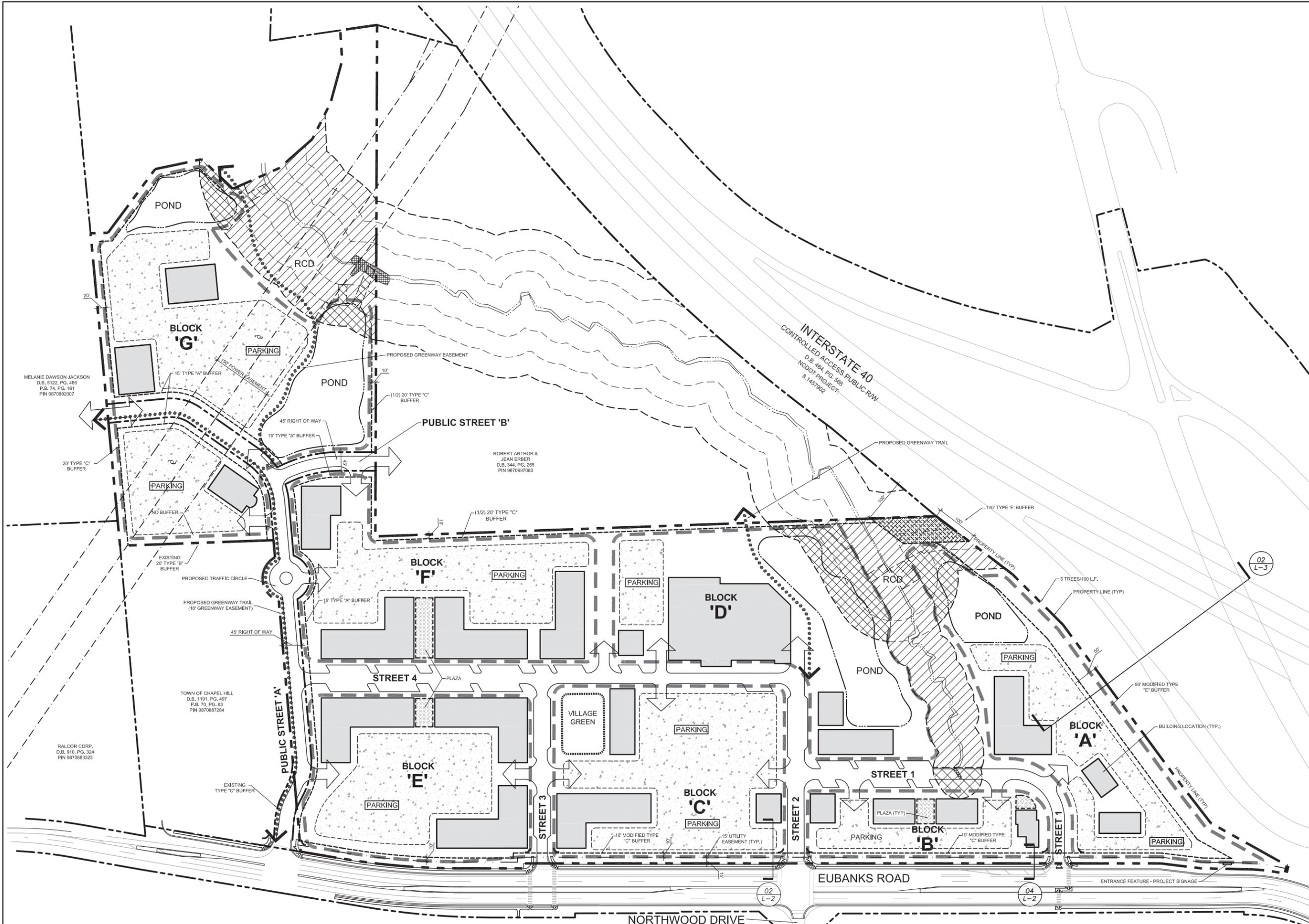
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PROJECT: 013050	DATE: 02.25.2014
REVISIONS:	DATE
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Resp. to 2nd Review	09.22.2014

DRAWN BY: BG/JMM
CHECKED BY: ML

Conceptual Site Layout- Example 1



Conceptual Site Layout- Example 1
Scale: 1" = 100'

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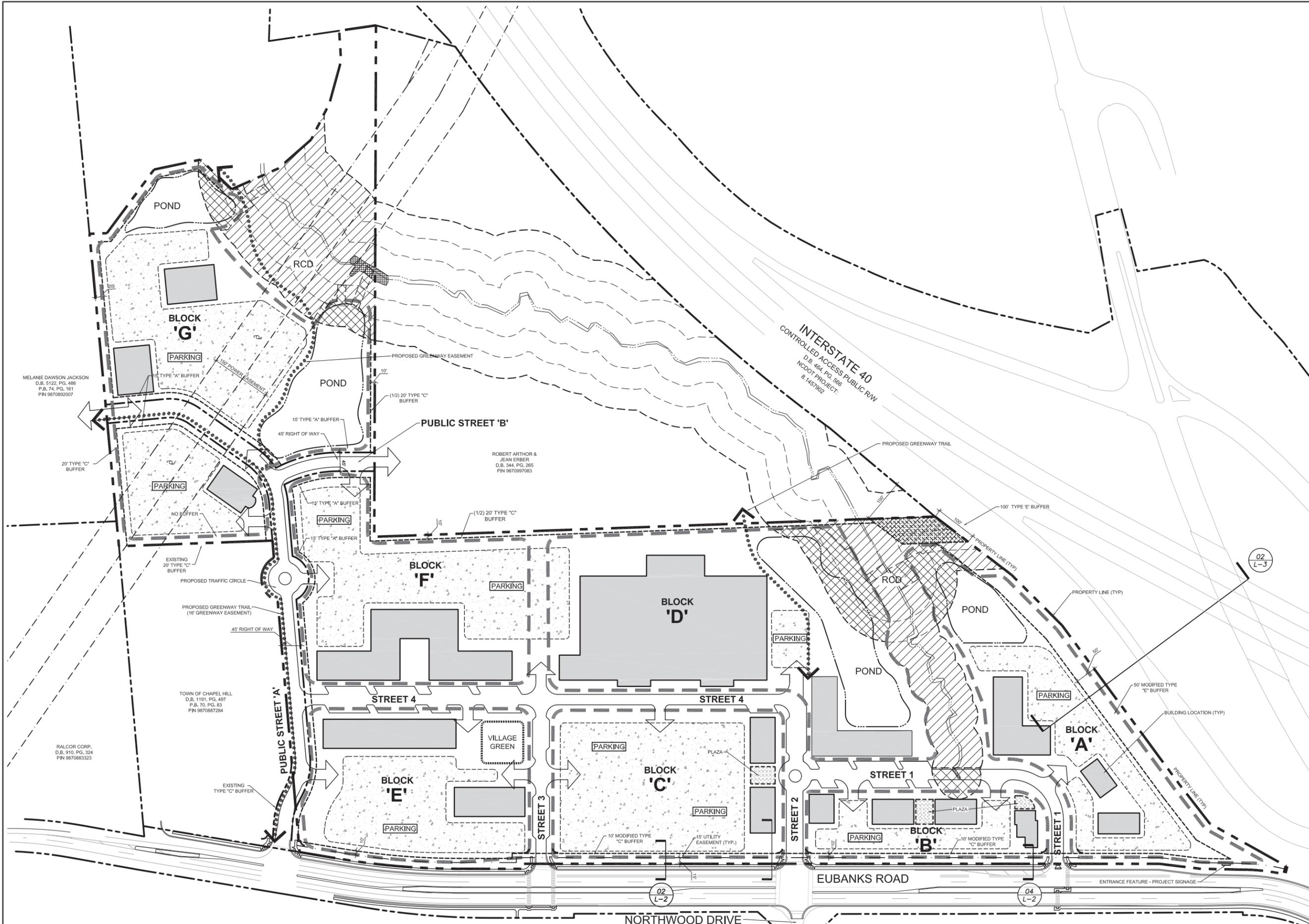
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Conceptual Site Layout- Example 3

C-4.3



Conceptual Site Layout- Example 3

Scale: 1" = 100'

01

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Northwood Ravin The Edge Chapel Hill, North Carolina

Special Use Permit

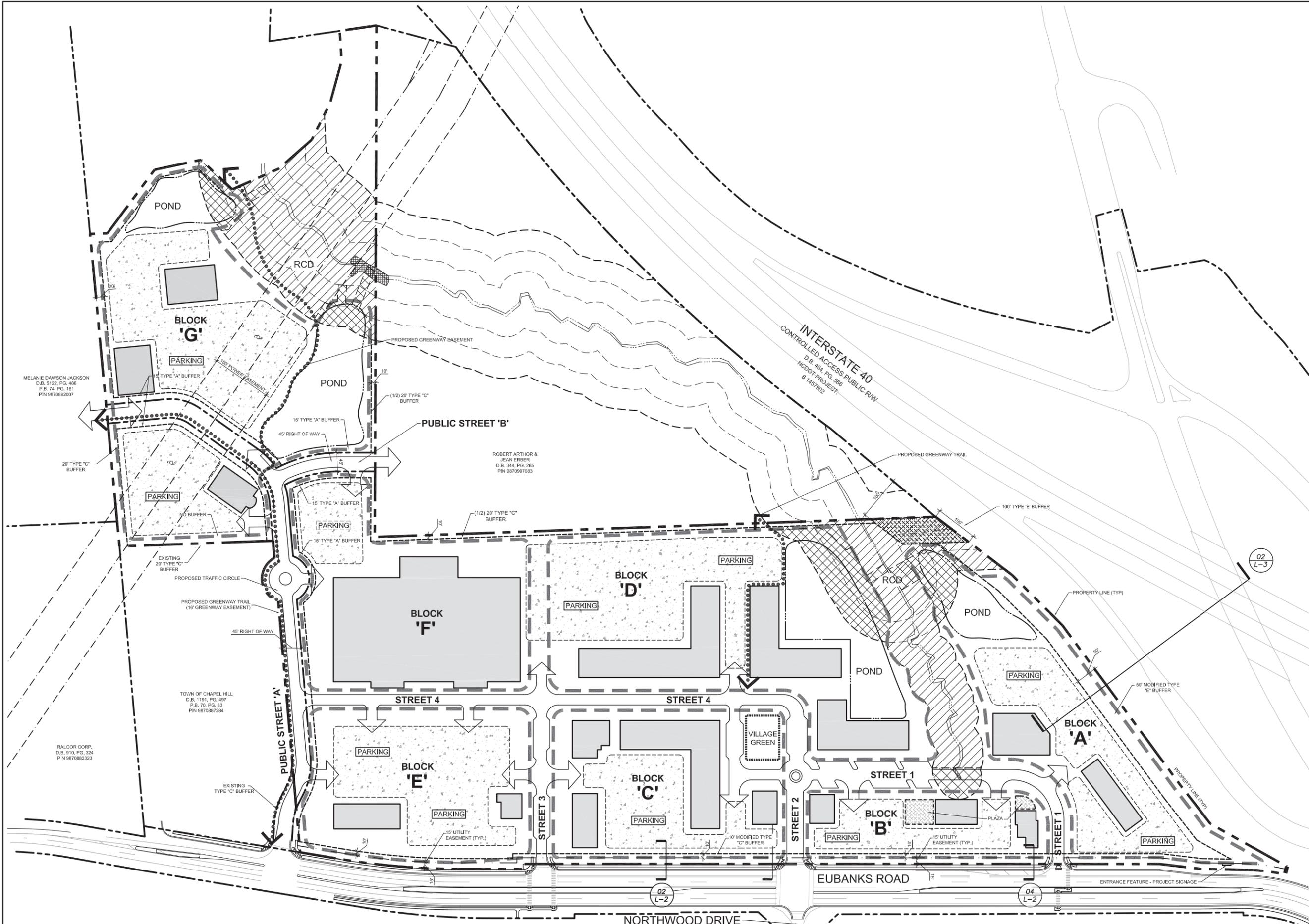
Not For Construction

Not For Construction

PROJECT: 013050	DATE: 02.25.2014
REVISIONS:	DATE
Resp. to 1st Review	05.23.2014
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Conceptual Site Layout- Example 4



Conceptual Site Layout- Example 4

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KEY DISCUSSION TOPICS

During review, staff identified several topics for discussion:

1. Economic Development Opportunity

This project and property has been of interest by the Town for a number of years. The Council Committee on Economic Development instructed staff to develop the original concept plan to help in facilitating growth and good use of the property. The current proposal has the potential to add over 400-700 residential units, 140,000-416,000 sq. ft. of retail/hotel space, and 60,000-270,000 sq. ft. of office. The project could add as much as 935,000 sq. ft. of floor area.

2. Affordable Housing

The applicant is proposing to allocated land for 50 new affordable rental units. This would be equivalent to 7%-13% (depending on the final mix) of the new housing created within the project. Financing approval for the 50 new affordable units will be pursued for a period of no less than 5-years after SUP approval, and land allocated for the new affordable units will be held for this use during the period. Examples of financing options that could be pursued include Low Income Housing Tax Credits (LIHTC) and tax-exempt bonds.

3. Eubanks Road Park and Ride Lot

The Edge project is adjacent to the Town's Eubanks Road park/ride lot. The August 2013 Traffic Impact Study identified several roadway improvements that are required to address existing traffic problems as well as increase in the traffic volumes from the proposed development. The improvements include a redesign to the ingress and egress along Eubanks Road.

4. Modifications to Regulations

The applicant is seeking Council approval of modifications to the Land Use Management Regulations for these standards:

- a. Tree Canopy Percentage: Reduce the minimum tree canopy coverage from 40% to 20%.
- b. Building Height: Increase the primary building height along Public Street 'A' & 'B' from 50-feet to 59-feet.
- c. Building Setbacks: Reduce the perimeter parking lot street setbacks and interior/street setbacks.
- d. Landscape Buffer Widths: Reduce proposed landscape buffer widths around the perimeter of the site.
- e. Mix of Land Use Percentages: Change the mix of land use percentages (residential, commercial, office) required in the Office Institutional-1 and Residential-1 Mixed Use Districts.

- f. Signage: Allow multiple ground signs along Eubanks Road, increase the size of wall signs and add for a large iconic gateway-private art sign feature near the Eubanks/Road Martin Luther King Jr. Blvd. intersection.
- g. Tree Survey: Increase the diameter at breast height standard from 6-inches to 12-inches.
- h. Burial of utilities underground: Underground installation of new or relocated utilities is not required for activities located outside the boundary of the development, or associated with the reconstruction of Eubanks Road.

For additional discussions on these topics, please refer to the applicants' attached materials.

Transportation Notes:

A TIA for The EDGE development (*The EDGE Development Traffic Impact Study – 2013 Update Final Executive Summary*) was completed in August 2013. The development's improvements to Eubanks Road¹, which have been reviewed and approved through both the Chapel Hill Transportation Division and NCDOT Region 5, will not only support existing daily traffic volumes, but will incorporate through lanes, turn lanes and storage volumes to improve existing traffic. Fourteen (14) intersections were analyzed (including intersections created as part of the development); the Build scenarios are forecast to improve congestion levels at two (2) intersections (Martin Luther King, Jr. Boulevard and the I-40 eastbound ramp; Martin Luther King, Jr. Boulevard and Eubanks Road), and are forecast to degrade one (1) intersection to a "failing" LOS E (Eubanks Road and Old N.C. 86).

High-capacity transit investment will be necessary to provide alternatives to single-car travel through the corridor; mode shift from cars to transit will mitigate congestion within the corridor and support efficient mobility for all transportation network users. Therefore, Orange County endorses the following improvements reviewed in the *North-South Corridor Study (NSCS)*² (scheduled for completion in September 2015):

- The 2040 Capital Area MPO and DCHC MPO *Metropolitan Transportation Plan* recommend Bus Rapid Transit (BRT) on the Chapel Hill Martin Luther King, Jr. Boulevard Corridor. The types of improvements discussed in the plan include more frequent service/improved headways, additional service hours during evenings and weekdays, realigned bus routes to connect with rail routes, new technology, such as satellite tracking of buses, and circulator service to provide connections for the "last mile" for transit riders.
- The *NC 86 / Martin Luther King Jr. Boulevard Corridor and Town-Wide Pedestrian Safety Evaluation Study* makes several recommendations that seek to improve conditions for pedestrian, bicyclists and transit users in the corridor. Some of the specific recommendations include filling in gaps in sidewalk coverage, stripe crosswalks, constructing bus pullouts, and creating raised medians and narrow vehicular lanes.

Footnotes:

¹Summary of Transportation Improvements Proposed for The Edge

The application materials included information on proposed transportation improvements:

- Widening Eubanks Road in both directions
- Installing two new 4-way traffic signals on Eubanks Road
- Adding additional turn lanes to each leg of the existing traffic signal at the Eubanks Road/MLK intersection
- Modifications to both the ingress and egress routes from the park-and-ride lot.

²The North-South Corridor Study (NSCS) is an 18-month project that is being led by Chapel Hill Transit (CHT) in coordination with the Chapel Hill Transit Partners, which includes the Town of Chapel Hill (ToCH), the Town of Carrboro (ToC) and the University of North Carolina - Chapel Hill (UNC). The project will identify and evaluate a series of transit investment alternatives for implementation within the study corridor, which runs along the Martin Luther King, Jr. Boulevard (Historic Airport Road/NC Hwy 86), South Columbia Street, and US 15-501 South. This corridor, which is approximately 7.3 miles long, has its northern terminus at Eubanks Road and Martin Luther King, Jr. Boulevard and its southern terminus at US 15-501 near the Southern Village mixed-use development. The study will expand on previous planning work to identify a locally-preferred transit investment alternative that facilitates safe, efficient and expanded levels of mobility within the increasingly busy study corridor, and to improve connectivity between the corridor and the Research Triangle region. Additional reasons for this study include improving connections with other local and regional transit routes (including the planned Durham-Orange Light Rail line), supporting future development within the corridor, increasing transit mode share and ridership to the UNC campus/hospital, the downtown area, and improving multi-modal connectivity options between the new Carolina North campus on the northern end of the study corridor, Southern Village at the southern end of the corridor, and the rest of the study corridor.