Approved 12/3/14

MINUTES
ORANGE COUNTY PLANNING BOARD
NOVEMBER 5, 2014
REGULAR MEETING

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.

Paul Guthrie: I would encourage you that before the next one comes up that a standard process be created for this. The communications from Chapel Hill for the County is minimal at best. I would say getting some sort of standing policy about how these are dealt with and how it is communicated would be a very good idea.

Andrea Rohrbacher: I agree with Paul about the communications but because of other issues with this area, they monitor very carefully and have been active participants, this has come up before.

Craig Benedict: The BOCC asked me to meet with ETJ and Joint Planning area representatives in Mebane, Hillsborough, Carrboro and Chapel Hill to see if they understand the role of being a representative in an area that does not vote. A meeting was held with Orange County representative on Tuesday, October 28, 2014.

AGENDA ITEM 3: APPROVAL OF MINUTES
October 8, 2014 Regular Meeting

MOTION by Bryant Warren to approve the minutes. Seconded by Tony Blake.
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.

AGENDA ITEM 6: CHAIR COMMENTS

AGENDA ITEM 7: PLANNING BOARD ANNUAL REPORT AND WORK PLAN FOR COUNTY COMMISSIONERS' ANNUAL PLANNING RETREAT: To discuss the input form for the annual BOCC planning retreat in early 2015. The annual report informs the BOCC of past year's activities of advisory boards/commissions and assists in overall County work planning.
Presenter: Craig Benedict, Planning Director.

Craig Benedict reviewed the annual report/work plan

Paul Guthrie: What is the definition of negative land use?

Craig Benedict: It could be an adult entertainment establishment. We have been working with the attorney's office to develop what are also known as sexual oriented businesses. Regulations cannot be completely prohibited of such uses but you can regulate them.

Paul Guthrie: I assume that terminology as defined will not encroach upon other things you don't have jurisdiction on. For instance, farming.

Craig Benedict: Farming will continue to be exempt from zoning law.

Lydia Wegman: The rural enterprise item, is this agricultural support enterprises already in the UDO?

Craig Benedict: It is in the UDO for areas in the rural part of the County outside the rural buffer. There is dialogue with Chapel Hill and Carrboro about any uses such as ag support enterprises being allowed in the rural buffer. There needs to be joint approval.

Lydia Wegman: Will that come to the Planning Board?

Craig Benedict: It has been to the Planning Board already as far as the abridged list of uses for the rural buffer. If Chapel Hill or Carrboro suggest a shorter list, we will bring it back to this Board.

Lydia Wegman: Is there a way to get more information in writing about the list and what is being considered?

Perdita Holtz: It is on the February 2014 quarterly public hearing materials, the one about the rural buffer.

Tony Blake: The new zoning you are talking about, what specific areas? Would it be the Efland area and the Eno area?

Craig Benedict: Our economic development zones. There are areas around Hillsborough and the Efland/Buckhorn/Mebane corridor.

Paul Guthrie: Do you see this as a way to begin to bank potential sites that are quick to move or as a classification to ease individual requests?

Craig Benedict: Both. You do want to ease the development process but the first part of your question was if there are sites that would have a better retailability, you do need to preserve those sites for retail.

Tony Blake: I have been reading about form based codes and zoning. This sounds like you are leading up to that.

Craig Benedict: It is more of a mixed use with parameters of development.

Tony Blake: I would love to hear from Steve Brantley. To come and talk to us and give an overview.

Lisa Stuckey: When I came, we were talking about the implementation bridge. Have most of those things been ticked off or no longer relevant?

Tony Blake: Transportation, not so much.

Craig Benedict: There are still items that need to be implemented and are step by step like the Efland Mebane Small Area Plan.

Lisa Stuckey: This was a document that came out of the UDO process. Things they didn't address.

Craig Benedict: We called it the bucket list. You can't address all these things at once.

Perdita Holtz: The easy stuff has been done and now we have moved into the hard stuff like the public hearing process changes.

Lisa Stuckey: Sometimes things become irrelevant and sometimes things get forgotten.

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

AGENDA ITEM 8: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENT: To continue discussion and provide input on 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. This item was heard at the September 8, 2014 quarterly public hearing and was discussed at the October 8 Planning Board meeting. Discussion is expected to focus on the quasi-judicial process.
Presenter: Perdita Holtz, Planning Systems Coordinator

Perdita Holtz reviewed PowerPoint Chart

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

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

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

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

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

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

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

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

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.

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

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

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

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

Lydia Wegman: If the BOCC has already made the decision, there is no opportunity for anyone to make comments.

Perdita Holtz: They should comment before the public hearing at the Planning Board or at the public hearing.

Lydia Wegman: What is the purpose of having this additional opportunity for comment after the public hearing is closed.

Perdita Holtz: There isn't an additional opportunity via statutes, people can continue to comment. It is not like a quasi-judicial process.

Craig Benedict: In the three cases the BOCC can decide, if they defer their decision, any input that comes from the citizens can still be considered. If it gets referred back to the Planning Board, the citizen can still provide comment. The only case it would not work is if the BOCC heard everything they thought they needed to decide that night.

Tony Blake: Where along this process line is the community information meeting?

Perdita Holtz: The information meeting 45 days ahead of time is associated with Special Use Permit applications which are not legislative but are quasi-judicial.

Michael Harvey: Neighborhood meetings are also for major subdivision and fire stations.

Tony Blake: That is a localized place to make comments and the Planning Board rep should be notified and invited to that meeting. This seems to cry out for a Neighborhood Information Meeting.

Perdita Holtz: We were kind of looking at it as the Planning Board meeting would be the prelude to the public hearing.

Tony Blake: They are involved by the applicant. You are making the distinction that these are not text amendments. The Neighborhood Information Meeting is more important for something like this that is not a text amendment than a Special Use Permit.

Perdita Holtz: The whole point of having the Neighborhood Information Meeting for the Special Use Permit is so people can understand that is a very special process and that you will have to hire experts to represent you.

Tony Blake: A concrete example is the Mountains to Sea Trail. I would think that sort of process would be valuable there.

Perdita Holtz: I think that DEAPR is holding meetings on the Mountains to Sea Trail.

Tony Blake: I am getting pounded by this new gas pipeline.

Michael Harvey: The BOA held a public hearing on the gas line proposal which was advertised and notifications were sent. We were on tenuous ground as to whether the hearing was required but we had the hearing and went through the process.

Bonnie Hammersley: I met with PSNC's representatives with the Chair and Vice Chair and how we can inform people better about those issues.

Paul Guthrie: Having managed the acquisition of trails for snow mobiles and hiking, etc. in Wisconsin I can tell you that it would be good to keep a master file of all communications that come in whether the are timely or not for information.

Lisa Stuckey: Going back to the discussion of the suggestion to change our process, if it's related to the change, now is the time. Perdita, do you need a vote or consensus?

Perdita Holtz: For a consensus that says this flowchart captures the discussion at last month's Planning Board meeting.

Laura Nicholson: I like the flowchart and I think it does capture what we have been talking about. When you get to the last bubble it gets wordy. It says Planning Board members would be encouraged to attend, could we say expected to attend so it sounds more like we care about being there.

Lisa Stuckey: In the description of the Planning Board's responsibilities and what people see when they are thinking about applying to the Planning Board, it doesn't mention the quarterly public hearings, it mentions only the monthly meetings.

Laura Nicholson: I agree. If it is in there as an expectation then the idea is that you should know that upfront.

Lisa Stuckey: Now there is a quarterly public hearing, people have been making comments at our meeting, the process hasn't been explained to them, we are expanding the number of times a person can comment from only the quarterly public hearing to our meeting in a more formalized way, the public hearing, they have another chance to speak. We are expanding the number of times people can speak; do you think it will slow the process?

Perdita Holtz: On controversial items, possibly.

Buddy Hartley: I like the setup. It does do what we have talked about for years.

Lisa Stuckey: Is there a consensus?

Lydia Wegman: People need to understand if the BOCC makes a decision that night, it is over. People need to understand upfront that is a possibility.

Tony Blake: I agree with the caveat that if you are changing zoning there should be a public information meeting.

Perdita Holtz: That would make the process longer.

Lisa Stuckey: In the letter that goes out, notifying the people of the Planning Board meeting, there could be a note of encouragement that if you have questions or concerns, attend and make your feelings known.

Laura Nicholson: At the bottom bubble, it says the public hearing will be closed at the conclusion of the hearing and written comments will no longer be made. You say hearing a lot and you are talking about written comments would no longer be required, you might want to say solely written comments wouldn't be required.

Perdita Holtz: This flowchart is for people who are somewhat familiar with the process, so they can make decisions about changes from the existing process, it's not to be distributed to lay people who know nothing about how the process works.

Andrea Rohrbacher: From my experience, no matter how hard you try, you will have someone who says I didn't know.

Perdita Holtz: Moving on to the quasi-judicial process. Reviewed abstract. Three questions that may frame the discussion. One, do you think the Planning Board should make recommendation on quasi-judicial. Two, if you decide you want to continue to make a recommendation, when would that occur? Three, if the Planning Board is no longer attending the public hearings as an official board, what would the Planning Board meeting be?

Paul Guthrie: Does the BOCC feel they need a buffer?

Perdita Holtz: I don't know what the BOCC feels.

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 and it could expedite the process.

Tony Blake: 99.99% of the time, staff is correct that it meets or doesn't meet….but there are cases where there is something they are not aware of.

Lisa Stuckey: But we can't receive that information.

Tony Blake: If staff says it meets this checklist and you know otherwise, that is not testimony….

Lisa Stuckey: When we go through the checklist, is that before or after the public hearing?

Perdita Holtz: After the public hearing.

Lisa Stuckey: The Planning Board is not allowed to take additional testimony so we can't insert things we have heard.

Craig Benedict: You can ask questions. You can ask the applicant to provide information.

Lisa Stuckey: Can you ask a member of the public who spoke?

Craig Benedict: You have the right to cross examine anyone at the hearing.

Lisa Stuckey: If we don't have a quorum and we come back to our meeting, are we allowed to go forward with the checklist? If a quorum of the Planning Board is not required at the public hearing, can we proceed?

Lydia Wegman: What would be the role of the Planning Board after the public hearing?

James Bryan: From a legal standpoint, the public hearing, as the trial, once that is closed, there will be no other comments considered by the Board except for the Board talking among themselves and to their attorney. My belief now is the current process, if we have a written comment after the hearing is closed, it should not be considered from a legal perspective.

Lydia Wegman: The way it is set up now, any comment that comes in after the public hearing are a problem?

James Bryan: Yes.

Lydia Wegman: Your concern is whatever comments are coming in have to come in at the public hearing or before the public hearing?

James Bryan: At the public hearing, at the trial because everything the Board hears, all the parties, which is a legal term, anything the Board hears, I get to hear it being spoken to them, I get to question whoever speaks it to the Board.

Paul Guthrie: Does that also preclude the BOCC in considering the trial of discussing it? You used the analogy of the jury system. A jury can discuss in its own quarters. Who is the jury?

James Bryan: The BOCC. After the public hearing is closed, the only words they can hear are what they heard at the hearing. As a practice, in some jurisdictions, there is no planning board meeting. Other jurisdictions have it set up where it goes to the planning board first and they have a mock hearing. A dry run.

Lydia Wegman: Also an opportunity for citizenry to have information about what is required.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tony Blake: Wouldn't staff do that anyway?

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

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

Bryant Warren: You said if the Planning Board wanted to be at the informational meeting and they had questions about it and they wanted staff to bring it to the BOCC during the quasi-judicial hearing, would that be a recommendation? As long as it is presented to the BOCC.

James Bryan: There is a difference between hearing it and using it as a basis for the decision.

Lisa Stuckey: Do we clarify things or muddy the waters? They can hear it but not base anything on it.

James Bryan: Attorneys will do that. Give you background information, sort of context for it.

Tony Blake: Even presenting new facts that are not in evidence, that is not sufficient?

James Bryan: Right.

Lydia Wegman: A recommendation could be considered by the BOCC if I understand correctly.

Paul Guthrie: Are staff communications directly to the BOCC privileged?

James Bryan: No.

Paul Guthrie: So they are considered just another testifier?

James Bryan: Anytime that staff sends anything to the BOCC it is called a work product and under the public records of law that is available. If it is quasi-judicial, staff isn't supposed to be talking to the Board about the particular question at hand. You deal with it by divulging the communication at the hearing so everyone knows.

Paul Guthrie: The recommendation of staff to the BOCC has to be done as a witness format?

James Bryan: Yes. Again, the statutes aren't the best in the world. The conventional thinking is that you have a board that acts as judges and anyone there has to be a party to it.

Maxecine Mitchell: My understanding from what I've heard, legally we really have no say but we can put information out that would make the BOCC look more in depth at what they are presented. I am ok to say if the Planning Board makes the recommendation. I guess I would go with before. If the Planning Board continues to make recommendations, we don't really need to be at the public hearing meeting.

Bryant Warren: If we get the information from the informational meeting, we make recommendations to staff and they can give it to them. I don't see the need for us to be at the public hearing.

Andrea Rohrbacher: For question one, I would say, yes, we still should make a recommendation and for question two it should be before the public hearing and attendance at the official meeting where all the testimony is being presented would be optional for the Planning Board.

Paul Guthrie: On one hand, I think one of the positive roles of this Board is that it can begin to articulate the sentiment of both itself and people it deals with on issues of public concern. On the other hand, the way this system 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 outside the confines of this Board and this Board's responsibility. I don't think that helps the public decision process at all. I have great problems with the recommendation but I am not sure there is anything else to do.

Buddy Hartley: In the process where we haven't got to the public hearing yet, we would have seen the application, correct?

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

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

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 know.

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

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

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

Tony Blake: Even some more background on the project.

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

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

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

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

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

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

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 have subpoena power and if you don't show up, the Court of Justice can require you to get a contempt of court.

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

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

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

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

AGENDA ITEM 8: COMMITTEE/ADVISORY BOARD REPORTS:

a. Board of Adjustment

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

AGENDA ITEM 12: ADJOURNMENT:

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Pete Hallenbeck, Chair