

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



**AGENDA
ORANGE COUNTY PLANNING BOARD**

**ORANGE COUNTY WEST CAMPUS OFFICE BUILDING
131 WEST MARGARET LANE – LOWER LEVEL CONFERENCE ROOM (ROOM #004)
HILLSBOROUGH, NORTH CAROLINA 27278
Wednesday, December 3, 2014
Regular Meeting – 7:00 pm**

No.	Page(s)	Agenda Item
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- 1. **CALL TO ORDER**
- 2. **3-4 INFORMATIONAL ITEMS**
 - a. Planning Calendar for December and January
 - i. Next regular meeting on January 7, 2015
 - Elect Chair & Vice Chair for the year

- 3. **5-14 APPROVAL OF MINUTES**
November 5, 2014 Regular Meeting

4. **CONSIDERATION OF ADDITIONS TO AGENDA**

5. **PUBLIC CHARGE**
Introduction to the Public Charge

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

Public Charge

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

6. **CHAIR COMMENTS**

No.	Page(s)	Agenda Item
7.	none	OVERVIEW ON COUNTY'S ECONOMIC DEVELOPMENT ACTIVITIES: To receive an overview on the County's economic development activities, as requested at the November 5 th Planning Board meeting. Presenter: Steve Brantley, Economic Development Director
8.	15-36	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 and November 5 Planning Board meetings. Presenter: Perdita Holtz, Planning Systems Coordinator
9.		COMMITTEE/ADVISORY BOARD REPORTS a. Board of Adjustment
10.		ADJOURNMENT

IF AN EMERGENCY OCCURS, OR IF YOU ARE RUNNING LATE FOR THE MEETING, PLEASE LEAVE A VOICE MAIL FOR PERDITA HOLTZ (919-245-2578).

December 2014

December 2014

Su	Mo	Tu	We	Th	Fr	Sa
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January 2015

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	Sun	Mon	Tue	Wed	Thu	Fri	Sat
Nov 30 - Dec 6	Nov 30	Dec 1	2	3	4	5	6
		7:00pm BOCC Reg Meeting (Whitted Meeting Facility)		6:30pm ORC Meeting *7:00pm Planning Board Meeting West Campus Office Bldg			
Dec 7 - 13	7	8	9	10	11	12	13
		7:30pm Board of Adjustment (West Campus Office Bldg)	7:00pm BOCC Reg Meeting (Southern Human Services)				
Dec 14 - 20	14	15	16	17	18	19	20
				7:00pm OUTBoard Meeting (West Campus Office Bldg)			
Dec 21 - 27	21	22	23	24	25	26	27
				HOLIDAY	HOLIDAY	HOLIDAY	
Dec 28 - Jan 3	28	29	30	31	Jan 1, 15	2	3

*Planning Board Member Attendance Required

January 2015

January 2015

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February 2015

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	Sun	Mon	Tue	Wed	Thu	Fri	Sat
	Dec 28	29	30	31	Jan 1, 15	2	3
Dec 28 - Jan 3					HOLIDAY		
	4	5	6	7	8	9	10
Jan 4 - 10				7:00pm *PLANNING BOARD MEETING (West Campus Office Bldg)			
	11	12	13	14	15	16	17
Jan 11 - 17		7:30pm Board of Adjustment (West Campus Office Bldg)					
	18	19	20	21	22	23	24
Jan 18 - 24		HOLIDAY		7:00pm OUTBoard Meeting (West Campus Office Bldg)	7:00pm BOCC Reg Meeting (Whitted Meeting Facility)		
	25	26	27	28	29	30	31
Jan 25 - 31			7:00pm BOCC Work Session (Southern Human Services)			BOCC Planning Retreat Southern Human Services	

*Planning Board Member Attendance Required

DRAFT**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.

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.

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

Craig Benedict: This is a 1,000 acre area and would include the whole section northwest of Chapel Hill.

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.

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.

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

DRAFT

- 55
56 **AGENDA ITEM 4: CONSIDERATION OF ADDITIONS TO AGENDA**
57
- 58 **AGENDA ITEM 5: PUBLIC CHARGE**
59
60 **Introduction to the Public Charge**
61 The Board of County Commissioners, under the authority of North Carolina General Statute,
62 appoints the Orange County Planning Board (OCPB) to uphold the written land development
63 laws of the County. The general purpose of OCPB is to guide and accomplish coordinated and
64 harmonious development. OCPB shall do so in a manner which considers the present and
65 future needs of its citizens and businesses through efficient and responsive process that
66 contributes to and promotes the health, safety, and welfare of the overall County. The OCPB
67 will make every effort to uphold a vision of responsive governance and quality public services
68 during our deliberations, decisions, and recommendations.
69
- 70 **AGENDA ITEM 6: CHAIR COMMENTS**
71
- 72 **AGENDA ITEM 7: PLANNING BOARD ANNUAL REPORT AND WORK PLAN FOR COUNTY COMMISSIONERS' ANNUAL**
73 **PLANNING RETREAT:** To discuss the input form for the annual BOCC planning retreat in early
74 2015. The annual report informs the BOCC of past year's activities of advisory
75 boards/commissions and assists in overall County work planning.
76 **Presenter:** Craig Benedict, Planning Director.
77
- 78 *Craig Benedict reviewed the annual report/work plan*
79
- 80 Paul Guthrie: What is the definition of negative land use?
81
- 82 Craig Benedict: It could be an adult entertainment establishment. We have been working with the attorney's office to
83 develop what are also known as sexual oriented businesses. Regulations cannot be completely prohibited of such
84 uses but you can regulate them.
85
- 86 Paul Guthrie: I assume that terminology as defined will not encroach upon other things you don't have jurisdiction
87 on. For instance, farming.
88
- 89 Craig Benedict: Farming will continue to be exempt from zoning law.
90
- 91 Lydia Wegman: The rural enterprise item, is this agricultural support enterprises already in the UDO?
92
- 93 Craig Benedict: It is in the UDO for areas in the rural part of the County outside the rural buffer. There is dialogue
94 with Chapel Hill and Carrboro about any uses such as ag support enterprises being allowed in the rural buffer. There
95 needs to be joint approval.
96
- 97 Lydia Wegman: Will that come to the Planning Board?
98
- 99 Craig Benedict: It has been to the Planning Board already as far as the abridged list of uses for the rural buffer. If
100 Chapel Hill or Carrboro suggest a shorter list, we will bring it back to this Board.
101
- 102 Lydia Wegman: Is there a way to get more information in writing about the list and what is being considered?
103
- 104 Perdita Holtz: It is on the February 2014 quarterly public hearing materials, the one about the rural buffer.
105
- 106 Tony Blake: The new zoning you are talking about, what specific areas? Would it be the Efland area and the Eno
107 area?
108

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- 109 Craig Benedict: Our economic development zones. There are areas around Hillsborough and the
110 Efland/Buckhorn/Mebane corridor.
- 111
- 112 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
113 ease individual requests?
- 114
- 115 Craig Benedict: Both. You do want to ease the development process but the first part of your question was if there
116 are sites that would have a better retailability, you do need to preserve those sites for retail.
- 117
- 118 Tony Blake: I have been reading about form based codes and zoning. This sounds like you are leading up to that.
- 119
- 120 Craig Benedict: It is more of a mixed use with parameters of development.
- 121
- 122 Tony Blake: I would love to hear from Steve Brantley. To come and talk to us and give an overview.
- 123
- 124 Lisa Stuckey: When I came, we were talking about the implementation bridge. Have most of those things been
125 ticked off or no longer relevant?
- 126
- 127 Tony Blake: Transportation, not so much.
- 128
- 129 Craig Benedict: There are still items that need to be implemented and are step by step like the Efland Mebane Small
130 Area Plan.
- 131
- 132 Lisa Stuckey: This was a document that came out of the UDO process. Things they didn't address.
- 133
- 134 Craig Benedict: We called it the bucket list. You can't address all these things at once.
- 135
- 136 Perdita Holtz: The easy stuff has been done and now we have moved into the hard stuff like the public hearing
137 process changes.
- 138
- 139 Lisa Stuckey: Sometimes things become irrelevant and sometimes things get forgotten.
- 140
- 141 **MOTION** made to approve the report and work plan presented by Craig Benedict by Andrea Rohrbacher. Seconded
142 by Laura Nicholson.
- 143 **VOTE:** Unanimous
- 144
- 145 **AGENDA ITEM 8: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENT:** To continue discussion and
146 provide input on government-initiated amendments to the text of the UDO to change the
147 existing public hearing process for Comprehensive Plan-, UDO-, and Zoning Atlas-related
148 items/amendments. This item was heard at the September 8, 2014 quarterly public hearing
149 and was discussed at the October 8 Planning Board meeting. Discussion is expected to focus
150 on the quasi-judicial process.
- 151 **Presenter:** Perdita Holtz, Planning Systems Coordinator
- 152
- 153 *Perdita Holtz reviewed PowerPoint Chart*
- 154
- 155 Paul Guthrie: If there is a different presentation at the BOCC from what was given to this Board, what would
156 happen?
- 157
- 158 Perdita Holtz: If it were significant, we could say this is a significant difference, you may wish to send it back to the
159 Planning Board and the BOCC would decide.
- 160
- 161 Paul Guthrie: If you want to catch up to speed on what happened, where would you get that?
- 162

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

165
166 Lydia Wegman: The Planning Board meeting would occur first. Most of the public will probably blow off the Planning
167 Board meeting. If they come to the BOCC and make a presentation that the Planning Board didn't see or consider,
168 how will the BOCC know they are seeing something the Planning Board didn't see that might be significant and
169 change the recommendation?

170
171 Perdita Holtz: There would be a report that tells the BOCC who spoke at the Planning Board meeting. Also, staff
172 could let the BOCC know if something significant is being raised at the public hearing that wasn't at the Planning
173 Board meeting. Then the BOCC could decide if it should go back to the Planning Board.

174
175 Paul Guthrie: Worst case scenario, would it be possible for this Planning Board de nova after that decision to say we
176 didn't hear any of that?

177
178 Perdita Holtz: That would depend on if the BOCC made a decision the night of the hearing or not.

179
180 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.

181
182 Lydia Wegman: It says the public hearing will be closed at the conclusion and written comments would no longer be
183 required for making comments after the hearing. If the public hearing is closed, what would be the forum for making
184 comments?

185
186 Perdita Holtz: On a legislative items, anybody can comment anytime. The current process is that the public hearing
187 is left open for written comments.

188
189 Lydia Wegman: It the public hearing is closed then what does it mean to submit comments in any form?

190
191 Perdita Holtz: For legislative items, the public hearing is a statutory requirement that you hold a public hearing but
192 you can receive comments before and after that formal hearing.

193
194 Lydia Wegman: If the BOCC has already made the decision, there is no opportunity for anyone to make comments.

195
196 Perdita Holtz: They should comment before the public hearing at the Planning Board or at the public hearing.

197
198 Lydia Wegman: What is the purpose of having this additional opportunity for comment after the public hearing is
199 closed.

200
201 Perdita Holtz: There isn't an additional opportunity via statutes, people can continue to comment. It is not like a
202 quasi-judicial process.

203
204 Craig Benedict: In the three cases the BOCC can decide, if they defer their decision, any input that comes from the
205 citizens can still be considered. If it gets referred back to the Planning Board, the citizen can still provide comment.
206 The only case it would not work is if the BOCC heard everything they thought they needed to decide that night.

207
208 Tony Blake: Where along this process line is the community information meeting?

209
210 Perdita Holtz: The information meeting 45 days ahead of time is associated with Special Use Permit applications
211 which are not legislative but are quasi-judicial.

212
213 Michael Harvey: Neighborhood meetings are also for major subdivision and fire stations.

214
215 Tony Blake: That is a localized place to make comments and the Planning Board rep should be notified and invited
216 to that meeting. This seems to cry out for a Neighborhood Information Meeting.

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217
 218 Perdita Holtz: We were kind of looking at it as the Planning Board meeting would be the prelude to the public
 219 hearing.
 220
 221 Tony Blake: They are involved by the applicant. You are making the distinction that these are not text amendments.
 222 The Neighborhood Information Meeting is more important for something like this that is not a text amendment than a
 223 Special Use Permit.
 224
 225 Perdita Holtz: The whole point of having the Neighborhood Information Meeting for the Special Use Permit is so
 226 people can understand that is a very special process and that you will have to hire experts to represent you.
 227
 228 Tony Blake: A concrete example is the Mountains to Sea Trail. I would think that sort of process would be valuable
 229 there.
 230
 231 Perdita Holtz: I think that DEAPR is holding meetings on the Mountains to Sea Trail.
 232
 233 Tony Blake: I am getting pounded by this new gas pipeline.
 234
 235 Michael Harvey: The BOA held a public hearing on the gas line proposal which was advertised and notifications
 236 were sent. We were on tenuous ground as to whether the hearing was required but we had the hearing and went
 237 through the process.
 238
 239 Bonnie Hammersley: I met with PSNC's representatives with the Chair and Vice Chair and how we can inform
 240 people better about those issues.
 241
 242 Paul Guthrie: Having managed the acquisition of trails for snow mobiles and hiking, etc. in Wisconsin I can tell you
 243 that it would be good to keep a master file of all communications that come in whether they are timely or not for
 244 information.
 245
 246 Lisa Stuckey: Going back to the discussion of the suggestion to change our process, if it's related to the change,
 247 now is the time. Perdita, do you need a vote or consensus?
 248
 249 Perdita Holtz: For a consensus that says this flowchart captures the discussion at last month's Planning Board
 250 meeting.
 251
 252 Laura Nicholson: I like the flowchart and I think it does capture what we have been talking about. When you get to
 253 the last bubble it gets wordy. It says Planning Board members would be encouraged to attend, could we say
 254 expected to attend so it sounds more like we care about being there.
 255
 256 Lisa Stuckey: In the description of the Planning Board's responsibilities and what people see when they are thinking
 257 about applying to the Planning Board, it doesn't mention the quarterly public hearings, it mentions only the monthly
 258 meetings.
 259
 260 Laura Nicholson: I agree. If it is in there as an expectation then the idea is that you should know that upfront.
 261
 262 Lisa Stuckey: Now there is a quarterly public hearing, people have been making comments at our meeting, the
 263 process hasn't been explained to them, we are expanding the number of times a person can comment from only the
 264 quarterly public hearing to our meeting in a more formalized way, the public hearing, they have another chance to
 265 speak. We are expanding the number of times people can speak; do you think it will slow the process?
 266
 267 Perdita Holtz: On controversial items, possibly.
 268
 269 Buddy Hartley: I like the setup. It does do what we have talked about for years.
 270

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271 Lisa Stuckey: Is there a consensus?
 272
 273 Lydia Wegman: People need to understand if the BOCC makes a decision that night, it is over. People need to
 274 understand upfront that is a possibility.
 275
 276 Tony Blake: I agree with the caveat that if you are changing zoning there should be a public information meeting.
 277
 278 Perdita Holtz: That would make the process longer.
 279
 280 Lisa Stuckey: In the letter that goes out, notifying the people of the Planning Board meeting, there could be a note of
 281 encouragement that if you have questions or concerns, attend and make your feelings known.
 282
 283 Laura Nicholson: At the bottom bubble, it says the public hearing will be closed at the conclusion of the hearing and
 284 written comments will no longer be made. You say hearing a lot and you are talking about written comments would
 285 no longer be required, you might want to say solely written comments wouldn't be required.
 286
 287 Perdita Holtz: This flowchart is for people who are somewhat familiar with the process, so they can make decisions
 288 about changes from the existing process, it's not to be distributed to lay people who know nothing about how the
 289 process works.
 290
 291 Andrea Rohrbacher: From my experience, no matter how hard you try, you will have someone who says I didn't
 292 know.
 293
 294 Perdita Holtz: Moving on to the quasi-judicial process. Reviewed abstract. Three questions that may frame the
 295 discussion. One, do you think the Planning Board should make recommendation on quasi-judicial. Two, if you
 296 decide you want to continue to make a recommendation, when would that occur? Three, if the Planning Board is no
 297 longer attending the public hearings as an official board, what would the Planning Board meeting be?
 298
 299 Paul Guthrie: Does the BOCC feel they need a buffer?
 300
 301 Perdita Holtz: I don't know what the BOCC feels.
 302
 303 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
 304 and it could expedite the process.
 305
 306 Tony Blake: 99.99% of the time, staff is correct that it meets or doesn't meet....but there are cases where there is
 307 something they are not aware of.
 308
 309 Lisa Stuckey: But we can't receive that information.
 310
 311 Tony Blake: If staff says it meets this checklist and you know otherwise, that is not testimony....
 312
 313 Lisa Stuckey: When we go through the checklist, is that before or after the public hearing?
 314
 315 Perdita Holtz: After the public hearing.
 316
 317 Lisa Stuckey: The Planning Board is not allowed to take additional testimony so we can't insert things we have
 318 heard.
 319
 320 Craig Benedict: You can ask questions. You can ask the applicant to provide information.
 321
 322 Lisa Stuckey: Can you ask a member of the public who spoke?
 323
 324 Craig Benedict: You have the right to cross examine anyone at the hearing.

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325
 326 Lisa Stuckey: If we don't have a quorum and we come back to our meeting, are we allowed to go forward with the
 327 checklist? If a quorum of the Planning Board is not required at the public hearing, can we proceed?
 328
 329 Lydia Wegman: What would be the role of the Planning Board after the public hearing?
 330
 331 James Bryan: From a legal standpoint, the public hearing, as the trial, once that is closed, there will be no other
 332 comments considered by the Board except for the Board talking among themselves and to their attorney. My belief
 333 now is the current process, if we have a written comment after the hearing is closed, it should not be considered from
 334 a legal perspective.
 335
 336 Lydia Wegman: The way it is set up now, any comment that comes in after the public hearing are a problem?
 337
 338 James Bryan: Yes.
 339
 340 Lydia Wegman: Your concern is whatever comments are coming in have to come in at the public hearing or before
 341 the public hearing?
 342
 343 James Bryan: At the public hearing, at the trial because everything the Board hears, all the parties, which is a legal
 344 term, anything the Board hears, I get to hear it being spoken to them, I get to question whoever speaks it to the
 345 Board.
 346
 347 Paul Guthrie: Does that also preclude the BOCC in considering the trial of discussing it? You used the analogy of
 348 the jury system. A jury can discuss in its own quarters. Who is the jury?
 349
 350 James Bryan: The BOCC. After the public hearing is closed, the only words they can hear are what they heard at
 351 the hearing. As a practice, in some jurisdictions, there is no planning board meeting. Other jurisdictions have it set
 352 up where it goes to the planning board first and they have a mock hearing. A dry run.
 353
 354 Lydia Wegman: Also an opportunity for citizenry to have information about what is required.
 355
 356 James Bryan: Every jurisdiction is different. This place has a lot of educated folks and a lot of money which is
 357 different than others that don't have those things.
 358
 359 Maxecine Mitchell: We are pretty much serving as a double check to the staff to make sure the applicant did
 360 everything according to the rules and laws of the County who, if they meet them and let them move forward so if a
 361 project happens in my area, I can know and prepare my neighbors.
 362
 363 Michael Harvey: Staff is preparing a script based on the evidence entered into the record and testimony at the
 364 hearing. Some items are based solely on the testimony of the public hearing.
 365
 366 Bryant Warren: Being on the Hillsborough Planning Board, this is totally different. We met then the Planning Board
 367 met and made recommendations. This sounds different and if we are not going to be in the public hearing, just the
 368 BOCC, then they will have the final say then there is nothing we can do about it. We can have an information
 369 meeting prior to that. I don't really see any place for a Planning Board in this process.
 370
 371 Perdita Holtz: Special Use Permits applications will have a Neighborhood Information Meeting 45 days ahead of the
 372 public hearing.
 373
 374 Bryant Warren: What about having that informational meeting at the Planning Board meeting and let them be there.
 375
 376 Perdita Holtz: We will look at that but sometimes the way the schedule works in quarters and having ORC Ordinance
 377 Review meetings sometimes, we might not be able to do everything in one night. There can be a scheduling difficulty
 378 when you have more than one meeting.

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379
380 James Lea: It sounds like there is plus to making recommendations or just having quasi-judicial meetings.
381
382 Tony Blake: In this way our role is to inform more than represent.
383
384 Perdita Holtz: Should that pre-meeting with the Planning Board be the Neighborhood Information Meeting together?
385
386 Lisa Stuckey: In these cases, the folks are hiring lawyers so this is more expense to them. Maybe the lawyer is at
387 the neighborhood meeting and then to our meeting and then they will do the public hearing.
388
389 Lydia Wegman: In your list you say if the Planning Board continues to make a recommendation so are you assuming
390 there is a room as a legal matter to make a recommendation if the Planning Board meeting occurs before the
391 meeting of the BOCC?
392
393 James Lea: It sounds like we are not making recommendations.
394
395 James Bryan: You have the public hearing. The first person to speak is staff who introduces it, reviewing the packet,
396 and one item will be the Planning Board recommendation.
397
398 Lydia Wegman: The Planning Board could hear whatever we are hearing from the public from the applicant and
399 make a recommendation prior to the public hearing that would go into the record that the BOCC would consider?
400
401 James Bryan: Right. The BOCC can't make a decision based on that recommendation. But it could prompt them to
402 ask the right questions.
403
404 Tony Blake: Wouldn't staff do that anyway?
405
406 Paul Guthrie: Prior to the formal legal hearing, could this group discuss the project and appear as a witness for
407 information at the legal hearing?
408
409 James Bryan: It depends on the facts but in general, no. I would object.
410
411 Bryant Warren: You said if the Planning Board wanted to be at the informational meeting and they had questions
412 about it and they wanted staff to bring it to the BOCC during the quasi-judicial hearing, would that be a
413 recommendation? As long as it is presented to the BOCC.
414
415 James Bryan: There is a difference between hearing it and using it as a basis for the decision.
416
417 Lisa Stuckey: Do we clarify things or muddy the waters? They can hear it but not base anything on it.
418
419 James Bryan: Attorneys will do that. Give you background information, sort of context for it.
420
421 Tony Blake: Even presenting new facts that are not in evidence, that is not sufficient?
422
423 James Bryan: Right.
424
425 Lydia Wegman: A recommendation could be considered by the BOCC if I understand correctly.
426
427 Paul Guthrie: Are staff communications directly to the BOCC privileged?
428
429 James Bryan: No.
430
431 Paul Guthrie: So they are considered just another testifier?
432

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

436
 437 Paul Guthrie: The recommendation of staff to the BOCC has to be done as a witness format?
 438

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

441
 442 Maxecine Mitchell: My understanding from what I've heard, legally we really have no say but we can put information
 443 out that would make the BOCC look more in depth at what they are presented. I am ok to say if the Planning Board
 444 makes the recommendation. I guess I would go with before. If the Planning Board continues to make
 445 recommendations, we don't really need to be at the public hearing meeting.

446
 447 Bryant Warren: If we get the information from the informational meeting, we make recommendations to staff and
 448 they can give it to them. I don't see the need for us to be at the public hearing.
 449

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

453
 454 Paul Guthrie: On one hand, I think one of the positive roles of this Board is that it can begin to articulate the
 455 sentiment of both itself and people it deals with on issues of public concern. On the other hand, the way this system
 456 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
 457 outside the confines of this Board and this Board's responsibility. I don't think that helps the public decision process
 458 at all. I have great problems with the recommendation but I am not sure there is anything else to do.
 459

460 Buddy Hartley: In the process where we haven't got to the public hearing yet, we would have seen the application,
 461 correct?
 462

463 Perdita Holtz: You normally don't see the application until it goes out in the quarterly public hearing materials now.
 464 We are 99.99% sure we are adding the neighborhood informational meeting 45 days ahead of time.
 465

466 Buddy Hartley: I think it is fine to make it before. Basically we see if everything meets the criteria and we make the
 467 recommendation.
 468

469 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
 470 know.
 471

472 Laura Nicholson: Yes on item one, before on item two, I just think we have a responsibility to our townships, the only
 473 way we could influence or affect anything is before.
 474

475 Tony Blake: We are not really making a recommendation but making a suggestion. I wouldn't mind having the
 476 opportunity of making a recommendation. I would also like to say that the Planning Board needs to know about this
 477 stuff earlier in the process so that when someone puts a sign out there and we get a call from someone in the
 478 community we don't have to say we don't know what you are talking about.
 479

480 Perdita Holtz: One of the things we could institute as part of the neighborhood information process is to email you all
 481 the notice that is going out to the public.
 482

483 Tony Blake: Even some more background on the project.
 484

485 Perdita Holtz: I think there will start being information on the website and we can provide a link.
 486

DRAFT

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

488
489 Lydia Wegman: I do think the Planning Board should be making recommendations on quasi-judicial matters and I do
490 think the recommendation should occur before the public hearing along the lines of what we are talking about. I am
491 concerned about having an informed recommendation. There needs to be a process between the Neighborhood
492 Information Meeting and the public hearing for the Planning Board to make a recommendation. The only concern I
493 have about the Planning Board not being at the public hearing is if the BOCC should want to take more time to
494 consider and continue the public hearing so if the BOCC wanted the Planning Board to offer more input subsequent,
495 there would need to be a way for the Planning Board members to hear what went on at the public hearing.

496
497 Perdita Holtz: There have always been issues where some people make it to the public hearing but the same people
498 don't make it to the Planning Board meeting.

499
500 Lisa Stuckey: I don't think we should make recommendations. I don't think going through that process up until now
501 has been productive, we rely on staff if they meet all the requirements, we have to recommend it be approved. It
502 seems a very artificial process. The real thing happens at the public hearing.

503
504 Paul Guthrie: Could a member or members of this group that have discussed this prior to any of the formal legal
505 steps be subpoenaed by the applicant to testify at the hearing.

506
507 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
508 have subpoena power and if you don't show up, the Court of Justice can require you to get a contempt of court.

509
510 Tony Blake: Can we be deposed in the legal sense?

511
512 James Bryan: The subpoena will most likely require you to show up at the hearing and they you will be ask
513 questions.

514
515 Bonnie Hammersley: I wanted to say on behalf of the County Board of Commissioners that on the 24th there is not
516 going to be a quarterly public hearing because there aren't any items and also no dinner because there is no
517 meeting. They wanted to extend to you that at any time you want to schedule a meeting like that in 2015, they would
518 love to spend that time with you.

519
520 **AGENDA ITEM 8: COMMITTEE/ADVISORY BOARD REPORTS:**
521 a. Board of Adjustment

522
523 Michael Harvey: The BOA approved the PSNC pipeline. We will have a meeting in December for an appeal. Local
524 residents are appealing a decision by the County to rescind a notice of violation involving a gun range.

525
526 **AGENDA ITEM 12: ADJOURNMENT:**

**ORANGE COUNTY
PLANNING BOARD
ACTION AGENDA ITEM ABSTRACT**
Meeting Date: December 3, 2014

**Action Agenda
Item No. 8**

SUBJECT: Unified Development Ordinance Text Amendment - Public Hearing Process Changes

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N)

No

ATTACHMENT(S):

1. Flow Chart of Possible Process for Quasi-Judicial items
2. Example of Checklist Used for Quasi-Judicial Items

INFORMATION CONTACT: (919)

Perdita Holtz, Planning, 245-2578
Craig Benedict, Planning, 245-2592

PURPOSE: To review a possible public hearing process for quasi-judicial items, as discussed at the November 5 Planning Board meeting.

BACKGROUND: The Planning Board discussed proposed changes to the public hearing process at its October 8 and November 5, 2014 meetings. At the November 5th meeting, the Board agreed that the flow chart for a possible process for legislative items (included in the agenda materials: <http://orangecountync.gov/planning/documents/11.5.14PBPacket.pdf>) captured the discussion at the October 8th meeting. Discussion at the November 5th meeting focused on a possible process for quasi-judicial items (draft Minutes for the November 5th meeting are part of the agenda packet for the December 3rd Planning Board meeting). Staff has prepared a flow chart for quasi-judicial items for the Planning Board's review (see Attachment 1).

Attachment 2 is the Findings of Fact checklist used during the review of quasi-judicial items. It is included so that Planning Board members can be informed/reminded of the review process that is necessary for quasi-judicial items.

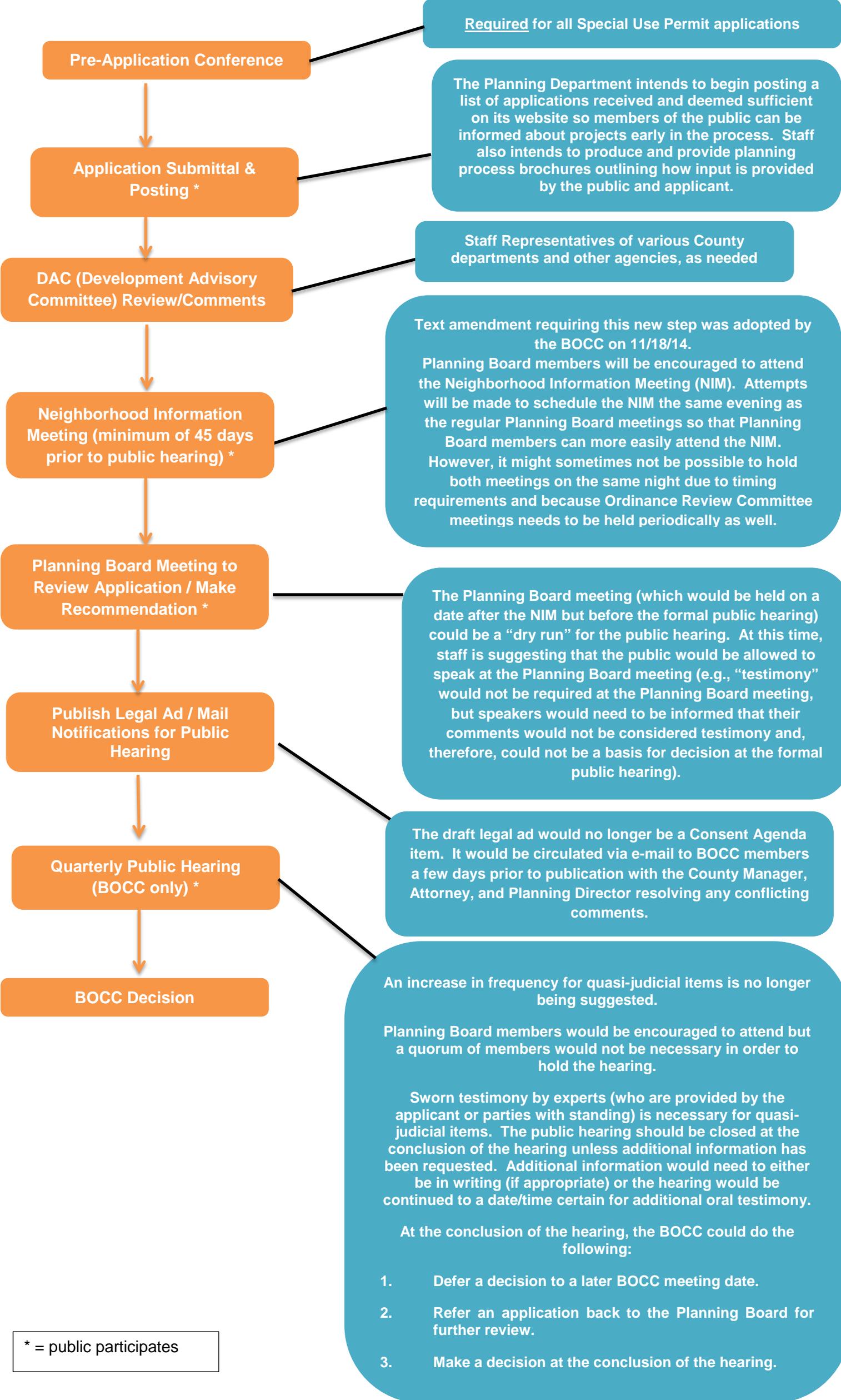
At the November 6, 2014 Board of County Commissioners (BOCC) meeting, the BOCC received the information available at that time and discussed the topic (agenda materials are available at: <http://orangecountync.gov/occlerks/141106.pdf> and the video may be viewed at: <http://orangecountync.gov/occlerks/granicus.asp>). The BOCC also voted to close the public hearing on this topic at this time, as staff recommended. The hearing has been closed because it is expected that the proposed text amendment will be changed significantly enough from the materials presented at the September 8th quarterly public hearing that a new public hearing will be necessary. At this time, staff expects that the topic will be an item for discussion at a future BOCC work session. Part of the work session materials will be the Planning Board's input, as reflected in the flow charts and meeting minutes.

FINANCIAL IMPACT: Existing staff will complete the necessary work required for this project. Changing the public hearing process is not expected to cause significant financial impacts

(negative or positive). Legal ads and mailed notifications, if required, would have to be sent regardless of the process. Additional notifications (sent via first class mail) would increase overall costs slightly. Internal work flow, both within the Planning Department and in other County Departments that have involvement with agenda setting, may need to be updated/changed, depending on the whether public hearing items can be placed on regular BOCC meeting agendas (as opposed to keeping the existing process of quarterly public hearings only). Initial meetings with these departments have indicated that necessary changes can be accommodated.

RECOMMENDATION(S): The Planning Director recommends the Board review and discuss as necessary the attached possible public hearing process for quasi-judicial items to ensure it captures the discussion that occurred at the November 5 Planning Board meeting.

Possible Review Process for Quasi-Judicial Items



* = public participates

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CASE NUMBER: EXAMPLE

**FINDINGS OF THE ORANGE COUNTY PLANNING STAFF
PERTAINING TO A REQUEST SUBMITTED BY
[NAME]
REQUESTING A CLASS A SPECIAL USE PERMIT
TO [PROJECT & LOCATION]**

Applications for a [PROJECT] are required to demonstrate compliance with general and specific standards as set forth in Section(s) 5.3.2 (A) and (B) as well as 5.9 of the Orange County Unified Development Ordinance (UDO).

Section 5.3.2 (A) (2) of the UDO requires written findings certifying compliance with the following:

- (1) The use will maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted;
- (2) The use will maintain or enhance the value of contiguous property (unless the use is a public necessity, in which case the use need not maintain or enhance the value of contiguous property); and
- (3) The location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which it is to be located and the use is in compliance with the plan for the physical development of the County as embodied in these regulations or in the Comprehensive Plan, or portion thereof, adopted by the Board of County Commissioners;

In addition, the Board shall make findings certifying that the application is compliant with the following specific standards:

- (1) Specific standards for the submission of Special Use Permit applications as outlined within Section(s) 2.2 and 2.7 of the UDO,
- (2) Applicable provisions of Article 3 (Dimensional Requirements) and Article 6 (Application of Dimensional Requirements) of the UDO,
- (3) Applicable landscape provisions detailed within Section(S) 5.9 and 6.8.6 of the UDO,
- (4) Specific regulations governing the development of individual Special Uses, in this case regulations detailed within Section 5.9.6 of the UDO,
- (5) Section 5.3.2 (B) relating to the method and adequacy of the provision of:
 - a. Sewage disposal facilities,
 - b. The adequacy of police, fire, and rescue squad protection, and
 - c. The adequacy of vehicular access to the site and traffic conditions around the site
- (6) The aforementioned general findings outlined within Section 5.3.2 (A) (2).

Listed below are the findings of the Orange County Planning Department regarding the application in question. The findings have been presented by Article and requirement to assist in deliberations.

SECTION 2.2 AND 2.7.3 CLASS A SPECIAL USE PERMIT APPLICATION COMPONENTS ("Yes" indicates compliance; "No" indicates non-compliance)

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	PLANNING BOARD FINDINGS
<p>Section 2.2</p> <p>The application for a Class A Special Use Permit shall be on forms provided by the Planning Department.</p>	<u>X</u> Yes ___ No	Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained the completed application packet for the request.	___ Yes ___ No
<p>2.2.4 (D)</p> <p>Applications must be accompanied by the fee amount that has been established by Board of County Commissioners. Application fees are nonrefundable.</p>	<u>X</u> Yes ___ No	Staff testimony from the February 24, 2014 Quarterly Public Hearing that the applicant had paid all applicable fees as required by the adopted fee schedule.	___ Yes ___ No
<p>2.7.3 (B) (1)</p> <p>A full and accurate description of the proposed use, including its location, appearance, and operational characteristics.</p>	<u>X</u> Yes ___ No	Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained a detailed narrative outlining the nature of the request as well as a formal, professionally prepared, site plan.	___ Yes ___ No
<p>2.7.3 (B) (2)</p> <p>The names and addresses of the owners of the property</p>	<u>X</u> Yes ___ No	Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained the required information	___ Yes ___ No

Ordinance Requirements

PLANNING STAFF RECOMMENDED FINDINGS

EVIDENCE SUBMITTED TO SUPPORT FINDINGS

PLANNING BOARD FINDINGS

2.7.3 (B) (3)

Yes No

Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained the required detail including a site plan denoting the boundary of the property.

Yes No

Relevant information needed to show compliance with the general and specific standards governing the Special Use

2.7.3 (B) (4)

Yes No

Staff testimony from the February 24, 2014 Quarterly Public Hearing indicating required copies of the site plan, prepared by Strata Solar and sealed by Mr. Brent Niemann License Number 026475 were submitted as part of Attachment 1.

Yes No

Twenty-six (26) copies of the site plan prepared by a registered N.C. land surveyor, architect, or engineer.

2.7.3 (B) (5)

X Not applicable

The Project does not involve a preliminary subdivision application.

Not applicable

If the application involves a Preliminary Subdivision Plat, 26 copies of the Plat prepared in accordance with Section 7.14 shall be provided.

2.7.3 (B) (6)

Yes No

Attachment(s) 1 and 4 of the February 24, 2014 Quarterly Public Hearing packet contained the required information

Yes No

A list of all parcels located within 500 feet of the subject parcel and the name and address of each property owner, as currently listed in the Orange County tax records.

2.7.3 (B) (7)

Yes No

While no buildings are proposed for the site, Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained a site plan containing elevations of the proposed solar arrays.

Yes No

Elevations of all structures proposed to be used in the development.

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	PLANNING BOARD FINDINGS
2.7.3 (B) (8) 26 copies of an Environmental Assessment or Environmental Impact Statement as required by Section 6.16 of the UDO	<u> X </u> Not applicable	The Project will not result in any disturbance requiring the submission of an Environmental Assessment per Section 6.18 of the UDO. As such this requirement is not applicable.	<u> </u> Not applicable
2.7.3 (B) (9) Method of disposal of trees, limbs, stumps and construction debris associated with the permitted activity, which shall be by some method other than open burning.	<u> </u> X <u> </u> Yes <u> </u> No	Attachment 1 of the packet, as well as applicant testimony, from the February 24, 2014 Quarterly Public Hearing referenced the submitted site plan containing a note stating the project will comply with applicable County Zoning and Solid Waste Management regulations.	<u> </u> Yes <u> </u> No
2.7.3 (B) (10) Statement from the applicant indicating the anticipated development schedule for the build-out of the project.	<u> </u> X <u> </u> Yes <u> </u> No	Attachment 1 of the packet, as well as applicant testimony, from the February 24, 2014 Quarterly Public Hearing indicating the project would be completed within a year of approval of all required permits.	<u> </u> Yes <u> </u> No
2.7.3 (B) (11) Statement from the applicant in justification of any request for vesting for a period of more than two years (five years maximum)	<u> X </u> Not applicable	The applicant is not requesting vesting of the project.	<u> </u> Not applicable

SECTION 2.7.5 CLASS A SPECIAL NOTIFICATION REQUIREMENTS ("Yes" indicates compliance; "No" indicates non-compliance)

<u>Ordinance Requirements</u>	<u>PLANNING STAFF RECOMMENDED FINDINGS</u>	<u>EVIDENCE SUBMITTED TO SUPPORT FINDINGS</u>	<u>PLANNING BOARD FINDINGS</u>
A. The Planning Director shall give public notice of the date, time and place of the public hearing	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Attachment 4 of, and staff testimony from, the February 24, 2014 Quarterly Public Hearing indicating public notice was sent via certified mail on February 7, 2014 for the February 24, 2014 Public Hearing. This included photo copies of the certified mal receipts.	<input type="checkbox"/> Yes <input type="checkbox"/> No
B. Such notice shall be published in a newspaper of general circulation in Orange County once a week for two successive weeks, with the first notice to be published not less than ten days not more than we days prior to the date of the hearing.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	The legal ad was published in the News of Orange and the Herald Sun on February 12, 2014 and again on February 19, 2014.	<input type="checkbox"/> Yes <input type="checkbox"/> No
C. The Planning Director shall post on the affected property a notice of the public hearing at lest ten days prior to the date of said hearing.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	The property was posted on February 12, 2014.	<input type="checkbox"/> Yes <input type="checkbox"/> No
D. Written notice shall be sent by certified mail to all adjacent property owners not less than 15 days before the hearing date. Adjacent property owners are those whose property lies within five hundred feet of the affected property and whose manes and addresses are currently listed in the Orange County tax records.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	As previously indicated public notice was sent via certified mail on February 7, 2014. Attachment 4 of the February 24, 2014 Quarterly Public Hearing abstract contained staff's mail out certification, a copy of the notification letter, copies of the certified mail receipts dated February 7, 2014, and the mailing labels as provided by the applicant for all property owners within 500 feet.	<input type="checkbox"/> Yes <input type="checkbox"/> No

SECTION(S) 3.3 BASE ZONING DISTRICT – AGRICULTURAL RESIDENTIAL AND 6.3 LAND USE INTENSITY MEASURES ("Yes" indicates compliance; "No" indicates non-compliance)

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	PLANNING BOARD FINDINGS
<p>Section 3.3 and 6.3 of the UDO provides the land use intensity measures governing the development of projects within the County.</p> <p>The applicant has applied for a Special Use Permit within the Rural Residential (R-1) general use zoning district. The dimensional and ratio standards associated with the R-1 zoning district are as follows:</p>			
<p>Minimum lot size – 40,000 square feet</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet indicating the properties subject to the application totaled 52 acres of land area.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Minimum lot width – 150 feet</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained a site plan indicating the lot(s) had 686 and 620 feet, respectively, of frontage along Redman Road (SR 1311)</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Required front yard setback – 40 feet</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained a site plan indicating the arrays will be setback approximately 47 feet from Redman Road (SR 1311)</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	PLANNING BOARD FINDINGS
Required side yard setback – 20 feet	<input checked="" type="checkbox"/> Yes ___ No	Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained a site plan indicating the arrays will meet the required 20 foot side yard setback.	___ Yes ___ No
Required rear yard setback – 20 feet	<input checked="" type="checkbox"/> Yes ___ No	Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained a site plan indicating the arrays will meet the required 20 foot rear yard setback.	___ Yes ___ No
Floor Area Ratio - .088 sq. ft. or 199,330 sq. ft. (52 acres x 43,560 x .088)	___X___ Not applicable	Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained a site plan indicating no buildings are being proposed for the property	___ Not Applicable
Minimum gross land area	___X___ Not applicable	Not applicable – This proposed project is not subject to the minimum gross land area requirement as detailed within Section 3.3 of the UDO	___ Not Applicable
Required Open Space - .84 or 1,902,700 sq. ft. (43.68 acres) (52 acres x 43,560 x .84)	<input checked="" type="checkbox"/> Yes ___ No	Applicant and staff testimony from the February 24, 2014 Quarterly Public Hearing indicating there is approximately 45 acres of open space as defined within Article 10 of the UDO.	___ Yes ___ No

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	PLANNING BOARD FINDINGS
Required Livability Space	<u> X </u> Not applicable	Not applicable – This proposed project is not subject to the minimum required livability space as detailed within Section 3.3 of the UDO	<u> </u> Not Applicable
Required Recreation Space	<u> X </u> Not applicable	Not applicable – This proposed project is not subject to the minimum required livability space as detailed within Section 3.3 of the UDO	<u> </u> Not Applicable
Required Pedestrian/landscape ratio - .21 or 475,675 sq.ft. (10.92 acres) (52 acres x 43,560 x .21)	<u> X </u> Yes <u> </u> No	Staff testimony from the February 24, 2014 Quarterly Public Hearing indicating there is approximately 11.7 acres of pedestrian/landscape space on the property comprised as follows: <ol style="list-style-type: none"> 1. Required Major Transportation Corridor (MTC) buffer – approximately 1 acre 2. Stream buffer area – south west portion of project – 9.6 acres 3. 50 foot Type D land use buffer along eastern property line – 1.1 acres 	<u> </u> Yes <u> </u> No

SECTION 5.9.6 (C) SOLAR ARRAY – PUBLIC UTILITY ("Yes" indicates compliance; "No" indicates non-compliance)

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	PLANNING BOARD FINDINGS
<p>Section 5.9.6 (C) of the UDO establishes additional submittal requirements and standards of evaluation for a solar array public utility</p>			
<p>5.9.6 (C) (1)</p>			
<p>In addition to the information required by Section 2.7, the following shall be submitted as part of the application:</p>			
<p>5.9.6 (C) (1) (a)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained a site plan denoting required information.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>A site plan showing all existing structures on the property, any proposed buildings or structures that are necessary to support the proposed array, existing and proposed storage areas, parking and access areas, topography at a contour interval of five feet, any officially designated floodplains or alluvial soils.</p>			
<p>5.9.6 (C) (1) (b)</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained a site plan denoting required information.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Plans and elevations for all proposed structures and arrays as well as descriptions of the color and nature of all exterior materials</p>		<p>The site plan indicates no buildings are proposed for the site.</p>	

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	PLANNING BOARD FINDINGS
5.9.6 (C) (1) (c)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained a site plan denoting required information. Existing foliage is going to be preserved along the eastern and southern boundary line to satisfy required landscape requirements.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Section 5.9.6 (C) (2) <i>Standards of Evaluation</i>			
5.9.6 (C) (2) (a)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained a site plan denoting required information, specifically Note 20.	<input type="checkbox"/> Yes <input type="checkbox"/> No
All on-site utility and transmission lines shall, to the extent feasible, be placed underground.			
5.9.6 (C) (2) (b)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained a site plan denoting required information, specifically in the elevation drawings of a typical array.	<input type="checkbox"/> Yes <input type="checkbox"/> No
The height of proposed arrays and support structures shall not exceed 40 feet.			
5.9.6 (C) (2) (c)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained a site plan denoting required information, specifically Note 21.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Individual arrays/solar panels shall be designed and located in order to prevent reflective glare toward any inhabited buildings on adjacent properties as well as adjacent street rights-of-way.			

Ordinance Requirements

PLANNING STAFF RECOMMENDED FINDINGS

EVIDENCE SUBMITTED TO SUPPORT FINDINGS

PLANNING BOARD FINDINGS

5.9.6 (C) (2) (d)

Yes No

Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained a site plan denoting required information, specifically Note 16.

Yes No

A clearly visible warning sign concerning voltage must be placed at the base of all pad-mounted transformers and substations.

5.9.6 (C) (2) (e)

Yes No

Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained a site plan denoting required information.

Yes No

All mechanical equipment of principal solar energy systems including any structure for batteries or storage cells, shall be completely enclosed by a minimum eight (8) foot high fence with a self-locking gate, and provided with screening in accordance with the provisions of Section 6.8.

The applicant is proposing an 8 foot high fence and a 50 foot wide Type D land use buffer as required within Section 6.8 of the UDO.

5.9.6 (C) (2) (f)

Yes No

Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained a narrative indicating proof of insurance would be provided prior to issuance of a Certificate of Occupancy.

Yes No

The applicant shall submit proof of liability insurance covering bodily injury and property damage demonstrating a minimum coverage limit of \$ 500,000.00 per occurrence.

Staff recommends a condition of approval be that a copy of the policy be submitted prior to the issuance of the Certificate of Occupancy

Ordinance Requirements

5.9.6 (C) (2) (g)

A Type D Land Use Buffer shall be provided along any portion of the perimeter of the parcel, easement, or leasehold area located adjacent to property zoned, or otherwise utilized for, residential use except where such property is owned, leased or consists of other utility easements currently used for electrical distribution or transmission purposes.

Existing vegetation may be used to satisfy the landscaping requirements.

5.9.6 (C) (3)
Decommissioning

PLANNING STAFF RECOMMENDED FINDINGS

Yes No

Yes No

EVIDENCE SUBMITTED TO SUPPORT FINDINGS

Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained a site plan denoting required information.

Attachment 1 of the February 24, 2014 Quarterly Public Hearing packet contained a narrative detailing the applicant's understanding of our decommissioning requirements and further indicating they will comply with these applicable standards in the event the use of the site as a solar array – public utility is ceased.

PLANNING BOARD FINDINGS

Yes No

Yes No

Section 5.3.2 (B) SPECIAL USE – SPECIFIC STANDARDS CLASS A SPECIAL ("Yes" indicates compliance; "No" indicates non-compliance)

	<u>PLANNING STAFF RECOMMENDED FINDINGS</u>	<u>EVIDENCE SUBMITTED TO SUPPORT FINDINGS</u>	<u>PLANNING BOARD FINDINGS</u>
Section 5.3.2 (B)			
In addition to the general standards the following specific standards shall be addressed by the applicant before the issuance of a Special Use Permit			
Section 5.3.2 (B) (1)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Attachment 3 of the February 24, 2014 Quarterly Public Hearing packet contained correspondence from staff indicating there are no problems with respect to compliance with this standard.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Method and adequacy of provision for sewage disposal facilities, solid waste and water service.		No sewage system or well is proposed.	
		Waste will be disposed of by a private contractor. Orange County Solid Waste has indicated they have no concerns associated with the project.	

<u>Ordinance Requirements</u>	PLANNING STAFF RECOMMENDED FINDINGS	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	PLANNING BOARD FINDINGS
	<u>X</u> Yes ___ No		___ Yes ___ No
Section 5.3.2 (B) (2)		Attachment 3 of the February 24, 2014 Quarterly Public Hearing packet contained correspondence from staff indicating there are no problems with respect to compliance with this standard.	
Method and adequacy of police, fire and rescue squad protection.		Fire protection will be provided by the Efland Volunteer Fire Department, rescue service by the Orange County Emergency Management, and police protection by the Orange County Sheriff's Department.	
		The Fire Marshal indicates they had no problem with the proposal as submitted. Staff has verified with the deputy chief of the Efland volunteer fire department (Pete Hallenbeck) his department has no concerns.	
		No concerns have been expressed by the Sheriff's office.	
Section 5.3.2 (B) (3)	<u>X</u> Yes ___ No	NC DOT has indicated they have no concerns over the project.	___ Yes ___ No
Method and adequacy of vehicle access to the site and traffic conditions around the site.		A condition of approval is Strata Solar shall obtain a NC DOT driveway permit prior to the commencement of land disturbing activity associated with the project.	

Section 5.3.2 (A) (2) SPECIAL USE – GENERAL STANDARDS CLASS A SPECIAL ("Yes" indicates compliance; "No" indicates non-compliance)

	PLANNING STAFF RECOMMENDED FINDINGS	EVIDENCE SUBMITTED TO SUPPORT FINDINGS	PLANNING BOARD FINDINGS
<p>In accordance with Section 5.3.2 (A) (2), the Board of Commissioners shall also consider the following general conditions before the application for a Special Use can be approved:</p>	<p>** NOTE – staff does not make specific recommendations with respect to these findings **</p>		
<p>Section 5.3.2 (A) (2) (a)</p>		<p>Based on evidence presented at the hearing including:</p>	<p style="text-align: center;">___Will ___Will Not</p>
<p>The use will maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted.</p>		<ul style="list-style-type: none"> i. Staff abstract and attachments, including the SUP application and site plan. ii. Staff testimony on the project's compliance with the UDO from the Public Hearing and the March/April Planning Board meetings. iii. Applicant testimony from Mr. Louis Iannone, Mr. Bret Niemann, Mr. Gabriel Cantor, and Mr. Richard Kirkland, on how the project complied with the UDO including the affidavit entered into the record at the Public Hearing and written correspondence submitted to the March and April Planning Board meetings. iv. Adjacent property owner e-mails and applicant responses. Comments from the BOCC, Planning Board, and the general public. 	

**PLANNING
STAFF
RECOMMENDED
FINDINGS**

Section 5.3.2 (A) (2) (b)

The use will maintain or enhance the value of contiguous property (unless the use is a public necessity, in which case the use need not maintain or enhance the value of contiguous property).

**EVIDENCE SUBMITTED
TO SUPPORT
FINDINGS**

Based on evidence presented at the hearing including:

- i. Staff abstract and attachments, including the SUP application and site plan.
- ii. Staff testimony on the project's compliance with the UDO from the Public Hearing and the March/April Planning Board meetings.
- iii. Applicant testimony from Mr. Louis Iannone, Mr. Bret Niemann, Mr. Gabriel Cantor, and Mr. Richard Kirkland, on how the project complied with the UDO including the affidavit entered into the record at the Public Hearing and written correspondence submitted to the March and April Planning Board meetings. This included a real estate evaluation indicating the project would not have an impact on adjacent property value.

**PLANNING
BOARD
FINDINGS**

___ Will ___ Will
 Not

**PLANNING
STAFF
RECOMMENDED
FINDINGS**

Section 5.3.2 (A) (2) (c)

The location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which it is to be located and the use is in compliance with the plan for the physical development of the County as embodied in these regulations or in the Comprehensive Plan, or portion thereof, adopted by the Board of County Commissioners.

**EVIDENCE SUBMITTED
TO SUPPORT
FINDINGS**

Based on evidence presented at the hearing including:

- i. Staff abstract and attachments, including the SUP application and site plan.
- ii. Applicant testimony from Mr. Louis Iannone, Mr. Bret Niemann, Mr. Gabriel Cantor, and Mr. Richard Kirkland, on how the project complied with the UDO

**PLANNING
BOARD
FINDINGS**

___ Is ___ Is
 Not

RECOMMENDATION:

Staff has not received any information that would establish grounds for making a negative finding on the general standards. These standards include maintaining or promoting the public health, safety, and general welfare, maintaining or enhancing the value of contiguous property, and the use being in compliance with the general plan for the physical development of the County.

Staff has reviewed the application, the site plan, and all supporting documentation and has found that the applicant **complies** with the specific standards and required regulations as outlined within the UDO.

Provided the Planning Board and the Board of County Commissioners finds in the affirmative on the specific and general standards, the Board could make a positive finding on this application. In the event that the Planning Board makes the determination that the permit can be issued, Planning Staff recommends the attachment of the following conditions to the Special Use Permit:

- (1) The applicant shall cause a formal and detailed landscape and tree preservation plan shall be submitted and approved by the Orange County Planning Department within 180 days from the approval of the Special Use Permit.
- (2) A revised site plan shall be submitted denoting the required Pedestrian/Landscape Ratio for the project as required under Section 3.3 of the UDO. This revised sheet shall be submitted within 180 days from the approval of the Special Use Permit.
- (3) That the applicant complete and submit a formal application to the Orange County Inspections Department requesting authorization to commence construction of the proposed solar array. The application, including all applicable fees, shall be submitted within 180 days from the approval of the Special Use Permit.
- (4) That the Orange County Fire Marshal's office shall review and approve the final site plan, as part of the normal building permit review process, and that any and all modifications be made to address fire code issues and access prior to the issuance of the permit authorizing the commencement of land disturbing activities.
- (5) The applicant shall provide a detailed, scaled, map to the Orange County Fire Marshal's office and the Efland Volunteer Fire Department denoting the location of all storage areas for batteries, master cut-off switches, and other similar devices to ensure the protection of emergency responders in the event of a catastrophic incident on the property. This map shall be submitted prior to the issuance of a Certificate of Occupancy by the County allowing for operation of the facility to commence.
- (6) That prior to the commencement of land disturbing activity the applicant shall submit all necessary stormwater, grading plans, and erosion control applications to the Orange County Erosion Control Department for review and processing. These applications shall be submitted within 180 days from the issuance of the SUP.
- (7) That the applicant shall submit the approved site plan to NC DOT for review and comment. In the event it is determined that the applicant is required to apply for, and receive a, driveway permit from NC DOT to allow for the project to be developed, the applicant shall submit all necessary applications as required by NC DOT within 180 days from the issuance of the SUP and provide planning staff with a copy of the issued permit.