

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, July 10, 2013
Ordinance Review Committee Meeting – 6:30 pm

Note: This is a meeting of the Ordinance Review Committee (ORC) for Planning Board members who would like to review and comment on the proposed amendments before the items are placed on the next Quarterly Public Hearing agenda. Attendance is not mandatory and a quorum is not necessary for meetings of the ORC.

<u>No.</u>	<u>Page(s)</u>	<u>Agenda Item</u>
1.		CALL TO ORDER
2.	2-22	UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENTS – GOVERNMENTAL USES To review and comment upon proposed revisions to the UDO to require that the site plan review process for governmental uses include a neighborhood information meeting. Presenter: Michael Harvey, Current Planning Supervisor
3.		ADJOURNMENT

**ORANGE COUNTY
PLANNING BOARD ORDINANCE REVIEW COMMITTEE
ACTION AGENDA ITEM ABSTRACT**

Meeting Date: July 10, 2013

**Action Agenda
Item No.** 2

SUBJECT: Review of Proposed UDO Text Amendment – Neighborhood Information Meeting for Governmental Uses

DEPARTMENT: Planning and Inspections

PUBLIC HEARING: (Y/N)

No

ATTACHMENT(S):

INFORMATION CONTACT:

- | | |
|---|--|
| 1. Comprehensive Plan and Unified Development Ordinance Amendment Outline Form (Zoning 2013-03) | Michael D. Harvey, Planner III (919) 245-2597
Craig Benedict, Director (919) 245-2575 |
| 2. Proposed Text Amendments | |
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PURPOSE: To review and comment upon Planning Director initiated UDO text amendment concerning the holding of a neighborhood information meeting prior to the review of a site plan application proposing a governmental use.

Attachment 1 contains the approved Comprehensive Plan and Unified Development Ordinance Amendment Outline Form (Zoning 2013-03) approved by the BOCC on June 18, 2013. Attachment 2 contains the proposed text amendment language.

BACKGROUND: The anticipated development of a fire department substation off of Neville Road has caused concern amongst local residents over a lack of notification or participation in the process to develop the aforementioned facility. Such uses are a permitted use of property (i.e. staff review and action) falling into the 'Governmental Uses' land use category as detailed within Section 5.2 of the UDO.

Neither the County nor the applicant is required to notify adjacent property owners of the project as it is considered to be a permitted use (i.e. permitted by right).

In both internal discussion, and review with several BOCC members, it has been decided to promote additional public involvement with the development of 'governmental uses'. As a result staff is proposing a UDO text amendment to require a neighborhood information meeting be held for 'governmental uses' to allow the general public to be made aware of the project and offer comment.

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

RECOMMENDATION: The Planning Staff recommends the Ordinance Review Committee review and comment upon the proposed amendments to the UDO.

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

UDO / Zoning-2013-03

Amendment(s) requiring a neighborhood information meeting prior to the issuance of
a permit allowing for the development of a governmental land use

A. AMENDMENT TYPE

Map Amendments

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

Text Amendments

- Comprehensive Plan Text:

Section(s):

- UDO Text:
- UDO General Text Changes
 UDO Development Standards
 UDO Development Approval Processes

Section(s):

1. Create a new Section 2.24 entitled *Governmental Uses* establishing new procedural requirement(s) for the land use category.
2. Renumber Existing Section(s) 2.24 and 2.25.
3. Update existing references throughout the UDO.

- Other:

B. RATIONALE

1. Purpose/Mission

In accordance with the provisions of Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the UDO, the Planning Director has initiated a text amendment to require that a neighborhood information meeting be held prior to any action authorizing the development of a governmental land use within the County's planning jurisdiction.

The anticipated development of a fire department substation off of Neville Road has caused local residents to voice concern over a lack of notification or participation in the process to develop the aforementioned facility.

A volunteer fire department falls within the *Governmental Use* land use category, as detailed within Section 5.2 *Table of Permitted Uses* of the UDO, and is considered to be a permitted use of property. Permitted uses are handled administratively (i.e. staff review) with no public outreach required by the UDO.

In order to address a concern over a lack of public involvement with 'governmental uses' the Planning Director proposes to modify the UDO to require a neighborhood information meeting to allow the general public to be made aware of such applications and offer comment.

2. **Analysis**

As required under Section 2.8.5 of the Orange County Unified Development Ordinance, the Planning Director is required to: '*cause an analysis to be made of the application and, based upon that analysis, prepare a recommendation for consideration by the Planning Board and the Board of County Commissioners*'.

The proposed amendment is designed to address a concern over a lack of notification and involvement of the general public with respect to the development of governmental uses throughout the County's planning jurisdiction.

If approved, the amendment will require a neighborhood information meeting prior to formal submittal of a site plan to the Planning Department in the hopes the applicant can address any local property owner concerns.

It should be noted this amendment, if approved, will likely extend the development review period for such projects by several weeks.

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

Objective LU-6-1: Undertake a comprehensive effort to inform and involve the citizens of Orange County in the land use planning process.

4. **New Statutes and Rules**

N/A

C. PROCESS

1. TIMEFRAME/MILESTONES/DEADLINES

- a. BOCC Authorization to Proceed

June 18, 2013 – BOCC members approved the UDO Amendment Outline form authorizing staff to commence development of the amendment package.

- b. Quarterly Public Hearing

September 9, 2013

- c. BOCC Updates/Checkpoints

June 18, 2013 – BOCC members approved the legal advertisement for the September 9, 2013 Quarterly Public Hearing.
July 10, 2013 – Planning Board Ordinance Review Committee (ORC)
September 9, 2013 – Quarterly Public Hearing with this item on the agenda.
November 19, 2013 - Receive Planning Board recommendation.

- d. Other

2. PUBLIC INVOLVEMENT PROGRAM

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

- a. Planning Board Review:

July 10, 2013 – Ordinance Review Committee (ORC).
October 2, 2013 – Recommendation

- b. Advisory Boards:

- c. Local Government Review:

- d. Notice Requirements

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

- e. Outreach:

General Public: _____
 Small Area Plan Workgroup: _____

- Other: Letter sent to various County agencies (i.e. DEAPR, Asset Management, Solid Waste, etc.) and other local entities (i.e. local volunteer fire departments and rescue squads) potentially impacted by the proposal outlining the amendment and soliciting comments for inclusion within the QPH package.

3. **FISCAL IMPACT**

Coordination and attendance at the neighborhood information meeting by staff shall be handled within existing budgetary outlays. The cost associated with the notification of the information meeting shall be borne by the applicant.

Additional budgetary outlays to cover the costs of a mailing and sign posting will be required by any County department proposing the development of a governmental land use.

D. AMENDMENT IMPLICATIONS

If approved, the development of a governmental use will require that a neighborhood information meeting be held prior to the formal submission of a site plan.

As previously indicated this will likely extend the site plan review process by several weeks.

E. SPECIFIC AMENDMENT LANGUAGE

Draft language for ORC comment is contained in Attachment 2.

Primary Staff Contact:

Michael D. Harvey

Planning

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ATTACHMENT 2

UDO AMENDMENT PACKET NOTES:

The following packet details staff's proposed modifications to existing regulations establishing a requirement for a neighborhood information meeting prior to the submittal of a site plan proposing the development of a governmental land use. The amendment package also proposes the re-numbering of 2 existing sections, to accommodate the new standards, and updates existing references throughout the UDO.

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

- Red Underlined Text: Denotes new, proposed text, that staff is suggesting be added to the UDO
- ~~Red Strikethrough Text~~: Denotes existing text that staff is proposing to delete

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

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

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

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

There are no changes proposed on this page. It is included to provide context for the next page.

(B) Structural stormwater measures that are designed, constructed and maintained in accordance with the NC DWQ Stormwater BMP Design Manual, approved accounting tool, and requirements listed in Section 6.14 will be presumed to meet the required performance standards of Section 6.14. Submittals containing measures not designed to these specifications, may be approved on a case by case basis provided the applicant provides adequate data and information showing how the deviations meet the requirements of Section 6.14.

(C) Plan Approval

The Erosion Control Officer is authorized to approve any Stormwater Management Plan which is in conformance with the performance standards specified in the NC DWQ Stormwater BMP Design Manual, and other requirements of this Ordinance.

(D) Approved Plan a Prerequisite

The Erosion Control Officer is not authorized to issue any permits for development on any land that is defined as new development under Section 6.14 of this Ordinance unless and until a Stormwater Management Plan in compliance with the requirements of this Ordinance has been approved.

(E) Design of Permanent Nutrient Export Reduction Structural Stormwater Measures

When a permanent nutrient export reduction structural stormwater measure is required for new development to meet the requirements of this Ordinance, a North Carolina registered professional engineer shall prepare the plan with the Engineer's Certification of Stormwater Management affixed, signed, sealed and dated.

SECTION 2.22: HOME OCCUPATIONS

2.22.1 Application Requirements

- (A) An application for a Home Occupation Permit shall be filed with the Planning Director on forms provided by the Planning Department.
- (B) Application forms shall be prepared so that when completed a full and accurate description of the proposed use, including its location, appearance, and operational characteristics are disclosed.
- (C) An application shall include a plot plan that adheres to the requirements of Sections 2.4.3 and 5.5.3.

2.22.2 Conditions of Approval

- (A) If conditions are attached to the approval of a permit, they may address deficiencies in meeting specific Ordinance requirements or they may address specific impacts which result from the operation of the home occupation.
- (B) If conditions address specific impacts which result from the operation of the home occupation, the conditions may include, but not be limited to the following limitations:
 - (1) Hours of operation;
 - (2) Number of vehicles to be parked on the premises;
 - (3) The location of an accessory building, storage area or parking on the property.
- (C) The Planning Director may require greater setbacks and/or additional landscaping or screening to adequately screen the home occupation from adjoining properties.

2.22.3 Application Approval

- (A) If the application is approved, either with or without conditions, the Planning Director shall send the applicant a permit letter informing him/her of the approval and of the requirements of the Ordinance that apply to the home occupation.

- (B) The permit letter must be signed by the applicant to indicate his/her willingness to operate the home occupation in conformance with the requirements and conditions set forth in the permit letter.
- (C) Each permit letter shall be kept on file by the Planning Director and shall constitute the Home Occupation Permit for the particular use in question.
- (D) The home occupation may be operated by the applicant as long as it is operated in conformance with the requirements and conditions set forth in the permit letter.

2.22.4 Application Denial

If the application is denied, the Planning Director shall notify the applicant of the denial and shall state the reasons for denial in writing.

2.22.5 Appeals

The applicant may appeal the decision of the Planning Director to the Board of Adjustment as set forth in Section ~~2.25~~ 2.27.¹

SECTION 2.23: DAY CARE CENTER IN A RESIDENCE

2.23.1 Application Requirements

- (A) An application for a day care center in a residence for 3 to 12 children shall be filed with the Planning Director on forms provided by the Planning Department.
- (B) Application forms shall be prepared so that when completed a full and accurate description of the proposed use, including its location, appearance, and operational characteristics are disclosed.
- (C) An application shall include a plot plan that adheres to the requirements of Sections 2.4.3 and 5.8.1.

2.23.2 Application Review

Upon a determination that the application is complete, the Planning Director shall cause a review of the application to be made. The review shall determine if the proposed day care center in a residence for 3 to 12 children conforms with all requirements of this Ordinance. Based on the review, the application will be approved, approved with conditions, or denied.

2.23.3 Conditions of Approval

- (A) If conditions are attached to the approval, they may address deficiencies in meeting specific chapter requirements or they may address specific impacts which result from the operation of the day care center in a residence for 3 to 12 children.
- (B) If conditions address specific impacts which result from the operation of the home occupation, the conditions may include, but not be limited to the following limitations:
 - (1) Hours of operation;
 - (2) Location of play area;
 - (3) Number of vehicles to be parked on the premises;
 - (4) The location of a storage area or parking on the property.
- (C) The Planning Director may require greater setbacks and/or additional landscaping or screening to adequately screen the day care center in a residence for 3 to 12 children from adjoining properties.

¹ Staff is update references based on the proposed amendment throughout the document.

2.23.4 Application Approval

- (A) If the application is approved, either with or without conditions, the Planning Director shall send the applicant a letter informing him or her of the approval and of the requirements of this Ordinance that apply to the day care center in a residence for 3 to 12 children
- (B) The letter must be signed by the applicant to indicate his or her willingness to operate the day care center in a residence for 3 to 12 children in conformance with the requirements and conditions set forth in the letter.
- (C) Each letter shall be kept on file by the Planning Director and shall constitute the approval for the day care center in a residence for 3 to 12 children in question.

2.23.5 Application Denial

If the application is denied, the Planning Director shall notify the applicant of the denial and shall state the reasons for denial in writing.

2.23.6 Annual Review

Each day care center in a residence for 3 to 12 children approved by the Planning Director shall be reviewed annually by the Planning Director to assure compliance with the standards of evaluation for such facilities.

2.23.7 Minor Changes to Approval

The Planning Director is authorized to approve minor changes in the approved day care center in a residence for 3 to 12 children, provided that the changes are in harmony with the action of the original approval and provided that any change in the operation complies with the standards of evaluation as specified in Section 5.8.1.

2.23.8 Changes in Operation

Any change in the operation of the day care center in a residence for 3 to 12 children that does not comply with the standards for evaluation as specified in Section 5.8.1 shall constitute a modification and shall require the approval of a Class B Special Use Permit by the Board of Adjustment under the provisions of Section 2.7 of this Ordinance.

2.23.9 Appeals

The applicant may appeal the decision of the Planning Director to the Board of Adjustment as set forth in Section ~~2.25~~ 2.27.

SECTION 2.24: GOVERNMENTAL USES²

2.24.1 Applicability

The following applies to those land uses permitted within the Governmental Uses land use category as detailed within Section 5.2.1.³

² This section will require a neighborhood information meeting for all land uses permitted within the 'Governmental Uses' land use category prior to the formal submittal of a site plan application to the Planning Department if the project has not been formerly subject to public comment.

³ This section was added at the suggestion of the County Attorney's office to clarify which 'governmental uses' the meeting requirements would apply to. There was a concern utility development, detailed within Section 5.1.2, could have somehow been interpreted as having to abide by these standards as well.

2.24.2 Neighborhood Information Meeting

- (A) If a proposed project has not been a part of a previous planning effort that included the opportunity for public comment and input, a neighborhood information meeting shall be held prior to the submittal of a site plan application. The purpose of this meeting is to obtain surrounding property owner input and comments on the proposed development.
- (1) Examples of planning efforts that generally include the opportunity for public input are: park master plans, small area plans, solid waste management master plans, library master plans, etc.⁴
- (B) The Planning Department shall assist the applicant with the scheduling of the neighborhood information meeting.⁵
- (C) The applicant shall obtain property owner mailing address information from the Planning Department, who shall utilize Orange County Land Records data, and shall mail certified notices of the meeting date, place, and time to each property owner within 500 feet of the subject property.
- (D) The notices shall be mailed a minimum of 14 days prior to the date of the meeting.⁶
- (E) The applicant shall post a sign on the property advertising the date, place, and time of the meeting a minimum of 10 days prior to the date of the meeting.
- (F) The applicant is required to submit copies of the certified mail receipts denoting the date of the mailing as well as a synopsis of comments from the meeting as part of the site plan application. The applicant shall also provide a written response on what steps, if any, were taken to address said comments.
- (G) A neighborhood information meeting shall not be required in cases where an applicant is proposing to expand facilities less than 25% of existing floor area.

Section 2.24: SECTION 2.25: REVIEW OF ENVIRONMENTAL DOCUMENTS⁷**2.24.42.25.1 Environmental Assessment****(A) Generally**

An Environmental Assessment ("EA" in this section) may be submitted prior to submittal of the development application to determine if an Environmental Impact Statement ("EIS" in this section) may be required, provided that:

- (1) All information necessary to perform the Assessment is provided, and
- (2) The project application, when submitted, is consistent with the project described in the Assessment.

(B) Review Process

- (1) The Planning Department shall review the EA for completeness within 5 calendar days of the date of submittal.
- (2) If the EA is found to be incomplete, it shall be returned to the applicant with notification of its deficiencies.

⁴ Many County Departments such as DEAPR, Solid Waste, Asset Management, and the Library already do public outreach meetings for their projects. Staff believes it is unnecessary to duplicate these outreach efforts as part of the site plan submittal process.

⁵ Planning staff assists all applicants who are required to hold neighborhood information meetings. This includes those applicants proposing a Major Subdivision, Conditional Use, and Conditional Zoning projects.

⁶ This is consistent with existing requirements for other neighborhood information meetings required by the UDO.

⁷ Section is being renumbered and references are being updated throughout the UDO.

- (3) Upon acceptance of a complete EA, the applicant shall submit 10 copies to the Planning Department. Additional copies may be required if needed. The EA will be distributed by the Planning Department to other appropriate departments and agencies for review and comment.
- (4) Final Action on the EA shall occur within 14 days from the date of acceptance, or such longer time as agreed to in writing by the applicant.
- (5) If the EA reveals no "significant environmental impacts", as that term is defined in this Ordinance, the Planning Department shall issue a Finding of No Significant Impact (FONSI).
- (6) If significant impacts are identified, the Planning Department shall issue a Finding of Significant Impact and shall require that an Environmental Impact Statement be prepared. The decision of the Planning Department shall be reviewed by the County Manager upon request of the applicant or Planning Department.
- (7) The applicant shall be notified if the Planning Department learns of any additional state or local permits which may be required to conduct the proposed activity.
- (8) Agencies the Planning Department has knowledge of potentially requiring additional permits shall be notified of the proposed activity by the Planning Department and shall have an opportunity to provide comments.

2.24.22.25.2 Environmental Impact Statements

(A) Review Process

- (1) The Planning Department shall review the EIS for completeness within 5 working days of submittal.
- (2) If the EIS is found to be incomplete, it shall be returned to the applicant with notification of its deficiencies.
- (3) Upon acceptance of a complete EIS, the applicant shall submit 10 copies to the Planning Department. Additional copies may be required if needed. The EIS will be distributed by the Planning Department to other appropriate departments and agencies for review and comment.
- (4) A notice shall be placed by the Planning Department in a newspaper of general circulation, stating that the EIS will be available for public review at the Planning Department for a period of at least 15 days.
- (5) If the proposed activity requires a Mining Permit from the State of North Carolina, or involves the storage of hazardous materials, the EIS shall also be sent to the State Clearinghouse for distribution and review pursuant to Title I, Chapter 25, Section .0200 of the North Carolina Administrative Code.
- (6) If an EIS prepared for a State or Federal agency has completed the Federal or State Environmental Review process, including publication in the "Environmental Bulletin" then the EIS and any required addendum thereto shall be advertised as available for public review at the Planning Department, but need not be re-circulated through the State Clearinghouse.
- (7) Upon Completion of the advertised 15-day review period, and upon receipt of comments from the State Clearinghouse when applicable, all comments will be compiled and summarized by Planning Staff.

(B) Public Hearing Required

- (1) The EIS, along with all comments received during the review period, shall be presented for public hearing concurrently with the development project.

- (2) If a public hearing before the Board of County Commissioners is not required for approval of the development project, then a special hearing shall be scheduled. The hearing shall take place no later than 30 days after the close of the public review period or receipt of comments from the State Clearinghouse, whichever is later.

(C) Notice of Public Hearing

- (1) Notice of the public hearing to review the EIS and receive public comment shall be published at least twice in a newspaper of general circulation in the county, stating the time and place of the hearing.
- (2) Said notice shall appear in said newspaper for two successive weeks with the first notice appearing not less than ten nor more than 25 days before the date set for the public hearing. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.

(D) Board of County Commissioners Action

- (1) The Board of County Commissioners shall receive the EIS and all comments as information only. The information presented may be used only to determine compliance with specific development standards established in this Ordinance.
- (2) No action shall be taken on the development project until after the EIS has been presented to the Board of County Commissioners.

(E) Effect on Other Permits and Actions

Construction or installation of any major development project shall not commence until subsequent to the filing of a Finding of No Significant Impact or acceptance of the Final EIS by the Board of County Commissioners.

~~Section 2.25:~~ **SECTION 2.26: APPEALS⁸**

~~2.25.12.26.1~~ **2.25.22.26.1 Generally**

Appeal applications shall be filed in accordance with Section 2.2 within 30 days of the decision being appealed on forms provided by the Planning Department, if applicable.

~~2.25.22.26.2~~ **2.25.22.26.2 Planning Director Decisions**

(A) Site Plans or Other Decision Pertaining to this Ordinance

Any decision of the Planning Director regarding a site plan application or other decision pertaining to this Ordinance not listed in (B) through (D) below may be appealed to the Board of Adjustment according to the provisions set forth in Section 2.12 of this Ordinance.

- (1) An appeal to the Board of Adjustment from a decision or determination of the Planning Director stays all proceedings in furtherance of the decision or determination appealed from, except:
 - (a) Situations that, in the opinion of the Planning Director, a stay would cause imminent peril to life and/or property.
 - (b) That the situation appealed from is transitory in nature and, therefore, an appeal would seriously interfere with enforcement of the Ordinance.

In either instance in (a) and (b) above, the Planning Director shall place in certificate the facts to support the conclusion.

(B) Exempt Subdivisions

⁸ Section renumbered and references are being updated throughout the UDO.

- (1) The decision of the Planning Director regarding an exempt subdivision application may be appealed to the Board of County Commissioners.
- (2) The Board of County Commissioners shall have final approval authority, and, where applicable, all Final Plats shall contain information and/or conditions approved by the Commissioners.
- (3) The Board of County Commissioners in all such appeals shall make findings of fact in support of its decision. The subdivider shall be notified, in writing, of the Board's decision.

(C) Minor Subdivisions

- (1) The decision of the Planning Director regarding a minor subdivision application may be appealed to the Board of County Commissioners.
- (2) The Board of County Commissioners shall have final approval authority, and, where applicable, all Final Plats shall contain information and/or conditions approved by the Commissioners.
- (3) The Board of County Commissioners in all such appeals shall make findings of fact in support of its decision. The subdivider shall be notified, in writing, of the Board's decision.

(D) Major Subdivisions – Final Plat

- (1) The decision of the Planning Director regarding a Major Subdivision Final Plat application may be appealed to the Board of Commissioners.
- (2) The Board of Commissioners shall have final approval authority, and where applicable, all Final Plats shall contain information and/or conditions approved by the Board of Commissioners.
- (3) The Board of Commissioners in all such appeals shall make findings of fact in support of its decision.
- (4) The applicant shall be notified, in writing, of the Board of Commissioners' decision.

2.25.32.26.3 Planning Board Decisions

(A) Major Subdivisions – Concept Plan

- (1) The decision of the Planning Board regarding Concept Plan Development Options may be appealed to the Board of Commissioners.
- (2) Any notice of appeal shall be filed, in writing, with the Planning Director within 15 days after the date of the Planning Board's decision.
- (3) If the appeal involves a plan/map approval, 16 copies of the plan/map shall be submitted along with the written appeal.
- (4) The Board of Commissioners shall have final approval authority, and, where applicable, all Concept Plan Development Options shall contain information and/or conditions approved by the Board of Commissioners.
- (5) The Board of Commissioners in all such appeals shall make findings of fact in support of its decision. The applicant shall be notified, in writing, of the Board of Commissioners' decision within ten days after said decision is made.

2.25.42.26.4 Board of Adjustment Decisions

- (A)** Every decision of the Board shall be subject to review at the request of any aggrieved party by the Superior Court by proceedings in the nature of certiorari. The appeal to Superior Court must be filed within 30 days of the availability of the notice of decision (2.12.5(A)).

2.25-52.26.5 Board of County Commissioners Decisions

(A) Quasi-Judicial Decisions

- (1) Quasi-judicial decisions made by the Board of County Commissioners pursuant to the Ordinance shall be subject to review at the request of any aggrieved party by the Superior Court by proceedings in the nature of certiorari.
- (2) The appeal to the Superior Court must be filed within 30 days of the filing of the decision of the Board of County Commissioners by the Planning Director or the delivery of the notice of the decision to the applicant, whichever is later.

(B) Legislative Decisions

- (1) Legislative decisions made by the Board of County Commissioners pursuant to the Ordinance shall be subject to review at the request of any aggrieved party by the Superior Court.
- (2) The appeal to the Superior Court must be filed from the date of adoption of said Ordinance within the prescribed period below:
 - (a) 60 days in cases involving the appeal of an Ordinance amending the Zoning Atlas,
 - (b) 1 year (365 days) in cases involving the appeal of an Ordinance amendment the UDO,
 - (c) 3 years (1,035 days) in cases involving an appeal based on an alleged defect in the adoption process of an Ordinance amending the UDO.

2.25-62.26.6 Water Supply Watershed Critical Area Boundary Line

Appeal applications disputing the Planning Director's decision regarding the location of a Water Supply Watershed Critical Area boundary line shall be accompanied by:

- (A) A survey prepared by a North Carolina registered land surveyor or professional engineer depicting the differences between:
 - (1) The locational criteria in Section 4.2,
 - (2) The official Watershed map on file in the Planning Department, and
 - (3) The boundary line the applicant asserts is correct.
- (B) A detailed explanation describing the differences in the three boundary lines contained in (A) above.

2.25-72.26.7 Special Flood Hazard Overlay District

- (A) Any property owner who has received an order to take corrective action in accordance with Section 9.7 may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten business days following issuance of the final order.
- (B) The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

2.25-82.26.8 Soil Erosion and Sedimentation Control

(A) Appeal of Erosion Control Plan

Except as provided in subsection (D) below, the appeal of a disapproval, approval with modifications, or approval with conditions of an Erosion Control Plan shall be governed by the following provisions:

- (1) The disapproval of, modification of, or conditions of approval attached to any proposed Erosion Control Plan by the Erosion Control Officer shall entitle the person submitting the plan to an appeal of the decision to the Orange County Planning Director.
- (2) If the Planning Director upholds the decision, the person shall be entitled to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of disapproval, modification, or conditions of approval.

(B) Hearings

(1) Orange County

- (a) This sub-subsection pertains to appeals for land-disturbing activities occurring outside the corporate limits of the Towns of Chapel Hill, Carrboro, and Hillsborough, and the City of Mebane.
- (b) Hearings held pursuant to this sub-subsection shall be conducted by the Orange County Planning Board within 30 days after receipt of written demand, as provided for in (A)(2) above.
- (c) The Orange County Planning Board shall make recommendations to the Board of County Commissioners within 30 days after the date of the hearing on such Erosion Control Plan.
- (d) The Board of County Commissioners will render its final decision on any Erosion Control Plan appeal within 30 days of receipt of the Planning Board recommendation.

(2) Other than Orange County

- (a) This sub-subsection pertains to appeals for land-disturbing activities occurring within the corporate limits of the Towns of Chapel Hill, Carrboro, and Hillsborough, and the City of Mebane.
- (b) Hearings held pursuant to this sub-subsection shall be conducted by a designated agency of the appropriate town or city board within 30 days after receipt of written demand, as provided for in (A)(2) above.
- (c) The said designated agency shall make recommendations to the appropriate town or city board within 30 days after the date of the hearing on such Erosion Control Plan.
- (d) The said appropriate town or city board will render its final decision on any Erosion Control Plan appeal within 30 days of the receipt of the recommendations from the said designated agency conducting the hearing.

(C) Appeal from Local Government's Decision

If the local governing body upholds the disapproval, modification, or conditions of approval of a proposed Erosion Control Plan following the public hearing, the applicant shall be entitled to appeal the local government's action to the North Carolina Sedimentation Control Commission as provided in Section 113A-61(c) of the General Statutes and Title 15A NCAC 4B.0118.

(D) Appeal of Erosion Control Plan if Disapproval Based on Applicant's Past Performance

The applicant may appeal disapprovals issued under the provisions of Section 2.19.11 of this Ordinance directly to the North Carolina Sedimentation Control Commission.

(E) Appeal of Land-Disturbing Stop Work Order

- (1) The person conducting the land-disturbing activity may appeal a stop work order to the Board of County Commissioners within a period of five days after the order is issued.
- (2) Notice of the appeal shall be given in writing to the Board of County Commissioners, with a copy to the Erosion Control Officer.
- (3) The Board of County Commissioners shall conduct a hearing at their next scheduled regular meeting at which the appellant and the Erosion Control Officer or Inspector shall be permitted to submit relevant evidence, and shall rule on the appeal as expeditiously as possible.
- (4) Pending the ruling by the Board of County Commissioners on an appeal, no further work shall take place in violation of a stop work order.

2.25.92.26.9 Stormwater Management Plan

- (A) Appeals of the Erosion Control Officer's decision on a Stormwater Management Plan shall be made to the Orange County Planning Director.
- (B) If the Planning Director upholds the decision, the applicant shall be entitled to a public hearing if the applicant submits written demand for a hearing within 15 days after receipt of written notice of disapproval, modification, or conditions of approval.
- (C) The hearing shall be conducted by the Orange County Planning Board within 30 days after receipt of written demand for a hearing.
- (D) The Orange County Planning Board shall make recommendations to the Board of County Commissioners within 30 days after the date of the hearing.
- (E) The Board of County Commissioners shall render its final decision on any stormwater management plan upon which a hearing is requested within 30 days of receipt of the recommendations from the Planning Board.

2.25.102.26.10 Appeal of Stop Work Orders Regarding Stormwater Management Provisions

- (A) The person conducting the development activity may appeal a stop work order to the Board of County Commissioners within a period of five days after the order is issued.
- (B) Notice of the appeal shall be given in writing to the Board of County Commissioners, with a copy to the Erosion Control Officer.
- (C) The Board of County Commissioners shall conduct a hearing at their next scheduled regular meeting at which the appellant and the Erosion Control Officer or Inspector shall be permitted to submit relevant evidence, and shall rule on the appeal as expeditiously as possible.
- (D) Pending the ruling by the Board of County Commissioners on an appeal, no further work shall take place in violation of a stop work order.

2.25.112.26.11 Appeals from Final Decisions Regarding Soil Erosion and Sedimentation Control Civil Penalties

- (A) **Appeal from Board of County Commissioners or Other Governing Body Decisions**
Appeal from the final decision of the governing body regarding civil penalties assessed for violations of the soil erosion and sedimentation control provisions of this Ordinance shall be to the Superior Court of the county where the violation occurred, or in the county where the violator's residence or principal place of business is located.

- (b) State the actions necessary to correct the violation,
- (c) Specify a reasonable time period in which the violation must be corrected,
- (d) State the remedies and penalties authorized herein that the Planning Director may pursue if the violation is not corrected within the specified time limit,
- (e) Invite the alleged violator to meet with the Planning Director to discuss the violation and how it may be corrected, and
- (f) Contain a statement indicating that the decision referenced within the notice can be appealed to the Orange County Board of Adjustment as detailed within this Ordinance. This statement shall include language indicating that the appeal must be filled within 30 days from the date of the initial notice and shall provide the deadline for the submittal of the appeal application.

9.5.4 Appeals

- (A) Any person aggrieved by the Planning Director's determination of a violation or a correction order may appeal that determination or order to the Board of Adjustment in accord with the provisions of Section ~~2-25~~ 2.27 of this Ordinance, including payment of the appropriate fee.
- (B) Except as provided in Section ~~2-25~~ 2.27, an appeal generally stays all further actions to enforce a notice of violation, correction order, or Stop Work Order, until the Board of Adjustment has made a decision concerning the appeal.
- (C) Civil Penalty Citations subsequent to the initial notice of violation may not be appealed to the Board of Adjustment.
- (D) As detailed within Sections 2.12 and ~~2-25~~ 2.27, the Board of Adjustment shall hear the appeal and may affirm, modify, or revoke the Planning Director's determination of a violation.
- (E) If there is no appeal, the Planning Director's determination of the nature and degree of the violation are final.

9.5.5 Timeline for Abatement

The time allotted to abate an identified violation shall be at the sole discretion of the Planning Director and shall be based upon what is deemed a reasonable amount of time to abate the identified violation. The following standards shall apply"

- (A) Within ~~30~~ days of receipt of an initial notice of violation, correction order, or Stop Work Order, the owner of the property on which the violation occurs may submit to the Planning Director a written request for extension of the specified time limit for correction of the violation.
- (B) The Planning Director shall assist individuals in the preparation of the written request for extension in cases where an individual(s) is/are unable to prepare a written request.
- (C) The Planning Director shall determine whether the time limit should be extended based on the information contained in the written request for extension. The Planning Director may extend the time limit as reasonably necessary to allow timely correction of the violation.
- (D) In cases where an appeal of the notice of violation has been properly filed with the Board of Adjustment, as provided in Section 9.5.4, the 30 day period shall commence upon receipt of the notice of the Board of Adjustment decision concerning the violation or correction order.
- (E) Following the time limit for correction of the violation, including any stay or extension thereof, the Planning Director shall determine whether the violation has been corrected.

this Ordinance for failure to comply with the provisions of this Ordinance or the terms and conditions of a permit or authorization granted under this Ordinance.

- (B) Any permit, certificate, or authorization mistakenly issued in violation of State law or local ordinance, or issued on the basis of misrepresentations by the applicant, owner, or owner's agent may be revoked without such written determination.

9.6.3 Permit Denial or Conditioning

- (A) As long as a violation of this Ordinance remains uncorrected, the Planning Director may deny or withhold approval of any permit, certificate, or other authorization provided for in this Ordinance that is sought for the property on which the violation occurs.
- (B) The Planning Director may also condition a permit, certificate, or authorization on the correction of the violation and/or payment of a civil penalty, and/or posting of a compliance security.

9.6.4 Injunctive and Abatement Relief in Superior Court

- (A) A violation may be corrected by any appropriate equitable remedy, a mandatory or prohibitory injunction, or an order of abatement as authorized by NCGS 153A-123.
- (B) The Planning Director shall have the authority to execute an order of abatement if the violator does not comply with such order, and the costs of the execution shall be recovered by a lien on the property in the nature of a mechanic's or materialman's lien.

9.6.5 Criminal Penalties

- (A) Any person, firm or corporation who violates the provisions of this Ordinance or fails to comply with any of its requirements shall, upon conviction, be guilty of a Class 3 misdemeanor and shall be fined not more than a maximum of \$500.00, imprisonment of up to 30 days, or both, for each violation, as provided in NCGS Section 14-4.
- (B) The Planning Director may refer a violation to the District Attorney for institution of criminal prosecution of the alleged violator.

9.6.6 Stop Work Order

- (A) If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, moved or maintained, or any building, structure or land is used in violation of a Stop Work Order, the Planning Director, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, moving, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or lands, or to prevent any illegal act, conduct, business or use in or about the premises.
- (B) Notice of a Stop Work Order shall be in writing, directed to the person(s) conducting the violating activity and/or the property owner, and shall state the reasons for the issuance of the Order, and the conditions under which activity may be resumed. Notice shall be given by registered or certified mail, return receipt requested. A copy of the notice shall also be sent by regular mail. Service shall be deemed sufficient if the notice by certified mail is unclaimed or refused, but the notice by regular mail is not returned by the post office within ten days after mailing. Upon issuance of such Order, and posting of same on the site of the violation, all work on the site of the violation shall cease, except those activities necessary to bring the site into compliance with this Ordinance.
- (C) The person(s) conducting the violating activity and/or the property owner may appeal the Stop Work Order to the Board of Adjustment pursuant to Section [2-242.27](#) of this Ordinance.

SECTION 9.7: ADDITIONAL PROCEDURES – SPECIAL FLOOD HAZARD AREA OVERLAY DISTRICT

9.7.1 Actions in Event of Violation

- (A) Identified violations of the Special Flood Hazard Area Overlay District shall be sent a Notice of Violation. The Notice shall detail the nature of the violation and schedule a hearing with the Floodplain Administrator to review the situation.
- (B) This hearing shall be held before the Floodplain Administrator at a designated place and time, not later than ten business days after the date of the Notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter.
- (C) Following the hearing, the Floodplain Administrator may issue such order to alter, vacate, or demolish the structure; or to remove fill as appears appropriate.

9.7.2 Order to Take Corrective Action

- (A) If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the structure or development is in violation of this Ordinance, he or she shall make an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 days.
- (B) Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.
- (C) In the absence of an appeal (see Section ~~2-24.7~~ 2.27.7), the order of the Floodplain Administrator shall be final.

9.7.3 Failure to Comply with Order

If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been filed, or fails to comply with an order of the governing body following an appeal, he or she shall be guilty of a Class 3 misdemeanor and shall be punished in the discretion of the court.

SECTION 9.8: SOIL EROSION AND SEDIMENTATION CONTROL

9.8.1 Inspections and Investigations

(A) Site Inspections

Agents, officials, or other qualified persons authorized by the County will periodically inspect land-disturbing activities to ensure:

- (1) Compliance with the North Carolina Sedimentation Pollution Control Act of 1973 (“Act” in this Section), this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance;
- (2) The measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activity.

Notice of the right to inspect shall be included in the letter of approval of each Erosion Control Plan.

(B) Authority to Enter Property and Conduct Investigations and Inspections

- (1) No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of Orange County, while that person is inspecting or attempting to inspect a land-disturbing activity under this section.

punishable by imprisonment not to exceed 90 days or by a fine not to exceed \$5,000, or by both, at the discretion of the court.

9.8.3 Injunctive Relief

(A) Civil Action in Superior Court

- (1) Whenever the governing body of the Town or County has reasonable cause to believe that any person is violating or threatening to violate the soil erosion and sedimentation control provisions of this Ordinance or any rule or order adopted or issued pursuant to these regulations, or any term, condition, or provision of an approved Erosion Control Plan, it may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in the name of the town or county for injunctive relief to restrain the violation or threatened violation.
- (2) The action shall be brought in the Superior Court of Orange County.

(B) Order to Cease Violation

- (1) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter an order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation.
- (2) The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of the soil erosion and sedimentation control provisions of this Ordinance.

9.8.4 Restoration of Areas Affected by Failure to Comply

- (A) The County may require a person who is engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by N.C.G.S. 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation.
- (B) This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this Ordinance.

9.8.5 Revocation of Land Disturbing Permit

- (A) Whenever a person conducting a land-disturbing activity is not complying with the soil erosion and sedimentation control provisions of this Ordinance, the Land Disturbing Permit, the Approved Erosion Control Plan or any amendments to the Erosion Control Plan, the Erosion Control Officer may revoke the Land Disturbing Permit for the site.
- (B) Notice of Revocation shall be sent by registered or certified mail to the person conducting the land-disturbing activity. In the event delivery cannot be accomplished by registered or certified mail, it may be accomplished in any manner provided in Rule 4 (j) of the North Carolina Rules of Civil Procedure.
- (C) Upon receipt of the Revocation Notice, the person responsible must immediately order all land-disturbing activities to cease except those which are specifically directed towards bringing the site into compliance with the soil erosion and sedimentation control provisions of this Ordinance.
- (D) Once the site has been inspected and remedial work approved by the Erosion Control Officer, the responsible party may reapply for a Land Disturbing Permit and pay the appropriate fee.
- (E) Resumption of land disturbing activities other than those necessary to bring the site back into compliance with the soil erosion and sedimentation control provisions of this Ordinance before the reissuance of the Land Disturbing Permit shall constitute a violation of the Ordinance.

- (F) The person conducting the land-disturbing activity may appeal the revocation of a Land Disturbing Permit following procedures set out in Section ~~2-252.27~~ of this Ordinance.

SECTION 9.9: STORMWATER MANAGEMENT

9.9.1 Inspections and Investigations

(A) Site Inspections

- (1) Agents, officials, or other qualified persons authorized by the County will periodically inspect on-site BMPs and illegal discharges to ensure:
- (a) Compliance with the North Carolina Sedimentation Pollution Control Act of 1973 ("Act" in this Section), this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance;
 - (b) The measures required in the Stormwater Management plan being constructed in accordance with the approved plan.
 - (c) The permanent BMPs are not in need of any maintenance including, but not limited to, the following:
 - (i) Mowing of vegetation,
 - (ii) Vegetation re-establishment,
 - (iii) Tree removal (especially from wet detention ponds),
 - (iv) Stabilization of any eroding areas, and
 - (v) Structural (pipe, riser, dam, etc) repair.
- (2) Notice of the right to inspect shall be included in the letter of approval of each Stormwater Management Plan.

(B) Authority to Enter Property and Conduct Investigations and Inspections

- (1) No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of Orange County, while that person is inspecting or attempting to inspect a required on-site BMP.
- (2) The Erosion Control Officer shall have the power to conduct such investigations as deemed reasonably necessary to carry out the duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any required on-site BMP.
- (3) No person shall refuse entry or access to any authorized representative or agent of the County who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out their official duties.

(C) Notice of Violation

- (1) If it is determined that a person responsible for construction or maintenance of any permanent on-site BMP, or removal of any Illegal Discharge has failed to comply with the Act, this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, a notice of violation shall be served upon that person.
- (2) The notice may be served by any means authorized under N.C.G.S. 1A-1, rule 4.
- (3) The notice shall specify a date by which the person must comply with the Act, or this Ordinance or rules, or orders adopted pursuant to this Ordinance, and inform the person of the actions that need to be taken to comply with the Act, this Ordinance, or rules or orders adopted pursuant to this Ordinance.
- (4) No time period for compliance need be given for encroaching on the riparian buffer or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out their official duties.