

MINUTES
ORANGE COUNTY PLANNING BOARD
MAY 4, 2011
REGULAR MEETING

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MEMBERS PRESENT: Brian Crawford (Chair), At-Large, Eno Township; Alan Campbell, Cedar Grove Township Representative; Buddy Hartley, Little River Township Representative; Lisa Stuckey, Chapel Hill Township Representative; Mark Marcoplos, At-Large, Bingham Township; Andrea Rohrbacher, At-Large Chapel Hill Township; Peter Hallenbeck, Cheeks Township Representative; Maxecine Mitchell, At-Large Bingham Township;

MEMBERS ABSENT: Larry Wright (Vice-Chair), At-Large, Cedar Grove Township; Judith Wegner, Bingham Township Representative; Rachel Hawkins, Hillsborough Township Representative; Vacant- Eno Township Representative;

STAFF PRESENT: Craig Benedict, Planning Director; Michael Harvey, Current Planning Supervisor; Shannon Berry, Special Projects Planner; Debra Graham, Administrative Assistant II

OTHERS PRESENT: Karen Foushee - Orange County Speedway

AGENDA ITEM 1: CALL TO ORDER AND ROLL CALL

AGENDA ITEM 2: INFORMATIONAL ITEMS

- a) Next Regular Planning Board meeting scheduled for June 1, 2011
- b) Planning Calendar for May and June
- c) Draft Legal Ad for May 23, 2011 Quarterly Public Hearing

Craig Benedict: We have added the full agenda for the Quarterly Public Hearing agenda for May 23. I have an abridged list on the screen (discussed information on screen).

Alan Campbell: That will come back to us after the Public Hearing and then will go back to the Board of County Commissioners?

Craig Benedict: Yes, both developer and government initiated. We will be sending out notices. Some are directly affected by it and some may have neighboring properties. This is consistent with planning efforts that have a community element over the last four years. We will be turning these around relatively fast and bring it back to the Board in June and August. At the Public Hearing, the public will speak and if the Planning Board or Board of County Commissioners has questions, those can be brought forward and staff can research them. The verbal comment ends at that public hearing but someone could send something in writing to be included with your deliberation.

AGENDA ITEM 3: APPROVAL OF MINUTES
April 6, 2011 Regular meeting

MOTION made by Alan Campbell to approve April 6, 2011 minutes. Seconded by Pete Hallenbeck.
VOTE: Unanimous

AGENDA ITEM 4: CONSIDERATION OF ADDITIONS TO AGENDA

AGENDA ITEM 5: PUBLIC CHARGE

Introduction to the Public Charge

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

62 and welfare of the overall County. The OCPB will make every effort to uphold a vision of responsive
63 governance and quality public services during our deliberations, decisions, and recommendations.
64

65 **PUBLIC CHARGE**

66 The Planning Board pledges to the citizens of Orange County its respect. The Board asks its citizens to
67 conduct themselves in a respectful, courteous manner, both with the Board and with fellow citizens. At
68 any time, should any member of the Board or any citizen fail to observe this public charge, the Chair will
69 ask the offending member to leave the meeting until that individual regains personal control. Should
70 decorum fail to be restored, the Chair will recess the meeting until such time that a genuine commitment
71 to this public charge is observed.
72

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74 **AGENDA ITEM 6: CHAIR COMMENTS**

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76 Brian Crawford: How soon with the Planning Board get the packet for the March 23 public hearing?
77

78 Craig Benedict: Seven to nine days before. We will have it posted on Friday, May 13.
79

80 Brian Crawford: Once we get it, please be as prepared as possible.
81

82
83 **AGENDA ITEM 7: PLANNING BOARD REPRESENTATIVE ON OUTBOARD:**

84 To recommend, for appointment consideration by the BOCC, a member of the Planning Board to serve
85 on the Orange Unified Transportation Board.
86

87
88 Brian Crawford: I asked the Planning Board members to join the OUTBoard. I understand there is a rule against Planning Board
89 members serving on more than two advisory boards. The lists of the members who do not currently serve on two boards are:
90 Alan Campbell, Buddy Hartley, Rachel Phelps-Hawkins, Mark Marcoplos, Maxecine Mitchell, Andrea Rohrbacher and Judith
91 Wegner. Of those names, would anyone like to volunteer?
92

93 Maxecine Mitchell: I saw a list that has other vacancies?
94

95 Brian Crawford: Those are vacancies on the actual Transportation Board.
96

97 Buddy Hartley: Since I am new to this Board, I would like to get my feet wet here before I jump into another one.
98

99 Brian Crawford: Buddy and Maxecine have taken themselves out. Any other volunteers?
100

101 Lisa Stuckey: I can't volunteer but I did serve as the school board liaison to the Chapel Hill Transportation Board. I will say it is
102 very interesting.
103

104 Craig Benedict: We are in the process of our Comprehensive Transportation Plan that sounds very generic but this is the first
105 one we have done. We have a transportation element to our Comprehensive Plan. That will serve as guidelines for some future
106 planning. In all these Economic Development Zones we are working on, we are going to come up with hypothetical road
107 connectivity plans so we know what intersections these will come out to.
108

109 Brian Crawford: When there are no volunteers, the chair has a prerogative to appoint someone but I will not do it tonight but will
110 expect Alan, Buddy, Rachel, Mark, Maxecine will get a call from me with significant arm twisting until someone volunteers.
111

112
113 **AGENDA ITEM 8: EDUCATION - CONDITIONAL USE REZONING AND CONCURRENT SPECIAL USE PERMIT (SUP) PROCESS:**

114 To receive information for educational purposes on the concurrent conditional use rezoning and Class a
115 SUP process. With several new Planning Board members and an upcoming project, planning staff will
116 walk through the process so Board members will be informed about the steps involved.
117

118 *Presenter: Michael Harvey, Current Planning Supervisor*

119 Peter Hallenbeck: I was thinking to get Phase 1 passed; we made this decision to make the conditional zoning be restricted to
120 certain areas. There was concern that we were doing something in Phase 1 that we shouldn't. Because of the time constraints,
121 we couldn't quite take it out and because of time constraints we couldn't deal with it properly. It seems odd to me that there was
122 concern we were doing something we shouldn't in Phase 1 that should have been a Phase II, then we made decisions about it

123 which is a Phase II thing we did in Phase I so when we get to the point we are doing Phase II, I hope we can revisit that. I think it
124 was necessary due to time constraints but I don't feel we gave it full consideration.
125
126 Brian Crawford: You are saying there are certain items that you think we should have left to Phase II?
127
128 Peter Hallenbeck: We did what we had to, I am happy with my vote.
129
130 Brian Crawford: Didn't we leave a list of items like that?
131
132 Craig Benedict: Bucket list.
133
134 Peter Hallenbeck: I would like to put that back into the bucket.
135
136 Brian Crawford: We need to bring that list back up to remind ourselves of those items.
137
138 Craig Benedict: They were in four categories. The next item will be how we initiate a specific thing that needs to be corrected.
139
140 Mark Marcoplos: Is it too early to see that list?
141
142 Craig Benedict: Debra, would you make a note to bring the bucket list back?
143
144 Debra Graham: Yes.
145
146 Michael Harvey: This is a reminder of what the UDO will require and what the process will be for a Conditional Use request. As
147 you are all aware, we modified the existing Development Review Process formerly called Planned Development and split it into
148 two separate constructs; Conditional Use and Conditional Zoning. Conditional Use involves review and approval of site specific
149 development plan in concert with a rezoning request and a Class A Special Use Permit. There are three attachments with your
150 abstract illustrating the various review and approval processes. Attachment 1 is a flow chart from the UDO providing an outline
151 and basic information of what is involved with a zoning atlas amendment as well as a special use permit. Through the
152 Conditional Use Process, the Board of County Commissioners, with a recommendation by the Planning Board, is taking action to
153 improve the Site Specific Development Plan in concert with a rezoning and special use permit approval. Attachment 3 provides
154 specific detail on the review and approval process.
155
156 Craig Benedict: In summary, the two step process for rezoning with conditions, legislative, that is where the Board of County
157 Commissioners will say it makes sense based on the Comprehensive Plan and other Small Area Plans and if you get past that
158 part, then they continue with a more formal Unified Development Ordinance issued Special Use Permit.
159
160 Alan Campbell: For Special Use and Conditional Use, since we are basing that testimony, are we going to be provided a
161 transcript?
162
163 Michael Harvey: Yes. You will be provided the minutes of the Public Hearing so you will have what was testified to by various
164 parties. What has happened in the past has been that as the minutes are adopted, the Board was provided copies of the
165 minutes. You attend the hearing and you are provided a copy of the approved minutes.
166
167 Brian Crawford: You also get copies of all the evidence presented in writing.
168
169 Michael Harvey: The Conditional Use Process allows for the imposition of conditions. As you are aware conditions cannot be
170 imposed as part of a general use rezoning process. The request either meets the ordinance or not. State statute allows for this
171 embedded process because a permit is going to be issued and the Board of County Commissioners. As a result they have the
172 ability, legally, to impose conditions. When it comes to the expert testimony, the ordinance mandates that the applicant has the
173 burden of proof to submit the necessary documentation demonstrating that they comply with the provisions of the code. Staff
174 keeps you as informed as we can on the evidentiary rules but also what has been to justify or approve that a condition has been
175 approved to.
176
177 Alan Campbell: On the imposition of conditions or possibility of adjusting the project, is that the purview of the Board of County
178 Commissioners or this body?
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180 Michael Harvey: You will make recommendations with the caveat that all conditions as part of this process have to be mutually
181 agreed to.
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183 Alan Campbell: That staff recommended obviously.

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Michael Harvey: There will be staff recommendations. With Buckhorn, the Planning Board recommended several conditions, some the Board of County Commissioners and the applicant accepted and some they rejected. The Board of County Commissioners recommended their own conditions, some of which were agreed to by the applicant and some that were not. Those that weren't we discussed by the applicant and the Board. If the Board of County Commissioners didn't feel strongly enough about them, obviously they were not incorporated in the plan. You do have an opportunity to make recommendations.

Lisa Stuckey: What if they don't?

Michael Harvey: Then they run the risk of being denied.

Mark Marcoplos: They would then have no legal recourse?

Michael Harvey: Any decision by the Board of County Commissioners, through a legislative process, has 60 days review because it is a decision by the Board because it is a state law. The Special Use Permit is automatically appealed to Orange County Superior Court within 30 days per the UDO.

Brian Crawford: Which is why the evidence is so important.

Michael Harvey: That is why staff gets very meticulous when it comes to ensuring everything is introduced into the record.

Craig Benedict: There is a little more flexibility at this legislative state than at this stage. Once this is approved, then you are into yes or no. If it is a yes, you have an approval. There is a little more latitude in this stage to say, we don't think it is in harmony with the surroundings, etc. or you could come up with less exacting reasoning but if it is meeting the Comprehensive Plan and its goals, there is a little more latitude.

Mark Marcoplos: There could be different conditions under the Special Use Permit?

Craig Benedict: There could be. If there are, they should be in our code.

Lisa Stuckey: A condition cannot exceed the ordinance?

Craig Benedict: At this stage. Also, as the schools are coming forward, they don't have to go through rezoning so there are standards in the code which are about 10 to 15. Michael, in our code, how many different uses do you have a bunch of standards for?

Michael Harvey: Within the UDO within Article 5, you have several uses. Schools, for example, have 15 to 20 different standards they have to meet. A camp/retreat center, which is approved through the SUP, has approximately 11 standards. They focus on ensuring that the proposed development doesn't have a negative impact on adjacent property owners. They are very specific. In SUPs, you only can issue the permit if you demonstrate compliance with the code.

Craig Benedict: There are certain uses that need to go through the SUP not even associated with rezoning. In those cases, you will need to look in our code book for the specific conditions that they have to meet. This is more of an evidentiary stage.

Brian Crawford: During the Buckhorn process, there was discussion during the rezoning portion about being more specific about the final design. That wasn't required during the SUP.

Michael Harvey: My hope is that you will find the difference between Planned Development and Conditional Use are actually minimal. I believe you will see the process will be smoother when the UDO process is in place.

Brian Crawford: Except for the swearing in and testimony, you don't feel there are two processes are happening but one process.

Michael Harvey: Two separate actions. One process.

Craig Benedict: Orange County hasn't done Planned Developments/Conditional Use type of processes that often.

Andrea Rohrbacher: I will use an example from Chapel Hill where we have developers come in and we have an Affordable Housing Ordinance. They come in and say, instead of provided the Affordable Housing on site, we propose to ... and they offer what they feel is a better plan. Does that come with the rezoning?

245 Michael Harvey: We also have Affordable regulations. The best way to answer that question is the developer can propose
246 handling an Affordable Housing component in any manner they choose but that would have to have part of the Conditional Use
247 Process.
248

249 Brian Crawford: Doesn't Chapel Hill have a list of alternatives for those Affordable Housing requirements?
250

251 Andrea Rohrbacher: Yes.
252

253 Craig Benedict: With Affordable Housing, Orange County does not have a specific mandate that someone has to x amount of
254 percentage of their projects but neither does Chapel Hill. They do have a resolution that says we would like you to do this and
255 since you have to go through a Conditional Rezoning process in almost every case, that legislative flexibility to ask for something
256 that is their feeling of what it takes to develop in Chapel Hill.
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259 **AGENDA ITEM 9: INFORMATION/EDUCATION - LAND USE AND UNIFIED DEVELOPMENT ORDINANCE (UDO) AMENDMENT**
260 **PROCESS:** To receive information about the Land use and Unified Development Ordinance amendment
261 process which the BOCC approved at its April 12, 2011 work session
262 *Presenter: Craig Benedict, Planning Director*
263

264 Craig Benedict: The Planning Board and Board of County Commissioners has asked for is we need a focused amendments,
265 changes and find out up front what the rules of engagement are so staff put this together. Here is an example of what we will
266 proceed with as we make amendments in the future. (Reviewed Attachment 3). We are completing these sheets for the six
267 amendments that are going forward for May 23. After that, sometime in June or July, we are going to get set for some things for
268 August, November and February of next year. There have been some in queue amendments and this is the first of them. There
269 are a few more that we have been waiting for three or four years to get some of this out of the way.
270

271 Brian Crawford: Questions or comments. There are no board reports.
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274 **AGENDA ITEM 10: COMMITTEE/ADVISORY BOARD REPORTS**
275
276 a) Board of Adjustment
277 b) Orange Unified Transportation
278 c) Efland-Mebane Small Area Plan Implementation Focus Group (not currently meeting)
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281 **AGENDA ITEM 9: ADJOURNMENT**
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283 **MOTION:** Mark Marcoplos made a motion to adjourn. Seconded by Lisa Stuckey.
284

285 **VOTE:** Unanimous

Brian Crawford, Chair