

MINUTES
ORANGE COUNTY PLANNING BOARD
JANUARY 19, 2011
SPECIAL MEETING

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MEMBERS PRESENT: Brian Crawford (Chair), At-Large, Eno Township; Larry Wright (Vice-Chair), At-Large, Cedar Grove Township; Tommy McNeill, Eno Township Representative; Peter Hallenbeck, Cheeks Township Representative; Alan Campbell, Cedar Grove Township Representative; May Becker, At-Large Chapel Hill Township; Mark Marcoplos, At-Large, Bingham Township;

MEMBERS ABSENT: Judith Wegner, Bingham Township Representative; Rachel Hawkins, Hillsborough Township Representative; Andrea Rohrbacher, At-Large Chapel Hill Township; Samantha Cabe, Chapel Hill Township Representative; Vacant- Little River Township Representative;

STAFF PRESENT: Craig Benedict, Planning Director; Tom Altieri, Comprehensive Planning Supervisor; Perdita Holtz, Planning Systems Coordinator; Michael Harvey, Current Planning Supervisor; Shannon Berry, Special Projects Planner; Terry Hackett, Stormwater Resource Officer; Rich Shaw, Land Conservation Manager; Tina Love, Administrative Assistant II

OTHERS PRESENT: Dolly Hunter

(Documents emailed from May Becker prior to meeting: Email from May Becker, Stream Notes-Riparian Buffers, NC DENR-Riparian Buffer Protection Rules and Tar-Pamlico River Basins, Orange County Protected Watersheds/Critical Areas Map, Article by May Becker and others on Hydrodynamic behavior of the Cape Fear River and estuarine system: A synthesis and observational investigation of discharge-salinity intrusion relationships, Article by May Becker and others on Effects of intratidal and tidal range variability on circulation and salinity structure in the Cape Fear River Estuary, North Carolina)

AGENDA ITEM 1: CALL TO ORDER AND ROLL CALL

AGENDA ITEM 2: UNIFIED DEVELOPMENT ORDINANCE (UDO) – REVIEW OF CONDITIONAL USE DISTRICTS/CONDITIONAL ZONING DISTRICTS AND STREAM BUFFERS:
To review and discuss the Stream Buffer provisions in the proposed UDO and to conduct any remaining discussion on the Conditional Use District and Conditional Zoning Districts.
Presenter: Planning Staff

Brian Crawford: Who is taking the lead tonight?

Perdita Holtz: At the last meeting we opened it up the Planning Board to express concerns.

May Becker: We talked about the Conditional and Conditional Zoning and I am still concerned about the Conditional Zoning that it is too open ended for the developer. I am concerned about the lack of a Special Use Permit and I would like to discuss more restrictions on that.

Brian Crawford: What specifically?

May Becker: I think that from our discussion/presentation last time that the planned development sounds like that was available or an option, had more restrictions and now it has been divided into Conditional Use and Conditional Zoning.

Craig Benedict: There was chart we used on Elmo last meeting that was something that majority of the Planning Board members understood the differences between the three different types of development. Maybe that is what she wants to see again?

May Becker: Yes. There is also the email that went around discussing the conditional use districts versus conditional use.....

61 Craig Benedict: Some of the other Board members may be able to help my recollection. This meeting we were talking about
62 stream buffers first and then if there was any time left over we would go back to conditional use. Is that how others remember it?
63 That is what I understood. I remember Judith saying, let's make sure we have a good grasp on stream buffers at this meeting
64 and then as time permits, go back to conditional use because we came to some degree of finality on conditional use and
65 conditional zoning and general use last week.

66
67 Brian Crawford: Let's go to stream buffers and try to do as much as possible and then if there are lingering issues from the last
68 meeting, Planning Board members will be free to bring them back up.

69
70 May Becker: My understanding was similar to that except that I felt that I voiced some concern about some of these issues and
71 wanted to follow up about them. I sent an email about particular concerns and overview about stream buffers in general and
72 some research I have been doing in North Carolina and how it relates to streams in general and river basins. Then I made some
73 particular comments at the end regarding uses permitted by right. It appears there are a number of uses that were not included
74 in the ordinance. Uses permitted with mitigation and what mitigation involves and in general with respect to permitted uses by
75 right and I don't see any specific protections in there. If we have a area stream that has trees around it now, the buffer zone, and
76 then you clear cut if for some particular reason, development or putting sewer lines, I would like to look at specifically what will be
77 done to make sure there is some kind of vegetative buffer in there so that if nitrogen and phosphates and such get into it we don't
78 have problems down the line with dissolved oxygen where the fish can't breathe or erosion and flooding and also all the way down
79 to the estuary and you consider what drives the estuary flow and what causes we to have health and fisheries that is all one
80 system and if you are urbanizing something in one part and changing on fresh water coming into the estuary for example that
81 changes the salinity gradient. In other words you have more fresh water pushing toward the ocean that changes the salinity
82 gradient between the ocean and fresh water infusion and that changes the potential for the salt water to come in or the strength
83 of the circulation of the salt water coming in on the bottom, saltwater coming in on the top which tends to change mixing
84 characteristics. I think there is a lot of evidence that the stream buffer, put in the handout with that, have had studies done at the
85 Neuse River Basin and the Cape Fear Basin and they have looked at results of putting stream buffers in as a result of problems
86 they had before and they have had positive results. I feel like that instead of later having to go down the line and clean up after
87 mistakes that have been made, I think we should look at it more carefully and make sure that we maintain the water quality that
88 we have. The other thing in the email was a link to an article about Falls Lake and how eventually when they have to consider
89 how to clean up the water quality they look at TMDL and consider who is going to pay the 1.5 billion dollars in clean up costs. I
90 marked in the lower Cape Fear and did some critical field study for TMDL environmental management plan. It is long process
91 and there are a lot of different issues in this state so sometimes it comes up in meetings, why do we need more regulations when
92 the state has these regulations. These processes take a long time and they have to consider natural factors that are causing the
93 circulation. Sometimes people get the impression that we are at the point in technology where we have all the answers and can
94 solve everything but as we've seen in the Gulf with the oil spill, you have a problem and then all of a sudden people ask how do
95 we solve this. I feel like we shouldn't be of the kind of illusion that somebody is going to clean it up and everything is going to be
96 ok.

97
98 Tommy McNeill: Dr. Becker, I hear what you are saying and I have looked at the attachment looking at the houses and the 100
99 year flood in Orange County, the wetlands, etc. What is it that concerns you?

100
101 May Becker: It concerns me to take trees in areas close to the river because if you have trees or other vegetation and you have
102 got urbanization, runoff, etc. that you have a filter system to keep excess nitrogen and phosphates from coming into the water
103 body. If they do come into the water body, you have green algae or different types of chlorophyll that grow and as they grow,
104 chemical process take place. For example, vegetation or algae can rot and as the algae rots it sticks to the bottom and starts to
105 consume oxygen. As it consumes oxygen, fish or the other creatures that are used to living there don't have enough oxygen to
106 breathe and you start to see fish kills. We've seen that in the Neuse River Basin, it's an area where it's largely surrounded, the
107 Outer Banks for example, serve as a barrier island to stop the flushing of the tidal currents coming in and out so you have a
108 system that is basically temperature stratified because you don't have a lot of mixing, you tend to have problems with dissolved
109 oxygen. In the Cape Fear, in contrast, you have an estuary that is open to the ocean and you have the tides coming in and out
110 and you have more oxygenated waters that can dissolve oxygen, you will see there are different industries, they monitor these
111 areas to see how much they're discharging into the estuary. They have different ways of overseeing this. My concern is that in a
112 public area like streams here you don't have a monitoring system in place and you continue to potentially you go to a
113 subdivision for example, you have a lot of new residences, you have people fertilizing their lawns and you don't have some type
114 of vegetation buffer, some strict, specific area that is keeping a filter or some kind of vegetation to prevent development close to
115 the stream, then you don't know what you will have.

116
117 Brian Crawford: Help us think about policies. As I understand the buffers, and they can clear cut maybe 25 feet of it and you
118 have the vegetation portion that has to stay in place. Specifically that is what the buffer is at state law and you are suggesting
119 something further to increase the absorption and a potential runoff into the streams.

120

121 May Becker: I would like to go through what is there and what is not there. The way it reads to me is things that were not
122 permitted within this area are now being permitted.

123
124 Tommy McNeill: Could you give an example?
125

126 May Becker: Let's go to page 6-142, 143, Section 6.13.6. A whole bunch of things have been added in red. The property
127 owners provide a written notification to the planning department and location of the accepted use. Property owners shall provide
128 a written statement to the planning department that the use shall be designed, constructed, and maintained to minimize soil
129 disturbance and to provide the maximum water quality protection practicable. If structures are proposed, approval of a site plan
130 and all applicable building permits shall be required prior to commencement of land disturbing activities. From my understanding,
131 these particular activities or uses are now being permitted by right according to Section C. For example number 8, driveway
132 crossing on single-family residential lots that disturb less than, or equal to, 25 linear feet or 2,500 square feet of stream buffer
133 number 12, public water and sewer lines that do not disturb over 40 linear feet, and New stormwater management ponds,
134 provided a riparian buffer that meets the requirements of this Section is established adjacent to the pond. So another concern I
135 have is ponds. We have seen in Cape Fear what these waste lagoons do when farmers have industrialized hog production
136 facilities and they put their waste into these lagoons, during storm events they overflow into the stream and you've got fish kills
137 and you've got...essentially people don't monitor what's going on over these storm events and you have a big mess.
138

139 Tommy McNeill: Regarding the lagoons, do you feel that is really typical here in Orange County? I understand the Cape Fear,
140 and certainly I understand your concern in the Cape Fear River Basin but here in Orange County do you think that would be a
141 concern of Orange County residences to worry about the quality in Orange County.
142

143 May Becker: That was an analogy really.
144

145 Tommy McNeill: Craig, the things that she has brought up, the things discussed, is that a red flag? How does staff feel about
146 them?
147

148 Craig Benedict: Presently, our code allows for private driveway crossings, utility crossings to stream buffers and that is an
149 acceptable encroachment to the stream buffers. We are suggesting for some additional encroachments to be allowed if there is
150 mitigation in accordance with State and the Department of Natural Resources. Terry Hackett is here tonight, he is the
151 Stormwater Officer in Orange County, and can explain the technology behind these mitigation rules. The State presently allows
152 more encroachment than even our modified version. At the appropriate time tonight, I will give somewhat of an answer not now
153 but at the appropriate time, we can go through why the modification that is being suggested will exceed state requirements as we
154 always have in Orange County.
155

156 Brian Crawford: Have you gone through the list and checked the ones of major concerns.
157

158 May Becker: I put a couple of questions I have, what do the ordinances say now, what they do in the proposed UDO. To me
159 when you add something residences are permitted by use or permitted by right, it applies to me that previously....that these are
160 new rights. If somebody has a piece of property now an ordinance is written that says this is his or her right then I would like to
161 know how, is this something new? I have marked those that are of particular concern. I would like to see what the particular
162 rules are regarding ponds as well as the public water and sewer water lines, what kind of vegetative would be maintained? On
163 Page 6-144, I would like to discuss what the steps of mitigation are, also, letter D number 4-6.144, with regard to cumulative
164 impact. I think there were comments on temporary roads by other members.
165

166 Brian Crawford: Perdita, can you flush it out?
167

168 Perdita Holtz: I would like to explain what Orange County regulations and what the state regulations are so we can have a basis
169 to start the discussion. *(Reviewed chart projected)* On the left is the state requirements and on the right is Orange County
170 existing requirements and as it exists in the UDO. State requires, in the watersheds that comprise Orange County, 50 feet wide
171 on both sides of the stream, which is measured from the top of the stream bank. In Orange County, we have two methods of
172 calculating width and the required methods depends on which watershed you are in. In the UDO, it tells you which method you
173 have to use. In protected and critical watersheds, generally, a 130 foot total buffer. It is measured from the edge of the flood
174 plain for streams that have mapped floodplains, so we are measuring from the edge of the flood plain which is further out than
175 the stream bank. If you have steeper lands, there will be 160 foot total buffer. There are specific nuances for Cane Creek,
176 Upper Eno, Lower Eno that may require a larger buffer than that. In the unprotected watersheds, which is a fairly small area in
177 the county, we require a 50 foot minimum on both sides of the stream. That is a state requirement. The state requires buffers on
178 intermittent and perennial streams, lakes, ponds and estuarine waters and those are shown on the soil survey map or the USGS
179 map. They are fairly major water bodies. In Orange County, we are requiring the same as the state except we also require that
180 you buffer water features identified by field determination. Our storm water folks go out to development projects and look for

181 drainage. We require buffers along what others might consider to be fairly insignificant streams. The state allows specific uses
182 in the stream buffer. Some are permitted outright and some are with mitigation. We currently allow some uses in the stream
183 buffer, in black, in the section May was referring to on page 142 through 143 and we are proposing to allow some additional uses
184 in the stream buffers. Some will be outright and some will be with mitigation but we are proposing allowable uses far less
185 expensive than those allowed by the state. Shannon has put together a chart showing what the state allows.

186
187 Tommy McNeill: In other words, in the final analysis, Orange County is a little more strict than the state?
188

189 Perdita Holtz: Yes. And we are recognized through the state for that.
190

191 May Becker: You are proposing to be more lenient than before and these particular numbers came from a local ... people before
192 here have considered Orange County as a local area as opposed to the state and if the state would come up with a buffer law
193 that would presumably apply to water bodies that are not as well known to people in Orange County, for example, because they
194 have the buffer for general buffer ordinance. Whereas in Orange County they presumably put some time into considering how
195 they protect the streams in Orange County and do we feel these buffer laws are what we want.

196
197 Perdita Holtz: Terry, has the list of state allowed uses expanded since our regulations were adopted?
198

199 Terry Hackett: Yes they have.
200

201 Perdita Holtz: So the state has changed and expanded their uses and we are now looking at what the state allows. Ultimately,
202 we have to be at least as restrictive as the state.
203

204 May Becker: No, I understand, I just feel that we have very limited number of water bodies and we have potentially a huge
205 amount of people who want to develop or move to Orange County and I feel that if these water bodies have laws to protect them
206 I think we should carefully consider if we are going to weaken any of those laws, what is the impact, and is it necessary, what is
207 the reason for it.
208

209 Perdita Holtz: There are actually a large number of water bodies that are protected in Orange County. Every stream or drainage
210 is essentially in the stream buffer.
211

212 May Becker: My point is that if there is that protection, to take it away is something that I feel one really has to think about and
213 know what the affects are going to be rather than look at it and say we have this bigger government agency, the state, that has
214 something that is less restrictive so we are okay because we are still more restrictive than they are.
215

216 Perdita Holtz: So it comes down to the Planning Board deciding whether the added uses are reasonable in the Planning Boards
217 view and making recommendations about it.
218

219 Mark Marcoplos: Do we know where North Carolina is ranked nationally in terms of its standards on water quality?
220

221 Terry Hackett: I would say that North Carolina's Water Quality Protection laws are one of the better ones in the country. We
222 have a big push now to look at stormwater and the impacts of run off from development. Obviously Falls Lake and Jordan Lake
223 are in our area a big concern. The nutrient reduction strategies the state has that are now in effect for those water bodies are
224 probably the most stringent in the country. No one has ever done that. I would say that I don't know exactly how we would rank
225 but I would certainly say we are near the top with what we do.
226

227 (Tommy McNeill left meeting)
228

229 Mark Marcoplos: So the Jordan Lake plan is a relatively new instituted plan in reaction to years of failed management, right? A
230 lot of pollution has gone into Jordan Lake and that was the impetus of the Jordan Lake Plan.
231

232 Terry Hackett: It was but I would not necessarily chalk it up to failed management. Folks knew that and is very typical with our
233 impoundments which are very shallow relatively and the appropriate conditions for eutrophication.... we knew there was going to
234 be a problem and of course as things developed certain portions of the watershed without these stringent buffer rules and that is
235 probably contributing a lot to the eutrophication . I think basically that the buffer rules we have in place now and even most of the
236 rules proposed in the UDO are very reasonable and low impact and we will be able to manage those.
237

238 Pete Hallenbeck: May, there is language in this UDO that talks about determining the size of the buffer zone and what it should
239 be whether it is woods or grass. Are those generally speaking acceptable? A follow up question would be, the concerns are with

240 the permitted use in general, in particular these new ones? Is there a problem defining what the buffer should look like or a
241 problem of all these places you can violate the buffer?
242
243 May Becker: My other concern is the places where you can violate the buffer. I don't know for sure about the specific details of
244 how, say woods versus material, went into that calculation. I am assuming that came from a method that has been developed
245 before this UDO has been presented so when I read it I moved on and said this is the method that has been used. Also, I want
246 to be clear on a few formatting things at the end followed by ... there were a couple of methods presented and later described as
247 to which method would apply to which area and I felt it wasn't
248
249 Pete Hallenbeck: Another reason for asking is we are at the point of merging the UDO and we said we will not change it but get
250 it all together, and then we will worry about change. I am also looking at this, are the definition of how much buffer you need
251 acceptable for this stage so we could focus solely on these new permitted uses and if that would be 80% of where we need to be
252 on water or is absolutely everything off and we have to look at both how we calculate the buffer size and the uses.
253
254 May Becker: I agree. I would like to understand better how the buffers are calculated.
255
256 Pete Hallenbeck: Are they acceptable at this stage?
257
258 May Becker: Yes. I would rather talk about new changes to understand where they are.
259
260 Brian Crawford: We are more restrictive.
261
262 Larry Wright: This would be 6.13.6 item 9, New Stormwater, I would like to know what that is and if this relates to a type of pond
263 that is used to mitigate with a built in wetland and then they build a pond without providing ... so they just build a pond in back of
264 the Harris Teeter on Martin Luther King, is this really a cesspool? It seems like it is mitigation. Stormwater that comes off the
265 parking lot. Is this the type of thing we are talking about on this item 13?
266
267 Terry Hackett: That is a yes and no. What you are referring to behind the Harris Teeter is a stormwater pond that was designed
268 to manage the amount of stormwater coming off those facilities. It was constructed before any of the newer stormwater
269 requirements. This is referring to, when we say stormwater management pond, is stormwater quality pond. It is a wet pond and
270 it will look like a pond but it is designed to treat the amount of stormwater in it and settle out pollutants from the runoff. Primarily
271 nitrogen and phosphorus. Those are the two we are most concerned with. The pond itself has to meet the design requirements
272 as we use the state's stormwater best management practices manual they have to meet. There are certain design guidelines
273 that a designer would have to meet. Basically, if we were to look at a development plan that proposed a stormwater management
274 pond such as this, our first suggestion is that we don't want it in a buffer at all. Unfortunately, because of site constraints, there
275 may be a reason it has to be in a buffer. This rule is saying you have to establish a riparian buffer around that pond just like if it
276 were a farm pond.
277
278 Larry Wright: So EPA has one of those? You can imagine all the guidelines but muskrats and beavers have made channels so
279 these are flowing directly into what they call the lake. What the EPA wanted to have for their holding ponds for their parking lots
280 doesn't seem to be working.
281
282 Terry Hackett: That really falls back on them because any engineered stormwater facility requires an operation maintenance
283 plan, requires to be recorded on the deed and that the owner of that pond would have to inspect that and provide a report. We
284 try to do it as we have time to go and inspect these. We don't have many in the county at this time. All that authority is in the
285 stormwater section of the UDO so there are provisions to take care of those issues. If you design something and it is not
286 maintained that is the problem because it not functioning.
287
288 May Becker: The way the ordinance reads now in terms of the new ordinance in red says this pond that we talked about is
289 permitted by right. What is it presently? What is the procedure if someone has a piece of property and said I am interested in
290 putting a storm pond close to the buffer or in the buffer zone?
291
292 Terry Hackett: I don't think we have anything in the existing rules that spells that out. Right now we have a stand alone
293 stormwater ordinance that includes the whole list of buffers that doesn't really apply because the zoning ordinance trumps that
294 but there are provisions in there. What basically with this particular use is just making clarification. Most of the time most of the
295 development we are seeing in the county, the stream buffer is just one tool we use to manage the stormwater runoff. We also
296 have impervious surface limits and open space requirements, etc. that also work together. We have very few of these types of
297 ponds out there now.
298

299 Brian Crawford: Here is the confusion. You said initially the state has this list of permitted uses and we went through that list
300 and selected 24 and said we will do these or we are suggesting we do these. I think May is saying that it sounds like that of
301 those 100, we have none of those left and so why would we want to add these 24 when we are doing fine without them. I think
302 that is what we need help to figure out why we are making this change at this point when they UDOs purpose was to consolidate
303 and worry about change later but then we are confronted with 24 changes here.

304
305 Terry Hackett: It takes a couple of uses by right were already there in our existing ordinance. These are clarifications of those.

306
307 Craig Benedict: Orange County has been in process of acquiring land over the last 15 years and it is important that when we
308 purchase new lands, and Rich Shaw is here from Environment Resources, that we are able to enjoy those natural areas and
309 presently we cannot put a six foot pathway 30 feet away from the stream so we suggesting, for the money that Orange County
310 citizens have invested in the county to enjoy these beautiful natural areas, that we be allowed to encroach on these natural areas
311 with a six foot unpaved pathway by right. That we are allowed to have a fire truck go down next to a pond so that we have rural
312 fire control which we cannot currently do. If there is a nuisance species, like poison ivy, that we can go down there and remove
313 it. If we get money for environmental enhancement, funds, if someone gives us money for enhancements, we can't do that
314 because there is some disturbance but there is more enhancement and mitigation that comes forward. All these suggestions on
315 1 through 15 are for purposes of enjoying, restoring or enhancing that stream buffer. Trail crossings, associated bridges, docks,
316 presently we own lands that are on behalf of the public and we cannot put a dock on that pond. We have had requests from
317 citizens and our own departments to use the resources we have purchased by some access to the docks, etc.

318
319 Larry Wright: Uses permitted by right. You said these were uses that were listed for enjoyment. Can you say that phrase
320 again?

321
322 Craig Benedict: So that we can enjoy the natural areas we have purchased in the county.

323
324 Larry Wright: If this was a preamble to this section so they would understand the spirit of the section, I think a lot of this
325 confusion and discussion would be directed towards that- the recreational.

326
327 May Becker: I feel like there are two different things going on. I see Craig's point but I am also hearing that these ponds have
328 been viewed as a right in a sense. On one hand you have the ponds that potentially....depending how it is regulated....
329 additional buffers may be required that could work or they could not work. To me that is important to establish and when I read
330 this about ponds and we all ask what is analogous to this and is this analogous to something else. I think that is what we need to
331 understand and be comfortable with if these things are permitted by right, to me that tells the owner of a piece of property will
332 think I have a right to do this.

333
334 Brian Crawford: Does that still allow your department to inspect that?

335
336 Terry Hackett: Absolutely. The stormwater management pond would be covered under the stormwater management plans that
337 are required for development in a different section of the UDO. They were required to meet the stormwater standards.

338
339 Brian Crawford: Why does it have to be by right? Can it be mitigation or some other language that announces to the public that
340 you have the ability to do these things but you just can't do it the way you want to do it. If I am reading this as a private citizen I
341 am going to think that I can hear dimensions, I am going to cut that hole and make the dimensions but it may not necessarily be
342 to the specifications that the Erosion Control Department would require. We need to make an announcement to the public that
343 they still have to go through a stringent process to allow this permitted use to be approved.

344
345 Michael Harvey: Could I direct your attention to 6.13.6c. There is a specific standard for stormwater ponds that the UDO is
346 subject to that. If there is a specific standard dealing with dam or reservoir maintenance mentioned in the UDO it has to meet
347 that standard. Stream restoration projects, stream buffer erosion control standards has to meet those standards. I think what
348 you are looking for is there.

349
350 Craig Benedict: Single family houses are permitted by right in agricultural areas but there are still standards to meet. I like
351 Larry's idea to further this preamble and the same introductory paragraph that says you have to meet standards but we could
352 also put in there that these permitted uses are being allowed as noted below are for the general enjoyment and maintenance of
353 these natural areas. These are all on behalf of the preservation of the resource.

354
355 Larry Wright: The mountains to the sea trail will be coming through Orange County and I understand if there are problems with
356 that trail coming through and I would like to see it come through this county. If we can do something to have this trail come next
357 to a stream buffer, I for one, would like to be able to see that happen.

358

359 Perdita Holtz: It almost sounds like in A, the General Standards, you want to make it clear that everything requires approval of
360 some sort of permit or approving document in order to do the uses permitted by right. Not just if structures are proposed but also
361 in general, you want everyone to know they need to get the approval of the planning department in order to do this.
362

363 Shannon Berry: Basically all activities require approval of the site plan and all applicable permits which would be Erosion
364 Control, etc.
365

366 May Becker: I guess the term "permitted by right". For example, if you want to build a house then you would say you have the
367 right to do that however, why would a pond be permitted by right.
368

369 Perdita Holtz: The use is permitted but without mitigation.
370

371 May Becker: The ponds have been added as permitted by right. So you are saying the ponds have been defacto existing
372 permitted by right or something else even though they are listed as permitted by right. I am asking if this has gone on so
373 productively for years, why does it have to be put into this document?
374

375 Shannon Berry: I think ponds permitted in a buffer, provided stormwater ordinances are permitted based on site plan approval. I
376 don't think what Terry was saying that they have allowed ponds all over the place in stream buffers.
377

378 May Becker: That is my concern. If they are going to do that now by right.
379

380 Terry Hackett: We have thousands of ponds on streams in Orange County. They are ponds not for stormwater management
381 most of them were probably created as farm ponds at one point. There is a whole permitting process they would have to go
382 through. This specific issue is stormwater ponds and they would not be allowed in the stream. That is something we would
383 never approve and the state doesn't allow or the EPA. This would be something where for space constraints, this stormwater
384 pond in order to treat the impervious surface that belongs to this property encroaches into this stream buffer, we are saying since
385 that pond encroaches in stream buffer, you have to establish a buffer around that too.
386

387 Craig Benedict: *(Provided a picture of the example.)* In the Unified Development Ordinance, we are balancing a lot of different
388 interest in the context of a bigger picture. In Orange County, all of these issues we have going on here, we are stricter than the
389 state for the Orange County watershed protection. We have some of the strictest requirements of any county in North Carolina.
390 The nutrient loads are being monitored by both the Neuse River, Jordan Lake and Falls Lake rules. We do monitor TMBL with a
391 stream monitoring process. We are still not being more liberal than the state. When you combine these things, we are doing
392 more for water quality in North Carolina than any other county.
393

394 Mark Marcoplos: I would like to second Larry's preamble just so that it is read, they understand the goal of these things are to
395 enhance the quality of life while protecting the waters and streams so that when someone comes along and finds a loop hole, at
396 least that is there and we can go to them and say, that was not the intent. What is stream bank stabilization, is that a potential
397 loop hole?
398

399 Terry Hackett: That is basically where you have possibly a degraded stream bank from erosion, or excess flow. It allows you to
400 come in there and stabilize that bank by various means and those would have to be submitted in a plan and approved. Typically,
401 when you talk about stream bank stabilization, anything below the ordinary high water mark also has to be approved by the
402 Corps of Engineers and the State of North Carolina. It is to eliminate in stream erosion.
403

404 Mark Marcoplos: So it could be rip rap or wood?
405

406 Terry Hackett: There are various different methods, but what we would certainly prefer to see is plantings but sometimes it
407 actually it takes engineering to re-slope the bank and put in a stabilization.
408

409 Pete Hallenbeck: I would like to clarify two things. Is there currently an ordinance in Orange County that prohibits repetitive
410 fertilizers in stream buffers?
411

412 Terry Hackett: Yes. In the Neuse stormwater ordinance. It allows for fertilization once for the establishment or reestablishment
413 of vegetation.
414

415 Pete Hallenbeck: If someone says I have this wonderful lawn 20 feet from the stream, they are not allowed to fertilize that every
416 year?
417

418 Terry Hackett: That is correct.

419
420 Pete Hallenbeck: Everything we are talking about, existing ponds will be grandfathered in, we are not proposing you go through
421 the county and find everyone with a pond and have them plant trees.
422

423 Craig Benedict: With existing ponds, we would not be retroactively pursuing conditions around existing ponds.
424

425 Pete Hallenbeck: On page 6-143, under C, number 13. New stormwater management ponds. We have talked a lot about
426 stormwater management ponds. There are ordinances in the UDO regarding stormwater management ponds, are there any
427 about plain old ponds?
428

429 Terry Hackett: The way we would regulate that is if the pond is for non-agricultural use. If it disturbs enough land to trigger an
430 erosion control permit then we would have require a permit and erosion control plan, etc. There are state rules, even with
431 agricultural ponds. There is a dam safety act, the rule of thumb is from top of the dam to toe is 15 feet requires a dam safety
432 permit and actually an engineered dam. It would hold enough water back that it could cause down stream flooding. The state
433 actually does inventory ponds and sends letters on a three or five year cycle.
434

435 Pete Hallenbeck: I have heard that. I have talked to farmers and they have this awareness that if you are making a pond, don't
436 go deeper than 15 feet.
437

438 Terry Hackett: It is true. If I have an actual live stream and I place fill to create a dam, I may have to have a section 404 Clean
439 Water Act Permit from the Corps of Engineers which also has state review and there is a whole list of requirements that they
440 have to do to protect down stream's habitat, etc. and they would have to establish a riparian buffer around that pond.
441

442 Pete Hallenbeck: What I am reading in both of those replies is to put a pond in Orange County, one way or another, you will run
443 into a permitting process. The only possible exception would be a homeowner putting in a pond disturbing less than the amount
444 of square footage for Erosion Control change based on the critical watershed area
445

446 May Becker: I am interested in what they are but I am also ... I am not trying to say that one homeowner is trying to have a
447 pond. My concern is the general trend. We have talked about development and zoning and such. If you have a right or you
448 could propose putting in that you have the right to put a pond into the development. For example, a developer comes and claims
449 he has the right to put a pond in the buffer zone, where is this runoff going to go and are there specific standards and what will
450 stop a developer essentially going too close to the river?
451

452 Pete Hallenbeck: So your concern is earlier in the process when the permits are run than the more general question which is
453 how we tell the people they have a right to put ponds in buffer zones.
454

455 Perdita Holtz: Can I address this one thing? Terry Hackett may not have been aware of this but new ponds with riparian buffer
456 adjacent to the pond is actually a use that is in the state's list of uses and it is not in the county's proposed uses so it probably is
457 not allowed to just do a pond that is not for stormwater management purposed.
458

459 Pete Hallenbeck: Stormwater or ag?
460

461 Perdita Holtz: Ag will fall into a whole different category because ag is not subject to the zoning ordinance. You said you want to
462 have a pretty pond with decks, the way it is written now, you would not be able to do that.
463

464 Larry Wright: What is 29?
465

466 Perdita Holtz: This is the list
467

468 Larry Wright: Give me an example of what that would be.
469

470 Perdita Holtz: A new pond like what May was just describing. You want a pond on your property that is in the stream buffer.
471

472 May Becker: I am essentially concerned about the runoff, new development and whether it would create more impervious
473 surface, you will have to have that runoff go somewhere. If it goes into the pond and that pond is too close to the stream buffer
474 than what is going to stop someone from putting it too close to the stream buffer and does that developer interpret that he has
475 the right to put on there.
476

477 Craig Benedict: The developer can locate a new stormwater pond in a stream buffer but it will not change the nutrients that
478 comes from the site no matter where it is located. The site output is still regulated so by allowing it in there, it is likely the

479 improvement will decrease the runoff speed and the nutrient load by having it held back for a while. If it is within the stream
480 buffer, there will be an enlarged stream buffer that will be created around this new device. In any event, we will not be increasing
481 the water quality aspects of the site.
482

483 Brian Crawford: In your scenario, the contractor wants to build a new storm water management pond, even though it is a use
484 permitted by right, I think Mr. Harvey said was that you still have to go through these general standards. In the general
485 standards there is a list that says, a written notification, a written statement, you have to provide a plan to minimize soil
486 disturbance, etc. so it is still an approval process for the site plan.
487

488 May Becker: There is an approval process but it is not very specific. It does not say you have to be 50 feet from the stream
489 whereas, previously if it wasn't permitted by right, it would be more difficult for a developer to say I need to have this pond and I
490 have the right to put it here.
491

492 Brian Crawford: But it still goes back to what our standards are. We still have the 80 feet that would kick in.
493

494 May Becker: They are saying it doesn't kick in if it is within the buffer zone, right?
495

496 Brian Crawford: That is not what I heard.
497

498 Craig Benedict: It is allowed in the stream buffer.
499

500 May Becker: There is no specific regulation stating that it has to be
501

502 Michael Harvey: As far as erosion control and state standards, they will not allow stormwater under 20 feet to the top of the bank
503 so there is going to be a required buffer.
504

505 May Becker: State standards will apply?
506

507 Michael Harvey: The only difference here is, Perdita provided this example on a chart, one of the uses that is allowed in streams
508 buffers, according to the state is airports and we don't allow that and we are not proposing to allow that. If we say you can have
509 a stormwater management pond approved through our process, then the state will say is we don't have a problem with that as
510 long as it is 20 feet from the edge of the top of the bank.
511

512 May Becker: You are proposing to have more lenient standards or no specific county standards.
513

514 Craig Benedict: If we put that under the uses permitted with mitigation ... let me think about that.
515

516 Mark Marcoplos: Is mitigation always project specific?
517

518 Craig Benedict: Yes. We will review where it is, what natural vegetation may or may not have been removed and we will ensure
519 that under state rules that the vegetation, ground cover, trees, will more than compensate for what we have removed from the
520 buffer. We can still never go within 20 of the top of the bank. These are really enhancements.
521

522 Mark Marcoplos: Isn't mitigation under this where it says, provided or repairing buffer. So moving it to the mitigation section
523 helps a little but you still get the same outcome.
524

525 Craig Benedict: That is correct.
526

527 Brian Crawford: May's point is well taken. We don't have any readily ascertained standards as we do in new proposals. You
528 guys work with the public all the time, doesn't it seem that you may have a developer or contractor come in and say I have a
529 permitted use by right and argue with you that the way the standard is written, they get to do what they want.
530

531 Terry Hackett: Not in this case because one thing you have to remember is this is a stormwater management pond and there is
532 no developer that will install a stormwater management pond unless they have to. If someone was trying to do something
533 because they felt they had the right, they would be doing it covertly I guess. If a stormwater management pond is required it's
534 because our stormwater standards meet the nutrient loading requirements to say you have to do this to develop this property the
535 way you are proposing so during that process, there is a whole list of standards.
536

537 May Becker: Putting permitted with mitigation, if approved by....in other words, that it is just allowed to be approved by mitigation
538 if approved by the particular.....standards.

539
540 Alan Campbell: If you moved 13 to D and then D crosses back over in 6.13.6b requires that the erosion control supervisor
541 approve it.
542
543 May Becker: If a use is permitted, it sounds as if it is permitted if I mitigate whereas if you say permitted if, that it sounds like it is
544 unconditionally permitted. You are not unconditionally permitted to do it unless you fulfill the obligations and approval.
545
546 Alan Campbell: There is a standard that says for uses permitted with mitigation, this is the extra step you have to do. It says if
547 you are going to do anything in 6.13.6, you have to do everything in A and B.
548
549 May Becker: But it also reads that you are permitted to do it and you have to everything in A and B but
550
551 Michael Harvey: But we would still have to approve it.
552
553 Alan Campbell: B is the approval, you have to do everything in A which is frankly not anything special by B you have to get
554 approval.
555
556 Perdita Holtz: But A3 does require approval of a site plan if you have a structure and we had talked about some sort of other
557 approval mechanism if there is not a structure.
558
559 Alan Campbell: I am saying for the issue of everything in here in addition to whatever else it may require, it also it has a
560 mechanism.
561
562 May Becker: To me it says, mitigation shall be provided in accordance with these standards and shall be approved kind of
563 implies that it shall be approved it is not saying it might not be approved.
564
565 Mark Marcoplos: I think we are at a point where the changes are good and it is protected. I can tell you as a builder, I have
566 made great arguments to building inspectors and I have been absolutely right some of the times and not all those times was I
567 allowed to continue on with my right to complete that house. In the end, if they are there inspecting, they will make a judgment.
568
569 May Becker: I would feel more comfortable if it did not say it was there right.
570
571 Pete Hallenbeck: It is there no matter what.
572
573 Brian Crawford: Are there any others? I think we can suggest some changes and suggestions. Outside of the new stormwater
574 management clause, are there any other issues that we need to address.
575
576 May Becker: Sewer lines.
577
578 Brian Crawford: What about sewer lines?
579
580 May Becker: Again, clear cutting to get to them, maintenance of them, if they will be too close to the stream buffer, why are they
581 necessary for the stream buffer. I am not really clear again on permitted by right. What is stopping the nutrients from getting into
582 the water body if you are moving some trees to put sewer lines.
583
584 Alan Campbell: Are these the sewer lines that would be put in by eminent domain, to put them where they want to anyway?
585 This is probably a technical correction to make sure they don't create a technical violation.
586
587 Craig Benedict: That is correct. These are serving the public interest. Public water and sewer lines and streams where, in North
588 Carolina, sewer outfalls parallel streams because they all run down hill by gravity. They don't put them in the streams, they cross
589 the streams, sometimes they are up the back. They parallel many streams, that is how a gravity public sewer system is and that
590 there is a right that people have to develop their property in designated areas of public water and sewer and we are allowing that
591 right for someone to develop public water and sewer.
592
593 Brian Crawford: That is more of a clarification than allowing because there is really nothing you can do if someone developed
594 property and you have a utility and someone comes in to put an easement within the allowable lot, I think the state will allow that.
595 I think you can clarify to say what that distance needs to be.
596
597 May Becker: Yes but we are talking about new sewer lines. If somebody already has something tagged so we are adding new
598 sewer lines to areas that ...have trees, or whatever.

599
600 Craig Benedict: Public sewer lines would trump the stream buffer regulations. There is a balance of the public interest for public
601 water and sewer in certain areas and the aspects of the streams. If we thought that public water and sewer would cross stream
602 buffers or parallel up the bank, it is something that would be occurring on a regular basis within our economic development
603 zones. There are streams there too. In many cases in rural areas, we are not going to be crossing streams because the septic
604 systems are located on site and usually outside the stream buffer.

605
606 May Becker: Are you saying there is already the right for the ...

607
608 Craig Benedict: Yes, they have the right to put public utilities within stream buffers.

609
610 Alan Campbell: I read this as a technical correction. There are many laws that say this is the way things happen and somehow
611 that creates a technical problem with another wall. This is fixing that saying this does not violate something we said you can't do
612 even though we can't prohibit it anyway.

613
614 Pete Hallenbeck: Is this referring to a crossing or parallel to the stream? Or does it matter?

615
616 Craig Benedict: It says that when it crosses, it should cross as much to a 90 degree angle as possible. It also pertains to
617 parallel streams and where the parallel could occur.

618
619 Pete Hallenbeck: One thing that is interesting about both buried utilities and sewer lines is the area of the buffers have to be
620 kept clear of trees and what is the impact here if someone comes along and the easiest way to put a cable in is to follow the
621 stream line and say we can do that and keep that 12 foot area clear of trees. Is there anything you can do about that?

622
623 Craig Benedict: There is certain public service commission rules as you can see gas lines that they go cross country, or electric
624 lines where we have very little input. There is more input with the location of sewer lines because we are working with the utility
625 provider and have some environmental sensitivity to the location.

626
627 Pete Hallenbeck: On item 1, I am not sure why when we talk about buried utilities, it calls it electrical, telephone, cable,
628 television. If it is necessary to call those out, I would also throw in data to make sure we can do everything but run a fiber optic
629 cable.

630
631 May Becker: On sewer lines who determines how far from the stream they are.....

632
633 Craig Benedict: Terry, are there zone one exclusions for sewer lines?

634
635 Terry Hackett: Generally, yes. If it is a sewer line public the utility will still have to get state approval so if it is a public utility, the
636 jurisdiction is usually removed from us and they generally don't want any utility line running parallel in the stream buffer if they
637 can avoid it and if it has to be it is usually in the outer 20 feet. If utility lines cross the stream buffer perpendicular, the state
638 buffer rules has an exempt category that says if you clear less than 40 feet to build it and maintain only 10 feet over the pipe, that
639 is exempt. Sewer lines are also approved by the Division of Water Quality that approves sewer systems. We would look at
640 these if a private developer is installing the utilities as part of their development and turning it over to public utilities.

641
642 Brian Crawford: If you build a community waste water system and for some reason turn it over....but it's possible.

643
644 Terry Hackett: But the utilities lines do have some additional review if it is the larger gas transmission lines, some of those have
645 a federal review process. There are added steps beyond what we do for a utility project.

646
647 Mark Marcolpos: From a practical standpoint, the impact of sewer lines is at its peak when they are being installed and you can
648 never write a policy keeping someone from driving along the stream bank and taking out extra trees when it comes down to who
649 is monitoring the process when it happens and how much integrity they have. There are ways to do it with a lot less impact and I
650 don't know if there is a policy that can really write site specific stuff.

651
652 Terry Hackett: As far as sewer outfall and buffer easements, because a lot of the older, for instance here in the town of
653 Hillsborough, they follow right next to the stream and other communities have the same problem and they are looking at how
654 narrow can they maintain that maintenance corridor to gain access. Obviously if you have crossings or man holes that are down
655 in the flood plain, you want to be able to access them if you have an overflow. We are also having discussion with the state
656 regarding getting some shrubs back here so we could actually have a riparian buffer that has woody vegetation and still maintain
657 some integrity in the stream buffer.

658

659 Brian Crawford: Any other discussion?
660
661 May Becker: Number 8driveway crossings and single family residential lots.
662
663 Perdita Holtz: What about it specifically?
664
665 May Becker: You have developers and at this point, they don't necessarily have access to lots and make sure you have the kind
666 of ... if you have a driveway you will have more runoff. If you have something that is not developed, if you add this as a
667 permitted use by right, again, it seems it is offering developers options that are kind of open ended.
668
669 Perdita Holtz: Michael, doesn't this occur fairly frequently because there is no other option?
670
671 Michael Harvey: You are correct. This actually codifies an interpretation. Existing language says public and private streets and
672 railroad rights of way. It has been interpreted through out subdivision process that there are many instances where we don't
673 want a right a way where you have a 20 foot road, we would rather encroach with a driveway which is anywhere from 12 to 15
674 feet.
675
676 Brian Crawford: Much of that is runoff.
677
678 May Becker: But if you are saying something is permitted by right that doesn't mean they are not going to do something else?
679
680 Michael Harvey: Just because it is permitted by right does not mean that it is not reviewed and approved in accordance with
681 standards of the UDO. It still has to go through that review and approval process. Single family residences just aren't put on
682 property overnight or at the whim of a developer because they can do it 'by right'. It has to go through an approval process.
683
684 Brian Crawford: If this was a single developer or a single person building a home there are minimum the lot sizes anyway.
685
686 Michael Harvey: There are minimum lot sizes. They range from district to district and conceivably by subdivision.
687
688 Larry Wright: If you want to build a kennel, and you want it at the back of the lot, we have a case where there is a problem with
689 getting emergency vehicles back there. It is only 12 feet wide driveway so there are restrictions that way. Here, you have a
690 developer that wants to take place, a kennel back in someone's yard, and the fire marshal has issues. There are other things
691 that come into play.
692
693 May Becker: I understand it is just I have gotten into talking about permitted by right as opposed to suggesting it is permitted if
694 certain approval is given. It's the language.
695
696 Brian Crawford: I think I hear folks, with the Section of number 13, that the other Planning Board members are becoming
697 convinced that there is still an approval process in this term permitted by right. I know you have issues with term but we have to
698 get to try to get you comfortable somehow that this permitted by right isn't as open ended as you are interpreting. We can keep
699 going down this list and that is what we keep coming back to. We have got to come to a point that the "permitted by right" term,
700 we have to decide to change it or we ... as in my case, I am comfortable that the language is restrictive enough. That is
701 essentially where the issue is now. I don't know how we make you comfortable or how you make us comfortable. I do agree on
702 13 that I think one of the suggestions were that we move that to D and I didn't think the staff had a problem with that.
703
704 May Becker: Pretty much ... I suggest we add if particular approvals are given as opposed to my interpretation that it shall be
705 given.
706
707 Brian Crawford: So you are still suggesting additional language in number 13.
708
709 May Becker: Permitted with mitigation suggests that I am permitted to do this if I do what is listed on page 6.4.2 a and b and
710 these as mitigation shall be provided in accordance with the state standards and shall be approved and inspected by the Erosion
711 Control Supervisor.
712
713 Alan Campbell: In b1 if we went to something like the landowner shall be required to provide mitigation in accordance with that
714 so it's active. Basically, this shall require approval from the Erosion Control Supervisor. Something that makes it clear that the
715 Erosion Control supervisor isn't required to give the approval, the landowner is required to get the approval.
716

717 Shannon Berry: We can add language to B1 along those lines that says basically this shall be reviewed in accordance with state
718 requirements and must be approved by the Erosion Control supervisor. We can change the language so it doesn't imply that is a
719 done deal.
720
721 Alan Campbell: Make it active.
722
723 Brian Crawford: I like that. May, do you want to look at that change.
724
725 Shannon Berry: We can come up with a couple of options for that.
726
727 Brian Crawford: After tonight we will reword that and shoot it out.
728
729 Alan Campbell: That will cover everything, not just 13, everything in D.
730
731 Brian Crawford: We are back to "permitted by right".
732
733 May Becker: It is a concern. You are putting up a list of things people are allowed to do with a stream buffer and I think we
734 should know what they are.
735
736 Brian Crawford: What would your suggestion be about this permitted by right? What would you like to see?
737
738 May Becker: Something along the lines, I would take right out and say something along the lines of, permitted if special use or
739 some kind of permitting is approved.
740
741 Brian Crawford: Staff?
742
743 Perdita Holtz: I think we could change it to uses permitted without mitigation and change the sentence that's right behind that
744 says the following uses are allowed as a matter of right and then make sure when you look at A3 it says structure are approved,
745 approval of a site plan and all that but add a 4 that says if structures are not proposed that they still have to ... we need to
746 determine what the permit would be called but a type of permit shall be required to be approved prior to commencement of the
747 activity.
748
749 Shannon Berry: If you are not happy with the word "permitted or permit", the state uses the term "allowable" which is a little more
750 open ended. We could change permitted by right to uses allowable with mitigation. We could change the topic of the whole
751 section, the whole title that says allowable in the stream buffers. Does that help?
752
753 Craig Benedict: It is more requested than permitted.
754
755 Shannon Berry: We can change all the "permitted" to "allowable".
756
757 Pete Hallenbeck: May, on item 8 is there some specific scenario you are thinking of? You have to let people go to their land, it's
758 25 feet, the streams are big, what exactly are you going to do? What's worrying you?
759
760 May Becker: What's worrying me is the developers. In places like Florida, they have very lax laws where they build shoddy
761 buildings, they pave over things.
762
763 Pete Hallenbeck: Is your concern, for example, you go down the stream and they are putting in a driveway and they are going to
764 pave it and put in ditches and let it run right into the stream? Is this gravel versus asphalt?
765
766 May Becker: My concern is just thoughts it could potentially change one particular landscape to something else. For example, if
767 you have a lot with a lot of trees or fairly rural and then you allow, you don't have a lot of rules, and a developer comes in form
768 you know where and doesn't know the community well and decides to subdivide that land into very small lots close to the stream
769 with a lot of driveways and not much vegetation is around there anymore. The other question, can people just fertilize lawns
770 without any regulations, I think the answer was not it was a one time application that was allowed but for me it's not clear.
771
772 Pete Hallenbeck: So a lot of what you're wrestling with is big picture stuff.
773
774 May Becker: It is but it also not completely unrealistic. We are welcoming development which, there are different ways to
775 approach development.
776

777 Brian Crawford: You know our ordinances are restrictive for subdivisions. We have one lot per five acres. These issues will be
778 before the Board and you will see some of these issues. Concept plan, preliminary plan, you'll see some of these come before
779 you.

780
781 May Becker: I feel like this is an ordinance that is a major starting point or major step and I get the sense there is a push to get it
782 through quickly and if I don't know and if we move on and don't talk about things like driveways. It's not ok with me. Another
783 thing, I live in Chapel Hill in an older neighborhood and there is lot of talk about developers coming in and changing the
784 neighborhood and people in the neighborhood there want to keep lawns there and old houses with porches. When you read
785 stuff like this, you don't know what type of developers are coming here and what is going to happen.

786
787 Brian Crawford: I know the driveway issue is a direct response from complaints from some of our more rural homeowners that
788 did not have access. This is a direct response from an Orange County meeting. Not necessarily a developer. This is
789 homegrown.

790
791 May Becker: If that is what is wanted, I don't see why we couldn't put in something like ... attach some type of approval to it. It is
792 something individuals wanted and something the inspections department are okay with, I would suggest we put it in here so that
793 when people read it, or the public reads it when developers consider this that is what is being communicated. Another thing I
794 want to point out is there is a lot of development coming into Chapel Hill and they have a lot of particular restrictions, they want
795 green buildings, they want certain affordable housing, they want public area for a fountain so there is kind of a community sense.
796 If you have high quality developments with people who care about the community who are willing to revise things so it fits in the
797 community then it would be okay with ordinances that make sense whereas if you have a developer who doesn't care, I don't
798 think we want those types of developments. Quality developers aren't going to be scared away by ordinances.

799
800 (Larry Wright left meeting)

801
802 Mark Marcoplos: One small change on the driveway crossing it's really a bridge, isn't it? A culvert which would be with a small
803 stream and a bridge with a larger stream so maybe there is a way to pinpoint that so you don't have this image of an oil leak and
804 75 Ford driving through the stream.

805
806 Alan Campbell: This is a single family so if you put the bridge just to go to your house, that would be pretty expensive.

807
808 Mark Marcoplos: It happens. If it is a significant body of water you can put a bridge over it but if it is a small body of water, a
809 culvert is a little bridge. What I am getting at is an image of a driveway crossing and you are going to drive through the stream
810 and maybe tidy up the language. I feel like right after C, those lines basically say, you will have to meet the standards. I am very
811 concerned about keeping the waters clean but I am quite comfortable with that language.

812
813 Brian Crawford: At some point we will have, taking the suggestions, we will have to come to a vote. If we come to a vote right
814 now with the existing language is okay with the exceptions of the suggestions we had, we might not reach the goal you want to
815 reach tonight. We are coming to the point where we have to figure out how to make you comfortable but not to shut you down.
816 At this point, we have discussed it pretty much in depth.

817
818 Mark Marcoplos: I have found that it is necessary to be redundant. To phrase the same thing in a different way. Maybe we can
819 insert a sentence that says, don't be mistaken, you are not going to just do this without going through the proper process so no
820 one can say I didn't understand that.

821
822 Shannon Berry: We can come up with some language that will address the concerns I hope makes it very clear that you go
823 through a process. We can beef up the front part of that section and more clearly articulate that there is a process.

824
825 Brian Crawford: May, when I got your email, I realized that you did a lot of work on this and I am relying on your expertise on
826 this. But at the same time, I think we have discussion it and I think we are convinced that there is language is there to secure the
827 suggested changes that the staff have put in. I still want you to be comfortable. I think the compromise is that we allow staff to
828 suggest some changes to hopefully end discussion on those issues.

829
830 May Becker: Yes that sounds like a plan. On those issues meaning we are going to reconvene at the next meeting and
831 continue.

832
833 Brian Crawford: I don't know about the next meeting but I want them to send out language to address the concerns we talked
834 about this evening and hopefully, that language is agreeable to you. It sounds like permitted by right gives you some concern so
835 they will attempt to make sure that doesn't confuse the general public that they can do what they want without some process that
836 we believe is in there but we will beef it up to make you more comfortable.

837
838 Pete Hallenbeck: My main goal tonight was to take advantage of May's expertise to ensure there was not some glaring thing that
839 was omitted. This driveway thing might be a problem but it seems to be covered.
840

841 May Becker: Since you bring up driveways over streams and all that. It is all a matter of degree, in that sense we've got a
842 homeowner who happens to be close to a stream and he wants to have his pickup truck over that stream and I don't think that is
843 necessarily going to be a problem hundreds of miles downstream. On the other hand if you have a tendency to develop Orange
844 County and you are going to do it near streams and you are sitting a precedence of sorts, I think we should be aware of what that
845 potentially could do to down stream erosion, to the flooding, to the question of fisheries, there the question may come up on how
846 you know but there are things we do know. We know for example that you look at hydrograph, you look at rainfall and then there
847 is a big storm and you see this big peak. There is also a low area that is called base flow which is like ground water flow and a
848 lot of what we rely on is being able to analyze these types of hydrographs. We don't necessarily know what is going on with the
849 ground water because we don't have the data for it and so we see more urbanization and see these peaks. You see the base
850 flow, if you don't see as much of a base flow signature in the hydrograph. Potentially it means there is more quick flow going to a
851 river. Base flow is associated with slow flow, like ground water flow or like, if you go to a river bank and it has been a dry
852 summer and then you can see the river bank water level is approximately representative of the ground water table. If you go out
853 there after a big storm then you are going to see the water is rushing by so if you urbanize areas then you are going to get more
854 peak flow. That means if you have more fresh water coming into the estuary then the boundary between salt and fresh water is
855 pushed more toward the ocean then you've got this density driven flow.
856

857 Pete Hallenbeck: I get the feeling that a lot of your concerns are almost more global concern up until quality of development and
858 it is hard for me to bring that into each little piece.
859

860 May Becker: My general point is here are some things that are best management practices like having buffers, open space,
861 filtering nutrients and not creating a lot of impervious surface.
862

863 Brian Crawford: I don't think any of that has gone away. We are all on the same page and comfortable with the next steps. We
864 don't need to revisit this in February. I will leave a section open for new business. I think if we could wrap this up.
865

866 Alan Campbell: The next meeting, are we going to try to approve the whole thing?
867

868 Brian Crawford: I have not seen the minutes for the first meeting, how did we resolve it in the first meeting. We got all buy in on
869 the first meeting.
870

871 May Becker: We didn't know we were still talking about conditional zoning.
872

873 Brian Crawford: Were there things not resolved?
874

875 Craig Benedict: I thought there was consensus, there was clear consensus, we went around the table, that doesn't mean that
876 100% of people would vote for conditional use.
877

878 Brian Crawford: We didn't take a vote? There are still things still outstanding but at the next meeting we will take a vote.
879

880 May Becker: I did talk about some....I just feel like...
881

882 Brian Crawford: Remember there is still Phase 2 and we will go through the substantive things that you were concerned about.
883 What stopped this piece was there lack of clarity on conditional use and conditional zoning and your suggestion about stream
884 buffers so I think we have gone through this and there was a general consensus. I don't think we can do anything but go for a
885 vote next month and yes there will be those that vote against it but we have to a vote to be consistent with the timeline we
886 suggested when we submitted to the BOCC and that has to take place in February.
887

888

889 **AGENDA ITEM 3: ADJOURNMENT**

890

891 **MOTION:** Alan Campbell made a motion to adjourn. Seconded by Mark Marcoplos

892 **VOTE:** Unanimous

893