

MINUTES  
ORANGE COUNTY PLANNING BOARD  
JANUARY 5, 2011  
REGULAR MEETING

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61

**MEMBERS PRESENT:** Judith Wegner (Vice-Chair), Bingham Township Representative; Larry Wright, At-Large, Cedar Grove Township; Tommy McNeill, Eno Township Representative; Peter Hallenbeck, Cheeks Township Representative; Samantha Cabe, Chapel Hill Township Representative; Alan Campbell, Cedar Grove Township Representative; May Becker, At-Large Chapel Hill Township; Mark Marcoplos, At-Large, Bingham Township; Rachel Hawkins, Hillsborough Township Representative; Andrea Rohrbacher, At-Large Chapel Hill Township

**MEMBERS ABSENT:** Brian Crawford (Chair), At-Large, Eno Township; 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; Tina Love, Administrative Assistant II

**OTHERS PRESENT:** Dolly Hunter

*(Documents handed out: 2011 Planning Board, Board of Adjustment, and Quarterly Public Hearing Schedules)*

**AGENDA ITEM 1: CALL TO ORDER AND ROLL CALL**

Judith Wegner: Thank you to the staff for your hard work. Is everybody ready?

**AGENDA ITEM 2: SELECTION OF CHAIR/VICE-CHAIR FOR 2011**

Judith Wegner: We have to decide on a Chair and Vice-Chair. I will entertain nominations or volunteers.

Mark Marcoplos: What has happened in the past?

Judith Wegner: What's happened in the past, the last couple of years Brian agreed to serve again. I agreed to serve again. I think the tradition, as best I know, is two to three years for the Chair and then some rotation depending on what is going on in the Board. I didn't ask Brian if he'd serve again, I think he probably would, I'd be happy to release Vice-Chair and defer to somebody else who'd like to do that so we'd have some continuity as well as some shift in change.

Larry Wright: Hasn't he been Chair for two sessions?

Judith Wegner: Two years, right and I've been Vice-Chair for two years. As best I know there isn't a limit. Is there anyone would consider serving as Chair?

Larry Wright: I'd serve as Chair.

Judith Wegner: Anybody else want to be considered as Chair or nominate Brian to serve again?

Mark Marcoplos: Do you know if Brian will serve again.

Judith Wegner: No, but he hasn't indicated that he didn't want to serve again. My sense is that he would be willing. If you want to we can have a closed ballot to have everybody have paper and fill in their choice and we can do something similar for Vice-Chair so if say Brian was elected Chair, Larry if you'd consider serving as Vice-Chair.

Craig Benedict: Brian has said he'd be willing to serve.

Judith Wegner: The Chair does meet with staff every month to set the agenda and works with the County Commissioners and Chair when we have a public hearing. Ok are there other candidates beside Brian and Larry that would like to volunteer? Ok, is

62 there a motion to close nominations?

63

64 Mark Marcoplos: I move to close nominations. Seconded by Samantha Cabe.

65 VOTE: Unanimous

66 *(Board wrote choice on blank ballots)*

67

68 Judith Wegner: Tina will count and then we'll do Vice-Chair.

69

70 Tina Love: The Chair is Brian Crawford by majority of votes.

71

72 Judith Wegner: How about Vice-Chair.

73

74 Samantha Cabe: I nominate Larry Wright if he is willing to serve. I nominate you too (Judith Wegner).

75

76 Judith Wegner: Motion to close nominations for Vice-Chair?

77

78 Mark Marcoplos: Move to close Vice-Chair nominations. Seconded by Rachel Hawkins.

79 VOTE: Unanimous

80 *(Board wrote choice on blank ballots)*

81

82 Tina Love: The Vice-Chair is Larry Wright by majority of votes.

83

84 Judith Wegner: Congratulations to Larry. Thank you all very much, thank you Larry for agreeing to serve.

85

86 **AGENDA ITEM 3: INFORMATIONAL ITEMS**

87 a) Special Planning Board Meeting scheduled for January 19, 2011

88 b) Next Regular Planning Board Meeting scheduled for Wednesday, February 2, 2011

89 c) Planning Calendar for January and February 2011

90

91 Judith Wegner: Craig do you want to give us an update?

92

93 Craig Benedict: We have included the schedule on page 19 in your packet. That is the timeline as we move forward. There will  
94 be a continuation of the November 22 Public Hearing in February for additional public comments. The January 19 meeting is a  
95 special meeting determined by this Board. The timeline noted on page 19 still has all the Planning Board recommendations  
96 wrapped up by March 2 and the Commissioners would bring up the item for a decision or action by their April 5 meeting which  
97 would give them time to review the material. They do want us to have an outreach meeting in January and specifically invite  
98 those people that had comments by email to answer their questions directly and meet with local governments. We sent a letter  
99 on December 20 inviting all local governments.

100

101 Judith Wegner: In Chapel Hill, is there a firm date for that?

102

103 Craig Benedict: Not yet. We sent material regarding conditional use and zoning. There is not a specific presentation date  
104 scheduled.

105

106 Larry Wright: If I remember correctly, there was a gentleman that represented Durham in the Eno Economic Development  
107 District, were they solicited in any fashion?

108

109 Craig Benedict: Aaron Cain was the person who was with Durham and I don't know if we sent a letter to them but they have  
110 been forwarded copies during the process in April and August of last year as we went through the process. We have been  
111 explaining to the Durham-Chapel Hill-Orange County work group and we have giving progress reports to that work group.

112

113 Alan Campbell: The outreach meetings, would it be useful for some of us to be there so we could brief them?

114

115 Craig Benedict: At this phase where you came into the process, any meeting would be good for a briefing because we ear going  
116 to give an overview, broader than what we are focusing on tonight or February. We will start at these outreach meetings almost  
117 from square one.

118

119 Alan Campbell: The prior meetings, you had one that was not well attended but I am assuming this one will be because of the  
120 requests we got and the attendance at the public hearing.

121

122 Craig Benedict: That is correct and we will also invite the people who sent emails. There were nine or ten people who spoke at  
123 the meeting and they were looking at our process positively, it was the emails that we spent more time on.

124  
125 Alan Campbell: That is the 27<sup>th</sup>?

126  
127 Craig Benedict: Yes.

128  
129 Alan Campbell: Is there an indication where that will be?

130  
131 Perdita Holtz: In this room, 6:30 to 8:00.

132  
133 Andrea Rohrbacher: Chapel Hill Town Council has been in recess since December 6 and their next meeting is Monday night so I  
134 expect you will hear from them this next week.

135  
136 **AGENDA ITEM 4: APPROVAL OF MINUTES**

137  
138 **MOTION** made by Rachel Hawkins to approve the December 1, 2010 minutes. Seconded by Alan Campbell.

139 **VOTE:** Unanimous

140  
141 **AGENDA ITEM 5: CONSIDERATION OF ADDITIONS TO AGENDA**

142  
143

144 **AGENDA ITEM 6: PUBLIC CHARGE**

145  
146 **Introduction to the Public Charge**

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

154  
155 **PUBLIC CHARGE**

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

162  
163 **AGENDA ITEM 7: CHAIR COMMENTS**

164 Judith Wegner: We are all committed to working hard to get questions resolved about the UDO. We met with staff a couple of  
165 weeks before Christmas and the staff will present tonight but I would like to know if there are any particular questions that any  
166 Board member would like to have addressed. Let's go around the table.

167  
168 Samantha Cabe: It might be helpful to give a short and broad overview of the different venues a developer can take in order to  
169 do a project. For example, the applications Special Use Permit process versus the current process versus the new process. An  
170 overview of the choices they have if the property is zoned for what they want or not because I think we get tunnel vision as this is  
171 the only way something can be done.

172  
173 Pete Hallenbeck: I am fairly comfortable with this the way it is. There is some clean up we can do. Way back in this process, we  
174 made this a manual and not a UDO for dummies and I think that decision has bit us a little bit in this area of floating zones.

175  
176 Alan Campbell: Specifically on the issue of mixed use, the master plan developments and how we now take them into a  
177 structure where a special use permit is not required and therefore the decision is entirely legislative by the Board of County  
178 Commissioners. Was an that intentional decision or did this just happen as a result of how this was reorganized?

179  
180 Larry Wright: I do have some questions regarding the terminology. Also, there is confusion I would like clarified with conditional  
181 uses. If you look at Section 5.1.4 Conditional Uses on page 53 of our current draft and look at exclusions, there is a reference to

182 4.18, Uses Excluded for Consideration of Conditional Use District. Then you go to Permitted Uses and there are the same items.

183  
184 May Becker: I have some questions. You mentioned targeted areas and the idea of using some pre conditional use districts for  
185 targeted areas. Could staff specifically talk about why we need or what the motivation is for adding these conditional use  
186 districts. In other words which targeted areas would benefit from it? How would that change development? Also how  
187 agricultural and farming may be affected by these areas. How it would change the land use.

188  
189 Judith Wegner: Are there questions about Conditional Use Districts or Conditional Zoning Districts to let the staff know before we  
190 get into that if there is something particular you would like to ask. I would say I think that some of the terminology is very  
191 confusing. The way the statutes read, there are uses that are as a right that if you are in a particular district that you are entitled  
192 to any of the uses within that general district or there may be permitted uses within that general use district that are subject to the  
193 Special Use Permit. Another fundamental point is that we have been using planned development strategies to work with different  
194 kinds of mixed uses but that terminology doesn't have a root in the way the statutes read so I think part of what the staff has  
195 recommended is to use these other provisions about conditional use districts and conditional zoning districts to try to read what is  
196 in the ordinances more directly into the statutes and if staff wanted to explain it to us, it would take 10 to 15 minutes and take  
197 another round of questions.

198  
199 Craig Benedict: I think there were two things that were said that were valuable to us. One is an overview of how zoning is done  
200 now and that puts everyone on a level playing field because we are talking about some of the complexities which are not often  
201 used in even the old zoning book which was called planned development and in the UDO it is called conditional use. We never  
202 used planned development so it is hard to get a context of it without knowing what it is like now and is there a change for the  
203 future. The second part is what is rooted in state statutes and what is not and we have to link or match up as close as possible  
204 to state statutes because that gives both flexibility and authority to plan as well as we can.

205  
206 Judith Wegner: I really appreciate the hard work staff has put into this especially over the holidays.

207  
208  
209 **AGENDA ITEM 8: UNIFIED DEVELOPMENT ORDINANCE (UDO) – REVIEW OF CONDITIONAL USE DISTRICTS/CONDITIONAL ZONING**  
210 **DISTRICTS:**

211 To review and discuss the Conditional Use District and Conditional Zoning Districts contained in the  
212 proposed UDO.

213 *Presenter: Planning Staff*

214  
215 Craig Benedict: We have talked about terminology a lot. We hope to break it into two main categories of zoning. One is what we  
216 have used over the years and something more regularly is something we call General Use Districts where someone has a limited  
217 commercial one or neighborhood commercial two. That is what people have used since zoning has started. Those have a list of  
218 standards and gives a permitted use table of about 200 uses and maybe 50 of them can go into that LC1 category (limited  
219 commercial one).

220  
221 Judith Wegner: What about agricultural?

222  
223 Craig Benedict: In Agricultural Residential AR, conventional zoning district, gives a list of uses which say residential uses are  
224 okay and some mobile homes are okay. Once you get into a category, you look at a list. Let's talk about Agricultural Residential.  
225 If there is a star in this, such as a single family, it is permitted by right, which means we can't say no. If there is no star, it is  
226 prohibited.

227  
228 Judith Wegner: This is in part 5.

229  
230 Craig Benedict: On 5-6 and 5-7. This is an idea of how to read the table. For any general use category, you see what uses are  
231 allowed there. The star means permitted by right. If there is a B, it is a different process, it is still permitted but you have to go  
232 through a Special Use Permit Class B which involves the Board of Adjustment. There is special criteria whether it can be allowed  
233 or not. There may be expert testimony.

234  
235 Judith Wegner: The general concept is that it is possible the ordinance says it is possible that this type of use could be  
236 appropriate but you have to make factual findings.

237  
238 Craig Benedict: If residents show up at a Board of Adjustment meeting and say I don't like it and don't think it is appropriate, that  
239 is not a standard. They would need to bring their expert to show proof or findings of fact.

240  
241 Samantha Cabe: If you have to go through that process and there is a letter in the box, that means if you meet a specific set of  
242 standards, you must be allowed to do it.

243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303

Tommy McNeill: The point I would make is now that you would have someone on the staff for those who may not be literate to walk through this process, we provide that kind of service to help them understand the complexity.

Craig Benedict: Yes. We have tried to make this as user friendly as possible but this is not what we will give our customers. We do have to take them through the process with Michael Harvey's department. He is working on a brochure to narrow down the places to look in the document.

Tommy McNeill: The reason I ask that is that I don't think we are looking for anything that would impede growth, I think we are trying to move forward an area that is simplistic. Someone walks in and gets assistance to open a small business and follow the guidelines and work with Michael Harvey's office and get assistance with the ordinance to make sure it is in compliance.

Judith Wegner: It is pretty complicated?

Tommy McNeill: Listening to it, yes. We speak with very simplistic terms but if you look at the county, there are a lot of individuals in the County that may not be as smart as Craig and they may need assistance in getting through this process and we want to ensure the playing field is level.

May Becker: I have a question about what happens if the Special Use Permit is granted and the property is sold and such, is the use still designated as special use?

Craig Benedict: Yes, in the case of a Special Use Permit, that special use permit does not mean they are rezoning the property, it is using their base zoning. It is either approved or denied. If it is denied, they can't have it in that area or they schedule another meeting of the Board of Adjustment to try to change the application to meet the standard. There are some very specific standards within special use permits and there are general standards. They are not as specific and that means the project meets the health, safety and welfare of the general neighborhood or it may enhance the property value. There is a generality there. You can't be over subjective but there are a few general standards that are a part of that process but if they are meeting the specific standards then you also answer the general standards.

Michael Harvey: One more important thing to remember is that once it is issued the applicant by ordinance and by conditions imposed by the approving body, a permit has to be recorded at the Register of Deeds office. This approval runs with the land so if I get approval to operate a child care facility that means it is a legal use of that property. I can sell it to someone else but it will be a daycare facility. If it is used for something else there may be a need to come back before the Board to seek re approval of that use.

Craig Benedict: Could you start out with a bed and breakfast and turn it into a country inn. You can see there is a description of the bed and breakfast there are a certain number of beds but if they increase it in size, that is not allowed. There is a limitation and they would need to come back for a Class A Permit.

Judith Wegner: The general concept is that the more substantial possible impact, it ramps up to the elected board rather than to an appointed board.

Tommy McNeill: What type of enforcement do you have?

Craig Benedict: We monitor that closely. We know where all the special use permits are and we monitor on at least an annual basis. This is more limited to a certain area.

Larry Wright: We have had cases before the Board of Adjustment where we would have really liked to have granted something to an applicant but we are not the Board of Commissioners so we must go by the ordinances.

Tommy McNeill: When it is a close call, what is the process for the applicant?

Larry Wright: We vote on it, has the case been made by the applicant and those who oppose the application, and then we must weigh those. Since I have been on the Board, you don't really get a strong opposition on some of these.

Judith Wegner: Kennels have been a real issue for people because the way kennels are defined, there is not an intermediate modest kennel. Is everyone comfortable with this? You can get a general district that you can do a whole range of things or you have an existing district and then come in for a permit for a particular use.

Craig Benedict: I will go over a few different avenues for different options. The ones across the top are general use districts that have a list of permitted uses, a list of SUP's in there, the special processes. If someone wants to open a dance studio in AR, it is

304 blank and they cannot unless they get rezoned. They are not going to rezone in AR because it is not allowed. They may go to a  
 305 Limited Commercial 1 category, they may ask for a rezoning. If they just ask for an LC1 it is called a general use rezoning and  
 306 they want to place an LC1 on the map, we have other criteria that says is an LC1 appropriate in that area. A lot of the transition  
 307 areas in the county that are activity nodes. When they ask for that LC1 in White Cross, they only have to ask for an AR to LC1  
 308 rezoning. They do not have to bring forward a site plan. We have very few of these rezoned in the county because when you  
 309 give an LC1, you give them the list of all the LC1s that are on these 200. When you ask for a general use rezoning, you don't get  
 310 the site plan and a very important thing is that you cannot set conditions. That is why the general use rezoning process is  
 311 somewhat limited in what you can ask for. The State has another category which is called Conditional Districts which are more  
 312 general. You can rezone and set conditions in both cases so when that process of rezoning, which is legislative, which does not  
 313 have to have those iron clad standards. It is a policy decision of the Commissioners with recommendations used from the  
 314 Planning Board. It is a lot easier to deny because it is a legislative process.

315  
 316 Larry Wright: It would be nice if section 10 had a definition of Conditional Districts and it was in terms of Conditional Use and  
 317 Conditional Zoning.

318  
 319 Judith Wegner: I have written about this stuff because I teach about property and things and for a long time, Conditional Use  
 320 was thought of as potentially Contract Zoning where the local government would agree that if you come in with a particular  
 321 proposal and give us goodies to go with it, we will approve it but we won't necessarily limit it to particular types of uses so at  
 322 some point, the legislature decided to approve Conditional Districts that would allow you to set up a mechanism that would limit  
 323 out of its whole range of 50 possible uses in that district limited to only a few in keeping with what you were proposing to do. It  
 324 gets more complicated because Conditional Zoning Districts were added as a further amendment to the statutes later and that  
 325 terminology is confounding to people because it sounds very much the same but the point here is to do with whatever is going to  
 326 be an SUP in question so it gets to be technically confusing to people.

327  
 328 Craig Benedict: We are going to try to lock in about three different types here today. We have the General Use. I think you have  
 329 a better idea that when someone asks for a General Use, you cannot set conditions, you do not get a site plan because that is  
 330 done later. After somebody gets the LC1 then is a permitted use in LC1 then they bring their site plan to staff and it gets  
 331 approved.

332  
 333 Samantha Cabe: Larry, there is a definition that is just Conditional Use District on page 10-7.

334  
 335 Craig Benedict: When we talked with Brian and Judith when were explaining something, we were using General, Specific or  
 336 Conditional. I think that needs to be separated into two areas. One is that you cannot set conditions in this one and the one  
 337 where you can set conditions is called Conditional Districts.

338  
 339 Samantha Cabe: Is it Conditional District or Conditional Use District?

340  
 341 Craig Benedict: This is the main heading and there are two categories under that. This is the way the statute says there is  
 342 Conditional Districts and there is the Conditional Use slot or the Conditional Zoning Districts. Both are considered Conditional  
 343 Districts. This was the original construct and having the rezoning to say we will approve your rezoning with a list of bigger  
 344 buffers, different access, etc.

345  
 346 Judith Wegner: A subset of what otherwise would be permissible in the General Use District.

347  
 348 Craig Benedict: The Conditional Use has some similarities to the Special Use Process. In the SUP process under General Use,  
 349 you are seeing the specific site plan and set conditions because the general use is in place already.

350  
 351 Judith Wegner: If you were the elected Board making the decision, you would have the possibility of someone coming in to say  
 352 let us have any 50 uses by redistrict or rezoning this to the LC1 or else you were the proponent of that, you would talk to staff  
 353 and they said that is such a wide spread you will have harder time convincing people that is a good idea if you decide you only  
 354 want a subset of everything in the LC1 option and you only as for a dance studio to be a subset slice of that with a permit that  
 355 gives you even further constraint that is much more likely to be acceptable to the elected Board and to the neighborhood  
 356 because it will constrain you more.

357  
 358 Samantha Cabe: It is important for the public to understand that all these things that have an A or B in different uses on the table  
 359 don't have to go through that new process. If you live in an AR and you want to have a child daycare facility nothing changes for  
 360 you, nothing changes for you. A majority of businesses that come up in these areas, there are still a lot of As and Bs there so  
 361 nothing changes for the majority of people.

362  
 363 Craig Benedict: We have not changed our role in this. Part of the Phase 1 UDO was to take all the General Use zoning districts  
 364 and all the Class As and Bs and leave them the same as they are.

365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425

Samantha Cabe: One example of positive change would be if someone wanted a barber shop or beauty shop in their home, the way it currently is that would not be possible without a complete rezoning but if their area is also zoned as one of these Conditional Zoning districts, it may be possible?

Craig Benedict: Let's not answer that question. We need to let it evolve into that discussion. We have a better grasp on the General Use. In that General Use, there are some permitted by right and there are some that go through a Special Use Permit, Class B which goes to the Board of Adjustment and some are Class A SUP. That requires a public hearing also standards, it goes to the Planning Board and to the Commissioners. The Board of Adjustment might be a three or four month time period and Class A would be six to nine months or more.

Tommy McNeill: What is the result of those applications? Are they successful or unsuccessful?

Craig Benedict: The Class B have been successful. They thought that was a business they wanted to have. Usually Class B or A may not be completely compatible unless they follow these standards. There have been individuals asking for that use. There has been success with that but less success with Class A SUPs. Gravelly Hill Middle School had to go through a Class A permit even though it was in an Economic Development Zone. We had it noted in the Economic Development Zone as needing a Class A SUP.

Judith Wegner: Conditional Districts are more constrained, more controlled than General Use Districts?

Craig Benedict: That is correct.

Judith Wegner: Do we have any Conditional District type methodology already in our ordinance?

Craig Benedict: That is what is in your agenda package. The Conditional Use and Conditional Zoning Districts track our planned development standards which are in our existing zoning code, on page 21, that shows what we have presently within our booklet and I will accent some the aspects of this.

Judith Wegner: What does planned development mean?

Craig Benedict: A zoning tool that someone can use to ask for a unique use that might be in the table of the conventional zoning district. You might be in an R1 area. Someone could ask for a planned development residential project. A planned development can be both residential, mixed use or non-residential. Planned Development can set their own standards or can match a combination of these General Use Districts. For example, Churton Grove is an example of a planned development.

Judith Wegner: If you had 20 acres, you would have to otherwise seek a separate rezoning for four acres and three acres and fifteen acres to make it add up.

Craig Benedict: The Planned Development is described well in the old code and the new one is to have a larger project to have it planned all together to know how the roads will service those multiple uses, how the stream buffers will be preserved through that larger project, how to get water and sewer there, etc. A way of looking at the entire project. In Churton Grove, there were about 50 conditions set with that planned development from 1988 and we are still monitoring those conditions. Also, in a planned development, you have the standards of your Conditional Zoning districts. Why are we going from PD to Conditional Use? We will match item for item but the only difference is that State law talks about Conditional Districts as a big heading and talks about specifically about Conditional Uses and Conditional Zoning Districts as subheadings. Before we proceeded with reviewing the Buckhorn Planned Development, we made amendments to our zoning code to make our planned development look like a Conditional Use Districts that is authorized by State law. That was the item we had on the agenda before because the way the PD was written was weak without the statutory oomph behind it. We tried to make amendments to the PD and said we need get rid of the PD and turn it in to what is more closely reflected by State statutes.

Judith Wegner: What is the ultimate difference? There is more control?

Craig Benedict: There is more control in both Planned Development and Conditional Use Districts than in general. As you will see here, you will set the uses you want in there and you can set conditions during that rezoning process. Those conditions should be reasonable and they have to be mutually agreed upon and cannot be imposed conditions. That is where State law stepped in to say that a local government cannot have unreasonable conditions but mutually agreed upon and reasonable.

Judith Wegner: The other thing is about the site planning requirement?

Craig Benedict: Yes. There are two nuances and that is a question Alan had and one they had. Why does one have a site plan

426 and one you don't. Let me go through Planned Development and Conditional Use Districts and page 22. This is in the existing  
427 zoning code and I think there has been anxiety about this being something completely new.  
428

429 Samantha Cabe: One thing that make is seem new is that looking at the Table of Permitted Uses, you don't see a planned  
430 development but there is the new Conditional Use zones.  
431

432 Shannon Berry: The last three columns are CZDs not Conditional Use Districts, they are Conditional Zoning Districts.  
433

434 Samantha Cabe: How does in a Conditional Use District, someone would apply for that like they would apply now for a planned  
435 development?  
436

437 Craig Benedict: Correct.  
438

439 Samantha Cabe: Regardless of what their current property is zoned, it could be anything on that list? It is really not different at  
440 all.  
441

442 Craig Benedict: It is not different at all. You can ask for PDs throughout the county. It is a legislative process that the  
443 Commissioners can say it makes sense or not. We have been doing planning studies like the Efland Buckhorn Mebane, the Eno  
444 Economic Development District, in the Orange County Speedway area that says these areas may be more appropriate for more  
445 intense growth and might be more opportunity for this creative flexible development.  
446

447 Larry Wright: I understand the Permitted Uses as they are on the table but I don't understand what is on page 5-4, Exclusions.  
448

449 Shannon Berry: If you would disregard the last three columns on the table when you talk about exclusions. The exclusions are  
450 what you cannot ask for as far as Conditional Use District.  
451

452 Samantha Cabe: If I own a big tract of land zoned Rural Residential and I wanted to do a Southern Village, I would go through  
453 the Conditional Use process and I could not ask for any of these things to include in my project?  
454

455 Shannon Berry: Yes. If you want a Conditional Use District but on the scale of Southern Village, you would probably go for the  
456 MPD-CZ zoning district and rezone to that with the master plan concept because you would be phasing it.  
457

458 Samantha Cabe: I would do a mini Southern Village. That is why the master plan wasn't used very often because it was either  
459 rezoned or not.  
460

461 Craig Benedict: If you have a specific project, you know what you are doing, you will be doing a CU. You are coming in with a  
462 specific use or dance studio or karate studio. You can come in and ask for it and set your own standards, get it approved and a  
463 site plan comes with it.  
464

465 Samantha Cabe: That would be like a strip mall.  
466

467 Shannon Berry: As far as the exclusions, on the list, they seem to be more intensive uses. The idea being that while you want to  
468 have flexibility, these more intensive uses, you probably don't want someone to come in areas because they are very specific.  
469 This give a little more leeway and approval work.  
470

471 Larry Wright: In terms of the next person who comes through there, we might want to think about putting something with the  
472 exclusions listed.  
473

474 Shannon Berry: The footnote.  
475

476 Larry Wright: It is ambiguous for me.  
477

478 Shannon Berry: Excluded for a CU district. One difficulty is that the words are so similar. In the footnotes, it states CU district  
479 but these are excluded from that old Planned Development stuff but not the new conditional use zoning. Anyone applying for this  
480 will not do it alone.  
481

482 Larry Wright: If you think about these exclusions and somehow how to wrap it around and help the reader a little more. That  
483 would be helpful.  
484

485 May Becker: What is the standard for the planned development? Can the County Commissioners say they don't think it is a  
486 good idea?

487  
488 Craig Benedict: They can say it is not a good idea. It is legislative and the standards for denial of a legislative decision are not  
489 as finite.  
490  
491 Judith Wegner: Conditional Use rezoning of any type.  
492  
493 Alan Campbell: Are you talking about a Planned Development?  
494  
495 Craig Benedict: First rezoning and then meshed with an SUP.  
496  
497 Alan Campbell: Is the big picture that planned development still requires, at some level, Conditional?  
498  
499 Craig Benedict: Certain kinds of planned development. It is called your basic, smaller scale planned development that might ask  
500 for some unique setbacks, etc. That will come in with an SUP and specific site plan.  
501  
502 Tommy McNeill: Can you give an example on the ground?  
503  
504 Craig Benedict: The only on the ground example I know is the Piedmont Electric Tower. They have their offices there. It was a  
505 multiple use project with a telecommunications tower, their offices, a storage yard. They knew everything they wanted to do.  
506 They brought in what the towers would look like and we went through a planned development process with the site plan and that  
507 was the more smaller scale PD. That is when you have the site plan and an SUP that comes with the rezoning process.  
508  
509 May Becker: Could you summarize which cases don't need a site plan?  
510  
511 Craig Benedict: The third category is Conditional Zoning Districts. You still have the rezoning with conditions. People still ask for  
512 a MPD, a conditional zoning district but I want to have a Churton Grove type of arrangement. I don't know what the store is going  
513 to look like but this is where it will be, here is the road plan, the stream plan, the drainage. They approve the rezoning with some  
514 conditions. At that time there was a Master Concept Plan, not the final site plan. This is where the Master Plan differs from an  
515 SUP that has a specific site plan.  
516  
517 Larry Wright: Do you have elevation?  
518  
519 Craig Benedict: It can be a conceptual elevation. How much of the land will be preserved as open space? This is more of a  
520 Southern Village type of plan. That master concept plan is part of their rezoning petition so it becomes a guideline. They cannot  
521 waiver from that Master Concept Plan.  
522  
523 Samantha Cabe: The 33% can be rearranged?  
524  
525 Craig Benedict: A little. There are two types of PDs. One you know what it is and one you don't. The second is more  
526 speculative and that is what I think we would expect more of a Master Concept Plan with some of our Economic Development  
527 Districts. It is not likely that someone will come in with a 20 acre Economic Development proposal and know the exact building  
528 shape. The Master Concept says in pod A you can put 100,000 square foot, in pod B 50,000 square feet, and in pod C 25,000.  
529 You can set all those parameters and you can max the entire project to 200,000 square feet of a certain use because you can  
530 link that to how much traffic comes from office or retail, etc. After that Master Concept Plan comes, you do not have that specific  
531 site plan. It comes through later and approved by staff looking at the standards that were created in the Master Concept Plan.  
532 This is what is in our present code under the Mixed Use Planned Development. They can set all conditions and parameters to  
533 make sure it is a good project. That is the difference and what we would expect is that even though Churton Grove did have a  
534 SUP process with it, it actually used a Master Concept Plan that gave the latitude to not know exactly what the house looked like,  
535 it didn't set the amount of square foot of the house but enough parameters that we could guide the developer.  
536  
537 Judith Wegner: Both gives more flexibility and also more control.  
538  
539 Larry Wright: Is there any time restriction between the concept plan and the site plan?  
540  
541 Craig Benedict: Yes it is in here. If they know they want to break ground on the infrastructure in one year, then they say they  
542 want break ground in one year, etc. You can set all the reasonable conditions on the timing and the phasing within the rezoning  
543 process.  
544  
545 Larry Wright: Is there wiggle room if Hillsborough doesn't get the water in?  
546  
547 Craig Benedict: In the case of Scottswood, they were waiting to get the new reservoir going.

548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608

Larry Wright: There is wiggle room in case conditions do?

Craig Benedict: Yes.

Samantha Cabe: These Conditional Zoning Districts are necessary because no one knows on day one what things will build out to but our current structure, you have to wink and nod about adjusting things are you go because once you get a special use permit, technically you should have everything planned but that is impossible so it left everyone in limbo.

Craig Benedict: When we had an attorney opinion during the Buckhorn Village Project about having a specific site plan or not and our attorney said if you are in Economic Development Zones and you do not have the ability to provide all these specificity of the site plan, then you work on the Master Concept Plan. That Bubble Plan gets wrapped into it as one of the conditions of rezoning. It becomes law.

Judith Wegner: Could you comment more on that? How would that be different?

Craig Benedict: Someone would ask for a Conditional Zoning District because they do not know every foot print of the building when they come in. Buckhorn Village would be known as the Buckhorn Village Master Plan Development – CZD. They would ask for that rezoning and proceed with the conditions of how much traffic, what are the buffers, they would do a master signage plan. That could be a condition. Buckhorn would more than likely be in this Conditional Zoning District program because we do not know all the site plan. If they want to bring in the Phase One site plan to get clarity with that.

Judith Wegner: If they didn't, what would be the subsequent?

Craig Benedict: This Master Concept Plan would say pod A has 100,000 square feet with retail allowed. The next phase would be adopted by the Commissioners. A site plan would come into staff. The staff would review it with every department in the County, DOT, any water/sewer provider to review that site plan and make sure it meets the standards and any conditions of the Buckhorn Village Master Plan Development - Conditional Zoning District. We then sign off and we attest that the 56 conditions put on Buckhorn Village are being met by the site plan. That is submitted to the manager which is forwarded to the Commissioners. We inform this Board that the site plan has come in for Phase 1 or Pod A of this Master Plan Development and we would report on how this administrative site plan meets those conditions.

Pete Hallenbeck: Of the two columns under Conditional Districts, is it generally correct that the Conditional Use path is less time than the Conditional Zoning Districts path?

Craig Benedict: I would say yes because you know exactly what the building is like and someone could go pretty fast from getting this approved to working on final building plans and moving forward. This will probably take six to nine months. When this Board reviews this as a rezoning and when the Commissioners review it as a rezoning, it probably moves a little faster because it is finite and in front of you and you see the final site plan.

Pete Hallenbeck: If you took that chart and you flipped where those two columns, and then take those three different types of zoning, General, Conditional Use and Conditional Zoning Districts, you would be going from a more general, lots of time, hard to get, to a middle of the road, to a more specific least amount of time.

Craig Benedict: You could say that. This would take a little longer because you are setting parameters for some unknowns.

Pete Hallenbeck: My goal in saying this was to try to read the chart to have flow to it. The other is I am thinking of how to explain this to people. With the middle of the road and Conditional Zoning, we have a rough idea but not too specific. The last one is very specific.

Craig Benedict: We already said this takes a little longer but afterwards, those site plans, when the developer says that pod A has a sign for it, you can put 100,000 square foot retail. If somebody comes into this site plan at that time, they can bring the site plan within a four or five week period. A developer invests in a larger site, gets all this out of the way and then can market a planned site. Then it happens faster and time is up front.

Alan Campbell: Is there any real difference in the current planned development, as far as timing?

Craig Benedict: I think it is about the same. We weren't charged with changing process time frames.

Alan Campbell: That might be something for Phase 2.

609 Craig Benedict: That has been mentioned as for EDD, in those zones, someone wants to come in and it takes nine months but  
610 having this in the new code lets people do some preliminary work and they respond faster to the actual business.

611  
612 Andrea Rohrbacher: I like the Conditional Zoning Districts especially what has happened with the economy. It gives developers  
613 latitude to pursue an idea knowing they have time and flexibility with economic changes that may give them the opportunity to  
614 move ahead at a certain point or to delay.

615  
616 Craig Benedict: That is an excellent point. Larry had asked about time frames. With Conditional Use, you have to do some sort  
617 of development activity within one year. In the Conditional Zoning District, you can set your phasing plan. The State recognized  
618 that the Conditional Use construct that was authorized by state law put a pinch on a lot of people in this economy so they had  
619 two or three local bills to allow for a one year extension. In December, we did not opt out which meant we authorized another  
620 one year to 2011 to allow those projects that would have expired to allow them to continue because of the economy.

621  
622 Samantha Cabe: Thinking about the emails we received on the eve of the public hearing, I wonder if what scared people was  
623 they saw a new zone with all the stars and permitted uses with the MPD-CZ and thinking they are going to allow someone to put  
624 this there.

625  
626 Judith Wegner: Hearing what we have heard tonight, if we are advising staff about what the high points were and what they  
627 should say to the public in the informational session and how they might change their presentation to the Commissioners and  
628 develop another two pager to hand out to people, what would we say are the most notable things we have observed about this  
629 move to Conditional Use/Conditional Districts. My question would be to go around the room and say if you could say one thing  
630 that would be the best way to explain this or make things clearer, what would that be?

631  
632 May Becker: I have a question regarding the email the email you sent out and the Conditional Use Districts and floating districts.  
633 You are scraping conditional districts?

634  
635 Judith Wegner: I had thought that there may be way to do it using different terminology would be helpful to people. If you say  
636 floating zones, they would understand these are not formally on the map until you apply for them however; I understand the  
637 staff's desire to track the statutory language but the statutory language came in a couple different stages so I am grateful the  
638 staff divided this into general then conditional. Also, as to Conditional Zoning Districts, I am very eager to get to the agricultural  
639 enterprise it supported because it is initiative that I think has been around for a couple of years and that will be advanced by  
640 some of these options. I don't know if there is anything beneficial in your charts. I urge staff to think about pictures as opposed  
641 to small words. Anything that will help people absorb conception of what is going on and not get drowned. Having examples  
642 has been helpful.

643  
644 Marc Marcoplos: Is this the presentation you will give to the elected officials?

645  
646 Craig Benedict: No. This was something to try to dig in.

647  
648 Marc Marcoplos: I think it would be great to give the elected officials. It would answer a lot of questions.

649  
650 Judith Wegner: One of the issues is this is a major change compared to something else that helped people. This makes clear  
651 that this dramatic change it is helpful in some simple ways.

652  
653 Larry Wright: I think the floating districts, I can see how they apply now and the way it was so ambiguous.

654  
655 Marc Marcoplos: I think most of the elected officials are looking at it the same way Samantha was saying the public would look  
656 at it and seeing new lingo and all these uses. It is no more complicated than that.

657  
658 Judith Wegner: That was a concern and that someone would be landed upon with an airport and I think for some of the Chapel  
659 Hill officials some of it had to do with the rural buffer questions. Say, in effect the rural buffer is not subject to some of these to  
660 keep it from being at risk of further development. The main thing is that we have to give staff this meeting, if we have the second  
661 one in February, which I would be included to do to bring up your questions about the water issues. The sooner we can clear  
662 this, the sooner we can give applause that we understand it. That was one of the things Brian tried to say at the last meeting  
663 because this seemed to be more enormous that we had fully absorbed. My sense tonight is that everyone is pretty comfortable  
664 with this.

665  
666 May Becker: I am still questioning some of the things you mentioned in your email. The differences between the Conditional  
667 Use and Conditional Zoning District in terms of you need a Special Use Permit for the Conditional Use and for the Conditional  
668 Zoning Districts and it is more open.

669

670 Judith Wegner: You don't need a permit. The gist of it was, in some ways, having a permit was redundant with very closely  
671 commissioned zoning requirements. I found that some of the very difficult stuff that trying to figure out what goes in zoning forms  
672 and what goes in permits. I think the staff would say they like Conditional Zoning Districts because you don't have this  
673 redundancy of the permits if you do it all closely with Conditional Use Districts, why is it you are having a permit in addition and it  
674 would clarify for the decision makers what they are dealing with. My view was let's have both because it gives both the  
675 legislative side and the fact finding side and protects you from challenges but there has not been much litigation about this stuff  
676 and it may well be if you've got an elected board that is confused about which piece goes where you may walk into more  
677 litigation.

678  
679 Craig Benedict: The conditions that are here, these SUP conditions are no more elaborate than the conditions that with  
680 rezoning. These are redundant where those are. We are not losing anything out of all those specific standards and conditions  
681 that need to be met are noted here. All you lose is seeing where the tree goes in the parking lot but you have the same amount  
682 of trees.

683  
684 Samantha Cabe: I favor a little less control than most people. I am supporting the Conditional Zoning Districts because I think it  
685 is needed. I would like to point out that I think, if in the Conditional Use, the way we have it where the BOCC approves a  
686 rezoning with conditions and then it is up to the Special Use Permitting process whether they are met. It is more of an objective  
687 determination whereas in the new plan, determining whether those conditions are met is purely legislative so if there is a big  
688 uproar about it there is more description on the part of the BOCC to ax the plan. That can be a good thing or bad thing but that is  
689 a major difference because in the Special Use Permitting process you are more likely to run into litigation.

690  
691 Marc Marcoplos: You are basing that on what has been the typical makeup of the BOCC that they may be more inclined to ax a  
692 project. The legislative process also allows them the flexibility gives them ability to approve a project. What if a university  
693 wanted to build a research facility to study diseases and they were going to have microbes, etc. How does a facility like that ever  
694 get sited in your county and what conditions are met?

695  
696 Judith Wegner: Let's do one more round of any other things we would like to say about tonight's topics but I wonder could we  
697 deal with the stream buffer issues in two weeks? Is that pushing it?

698  
699 Samantha Cabe: Going back to the issue of freaking the public out and the new zone that is listed along with the other general  
700 use districts. In my reading of the emails, they were looking at this as the County can let anything happen on expanding the  
701 uses. It would be helpful coming out of the gate saying that these new zoning districts are not designated without the application  
702 and approval processes. Indicate these are not mapped until someone applies and the BOCC approves it.

703  
704 Judith Wegner: A lot of things about how things can help or hinder the standing. If you could do some shading to make it clear.

705  
706 Shannon Berry: It is already on my notes to differentiate the new districts.

707  
708 Samantha Cabe: Even though the two new definitions you have, just a conditional district definition that says it is not mapped  
709 until that location pops up. We need to lead our discussion saying this is not going to be a zoned district that can be widely  
710 assigned. Each individual project has to ask for the zoning and it has to go through this process.

711  
712 Craig Benedict: That will be helpful.

713  
714 Pete Hallenbeck: I'd reorganize that diagram and go from most general to most specific so when people look at it and it is  
715 explained, then they make more sense. With regard to Conditional Districts, the concern was voiced by the citizens that you can  
716 put anything anywhere. I think you should point out in the document that this is a BOCC approval event, it has to be consistent  
717 with the Comprehensive Plan, it has to fit in with the area and many of these types of zoning and uses are explicitly excluded in  
718 the rural buffer and residential areas. Regarding the Conditional Zoning Districts, I think it is important to point out that it is  
719 faster for business. Regarding Conditional use, it is a specific site plan that is more suited for an entrepreneur effort. The MP  
720 zoning flexibility if you have something come up that just can't be planned. Regarding the stream data, I would love it if you  
721 could come up with information before the meeting.

722  
723 Judith Wegner: When I thought I couldn't be here tonight, I sent some information in advance.

724  
725 Pete Hallenbeck: I would love to see May write something up.

726  
727 Judith Wegner: It would help the staff to be prepared.

728  
729 Andrea Rohrbacher: I would like to see a clear explanation of the exclusions and how the conditional districts address these  
730 exclusions because some of the speakers mentioned airports, that was scary. If we could present as to how this new process is

731 protective against these scary uses rather than the new processes would be more permissive.

732  
733 Rachel Hawkins: I think as Pete said if we show that it can be faster than it has been it would be an advantage because we have  
734 a reputation in the state that we are the hardest people to get along with and we've got to make that.....they say the same  
735 thing in Chapel Hill but still I think we haven't said explicitly, like we have here tonight, it's not something hard.

736  
737 Larry Wright: I agree with Pete and Andrea. I would like to emphasize in this exclusion list, it looks like in those permitted tables,  
738 it is too much is being given away which is not the case at all. It is very difficult to read through that. Use chart Craig created.

739  
740 May Becker: I am thinking from the discussion tonight, what we're talking about there, what I've been considering there also is  
741 Samantha's original question about the person who wants to have a barber shop in his or her house and how that fits in mixed  
742 use development and these types of zoning. How that might relate to sprawl versus being able to maintain a historic center,  
743 walkable ....

744  
745 Samantha Cabe: After the discussion I realize I should have not asked that question because it is not relevant.

746  
747 May Becker: I think it's interesting too down the line if you create it where you do have people walking and people being able to  
748 have the opportunity to have a business in their own home, how does that fit into the type of zoning.

749  
750 Judith Wegner: Two weeks is agreeable from now.

751  
752 Tommy McNeill: What is fascinating is staff's knowledge. I think we are all more educated because of the process tonight.

753  
754 Marc Marcoplos: I thought you and Michael would talk briefly about did they speed up the process and you said they didn't  
755 necessarily speed up the process.

756  
757 Craig Benedict: That was the UDO Phase 2 to talk about what uses are in our EDD Conventional zones and how long does it  
758 take to get through that.

759  
760 Marc Marcoplos: A couple people said we should tell the public that it speeds it up. I would be careful.

761  
762  
763 **AGENDA ITEM 9: COMMITTEE/ADVISORY BOARD REPORTS**

- 764 a) Board of Adjustment
- 765 No Meeting.
- 766 b) Orange Unified Transportation
- 767 No Report
- 768 c) Efland-Mebane Small Area Plan Implementation Focus Group
- 769 No Meeting

770  
771  
772 **AGENDA ITEM 10: ADJOURNMENT**

773  
774 **MOTION:** Alan Campbell made a motion to adjourn. Seconded by Larry Wright.

775 **VOTE:** Unanimous

776  
777  
778

---

Brian Crawford, Chair

THE PAGES FOLLOWING WERE DIRECTED TO BE ADDED TO THE APPROVED MINUTES OF THE JANUARY 5, 2011 PLANNING BOARD MEETING BY THE PLANNING BOARD AT THEIR FEBRUARY 2, 2011 PLANNING BOARD MEETING