

PLANNING & INSPECTIONS DEPARTMENT  
Craig N. Benedict, AICP, Director

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131 W. Margaret Lane  
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June 4, 2020

Andy Petesch Petesch Law 127 W. Hargett Street Suite 500 Raleigh, NC 27601	Eric Knight 115 OLD SCHOOL ROAD CHAPEL HILL, NC 27516
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In the matter of:                   ADVISORY OPINION - STATUS of 6900 NC Highway 54 West

Dear Messrs. Petesch and Knight:

On March 30, 2020 the Orange County Planning Department provided an advisory opinion ([Attachment 1](#)) related to 6900 NC Highway 54 West, further identified utilizing Orange County Parcel Identification Number (PIN) 9820-51-5399, within the Bingham Township of the County (hereafter 'the property').

On May 15, 2020, staff received a request for a revised determination, specifically: *'.... directed to Part 5 on that Opinion, in which Staff recommended additional information be submitted to assess whether a proposed barn structure and processing facility used to brew beer as well as cider and fruit wine qualifies as a bona fide farm purpose as defined by the NC General Statutes'*. The request, which goes on to indicate Pluck Farm LLC is not seeking to conduct any agritourism in a farm structure at this time, contained:

- Revised/updated Farm Plan – Operational Overview (Spring 2020); and
- A Representative Product & Ingredient Chart (Spring 2020).

'Part 5' of the aforementioned opinion recommended submittal of additional information demonstrating products grown/harvested on-site are part of the proposed beer, cider, mead, and fruit wine production operation. Staff indicated in order for processing facilities to qualify as a bona fide farm purpose (i.e. related or incidental to agriculture use) products 'produced' on-site must be comprised of at least 50% of agricultural items grown on-site. Processing operations not meeting this requirement would require the issuance of a development permit.

The following information was provided as part of your May 15 submittal:

- a. The proposed processing facility/barn is intended to store, treat, pack, and process agricultural products produced on-site. This includes brewing operations;
- b. The building is intended to be used to store equipment used in various agricultural processes along with equipment used in the cultivation of agricultural products;
- c. Approximately 10 brewed products would be produced on-site throughout the year;
- d. Cumulatively over 50% of non-water ingredients, measured by weight, cultivated on the property shall be used in the brewing process including:
  - i. Fruits (i.e. apples, blackberries, blueberries, goumi berries, mulberries, muscadine grapes, maypops, paw-paw, persimmons, plums);
  - ii. Herbs;
  - iii. Hops;
  - iv. Honey;
  - v. Malted grains (i.e. wheat, barley, oats);
  - vi. Nuts (i.e. hazelnuts, pecans)
- e. Non-water ingredients not produced on-site shall be sourced from another North Carolina farm;

In reviewing this request, staff has relied on the following:

- i. Information submitted by Eric Knight in the fall of 2019/spring of 2020 as referenced within staff's March 30, 2020 advisory opinion;
- ii. Staff's March 30, 2020 advisory opinion (Attachment 1); and
- iii. Information contained within your May 15, 2020 request.

Based on this information, staff offers the following **Advisory Opinion**:

1. The property is used for bona fide farm purposes consistent with the provisions of NC General Statute 153A-340 (b) (1);
2. Activities on the farm are consistent with the provisions of NC General Statute 153A-340 (b) (2);
3. The structure located on the property is classified as a bona fide farm purpose pursuant to NCGS 153A-340 (b) (2a);
4. Processing facilities for brewing operations qualify as a bona fide farm purpose.

The structure, based on available information, would not subject to the land use regulations as embodied within the Unified Development Ordinance (UDO) adopted by Orange County pursuant of NCGS 153A-340 (a).

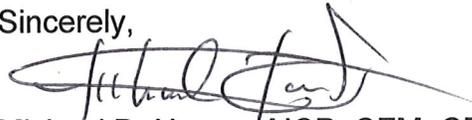
Please note agritourism activities cannot occur within the structure until compliance with NCGS 153A-340 (b) (2a) is documented (i.e. enrolled in the present use value program or owned by a person who holds a qualifying farmer sales tax exemption certificate from the Department of Revenue pursuant to G.S. 105-164.13E(a)).

Proposed brewing operations qualify as a bona fide farm purpose based on the information we have received as of the date of this letter and are not subject to approval of a permit application.

Changes in ownership, use, or status of the property after this issuance of this determination may subject the building or structure applicable land use regulations as contained within the UDO. This constitutes an advisory opinion not subject to appeal to the Board of Adjustment.

If I can provide further assistance please contact me at (919) 245-2597.

Sincerely,



Michael D. Harvey/AICP, CFM, CZO  
Current Planning Supervisor  
Orange County

CC: Travis Meryn, Assistant County Manager  
Craig Benedict, Planning Director  
James Bryan, County's Attorney Office  
Michael Rettie, Building Inspections  
File

PLANNING & INSPECTIONS DEPARTMENT  
Craig N. Benedict, AICP, Director

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131 W. Margaret Lane  
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Hillsborough, NC 27278



March 30, 2020

Eric Knight  
115 OLD SCHOOL ROAD  
CHAPEL HILL, NC 27516

In the matter of: **ADVISORY OPINION – STATUS of 6900 NC Highway 54 West (PIN 9820-51-5399)**

Dear Mr. Knight:

The Orange County Planning Department received document(s) related to a purported farm operation at 6900 NC Highway 54 West within the Bingham Township of Orange County.

The purpose of this letter is to provide an advisory opinion regarding bona fide farm status on a parcel of property based on documentation provided to the Department.

The parcel in question is approximately 57 acres in area, further identified utilizing Orange County Parcel Identification Number (PIN) 9820-51-5399, is zoned Agricultural Residential (AR) and is listed as being owned by Mr. Eric Knight. The submittal includes:

- A bona fide farm affidavit for 'Pluck Farm' with a PIN number 9820-51-5399;
- A copy of a 'forest stewardship plan' completed for Eric Knight by David Halley, NC Registered Forester, dated March 2019 indicating approximately 11 acres of pine are slated for partial harvesting and re-seeding;
- A narrative describing intended (i.e. future) agricultural activities including:
  - Livestock operations consisting of the rotation of grazing sheep and poultry for improved soil fertility as well as the sale of pastured meat;
  - Orchards (i.e. apples, hazelnuts, pecans, persimmons, plums, berries, chestnuts) on approximately 2 acres of property;
  - 'Several small herb gardens, shown on the plot plan as being planted around the proposed processing facility. The narrative

indicates the herbs will be harvested for creating, amongst other things, herbal extracts;

- The planting of hops in 2 ft. by 70 ft. rows;
  - 8 beehives for the production of honey;
  - Walking trails and tours of the 'farmlands';
  - Brewing of beer and fermenting of wine/cider; and
  - An undefined area (i.e. size) for 'high tunnel compost';
- A plot plan denoting 'future' agricultural areas on the property, including the construction of an approximately 7,400 sq.ft. 'barn and processing facility'. The plot plan denotes 'fenced in' pasture and orchard areas, a gazebo, parking areas in and around the barn/processing facility, and areas intended to remain 'wooded'; and
  - A conditional sales tax exemption certificate issued by the North Carolina Department of Revenue (hereafter 'DOR') issued to Steel String LLC.

Staff also reviewed 1) a set of submitted building plans dated January 7, 2020, and 2) property tax records to determine ownership.

In reviewing this information, staff offers the following advisory opinion(s):

1. According to North Carolina General Statute (hereafter 'NCGS') 106-581.1 the terms 'agriculture', 'agricultural', and 'farming' refer to and includes '*the planting and production of trees and timber*'. Further, NCGS 153A-340 (b) (2) indicates a forest management plan is sufficient evidence documenting the operation of a bona fide farm.

Per NCGS 153A-340 (b) (1) local land use/zoning regulations are not applicable to property used for bona fide farm purposes, but does retain regulatory authority over nonfarm purposes.

The County cannot impose land use/zoning regulations on tree farm activities, including the erection of structures supporting same. Any other use of those structures for nonfarm purposes would, however, be regulated and prohibited without the issuance of a zoning compliance permit.

2. The submitted DOR conditional sales tax exemption certificate does not constitute evidence the property is being utilized for agricultural activities as the property is not owned by Steel String LLC. There has been no demonstration of Steel String LLC's connection as either farm owner or operator.

In order for the DOR certificate to be utilized as evidence of a bona fide farm operation, it must either be issued in the name of the property owner (i.e. Eric Knight), the property must be owned by Steel String LLC, or there must be evidence of an agreement between the two parties for Steel String LLC to be the farm operator. Staff recommends you consult your attorney and discuss possible options to address this discrepancy.

DOR certificates may be issued to either conditional or qualifying farmers. Regarding evidence of property being used for bona fide farm purposes, either conditional or qualifying farmers may utilize the certificate as either

owner or operator. Regarding agritourism, only qualifying farmer certificates are relevant and must be issued to the farm owner.

3. With respect to agritourism activities, NCGS 153A-340 (b) (2a) reads as follows:

*'A building or structure that is used for agritourism is a bona fide farm purpose if the building or structure is located on a property that (i) is owned by a person who holds a qualifying farmer sales tax exemption certificate from the Department of Revenue pursuant to G.S. 105-164.13E(a) or (ii) is enrolled in the present-use value program pursuant to G.S. 105-277.3.'*

If it is your intention to use a structure on the property for agritourism activities, the property will either need to be:

- i. Enrolled in the present use value program; or
- ii. A qualifying farmer sales tax exemption certificate, issued by DOR, will have to be issued to the owner of the property.

It should be noted, agritourism activities can be conducted outdoors on property considered to be a bona fide farm per NCGS 153A-340 (b) (2).

4. In terms of the various agricultural land uses contained within the narrative/denoted on the submitted plot plan, staff offers the following advisory opinion:

- a. The keeping/maintaining of beehives are considered to be livestock under the definition of farming contained within NCGS 106.581.1 (3);
- b. The planting/harvesting of fruit from the proposed orchard, berries, and herbs are considered to be crop production under the definition of farming contained within NCGS 106.581.1 (1);
- c. The narrative and plot plan denote the erection of pasture fences in several locations. From staff standpoint:
  - i. Livestock is agriculture pursuant to NCGS 106.581.1(3) and there is sufficient evidence in the submitted documentation of an intention to have livestock on the property;
  - ii. Pasture fencing used to contain livestock would be an activity related or incidental to livestock management;
  - iii. Non-farm uses of pasture fences, such as for a maze or event traffic, would be prohibited without the submittal, review, and approval of a Zoning Compliance Permit in accordance with Section 2.4 of the County Unified Development Ordinance (UDO).

5. The narrative, plot plan, and submitted building plans indicate a barn and processing facility shall be constructed on the property. The submitted building plans indicate the following shall be located within the structure:

- a. Brew house;

- b. Lab;
- c. Malt Mill;
- d. Glycol Chillers;
- e. A future boiler;
- f. Keg cleaner;
- g. Walk-in cooler;
- h. 2 toilets;
- i. Gift shop/merchandising area; and

STAFF COMMENT: As previously detailed herein, in order for agritourism activities to be conducted within a structure erected for bona fide farm purposes the property must either be enrolled in the present use value program or owned by a person who holds a qualifying farmer sales tax exemption certificate from the Department of Revenue.

As this property is not enrolled within the present use value program, or owned by a person with a qualifying farmer sales tax exemption certificate, agritourism activities cannot be held within the structure.

- j. Work room and conference room.

The building plans and narrative indicate the structure will be primarily used to brew beer using materials grown and harvested on the property. The narrative and building plans make no reference to this structure being used to process harvested crops into any other product other than beer (i.e. bottling honey for sale, processing of harvested fruit/berries for sale, processing of livestock for the sale of pastured meats, etc.).

Brewing beer can be considered farming under the provisions of NCGS 106-581.1 (6) as an activity performed to add value to crops if materials grown and harvested on the farm are used in the production process.

Staff recommends additional detail be provided on the agricultural use and nature of the structure demonstrating same is being erected for bona fide farm purposes, including a detailed explanation on the brewing process outlining to what extent the materials harvested on the property are going to be used to brew the beer.

For processing facilities to qualify as a bona fide farm purpose for being related or incidental to agriculture use, all products 'produced' on the property (including the brewing of beer) must be comprised of at least 50% agricultural items grown on-site.

The processing of mostly agriculture grown off-site, or the production of goods comprised of mostly agriculture grown off-site, would be deemed by staff as being not related or incidental to agriculture and thus not a bona fide farm purpose and subject to regulation requiring a development permit.

While the use/incorporation of off-farm produced agricultural products in your on-site processing operation(s) is permitted, the products you produce on-site must include at least 50% of the agricultural products grown/harvested on the property as referenced above. This is necessary if said production operation to be considered exempt from County land use regulations/permitting requirements.

As you plan for future processing operation(s) beyond tree farming, it needs to be remembered there has to be product generated on the property that will be part of the production process for the activity to be considered an exempt agricultural activity.

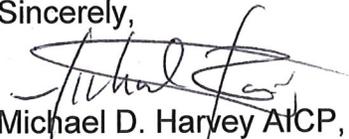
As previously indicated this letter constitutes an advisory opinion and is not subject to appeal to the Board of Adjustment in accordance with the provisions of the Unified Development Ordinance (UDO).

At your request, Staff can make a formal determination that the planting and harvesting of trees/timber constitutes an agricultural activity, which is exempt from local land use regulations. Further staff would confirm there is sufficient documentation on record indicating the property is a tree farm consistent with applicable NCGS.

If you require a final and binding determination on additional aspects, staff recommends you address some of the observations identified herein and make a specific request on the individual elements of the proposed operation.

If I can provide further assistance please contact me at (919) 245-2597.

Sincerely,



Michael D. Harvey AICP, CFM, CZO  
Current Planning Supervisor  
Orange County

CC: Travis Meryn, Assistant County Manager  
Craig Benedict, Planning Director  
James Bryan, County's Attorney Office  
Michael Rettie, Building Inspections  
File

May 15, 2020

**VIA EMAIL**

Michael Harvey  
Current Planning Supervisor  
Orange County  
P.O. Box 8181  
Hillsborough, NC 27278  
mharvey@orangecountync.gov

RE: Advisory Opinion Update Request

Dear Mr. Harvey:

On behalf of Pluck Farm LLC, I respectfully request an update, revision, or other appropriate addendum to your March 30, 2020 Advisory Opinion as to the status of property located at 6900 NC HWY 54 West (PIN 9820-51-5399). This request is specifically directed to Part 5 on that Opinion, in which Staff recommended additional information be submitted to assess whether a proposed barn structure and processing facility used to brew beer as well as cider and fruit wine qualifies as a bona fide farm purpose as defined by the NC General Statutes.

In support of this request and attached hereto, please find:

- Pluck Farm LLC & Steel String LLC: Farm Plan – Operational Overview (Spring 2020)
- Pluck Farm LLC: Representative Product & Ingredient Chart (Spring 2020)

Please note that Pluck Farm LLC is not seeking to conduct any agritourism in a farm structure at this time. This request is limited to the use of the barn and processing facility to produce beer, cider, and fruit wine.

Very truly yours,



Andrew J. Petesch, Esq.

enclosures

cc: James Bryan (via email)  
Eric Knight (via email)  
Will Isley (via email)  
Andrew Scharfenberg (via email)

**Pluck Farm LLC & Steel String LLC**  
Farm Plan – Operational Overview  
Spring 2020

Pluck Farm is a fifty-seven (57) acre farm in western Orange County located along NC HWY 54. The farm plan is based on holistic, integrated crop and livestock regenerative models of agriculture that increase soil fertility, reduce erosion, encourage biodiversity while producing a wide variety of value-added products. Agricultural products include pastured meat, honey, herbal extracts, compost, fruit, and nuts as well as beer, cider and wine. In addition to approximately twenty (20) acres of pasture, orchards and crops fields, we have approximately thirty-seven (37) acres of woodlands and a half-acre pond. In 2027, approximately eleven (11) acres of pine forest are marked for partial harvesting (improvement cuts) and reseeded. In addition to these operations, Pluck Farm will be open to the public seasonally for weekend farm tours.

Livestock operations will consist of rotational grazing of sheep and some poultry throughout our pastureland. The pasture will be seasonal covers and forage to help build soil fertility for future orchard plantings. The livestock will be stocked at a rate under carrying capacity of the land. In addition to yielding high-quality grass-fed meat, livestock operations will improve soil fertility and sustainable land management for the full range of present and future farm operations. Grazing pastures are integrated into orchards as a system to improve productivity of fruit and nut crops. During late fall and winter, livestock will rely on hay and spent grain and fruit from brewing, cider and fruit wine operations for sustenance. Perimeter fencing will be set up around each pasture, with mobile livestock fencing used to set up for rotational paddocks.

Covering almost two acres, the orchards will primarily be planted with apples, hazelnuts, pecans, persimmons, plums and pawpaw. Hop plants will surround the north, south and eastern walls of the barn and processing facility. Totalling roughly fifty (50) plants with best suited varieties to be planted along trellises in currently allocated fields once the rhizomes are acclimated to the soil and climate of the land. Hops will be harvested and used fresh as well as aged to produce traditional Belgian style farmhouse beers. Nearby will be other

trellis crops, e.g. Muscadine grapes and Maypops. Initially, one half-acre plot will serve as an intensive berry operation for blueberries, blackberries, goumi berries, aronia, mulberries with approximately 2500 square feet reserved for annual crop production (e.g. melons, corn). An additional acre in this area may be eventually utilized for crop production. Over time, more pasture will be planted with fruit and nut trees including chestnut. Not only will these fruits allow us to produce unique beers, ciders and wines but also preserves, juices and pickles.

Plans include the construction of a processing facility barn that is vital to support, process, store, treat and pack agriculture and agricultural products produced on a farm. This includes the brewing of beer and fermenting of wine, mead, and cider utilizing the fruits, nuts and herbs grown on site. The processing facility will also be used to wash and prepare raw produce for the market including vegetables, fruit and mushrooms. And to package and process value added goods such as sauerkraut and kimchi, hot sauces, jams and jellies, pickles and more. Finished products will be stored in the refrigerator in the processing building and also sold as retail sales in the gift shop as permitted under the NC General Statutes. The building will also be used to store equipment used in the various agricultural processes (e.g. crates, egg shells, pots, pans, bottles, jars), along with equipment used in the cultivation of trees for both nuts, timber, and fruit orchards and row crops (e.g. chainsaws and other forestry equipment, farm implements, plastic sheeting, wood, seeds and starts).

Steel String Brewery, which is also owned by Eric Knight, will be the primary brand for beer brewed on site and oversee the brewing beers, ciders, fruit wines and other packaged agricultural liquids. Steel String will also be in charge of processing solid waste either as compost or livestock feed. Steel String is a certified Got To Be NC agricultural product by the NC Department of Agriculture and uses North Carolina grown ingredients whenever possible.

The process of brewing involves taking malted grains (wheat, barley, oats) – grown on Pluck Farm or other local farm where possible – and mixing them with water drawn from the well on site, boiling the product with hops and any additional sugars, such as Pluck

Farm honey, and then fermenting with yeast, which we also plan to capture from fruit trees on the farm. After fermentation, fruit and/or additional hops may be added along with CO<sup>2</sup> to finish the beer. All ingredients added to Steel String beer are farm products. We do not and will not in the future add food products to beer.

Several small herb gardens will be placed around the brewing facility along the property's front pasture. These will be used in making beer as well as extracts and tea. Honey harvested from our apiary will be used in beer production and sold separately as a separate product. Honey bees will also assist in pollinating orchards and other crops.

Pluck Farm and Steel String plan to have about ten (10) brewed products available throughout the year, although the exact recipes will vary based on seasonality of ingredients and other factors. A representative sample of products and their respective ingredients is attached.<sup>1</sup> Cumulatively, over fifty (50) percent of the non-water agricultural product ingredients, as measured by weight, will be grown on Pluck Farm.<sup>2</sup> Approximately ninety-nine (99) percent of non-water ingredients are sourced from either Pluck Farm or another North Carolina farm – leaving on average less than one (1) percent of non-water ingredients from farms outside this State.<sup>3</sup>

Pluck Farm will develop walking trails through sections of the thirty-seven acre woodlands and be available to visitors on days when we are open to the public and include educational and artistic displays about the plants, animals, systems and values we have

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<sup>1</sup> See attached product & ingredient chart. Two Berliner Weisses, two IPAs, two Saisons, a dark beer, and several sours is representative of product types distribution at any given point during the year.

<sup>2</sup> Although all water used in the brewing process will be sourced from Pluck Farm wells, water weight is excluded from the analysis as it is assumed that water is not an agricultural product.

<sup>3</sup> These calculations do not include cider or fruit wines, which are also part of the Farm Plan and will be brewed, mulled, or fermented on the farm. Non-water ingredients for ciders and fruit wines would be one hundred (100) percent grown on Pluck Farm. Feasible batch sizes and yields from Pluck Farm orchards and berry operations are not yet reliably quantifiable, so these values are not part of the cumulative percentages, but obviously the proportion of Pluck Farm sourced ingredients used in all beer, cider, and fruit wine products made at Pluck Farm would only increase.

built into the farm. Outdoor farm tours, foraging walks, and volunteer workdays will encourage the public to be more invested in sustainable high-quality food production and conservation of dwindling productive farmlands. No agritourism, including tours or events, will take place in the processing facility and barn structure until Pluck Farm LLC or other appropriate entity under the NCGS has obtained qualifying farmer sales tax exemption certificate from NCDOR,

Product	Product Volume (gallons)	Product Weight (lbs)	Non-Water Inputs		Pluck Farm Non-Water Inputs		Scaled*		NC Farm Non-Water Inputs		Scaled*		Other Non-Water Inputs		Scaled*	
			Weight (lbs)	Weight (lbs)	Weight (lbs)	Weight (lbs)	Base %	Weight (lbs)	Scaled %	Weight (lbs)	Base %	Weight (lbs)	Scaled %	Weight (lbs)	Base %	Weight (lbs)
Big Mon	418	3,490	1045	1045.00	120	120	120.00	0.54	880	0.45	880.00	0.44	45	0.01	45.00	0.01
Up on the Hill	418	3490	665	665.00	120	120	120.00	0.56	500	0.45	500.00	0.44	45	0.01	45.00	0.01
Lonesome Ellen	200	1670	1197	2501.73	867	867	1812.03	0.56	330	0.45	689.70	0.44	45	0.01	45.00	0.01
Pluck Wit	200	1670	519	1084.71	189	189	395.01	0.56	330	0.45	689.70	0.44	0.25	0.01	0.52	0.01
Tempo Saison	200	1670	465	971.85	120	120	250.80	0.56	330	0.45	689.70	0.44	15	0.01	31.35	0.01
Unconditional Sikes	200	1670	740	1546.60	410	410	856.90	0.56	330	0.45	689.70	0.44	2	0.01	2.00	0.01
Watermelon Berliner	418	3490	1947	1947.00	1505	1505	1505.00	0.56	440	0.45	440.00	0.44	2	0.01	2.00	0.01
Hazelnut Porter	200	1670	645	1348.05	210	210	438.90	0.56	450	0.45	940.50	0.44	5	0.01	10.45	0.01
Myth of Fingerprints	200	1670	1045	2184.05	765	765	1598.85	0.56	280	0.45	585.20	0.44	2	0.01	4.18	0.01
Mulberry Berliner	200	1670	940	1964.60	660	660	1379.40	0.56	280	0.45	585.20	0.44	2	0.01	4.18	0.01
<b>Totals</b>			<b>9208</b>	<b>15258.59</b>	<b>4966</b>	<b>4966</b>	<b>8476.89</b>	<b>0.54</b>	<b>4150</b>	<b>0.45</b>	<b>6689.70</b>	<b>0.44</b>	<b>114.25</b>	<b>0.01</b>	<b>138.50</b>	<b>0.01</b>

\*Scaled numbers equalize percentages based on volume of 418 gallons for all ten products.