

APPROVED 5/20/2014

**ORANGE COUNTY BOARD OF COMMISSIONERS  
CHAPEL HILL TOWN COUNCIL  
CARRBORO BOARD OF ALDERMEN  
JOINT PLANNING PUBLIC HEARING  
March 27, 2014  
7:00 P.M.**

The Orange County Board of Commissioners met with the Towns of Chapel Hill and Carrboro for a Joint Planning Public Hearing on Thursday, March 27, 2014 at 7:00 p.m. at the Southern Human Services Center in Chapel Hill. N.C.

**COUNTY COMMISSIONERS PRESENT:** Chair Barry Jacobs and Commissioners Mark Dorosin, Alice M. Gordon, Earl McKee, Bernadette Pelissier, Renee Price, and Penny Rich

**COUNTY COMMISSIONERS ABSENT:**

**COUNTY ATTORNEYS PRESENT:** John Roberts

**COUNTY STAFF PRESENT:** Interim County Manager Michael Talbert, Assistant County Manager Cheryl Young, and Clerk to the Board Donna Baker (All other staff members will be identified appropriately below)

**CHAPEL HILL TOWN COUNCIL MEMBERS/STAFF PRESENT:** Mayor Mark Kleinschmidt, Donna Bell, Sally Greene, Ed Harrison, Lee Storrow, Jim Ward, Maria Palmer, George Cianciolo, and Town Manager Roger Stancil

**CHAPEL HILL TOWN COUNCIL MEMBERS ABSENT:** Matt Czajkowski

**CARRBORO BOARD OF ALDERMEN MEMBERS PRESENT/STAFF:** Mayor Lydia Lavelle, Aldermen Damien Seils, Jacquelyn Gist, Randee Haven O'Donnell, and Sammy Slade

**CARRBORO BOARD OF ALDERMEN MEMBERS ABSENT:** Michelle Johnson

**CARRBORO STAFF ABSENT:** Town Manager David Andrews

Chair Jacobs called the meeting to order at 7:06 pm.

**A. OPENING REMARKS FROM THE CHAIR AND MAYORS**

Mayor Lavelle welcomed everyone and said that Michelle Johnson will be late.

Chair Jacobs said that Mayor Kleinschmidt will be arriving around 7:30pm.

Chair Jacobs referred to the following items at their places.

- PowerPoint Sheets for - Item c-1 and Item c-2 – Text Amendments to the Joint Planning land Use Plan and Agreement
- Blue Sheet – Letter regarding Community Development Block Grant Funding

Commissioner Rich suggested that all the Mayors and Managers get on the NACo listserv.

**B. PUBLIC CHARGE**

**C. PUBLIC HEARING ITEMS**

**1. Text Amendments to the Joint Planning Land Use Plan and Agreement –**

Michael Harvey said this is a public hearing to review proposed amendments to existing language to ensure agricultural activities are recognized as being allowed throughout the Rural Buffer, require a minimum 2 acre density, allow for the clustering of subdivision lots in those portions of the Rural Buffer outside of the University Lake Watershed Area, and clarify text associated with the minimum lot size within the University Lake Watershed Area.

Michael Harvey presented the following PowerPoint slides:

- **MARCH 27, 2014**  
**AGENDA ITEM: C-1**  
**JOINT PLANNING PUBLIC HEARING**  
**ORANGE COUNTY, TOWN OF CHAPEL HILL, TOWN OF CARRBORO**  
**JOINT PLANNING IN ORANGE COUNTY:**
  - Began in 1984 with a call for the development of a land use plan.
  - Participants adopted a Joint Planning Land Use Plan October 13, 1986 outlining acceptable levels of development in identified areas outside of existing extraterritorial jurisdictional (ETJ) areas.
  - Management of area(s) formalized on September 22, 1987 with adoption of Joint Planning Agreement by all involved parties.
  - Agreement established: *'a method of coordinated and comprehensive planning'* in identified areas.
  
- **JOINT PLANNING IN ORANGE COUNTY:**
  - Plan envisions 2 primary development areas:
    - Transition Areas: Administered by the Towns under their individual land use and zoning regulations in accordance with the Plan. Areas characterized as transitioning from rural to urban development.
      - County has review authority for projects, text, and map changes in identified Transition Areas.
    - Rural Buffer: Areas outside Transition Areas under County regulatory control intended to remain rural in character where annexation is prohibited and urban services (i.e. public water and sanitary sewer) are not a necessary component to support development.
      - Town(s) has review authority for projects, text, and map changes in Rural Buffer area.
  - Joint Planning Land Use Plan – Land Use Category Map
  
- **ISSUES/CONCERNS:**
  - Agricultural Areas land use category is not depicted on maps contained within the Plan. No properties appear to be designated within this category.
    - NOTE: Current language could be misconstrued as establishing limits with respect to allowable locations for agricultural operations, which is inconsistent with State Law. This needs to be corrected.
  - Rural Residential land use category does not specify a density limit (minimum lot size only).
    - NOTE: County staff has interpreted there to be a 'defacto' density limit in the areas of the Plan not located within the University Lake Watershed Area of 1 dwelling unit for every 2 acres.
  - Clustering of lots is not viable within Rural Residential land use category as the Plan is currently written.
    - NOTE(s): There is a minimum required lot size for properties within this land use category of 2 acres.
    - Under County regulations, Cluster Subdivisions allows for the reduction of required lot sizes, not below 1 acre in area, so long as 33% of a parcel is preserved in open space and established density limits are observed.
    - Technique is utilized throughout the county, including the University Lake Watershed Area.

- There is no language within the Plan indicating the clustering of subdivision lots, below the 2 acre minimum lot size, is permitted in the Rural Residential land use category.
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- **CLUSTER SUBDIVISION ISSUE:**  
**Conventional subdivision layout:**
  - Open space is private and part of individual lots. As a result it can be disturbed,
  - Subdivision spread out over entire parcel,
  - More impervious surface area and more land clearing/grading required (i.e. longer roads and driveways),
  - Greater impact to existing foliage and more acres ‘developed’ under conventional subdivision design.

**Cluster subdivision layout**

- Smaller lots with open space being separate and less likely to be disturbed,
- Open space is now ‘shared common area’ for local residents,
- Subdivision is condensed requiring less land clearing and grading,
- Less impervious surface area required,
- Greater protection for existing foliage and less overall ‘development’ on property.

**ISSUES/CONCERNS (continued):**

- Plan indicates minimum required lot size within the University Lake Watershed Area is **5 acres**.
- This is inconsistent with language within Joint Planning Agreement and County regulations indicating minimum lot size is 2 acres.
  - NOTE(s): The Plan indicates there is a density limit for property within this area of 1 dwelling unit for every 5 acres.
  - County regulations also establish a density limit for property within the University Lake Watershed Area of 1 dwelling unit for every 5 acres of property. Minimum required lot size, however, is 2 acres. As previously indicated this is consistent with language contained within the Joint Planning Agreement.

**PROPOSAL:**

- County staff is proposing the following:
  - Combine Rural Residential and Agricultural Areas land use categories into 1 and add language indicating agricultural activities are permitted throughout area covered by the Plan.
  - Add language establishing density of 1 dwelling unit for every 2 acres for property within Rural Residential land use category.
    - NOTE(s): This is consistent with County planning staff’s interpretation of the allowable density in Rural Residential land use category. Plan is being modified to include this interpretation.
    - This amendment will not impact established density limits within the University Lake Watershed Area, which will remain at *1 dwelling unit for every 5 acres of property*.
  - Allow cluster subdivisions within the Rural Residential category so long as proposed density requirements (i.e. 1 unit for every 2 acres) are adhered to. Lots could be reduced to 1 acre in area while density limits are maintained.

**Proposal (continued) Chart Visual**

What proposed changes will mean in Rural Residential Land Use Category?

**Proposal (continued)**

- Change language denoting required minimum lot size for parcels in the University Lake Watershed Area from 5 acres, as detailed within the current Plan, to **2 acres** consistent with existing County regulations and the Joint Planning Agreement.
  - NOTE: This will not impact existing density requirements of **1 dwelling unit for every 5 acres** of property for parcels located within the University Lake Watershed Area.
  - Minimum required lot size will be 2 acres, which is what County staff has enforced since the adoption of the Agreement.
  - Please note: Cluster Subdivisions are allowed within the University Lake Watershed Area. Lots can be reduced to 1 acre in size so long as established density requirements (i.e. 1 dwelling unit for every 5 acres of property) are observed.

**Proposal (continued) Chart Visual**

What proposed changes will mean in University Lake Watershed Area?

**REVIEW PROCESS:**

- Step One: Joint Public Hearing with all participants
- Step Two: Review of proposal by all parties consistent with schedule outlined in abstract.
  - NOTE: each entity shall process request consistent with their applicable meeting schedules for advisory boards and elected officials.
  - Amendment(s) shall not become effective until approved by the parties.
- Step Three: Elected bodies take action.
- Step Four: If approved, staff will modify the language of the Plan.

**COUNTY STAFF RECOMMENDATION:**

1. Receive the request,
2. Conduct the Public Hearing and accept public and elected official(s) comments,
3. Refer the matter to the various advisory boards for recommendation and elected officials for final decision consistent with local meeting dates.

Council Member Palmer asked how a 2 acre lot can be purchased to build a house, but the density is one unit per 5 acres.

Michael Harvey referred to the example of a 100 acre parcel that can be split by a developer into a maximum of 20 lots. He said 19 of those lots can be 2 acre parcels, which is the minimum lot size, and one lot will be significantly larger. He said the minimum lot size will be maintained, but only 10 lots will get developed. He said it is up to the developer to decide how large the lot sizes will be, respecting the 2 acre minimum.

Council Member Palmer said she understands how this can work if you have a developer, but she questions the situation when there is an individual owner.

Michael Harvey said there are 1, 2 and 3 acre lots in this area. He said any of these that were created prior to 1990 are grandfathered in and can be developed; any new lot created after 1990 has to comply with the density standards.

Commissioner Dorosin referred to the example on the slide regarding shared open space in the cluster model. He asked if this means the developer has to create a Home Owners Association (HOA) to manage and maintain that shared space.

Michael Harvey said there are several ways to get this done. He said one way is to establish an HOA, and another way is to work with developers to have common areas donated and dedicated to local conservancy groups.

Commissioner Dorosin questioned how density would be measured if, for example, he owned a 5 acre stand-alone lot and he wanted to sub-divide it and sell part of it.

Michael Harvey said it would depend on when the lot was created. He said a subdivision would not be possible if the lot was created in 2000, as the density threshold has been reached for the area in question.

*Mayor Kleinschmidt arrived at 7:16 PM*

Commissioner Dorosin questioned whether subdivided lots from a parcel created earlier would still be grandfathered.

Michael Harvey said it would be a lot created under provisions referenced in the plan, as well as in County zoning regulations. He said there is a density bonus that the plan recognizes. He said this allows for up to 5 lots at a 2 acre density; but once this is exhausted, every dwelling would have to meet the one dwelling unit per 5 acre density.

Alderman Slade said this looks like a more attractive alternative for developers, and it may allow them to pursue the clustered subdivision as a way to save money. He questioned whether there might be ways to incentivize developers to make any existing nature corridors or County corridors publicly accessible space in exchange for the opportunity to do a cluster subdivision.

Michael Harvey said the current County standards do not incentivize the cluster subdivision process. He said this plan merely provides the developer an opportunity to reduce cost and preserve open space. He said the only incentive in their regulations is to potentially allow for additional density, subject to the provision of lots for affordable housing. He said the County has had developers that have dedicated open space and allowed for public access corridors consistent with the Greenway Master Plan, which is monitored by the Department of Environment, Agriculture, Parks & Recreation (DEAPR). He said DEAPR is involved in the review process and makes recommendations on the reservation of such areas.

Commissioner Price asked if staff can provide the statistics for which developers have used conventional plans versus clustering or conservation over the years.

Michael Harvey said he can do this, but he would remind the Board that there are 4 types of major sub-division regulations in the County, most of which are conservation/clustering style subdivisions. He said the County has only had 2 major subdivisions in the past 3 years.

Commissioner Price said there have been some in the past and she would like to have some idea of how this has gone. She said there were efforts in the 1990's to do this type of conservation, and a lot of the developers were choosing the conventional plan.

Michael Harvey said he can provide this information. He said there is nothing in this plan other than that it encourages and allows clustered subdivisions. He said it is the County's subdivision regulations that spell out the subdivision processes.

Council Member Harrison said it was with the Dunhill subdivision off Mount Sinai Road that he first learned about the lack of cluster. He asked if this neighborhood had any other option besides conventional that would have given them more buffer against the Johnston Mill Preserve.

Michael Harvey said the developer could have done a cluster sub-division, but this would have limited them to 2 acre lot sizes; therefore the conventional option was chosen. He said this amendment would have given the developer the option to cluster down to one acre with 33 percent open space.

Council Member Harrison questioned whether this option would have reduced the number of lots.

Michael Harvey said this is correct, but it would have been 2 acre minimum lot sizes.

Council Member Harrison said it could have increased the amount of open space against neighboring properties.

Michael Harvey said this is correct, but the County cannot require that the developer go through this process, because it was a special use permit.

Council Member Ward asked if this proposal is going to create any situations where people will lose development opportunities.

Michael Harvey said he does not think so, because County planning staff already interprets a de-facto one dwelling unit for every 2 acre density in the rural residential area. He said this will simply allow people to reduce the lot size, cluster, get more open space, and reduce the cost for development. He said the County gets the benefit of more open space.

Council Member Ward asked if there are there boilerplate restrictions related to the open space that is created within these subdivisions.

Michael Harvey said yes. He said the Orange County subdivision regulations spell out uses allowed within open space, and this is primarily for local residents, access and some recreational activities.

Council Member Ward asked if the space can be timbered.

Michael Harvey said no.

Council Member Ward asked about the nature of the enforcement.

Michael Harvey said he tries his best.

Council Member Ward noted that one of the proposals is to overlay what already is by state law agricultural uses throughout the County.

Michael Harvey said staff is proposing the combination of existing agricultural land use area with the rural residential category, adding language that stipulates agricultural activities are permitted consistent with state law.

Council Member Ward asked if this is going to do anything in the watershed that would be counterproductive to the interest in keeping it healthy.

Michael Harvey said not in his professional opinion, because state law says the County cannot stop farms from developing in that area anyway.

Council Member Ward asked if there are other ways to deal with agricultural activities to make sure these activities and farming practices are done as wisely as possible.

Michael Harvey said even though farms are exempt from the majority of zoning regulations, they are still required to comply with development regulations, specifically erosion control and storm water management. He said the County planning department does enforce impervious surface limits on farms and does work in concert with the Health Department to insure adequate septic. He said there are mechanisms in place to address some potential concerns, but the tools at the County's disposal are limited because of state law.

Commissioner McKee said there are regulations associated with the Jordan Lake rules that define record keeping, as well as best farming practices.

Commissioner Gordon asked if there is any other way to handle this concern about farming not being allowed. She said it seems that farming cannot be restrained, and she thinks there are already farms in this watershed and other areas of the rural buffer. She questioned whether there is any other way to phrase this that would bring the definition up to date instead of combining these two uses. She said this makes it sound much like the Agricultural Residential land use category, which is much different. She asked if there is a way to add a statement about compliance with state statutes.

Michael Harvey said the original proposal was to delete agricultural areas as a land use category altogether, and add the language being proposed on page 8 of the abstract. He said it was determined that the language of the agriculture areas land use category should be maintained. He said since there are no properties placed in the category to begin with it seemed reasonable to combine the two and add the language. He said the problem is that

agriculture activities can occur in all land use categories, so it was more prudent to combine the two categories.

Commissioner Price said she was referring to flexible development earlier.

Michael Harvey said the state requires a minimum stream buffer to be preserved around streams on farm properties, and the County buffers don't apply. He said the erosion control division of Orange County handles this.

Michael Harvey said he cannot enforce watershed buffers on a farm. He said he cannot enforce the 100 foot as currently detailed, since the watershed buffers are graduated from a 50 foot minimum to 250 feet, according to slope. He said the state will enforce the minimum stream buffer.

#### PUBLIC COMMENT:

Bolton Anthony said he runs a small non-profit called Second Journey, which is interested in new models for community in later life. He said his organization has been partnering with the Department on Aging on workshops regarding aging in the communities. He said there have been discussions on shared housing and clustered neighborhoods.

He said his non-profit was considering an elder-co-housing community 7 or 8 years ago, in which the houses are clustered and open onto a green space, and automobiles are kept at a distance. He said the affordability issue in Carrboro and Chapel Hill made this project very difficult, so the agricultural buffer was considered. He said there was a 15 acre tract on Old Hillsborough that would have worked beautifully, and the 2 acre requirement is what frustrated the ability to develop this. He urged the Board to give this a favorable hearing and not frustrate future attempts.

Council Member Palmer referred to page 15 of the materials and noted that there are approximately 9,260 acres of land designated rural/residential and agricultural. She said that could mean about 10,231 people according to the plan. She said if the County continues subdividing land into big lots, there will end up being mansions for 10,000 people. She does not want to County to look like this, and she does not want this to be the future of the outskirts of the Chapel Hill and Carrboro area. She would like to think of ways that this land can serve the community better than just subdividing it into lots. She suggested development of a soccer complex that would bring in people for recreational purposes and would bring economic development to our area. She said a park and ride lot could be placed next to it so that weekend users could utilize it to preserve parking in the towns. She said some of this land should be preserved for trails and campgrounds.

Council Member Palmer asked about use for affordable housing or educational farms for young people to learn about agriculture. She asked if these activities could be encouraged. She said she is comfortable making these changes to bring things up to date, but she hopes that the Board can come back and talk about new things that can be done with the rural buffer.

*Council Member Storrow arrived at 7:42 PM*

Council Member Ward asked how the land perkability affects these rules.

Michael Harvey said the reality is if that it is sometimes difficult to find perk sites. He said if developers don't do the due diligence before going through the process then there could be a lot of money spent for nothing. He said the County does require applicant to go through a fairly arduous process to avoid this.

Council Member Ward asked if the County requires a back up perk site.

Michael Harvey said yes.

Council Member Ward asked if the County is being asked about above ground perks and other alternatives with regard to land that does not perk

Michael Harvey said all of these are possible with state permits and state engineered systems. He said a project in the rural buffer is prohibited from having water or sewer extended to it.

Council Member Ward asked if developers can use the alternative strategies.

Michael Harvey said yes.

Commissioner Gordon said part of the reason for the rural buffer is to have a hard edge around the urban areas so that the urban areas can be developed in a more effective way. She said it is important to remember that whatever goes in the rural buffer needs to be able to survive on groundwater systems.

She said there are possibilities to have soccer areas in other parts of the County, such as Millhouse Road Park and the Twin Creeks Park.

Chair Jacobs referred to the clustering option and thanked the staff for bringing it forward. He said this is a gracious form of sprawl. He said the County loses the capacity to have significant connected open space and smaller yards. He said he has been asking for this for a long time. He said there has been frustration by this, and there has been hesitation to open the discussion about the rural buffer, but he trusts the wisdom of his colleagues. He thinks the County can do a better job, and he thinks this is a step in the right direction. He hopes this goes forward.

Alderman Haven O'Donnell referred to the comments by Bolton Anthony. She said there are people in Carrboro that have been there a long time and are discussing an elder co-housing concept. She said this is not possible in Carrboro, as the lots are not large enough. She asked, if this was to go forward, if there would be flexibility for these kinds of special uses.

Michael Harvey said his opinion is no, because there would still be a one acre minimum lot size with clustering.

Alderman Haven O'Donnell said the County is rapidly approaching a time, with baby boomers retiring, when a wise use of land makes sense. She questioned whether the County is missing an opportunity to purposefully create an environment where transitional and affordable housing would work.

Michael Harvey said it would require the efforts of the elected boards to put that type of flexibility in the proposed document.

Chair Jacobs noted that the County's minimum lot size is .92 acres.

Michael Harvey said there are areas in Orange County where water and sewer are available, and high density projects are encouraged and promoted. He said some of the projects Alderman Haven O'Donnell is suggesting could be developed through established processes; however this cannot be done in the current rural buffer.

Commissioner McKee said he supports the plan overall, but his only concern is the one dwelling for every 5 acres in the University Lake Watershed. He said he is concerned about the issue of affordability. He said with this limitation and the land prices in that area, there is no talk of affordable houses – only mansions.

Council Member Ward asked for an explanation of why the County could not create the ability to have smaller lot sizes.

Michael Harvey said the reason for the lot size requirements is the availability of active repair septic and wells that require a 50 foot setback from structures and septic systems. He said the lot sizes can vary dramatically in areas that have water and sewer.

Council Member Palmer said she understands the need for the septic system to support the population. She questioned having the land and clustering the people. She referenced the example of co-housing for the elderly. She said the homes in this setting are more like little apartments that open into common areas. She asked if this would be permitted, as you still have the density.

Michael Harvey said there are areas in the County where that concept would work, but this would not work in the rural buffer unless this elected body wants to change this plan.



Council Member Palmer asked if this means changing the plan to allow clustering to have lots of half an acre as long as the density is maintained.

Michael Harvey said that is one thing that would have to change, but there are many more changes that would have to occur, and he is not prepared to discuss that this evening.

Council Member Palmer asked if it is possible in much of the rest of the County.

Michael Harvey said yes. He said there are existing subdivision categories that give people the option to go through a process to create exactly what Council Member Palmer is talking about. He said most of these are in areas where water and sewer are available.

Alderman Seils said he has concern about any reduction of lot sizes. He said these discussions are describing an urban area, and the purpose of the rural buffer is to not be an urban area. He said he is not interested in changing the rural buffer to an urban area.

Commissioner Gordon agreed with Alderman Seils comments. She said the proposed concepts that Town Council Member Palmer mentioned require public water and sewer. She said there are good reasons why the requirements are in place for lots with septic and well.

Commissioner Price said she is in favor of the proposal, but she has looked at the clustering option in the past. She said she some of these developments have community wells in other areas, and it requires creative planning and a consideration of the carrying capacity of the land.

#### **a. Orange County**

A motion was made by Commissioner Price, seconded by Commissioner Rich to refer this item to the:

Orange County Planning Board for recommendation – May 7, 2014

Board of County Commissioners for possible action – June 3, 2014

VOTE: UNANIMOUS

#### **b. Chapel Hill**

A motion was made by Council Member Palmer, seconded by Council Member Storrow to refer this item to the :

Chapel Hill Planning Board for recommendation – May 6, 2014

Town Council for possible action – June 9, 2014

VOTE: UNANIMOUS

#### **c. Carrboro**

A motion was made by Alderman Gist, seconded by Alderman Seils to refer this item to the:

Carrboro Planning Board for recommendation – May 1, 2014

Board of Aldermen for possible action – June 3, 2014

VOTE: UNANIMOUS

### **2. Text Amendments to the Joint Planning Land Use Plan and Agreement**

Revise existing language to allow for the possibility of locating appropriate agricultural support enterprises in the Rural Buffer land use classification.

Perdita Holtz reviewed the following PowerPoint slides:

**Text Amendments to the Joint Planning Land Use Plan and Agreement to Allow for the Possibility of Locating Appropriate Agricultural Support Enterprises Within the Rural Buffer Land Use Classification**