

MEMORANDUM**Date:** May 9, 2014**To:** Town of Carrboro Planning Board**From:** Perdita Holtz, AICP, Orange County Planning Department *Perdita Holtz***Subject:** Proposed Amendments to Joint Planning Land Use and Agreement Regarding Agricultural Support Enterprises in the Rural Buffer

At the May 1 Planning Board meeting, I gave a presentation about the proposed amendments to the Joint Planning Land Use Plan and Agreement and the related (but separate) proposed Orange County Unified Development Ordinance (UDO) amendments that would allow for agricultural support enterprises in the Rural Buffer land use classification. There were two questions I was not able to fully address due to their legal nature and the Town asked if the County Attorney's office could weigh in on the topics. The questions were:

1. Why can some uses be limited to bona fide farms and some cannot? For example, a production only microbrewery (Sec. 5.14.2) requires location on a bona fide farm but a community meat processing facility (Sec. 5.13.13) does not.
2. Is it possible to restrict the location of any or all of the proposed uses to properties enrolled in or eligible for the Use Value taxation program?

In communication with the Orange County's staff attorney who handles land use and planning issues, I learned that, unfortunately, the attorney's office cannot respond directly to the Town of Carrboro because professional standards prohibit an attorney from giving legal advice or opinions to an entity represented by a different attorney. Since the Town has its own attorney, the County's legal staff cannot violate this professional standard. However, there were several salient points made during the course of communications with me, and I offer them as follows:

- Limiting certain land uses to a bona fide farm (BFF) is not itself objectionable. However, regulating farm uses on bona fide farms will be objectionable if there are not clear, reasonable and legally supported standards determining when they change from farm use to industrial (or other non-exempt) use. For example, if you want to limit ethanol production to BFFs, that's fine. But if you can't then say that all such ethanol production requires a permit and adherence to standards, because small batch production for operation of on-site farm equipment is protected as a bona fide farm use.

- There is an exception for bona fide farms in both the standards and in the definition of microbrewery. “A microbrewery, production only, that is located on a bona fide farm, and which utilizes primarily crops produced on-site is considered a bona fide farming use and is not subject to zoning regulations.” (See 5.14.2(A)(1)(a)). Also, it is erroneous that the microbrewery regulation requires that it be on a BFF. That requirement is only if it is in the AR or RB district, but it appears to be also allowed in three other general use zoning districts (I-1, I-2, and I-3). “If located in an AR or RB zoning district, the microbrewery must be located on a bona fide farm.” 5.14.2(A)(1).
- There is an implication that there is a bright line between what can and can't be placed on uses in BFFs. At either end of the spectrum it may be clear, but there is plenty of room in the middle. For example, the County can't say all farm stands must obtain a permit. At the other end of the spectrum it doesn't have to allow farm equipment on a BFF if it's dozens of rows of never-used tractors simply there for commercial resale. The microbrewery is an example of something that is defensible, but not certain. The best case law available used several factors in the court's determinations. It's possible for a court to say “yes, by weight this microbrewery used more off-site wheat in its production than any other ingredient BUT the use of the farm's entire on-site production of hops was more critical and given the several factors, this is a bona fide farm use that is exempt from zoning.”

In regards to question #2, the staff attorney responded that it's theoretically possible to restrict the location of any or all of the proposed uses to properties enrolled in or eligible for the Use Value taxation program but that he would need specific language to review in order to comment with more certainty. I provided draft language early in the week but, to date have not received a response. If a response is received prior to the Town's Planning Board meeting on the 15th, I will forward information to Town planning staff for distribution to the Planning Board via e-mail.

If Planning Board members have additional questions prior to the meeting on the 15th, I would appreciate hearing them ahead of time, if possible, so that I can research the question, if necessary, and respond fully at the meeting. My e-mail is pholtz@orangecountync.gov and my work phone is (919) 245-2578.