

Efland Community to address their concerns, and then this comes back to the Board. He said this does not say that this won't come back to the Board, but it directs staff to meet with the community.

Commissioner Dorosin suggested holding an informational meeting with the public at the Whitted building to allow Commissioners and staff to attend, in an effort to bridge the gap. He asked if this could be added to the motion.

Commissioner McKee and Commissioner Price agreed to this.

Commissioner Pelissier also suggested an amendment to the motion, stating that this would come back in May.

Commissioner McKee said he could not accept this, as he is not sure that this allows adequate time for staff to address community concerns. He said this would set an artificial deadline.

Commissioner Pelissier said she would like to have a specific time frame.

Commissioner McKee and Commissioner Price agreed to September.

Chair Jacobs reviewed the amended motion to have a public information meeting to give the Efland community members an opportunity to: meet with staff and Commissioners to express concerns, and for staff to explain the proposals, to come back for the September Public Hearing.

Michael Talbert said there are two options: 1. To close the existing public hearing or 2. Continue this public hearing until the September 2014 Public Hearing.

Commissioner McKee said he will add this to the beginning of his motion.

Commissioner Gordon said she is not sure about having a public information meeting that requires the Commissioners to have a quorum.

Commissioner Price said this is just a public meeting and the Commissioners can attend, but quorum is not required.

A motion was made by Commissioner McKee, seconded by Commissioner Price to close the public hearing; hold a staff coordinated public information session; and to bring this item back to a meeting in September, 2014. (There was discussion of the possibility of no QPH in September and the public hearing would possibly be during a regular meeting.)

VOTE: UNANIMOUS

Commissioner Price suggested there be more than one meeting.

**5. 2030 Comprehensive Plan and Unified Development Ordinance (UDO) Text Amendments** - To review government-initiated amendments to the text of the UDO to establish a zoning program commonly referred to as Agricultural Support Enterprises (ASE) outside of the Rural Buffer land use classification.

Perdita Holtz reviewed the following PowerPoint slides:

**Agricultural Support Enterprises Outside of the Rural Buffer Land Use Classification**

Quarterly Public Hearing

February 24, 2014

Item C.5

**History & Purpose of Amendment**

- A work-in-progress since 2001
  - Need for Conditional Zoning construct was one of the "sticking points"
  - We now have this type of zoning in the UDO

- Augment allowable uses farmers can pursue in order to generate additional farm-related income and to potentially allow farming support/related uses in rural areas while minimizing any adverse impacts on adjoining property.
  - Balance between rights of property owner and rights of neighboring property owners

### **Two Proposed ASE Amendments**

- Outside of Rural Buffer land use classification
- Within Rural Buffer land use classification
  - Requires amendments to Joint Planning Area documents
    - Orange County, Towns of Chapel Hill & Carrboro must approve JPA amendments
  - Will be on longer review/approval timeframe
  - The more intensive uses could not be considered in the Rural Buffer, under the current proposal

### **Comprehensive Land Use Map**

#### **Unified Development Ordinance & Comprehensive Plan Amendments**

- Add provisions for ASE into the UDO.
  - “Agriculture”, as defined in the State statutes, remains exempt from zoning regulations.
- Comprehensive Plan amendment to allow new zoning district in certain land use categories

#### **ASE Program (Zoning/Land Use)**

- Create new conditional zoning district (ASE-CZ)
- Add additional permitted uses to some of the existing general use zoning districts
- Create standards for many of the new uses
- Update some existing development standards
- Add definitions
- Amend Land Use/Zoning Matrix in Comprehensive Plan

#### **Project Review/Approval Process**

- Depends on use being proposed and current zoning of property
- Three basic processes:
  - Staff review/approval
  - Special Use Permit
    - Class B is reviewed/approved by Board of Adjustment
    - Class A is reviewed/approved by Board of County Commissioners
  - Rezoning
    - General Use district
    - Conditional district

#### **Use Specific Standards**

- Help mitigate impacts
  - Balance between rights of neighboring/nearby property owners
- Standards address issues such as:
  - Location on major roads
  - Additional setback requirements
  - Noise

- Hours of Operation
- Groundwater usage
- Building size
- Minimum lot size
- In addition to all requirements in the UDO

### **Permitted Outright vs. SUP or Conditional Zoning**

- Less intensive uses added to the Table of Permitted Uses as permitted outright (example for AR zoning district; other zoning districts are also affected)
  - Subject to use-specific and general development standards
    - Community Agricultural Processing Facility
    - Community Farmers Market
    - Cooperative Farm Stand
    - Community Meat Processing Facility
    - Non-Farm Use of Farm Equipment
    - Rural Special Events
- Check “Definitions” to see how these uses are defined
- Staff approval
- More intensive uses must be permitted through either the Special Use Permit process or rezoned as an ASE-CZ
  - Class B Special Use Permit (in AR zoning district):
    - Microbrewery with Minor Events
    - Taxidermy
    - Winery with Minor Events
    - Microbrewery, Production Only
    - Winery, Production Only
    - Veterinary Clinic
    - Veterinary Clinic, mobile
    - Rural Heritage Museum
  - Class A Special Use Permit (in AR zoning district):
    - Equestrian Center
- Special Use Permits are “quasi-judicial” proceedings
  - Public Hearing
  - Decided on a case-by-case basis with public input (“evidence”)

### **Conditional Zoning District (ASE-CZ)**

- Conditional zoning districts allow projects to be considered on a case-by-case, site-specific basis
  - Rezoning (legislative process) with public hearing
- Acknowledges that there are places where a specific type of use may be appropriate whereas it would not be in a different site-specific situation
  - BOCC has final decision on whether a proposed use(s) is compatible with surrounding uses
  - Mutually agreed upon conditions can be imposed as part of the approval process
    - Allows tailoring of project to a specific site
- Table of Permitted Uses lists the types of uses that can be applied for as an ASE-CZ

### **Change in groundwater usage standard language**

Proposed language in amendment package:

- A comprehensive groundwater study, for facilities expected to use more than 240 gallons of groundwater per day per acre of lot area. Said study shall detail:

- (i) The amount of water anticipated to be used on a daily, weekly, monthly, and annual basis;
- (ii) An analysis of the amount of groundwater withdrawal considered to be safe and sustainable in the immediate vicinity; and
- (iii) An analysis of whether other wells in the vicinity of the proposed use will be affected by withdrawals made by the proposed use.

### **Change in groundwater usage standard language**

Language Proposed as a result of comments

- A comprehensive groundwater study, for facilities expected to use more than 240 gallons of groundwater *on an annual basis per day per acre of lot area than an average single family residence (which uses 240 gallons of water per day) built at the highest density the existing zoning district would allow. For example, if the existing zoning district allows a residential density of 1 unit per 2 acres and the proposed use is on a 6 acre lot (which could yield 3 residences), the proposed use(s) may use three times the water used by an average single family residence (or 720 gallons per day, on an annualized basis) before a comprehensive groundwater study is required. The water usage rates of any existing use subject to zoning regulations located on the same lot shall be taken into account when determining if a comprehensive groundwater study is required. Said study shall detail:*
  - (i) The amount of water anticipated to be used on a daily, weekly, monthly, and annual basis;
  - (ii) An analysis of the amount of groundwater withdrawal considered to be safe and sustainable in the immediate vicinity; and
  - (iii) An analysis of whether other wells in the vicinity of the proposed use *will are expected to* be affected by withdrawals made by the proposed use.

### **Agricultural Preservation Board and Planning Board Review**

- APB has reviewed 3 times
  - Consensus to move forward
  - Would like farmers to have the ability to apply for as many uses as possible
    - (Do not remove more intensive uses from consideration)
- Planning Board Ordinance Review Committee reviewed 2 times
  - Same conclusion as APB
- Both Boards had minor comments/questions that have been incorporated into draft materials

### **Public Notification**

- Completed in accordance with Section 2.8.7 of the UDO
  - Newspaper legal ads for 2 successive weeks
- Held Public Information Meeting on February 17 (was postponed from advertised date of February 13)
  - Flyers posted
  - Press Release
- Has been a topic on a few agendas in the past year
  - BOCC (including Assembly of Governments)
  - Planning Board
  - Agricultural Preservation Board
- Planning website posting on January 24

### **County Attorney's Office Comments**

Perdita Holtz reviewed the land use map and said this amendment applies to all of the areas outside of the rural buffer and outside of the municipalities, which includes: Bingham Township, Cheeks Township, Eno Township, Hillsborough Township, Cedar Grove Township and Little River Township.

Referring to the slide titled, "Permitted Outright vs. SUP or Conditional Zoning", she said "permitted outright" means that approvals are done by staff.

Referring to the slide titled "Conditional Zoning District (ASE-CZ)", Perdita Holtz said projects can be considered on a case by case site specific basis. She said this is still a legislative process, which includes a public hearing; however it does allow Commissioners to have more discretion on whether projects are approved or not.

Perdita Holtz said the proposed change in the groundwater usage standard language is a result of comments made at the public information meeting held last week. She said the new wording attempts to clarify that groundwater usage is being looked at on an annual basis, and to account for the fact that some areas of the County do not allow a density of one unit per acre. She said there is a "for example" included in the language in an attempt to be as clear as possible. She said the change from "will" to "are expected to" comes from conversations with the consultants who would be doing the groundwater studies.

She said, in response to input requested by the Board regarding possible removal of the more intensive uses, the agricultural preservation board felt that there are places in the County where the more intensive uses might be acceptable, and that the conditional zoning or special use process would allow for any issues to be addressed.

James Bryan, County Attorney, said he has advised staff, and he would like to advise the Board that the attorney's office has found that this is legally insufficient, and parts of it would be unenforceable. He said if the Board adopts it and there is litigation, there is a high likelihood of an unfavorable outcome.

Chair Jacobs asked how this got all the way to a public hearing before this was discovered by the attorney's office.

James Bryan said there was agreement to disagree.

Perdita Holtz said there was a meeting back in August regarding his concerns about some of the definitions of non-farm use of farm equipment. She said staff asked if James Bryan would provide some legally sufficient language, but the attorney's office did not want to interject into policy. She said she and Michael Harvey have discussed this and both feel that proper discretion goes a long way in enforcing what is an obvious business use, versus a farmer who grades one road a year. She said this is where the County's attorney had concerns. She said there is some discretion allowed in enforcing this.

Chair Jacobs said it is insufficient to have this come up at a public hearing, and this needs to be fixed.

Commissioner Gordon asked for the specific areas James Bryan is referring to.

James Bryan said it is not that he does not want to inject policy. He said this is purely a legal issue and his legal advice is to pull these definitions. He said there are three definitions related to permitted-by-right, and these are: non-farming use of farm equipment, meat processing and the farm stand. He said all of these definitions say it has to be on a bona-fide farm. He said the state statutes about bona fide farms are very lenient. He said there is no line at all in this, and it is not statutorily correct.

Commissioner Gordon asked about the PowerPoint and the use specific standards on the bottom of page 4. She asked if, in the ASE-CZ, there are any uses in which all of the standards are eliminated and it is entirely a case by case basis.

Perdita Holtz said no.

Commissioner Gordon asked if the standard for major roads is ever eliminated.

Perdita Holtz said yes, that is one that has been discussed. She said there are some uses where you have to be located on a major road, but that standard can be modified if you go through the re-zoning process for the conditional zoning district.

Commissioner Gordon asked for the reason why R1 does not have agricultural support enterprises.

Perdita Holtz said, in the permitted use table, there is a footnote under the R1 zoning that says no uses are being added here. She said the reason for this is because the R1 zoning district purpose statement says that this is a zoning district for rural residential non-farm uses. She said staff did not feel that farm uses should be added as permitted uses, as it would be contrary to this purpose statement. She said, if you are currently zoned rural residential and operating a farm, there are other avenues for approval, such as re-zoning to AR or applying to the ASE-CZ zoning district. She said the R1 purpose statement could be modified, but that was not the purpose of this effort.

Perdita Holtz presented the following final two slides:

### **Final Note**

- Some uses the farming community might be interested in applying for may be permissible as a “Home Occupation”
  - Home Occupation standards are currently in the amendment approval process
    - Heard at November 2013 quarterly public hearing
- Planning staff can help people determine which review/approval process would be the most advantageous to apply for

### **Recommendation**

- Receive the proposal to amend the Comprehensive Plan and Unified Development Ordinance.
- Conduct the Public Hearing and accept public, BOCC, and Planning Board comment on the proposed amendment.
- Refer the matter to the Planning Board with a request that a recommendation be returned to the Board of County Commissioners in time for the April 15, 2014 BOCC regular meeting.
- Adjourn the public hearing until April 15, 2014 in order to receive and accept the Planning Board’s recommendation and any submitted written comments.

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 Perdita Holtz noted an error in attachment 3, on page 206. She said the sawmill use category should be listed as being allowed in the ASE-CZ zoning district. She said this has been corrected on the internet materials.

Commissioner McKee said it seems there is a problem between legal and the planning staff. He asked how to proceed.

Michael Talbert said this is a large item with many moving parts, and the area in conflict is fairly small. He feels it would be appropriate to proceed with the staff recommendation, and this can come back on April 15<sup>th</sup> with revised definitions that meet the requirements of both departments.

Perdita Holtz said this was scheduled to go to the planning board next week. She suggested it would be good to have this language turned around in time to put together these agenda materials. She said if this is not possible, it should be continued to a later date.

Chair Jacobs suggested it be continued to a later date.

Commissioner Price asked if the attorney is comfortable with the rezoning districts on a case by case basis. She said it seems like it is getting close to spot zoning.

James Bryan said he has reviewed all of this and he only found the three definitions to be legally insufficient.

Commissioner Pelissier referred to the addition of the provisions for some of the enterprises that might use more water than an average household. She asked if this would be a problem if a neighborhood went in with pools and irrigation and did not have the same requirements for ground water studies.

James Bryan said this might be a policy issue, but he sees no legal issue with it.

Paul Guthrie referred to the process with micro breweries and some of the definitions. He said this needs to be dealt with.

Tony Blake said he has talked with farmers and all of the concerns were around the water usage. He said people are not clear on what the language means for them. He said there is concern about the available use of water for their livelihood through expansion of herds or crops.

Chair Jacobs said it is important to clarify this.

Commissioner Gordon asked if this would apply to a bona-fide farm.

Perdita Holtz said this would not affect any livestock or crop usage. She wonders if this is getting at the issue of having a bona-fide farm that raises cattle and then there is also an agricultural services use that is subject to the groundwater study.

Tony Blake said the issue seems to be a desire for flexibility.

Perdita Holtz said this does not restrict water usage for cows or crops in any way, even if the farmer also has an agricultural services use.

Marc Marcoplos said he is impressed with the handling of the Efland overlay issues. He said he has been hearing about the agricultural enterprise concept for years, and he thinks it is important to help farmers make a better living. He said the water issue is the one that people will seize on, and perhaps for good reason with the way it is written.

He said he went to the information session, which was re-scheduled due to weather. He said there are 600 farmers in the County and it is worth looking into that there were none of them there. He feels there must be a better mechanism to communicate with the farmers.

Megan Toben said she lives off Dairyland Road and has been farming for 12 years. She said she has sold at multiple farmers markets. She said for 9 of those 12 years, her husband subsidized the farm with his income. She said most of the farm's financial resources and lands were lost in 2010 as a result of the financial crisis. She said she and her husband made a shift with the remaining 38 acres toward agri-tourism and crop diversification. She has been running a non-profit called Pickards Mountain Eco-Institute, which offers environmental education to local schools, as well as weekend workshops on various topics. She said the farm is also in the final stages of opening a farm stand called the Honeysuckle Teahouse, which will open in April. She said it is hard to make ends meet as a farmer. She said farmers need all the help that the County can offer, and it is worth it to spend the time working out all of these details. She recommended that the Board and staff check in with the Carolina Farm Stewards program for input on the issues farmers face. She said she is here to thank for the Board for what they do and to ask them to stay with this agricultural support enterprises program until it is the best that it can be.

Perdita Holtz said she would like to clarify that if you use more water than the average single house, it does not mean you cannot exist; it means you will have to do a groundwater study.

Tony Blake said he has a neighbor who had a spring that dried up in the drought. He was forced to go to groundwater. He said it was not clear to his neighbor that he was not being restricted.

Commissioner McKee said there were not a lot of commercial farmers at the information meeting or at tonight's meeting because those are large businesses that fall outside of the permitting structure. He said this will be beneficial to smaller or beginning farmers who want to transition their operation. He said these large farms have computers and smart phones and

ability to communicate. He said he is sure there will be concern and pushback over the water issue in the future.

Commissioner Gordon said she does think the ground water is a key concern. She said the County does encourage businesses that have low water usage, as part of economic development. She said the consideration of water usage is a legitimate concern, and the County has to consider not exceeding the carrying capacity.

She thinks the Board needs time to consider the definitions.

Perdita Holtz said, per the prior discussion the plan is to adjourn until the May meeting.

Chair Jacobs said, after all the time the Board has spent on this, he hopes it does not get hung up on how many gallons of water are allowed. He said the water issue is important; but there are a lot of people who can benefit from this, and he feels it is possible to come up with reasonable standards. He hopes staff will work with the planning board to come up with something that is sensitive to the concerns of farmers as well as the concerns of people who worry about our ground water.

A motion was made by Commissioner Rich, seconded by Commissioner McKee to:

1. Refer the matter to the Planning Board with a request that a recommendation be returned to the Board of County Commissioners in time for the May 20, 2014 BOCC regular meeting.
2. Adjourn the public hearing until May 20, 2014 in order to receive and accept the Planning Board's recommendation and any submitted written comments.

VOTE: UNANIMOUS

**6. 2030 Comprehensive Plan and Unified Development Ordinance (UDO) Text Amendments** - To review government-initiated amendments to the text of the UDO to establish a zoning program commonly referred to as Agricultural Support Enterprises (ASE) within the Rural Buffer land use classification.

Perdita Holtz reviewed the following PowerPoint slides:

**Agricultural Support Enterprises Within the Rural Buffer**

Land Use Classification  
 Quarterly Public Hearing  
 February 24, 2014  
 Item C.6

**Purpose of Amendment**

- Allow appropriate agricultural support enterprises within the Rural Buffer land use classification
  - Will augment allowable uses farmers can pursue in order to generate additional farm-related income while minimizing any adverse impacts on adjoining property
    - Intent is to better enable farmers to keep farming which will help preserve the rural heritage of Orange County, including the geographic area that comprises the Rural Buffer
  - Balance between rights of property owner and rights of neighboring property owners

**Two Proposed ASE Amendments**

- Outside of Rural Buffer land use classification
- Within Rural Buffer land use classification



- Requires amendments to Joint Planning Area documents
  - Orange County, Towns of Chapel Hill & Carrboro must approve JPA amendments
  - March 27, 2014 joint planning public hearing
  - JPA documents must be amended before these proposed UDO/Comprehensive Plan changes can be adopted by Orange County
- Will be on longer review/approval timeframe
- The more intensive uses could not be considered in the Rural Buffer, under the current proposal

### **Unified Development Ordinance & Comprehensive Plan Amendments**

- Only a few changes/additions would be necessary to the ASE text applicable outside of the Rural Buffer to allow ASE uses within the Rural Buffer
  - District chart in Article 3
  - Additions to RB zoning district in Table of Permitted Uses for General Use Zoning Districts
  - Noting that some uses shall not be approved in the ASE-CZ if located in the Rural Buffer
  - Additions to some of the use-specific standards in Article 5
- Comprehensive Plan amendment to allow new ASE-CZ zoning district in the Rural Buffer land use category

### **Project Review/Approval Process**

- Depends on use being proposed within the Rural Buffer
- Three basic processes:
  - Staff review/approval
  - Special Use Permit
    - Class B is reviewed/approved by Board of Adjustment
    - Class A is reviewed/approved by Board of County Commissioners (none in RB)
  - Rezoning
    - General Use district (not applicable in the Rural Buffer)
    - Conditional district (including proposed ASE-CZ)
- All projects within the Rural Buffer are sent to JPA partners for review and comment, in accordance with the JPA Agreement

### **Permitted Outright vs. SUP or Conditional Zoning**

- Less intensive uses added to the Table of Permitted Uses as permitted outright
  - Subject to use-specific and general development standards
    - Community Agricultural Processing Facility
    - Community Farmers Market
    - Cooperative Farm Stand
    - Community Meat Processing Facility
    - Non-Farm Use of Farm Equipment
    - Rural Special Events
- Staff approval
- More intensive uses must be permitted through either the Special Use Permit process or rezoned as an ASE-CZ
  - Class B Special Use Permit
    - Microbrewery with Minor Events
    - Winery with Minor Events

- Microbrewery, Production Only
- Winery, Production Only
- Rural Heritage Museum
- Special Use Permits are “quasi-judicial” proceedings
  - Public Hearing
  - Decided on a case-by-case basis with public input (“evidence”)

### **Conditional Zoning District (ASE-CZ)**

Some of the more intensive uses that can be applied for as an ASE-CZ could not be applied for in the Rural Buffer

- Composting Operation with grinding
- Regional Meat Processing Facility
- Stockyards/Livestock Markets
- Sawmills
- Both Agricultural Preservation Board and Planning Board Ordinance Review Committee agree on removing these uses from consideration in the Rural Buffer

### **Conditional Zoning District (ASE-CZ)**

- Conditional zoning districts allow projects to be considered on a case-by-case, site-specific basis
  - Rezoning (legislative process) with public hearing
- Acknowledges that there are places where a specific type of use may be appropriate whereas it would not be in a different site-specific situation
  - BOCC has final decision on whether a proposed use(s) is compatible with surrounding uses
  - Mutually agreed upon conditions can be imposed as part of the approval process
    - Allows tailoring of project to a specific site
- Table of Permitted Uses lists the types of uses that can be applied for as an ASE-CZ

### **JPA Review**

November 21, 2013 Assembly of Governments meeting to discuss with elected officials

Amendment Package sent to JPA partners on January 17, 2014

- To date, no comments have been received

### **Public Notification**

- Completed in accordance with Section 2.8.7 of the UDO
  - Newspaper legal ads for 2 successive weeks
- Held Public Information Meeting on February 17 (was postponed from advertised date of February 13)
  - Flyers posted
  - Press Release
- Has been a topic on a few agendas in the past year
  - BOCC (including Assembly of Governments)
  - Planning Board
  - Agricultural Preservation Board
- Planning website posting on January 24

### **Recommendation**

- Receive the proposal to amend the Comprehensive Plan and Unified Development Ordinance.

- Conduct the Public Hearing and accept public, BOCC, and Planning Board comment on the proposed amendment.
- Refer the matter to the Planning Board with a request that a recommendation be returned to the Board of County Commissioners in time for the September 4, 2014 BOCC regular meeting.
- Adjourn the public hearing until September 4, 2014 in order to receive and accept the Planning Board's recommendation and any submitted written comments.

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Commissioner Gordon referred to the use specific standards chart and asked why this is not included in the rural buffer section.

Perdita Holtz said the standards are the same in the rural buffer as they are in the agricultural residential. She referred to the amendment package, in article 5 and said any amendments in red are just adding RB to a few sections. She said the standards are the same, and there has been no re-write of standards to make it pertain to the rural buffer.

Commissioner Gordon asked how the Planning Board consideration interfaces with the joint planning consideration.

Perdita Holtz said, within the rural buffer, the planning board will make a recommendation on the JPA amendments as well. She said the planning board will be briefed on this in April, and information will be shared from the public hearing, planned for March 27<sup>th</sup>. She said the UDO revisions being considered tonight will be on the April planning board agenda for them to make a recommendation as well.

Commissioner Gordon said the recommendation will be made with just the hearing comments, but not with the comments from the jurisdictions.

Perdita Holtz said the UDO amendments are not what are being heard at the March 27<sup>th</sup> joint public hearing; this is to hear amendments to the joint planning land use plan and agreement, and there are very few amendments that need to occur.

Commissioner Gordon asked for a memo listing those amendments.

Perdita Holtz said this can be done.

Commissioner Gordon asked when the input on the UDO from the Chapel Hill and Carrboro public officials will come.

Perdita Holtz said public officials don't comment on UDO amendments unless staff wants to bring something to their attention.

Commissioner Gordon asked when these comments are due.

Perdita Holtz said these were due by tonight, but these will still be accepted while the public hearing process is going on. She said written comments can be submitted as part of the JPA process.

Chair Jacobs asked if there are any items in this proposal that have the same issues that the attorney and staff had in the previous proposal.

Perdita Holtz said this is not due to come back until September, so this is not an issue.

A motion was made by Commissioner Price, seconded by Commissioner Pelissier to:

1. Refer the matter to the Planning Board with a request that a recommendation be returned to the Board of County Commissioners in time for the September 4, 2014 BOCC regular meeting.
2. Adjourn the public hearing until September 4, 2014 in order to receive and accept the Planning Board's recommendation and any submitted written comments.

VOTE: UNANIMOUS