A motion was made by Commissioner Pelissier seconded by Commissioner Price for the Board to:

1) Award a bid to Riggs-Harrod Builders, Inc. of Durham, North Carolina not to exceed the amount of $429,550 for the construction of the Orange County SportsPlex Lobby Renovation;
2) Authorize the Chair to sign the necessary paperwork upon final approval of the County Attorney; and
3) Authorize the County Manager to execute change orders for the project up to the project budget.

Commissioner Rich said residents in Chapel Hill are asking when this facility can be duplicated in the southern part of the county.

Commissioner Dorosin said the Sportsplex is in the center of the County, and it is equidistance from all points.

VOTE: UNANIMOUS

c. Joint Planning Land Use Plan and Agreement Amendments – Revisions to Existing Language Ensuring Agricultural Activities are Allowed Throughout the Rural Buffer as well as Density and Minimum Lot Size Clarification(s)

The Board considered amendments to the Joint Planning Land Use Plan and Agreement modifying language to ensure agricultural activities are allowed throughout the Rural Buffer and to clarify required densities and minimum lot sizes within, and outside of, the University Lake Watershed Area.

Chair Jacobs noted that there are answers to some of the Board questions included in the documents at the Commissioners' places.

Michael Harvey reviewed the abstract documents and presented the following PowerPoint slides:

JUNE 3, 2014
AGENDA ITEM: 7-C
PROPOSED AMENDMENTS TO THE JOINT PLANNING LAND USE PLAN AND AGREEMENT

BACKGROUND:

- Presented at the March 27, 2014 Joint Planning Public Hearing.
- Town of Chapel Hill Planning Board reviewed and recommended approval of proposal.
  - Town of Chapel Hill Town Council will review at its June 9, 2014 regular meeting.
- Town of Carrboro Planning Board, as well as other local advisory boards, have reviewed and recommended approval.
  - Town of Carrboro Board of Alderman is reviewing this item at its June 3, 2014 regular meeting.

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): 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.
- 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.

PROPOSAL SUMMARY:

- Combine Rural Residential and Agricultural land use categories, add language indicating agricultural activities are permitted throughout the area covered by the Plan.
- Establish density of 1 dwelling unit for every 2 acres of property located within the Rural Residential land use category.
- 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.
- Change language within the Plan denoting required minimum lot size for parcels in the University Lake Watershed Area is 2 acres consistent with the adopted JPA and existing County regulations.

MANAGER RECOMMENDATION:

1. Deliberate as necessary on the proposed amendments to the Joint Planning Land Use Plan and Agreement,
2. Decide accordingly and/or adopt the Resolution contained in Attachment 2 which approves the amendments to the Plan and JPA.

Commissioner Gordon's questions and concerns and staff responses (via email) are noted for the record as follows:

From: Alice Gordon [mailto:gordon.alice@gmail.com]
Sent: Monday, June 02, 2014 6:23 PM
To: Barry Jacobs; Bernadette Pelissier; Earl McKee; Alice Gordon; Alice Gordon; Mark Dorosin; Penny Rich; Renee Price; Donna Baker; Michael Talbert; Greg Wilder; Cheryl Young; Clarence Grier; John Roberts
Cc: Craig Benedict
Subject: Additional questions/comments - June 3, 2014 agenda

Additional questions/comments - June 3, 2014 agenda - from Alice Gordon
Item 7c and 7d - JPA Land Use Plan and Amendment Agreements

In the proposed revisions to the Joint Planning Land Use Plan and JPA agreement, there are a number of places where the Rural Residential and Agricultural land use plan categories are combined into a new Rural Residential and Agricultural land use category.

(A) Reasons for combining the two land use categories

In reviewing the agenda materials, I have developed an understanding of the reason for combining these categories.

My understanding is that this combination into one category is not something that is mandated by state statute.
Staff response: Correct.
What is mandated by the statute is that the county cannot prohibit agricultural uses in the county's jurisdiction, including in the Rural Buffer.
Staff Response: Correct.
Therefore it is my understanding that the main reason to combine Rural Residential and Agricultural is related to planning issues, rather than legal issues.
Staff Response: Correct. Any agreement will be strengthened by clearly demonstrating the intent of the parties. However, both the original language and draft amendments likely are legally sufficient to convey the intent of the parties.

(B) Description/definition of the Agricultural category in the original Joint Planning Area Land Use Plan

My understanding of how the Agricultural category was described in the original JPA Land Use Plan tracks with the statement on page 60-a of the JPA land use plan (on page 10 of agenda item 7c) as follows:

Agricultural Areas include land areas currently in use for farming and forestry operations and which qualify for, or are listed for, use value taxation purposes.
Staff response: Correct. There's likely some discrepancy between the definitions as not all farms may qualify for the present-use value program which has four tests (ownership, size, income and sound management). While the revised language captures more farming operations, these will be practically the same.

My understanding further tracks with the two paragraphs concerning "Agricultural Areas" on page 83 of the JPA land use plan (page 16 of agenda item 7c).

There is a map in the original JPA land use plan which has symbols indicating where farms are located.

In agenda item 7-d, in Attachment 4, is a map of parcels in use value. My understanding is that this map would be the modern equivalent of the older map.
Staff response: Correct. Attachment 4 would be a modern equivalent for informational purposes and does not appear to replace or become part of the JPA.
After reviewing that map in our agenda materials (on page 19 of agenda item 7d), it is my understanding that the parcels in use tax value in the Rural Buffer would be the Agricultural areas and the other parcels would be the Rural Residential areas.

Staff response: The parcels identified on that map and within the Rural Buffer would be considered "Agricultural Areas" now and "Rural Residential and Agricultural Area" if the JPA were amended as proposed. The "Rural Residential and Agricultural Area" would be those parcels, plus farms outside the present-use value program (if any) and the residential uses. There would still be the other six categories of uses in the Rural Buffer (Resource Protection Area, Public-Private Open Space Area, Retail Trade Area, Extractive Use, and the University Lake Watershed Area) which are not depicted in the map.

I would appreciate it if the planning staff and the county attorney would comment on my understanding of (A) and (B) above. Some of my understanding of these issues comes from my having helped develop the JPA plan and agreement when I served as chair of the Orange County Planning Board, but most of it comes from a recent review of relevant information.

End of first email.

Continued Staff Responses:
Commissioner Gordon is correct that staff's proposal to combine the existing 'Rural Residential' and 'Agricultural' land use categories, as detailed in the Joint Planning Land Use Plan, is not mandated by State statute. Having said that existing language within the Joint Planning Land Use Plan, which we are proposing to delete, is no longer consistent with State law with respect to 'defining' how a property owner 'demonstrates' he/she operates a farming operation. From that standpoint we are, through this process, addressing the Plan's inconsistency with State law with respect on 'how' someone demonstrates their property is or is not a farm.

I am referring to the following language (again which we are recommending be deleted):

During the compilation of background information, a land use survey was conducted of the Joint Planning Area. The survey indicated those land areas currently in use for agricultural purposes. This information was further verified through the Orange County Tax Office to determine those farms which were qualified and listed for use value taxation purposes.

State law, specifically NCGS 153A-340 (b) (2) now provides 5 different options with respect to how a property owner 'demonstrates' the property is a farm, specifically:

- ***a. A farm sales tax exemption certificate issued by the Department of Revenue.***
- ***b. A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.***
- ***c. A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.***
- ***d. A forest management plan.***
- ***e. A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency.***

A parcel of property no longer has to be listed, or qualify for, the present use value program to be considered a farm for our purposes.

As previously indicated the chief reasons staff is proposing to combine the 2 land use categories into one is:

1. **By State law farms are allowed anywhere. Staff does not believe we can have language within the Plan which could be interpreted as limiting their location in only 1 land use category. This is why such language is being eliminated.**
2. **By combining the 2 land use categories we are ensuring there is universal understanding that a farm is allowed through the area covered by the Plan.**
3. **The current Joint Planning Land Use Map shows there are no properties within the 'Agricultural' land use category. The map provided as part of Item 7-d (attachment 4) was created at the request of the Carrboro Board of Alderman and is being provided for the BOCC's edification. All this map shows are the various farms throughout the Rural Buffer that are part of the present use value program. It is not a definitive list/map of all farm properties. It should in no way be construed as a 'modern' equivalent of the older map (assuming Commissioner Gordon is referring to the Joint Planning Land Use Plan Map). The Joint Planning Land Use Map, as previously indicated, does not specifically delineate any parcels of property as being located within the 'Agricultural' land use category.**

Commissioner Dorosin referred to the proposal summary slide. He asked about the proposed change to the University Lake watershed. He asked if a current property owner with one house on 5 acres in the University watershed would be able to construct another dwelling, or divide that parcel.

Michael Harvey said the ordinance establishes that any lot that legally existed prior to 1989, when the University Lake watershed density standards were adopted, receives a density bonus, where you can have up to 5 lots at a 2 acre density. He said, in the scenario presented by Commissioner Dorosin, if the lot was created in 1980 at 5 acres, the owner could create one additional lot at a 2 acre minimum lot size. He said if the lot was created in 2014, the owner will limited to one 5 acre lot.

Commissioner Dorosin referred to the defacto density limit and asked for clarification on this.

Michael Harvey said staff has interpreted the joint land use plan as establishing a defacto density because the language says that lots must be two acres or higher. He discussed the example of the Dunhill subdivision on Mount Sinai Road, which was not allowed to have a cluster model under the current plan, but would have been allowed as a cluster subdivision if these amendments were adopted.

Commissioner Gordon referred to her email question regarding the combination of agricultural and rural residential categories. She wanted to understand the reason why these were combined. She said it has been established that there were planning reasons, not legal reasons to do this. . She said the reason for the amendments is to keep farmers farming. She referred to the Joint Planning Area (JPA) strategy map on page 73 and said it shows farms, although it does not show all of the farms. She said the Board just got a map of the use value farms in their packet, which shows where the use value parcels are. She said neither agricultural nor residential are categories on the map for the Joint Planning Area Land Use Plan. She said the category was Rural Buffer. She said the Joint Planning Area strategy map

on page 73 shows farms, and the most recent map in the agenda materials shows use value parcels.

Commissioner Gordon said it is important to know which parcels have farms, which is about 27 percent of the parcels. She is not sure that the intent was to make everything agricultural, and her understanding of the intent was to keep the farmers farming and give them more ways to make a living.

Commissioner Gordon said the other point she wanted to make is that Carrboro is discussing this tonight, and Chapel Hill is discussing this on June 9. She questioned why Orange County is approving this tonight without waiting to hear from their partners. She said it would be more collegial to wait for feedback from the towns.

Michael Talbert said staff is running out of time to move this forward. He said the towns will receive this as a unanimous recommendation from the planning board, and there is no reason to think that the towns would have any objections. He said if the towns make any major material changes to the document, the Board would have to start over anyway.

Commissioner Gordon said it would depend on the changes made to the document. She said the deadline is a self imposed deadline, and there will be no money lost. She said agricultural support enterprises are not being discussed until the fall. She would like to hear what the towns say, and she is concerned about approving this tonight and then having to start all over again.

Michael Harvey said if one of the towns makes a word or language change, this would have to be re-reviewed by the planning board and the Board, as well as the town. He said it is the position of staff that there will be no language change with either of these two items.

Commissioner Dorosin said the Board should go ahead and vote.

A motion was made by Commissioner Dorosin, seconded by Commissioner Pelissier for the Board to:

1. Deliberate as necessary on the proposed amendments to the Joint Planning Land Use Plan and Agreement; and
2. Decide accordingly and/or adopt the Resolution contained in Attachment 2 which approves the amendments to the Plan and JPA.

VOTE: 6-1 (Commissioner Gordon)

d. Joint Planning Land Use Plan and Agreement Amendments – Agricultural Support Enterprises Within the Rural Buffer Land Use Classification

The Board considered 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.

Michael Harvey noted that the Agricultural Support Enterprises conditional zoning and the construct for the Rural Buffer are slated to come back to the Board in September. He said the approval of this item would merely allow that discussion to continue, but this Board will ultimately have the final say in what the program will look like.

Michael Talbert 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
Item 7.d

Purpose of Amendment

- Amend Joint Planning Land Use Plan and Agreement to allow for the potential of locating appropriate agricultural support enterprises within the Rural Buffer land use classification

Proposed Amendment

* Add text to two pages of Joint Planning Land Use Plan and to one page of Agreement
* Added text is shown in blue in Attachment 1 of agenda materials

What are Appropriate Agricultural Support Enterprises?

* Agricultural support-related uses to be added to County's Unified Development Ordinance (UDO) as permissible in the Rural Buffer zoning district and/or part of a new conditional zoning district that could be applied in the Rural Buffer
    * UDO amendments pertaining to the Rural Buffer can be adopted only if the three governing boards amend the Joint Planning Land Use Plan and Agreement

Unified Development Ordinance Amendment

* The UDO amendment is <u>not</u> the subject of this text amendment.
* UDO amendment package included as an informational attachment
    * Red, blue, and green text was adopted on May 20th
    * Orange colored text pertains to the Rural Buffer and is not yet adopted
* Proposed UDO amendments were heard at the County's February 24 quarterly public hearing
    * Adjourned to September 4, 2014 BOCC meeting for decision to allow time for decisions of Joint Planning documents

Tonight's Amendment Topic

- Joint Planning Land Use Plan and Agreement
    - Proposed amendments heard at March 27 joint public hearing (Orange County, Towns of Chapel Hill and Carrboro)
    - County and Town Planning Boards have recommended approval to their respective governing boards
    - Town of Carrboro considering tonight
    - Town of Chapel Hill considering Monday, June 9

Recommendation for Tonight

1. Deliberate as necessary on the proposed amendments to the Joint Planning Land Use Plan and Agreement
2. Decide accordingly and/or adopt the Resolution contained in Attachment 1 which approves the amendments to the Joint Planning Land Use Plan and Agreement

Commissioner Gordon noted that the Commissioners have an email at their places with her suggestion and staff responses. She is concerned about high intensity uses in the Rural Buffer.

Commissioner Gordon said she suggested the addition of language to the JPA. She said the attorney said it was fine to add clarification, and planning staff said this was workable; however, this would have to go before the boards.

Commissioner Gordon said this would only be a change to page 9 of the packet, in the blue sentence that is right before item C. She suggested adding language that refers to the agricultural support uses as "those *allowable* in the Rural Buffer that are permitted through the ASE-CZ."

Michael Harvey said staff has provided a response. He said the joint planning land use plan is just a plan. He said the document spelling out allowable or unpermitted uses is the UDO, and the existing language achieves what Commissioner Gordon is looking for. He said the agricultural support enterprises conditional zoning district is a floating district, and it is only applied when someone makes application for it. He said there is a specific set of allowed uses, and if it not listed as permitted, then it is not noted as permitted in that particular district.

A motion was made by Commissioner Gordon to modify the language to include "or those agricultural support uses allowable in the Rural Buffer that are permitted" to the end of the blue text on page 9 of the abstract.

No second. Motion fails.

A motion was made by Commissioner Pelissier, seconded by Commissioner McKee for the Board to:

1. Deliberate as necessary on the proposed amendments to the Joint Planning Land Use Plan and Agreement,
2. Decide accordingly and/or adopt the Resolution contained in Attachment 1 which approves the amendments to the Joint Planning Land Use Plan and Agreement.

Chair Jacobs referred to page 9, where the Rural Buffer is essentially defined. He said he is opposed to the definition of Rural Buffer as a "low-density area consisting of single-family homes." He said there are other uses that are specified, such as farms, resource conservation areas and natural areas. He feels the listed definition is oversimplified and inaccurate.

Michael Harvey referred to page 57, which breaks the Rural Buffer into individual land use categories. He said the Rural Buffer is a generic term that refers to an area of the County that is composed of 7 or 8 individual land use categories that further define the Rural Buffer. He said the Rural Buffer is just a term, and it actually incorporates the University Lake Watershed area, the resource protection areas, and public/private open space areas.

Chair Jacobs said the simple way to put it is that the Rural Buffer is the set, and those are all of the subsets.

Michael Harvey said that is correct, and he referred to the map and said the specificity is spelled out on pages 57 through the land use plan.

Chair Jacobs asked if this is only discussing that one land use.

Michael Harvey said this is not really discussing any land use; this text amendment adds the agricultural support enterprises as being allowed in the rural buffer category.

Chair Jacobs said he does not understand why the rural buffer is defined as single family residential at the top of page 6.

Commissioner Pelissier said the issue is the first sentence, and she noted that the second sentence further defines the rural buffer.

Michael Harvey said the rural buffer is the composition of many independent sub-categories that provide specificity.

Chair Jacobs said he would be more satisfied if this said the rural buffer is *in part* defined, but he can live with Commissioner Pelissier's point.

Chair Jacobs referred to page 95 and the definition of a commercial stable, which is prohibited in a lot of areas. He said there are no real numbers to define when stable becomes defined as commercial. He asked if there is a number for this.

Michael Harvey said there is a riding stable land use that is permitted by right or by class b special use permitting. He said the goal was to provide a distinction from boarding horses on your property and someone who wants to board a large number of horses and what is acceptable in terms of capacity.

Chair Jacobs said it would be nice to have clarification on the difference to make this self apparent.

Michael Harvey said this can be defined in advance of the September 4th hearing.

VOTE: 6 -1 (Commissioner Gordon)

e. Proposal to Create a Solid Waste Advisory Group (SWAG)

The Board considered creating a multijurisdictional task force of one year's duration to articulate, investigate, and propose collaborative solutions for solid waste issues confronting Orange County; the towns of Carrboro, Chapel Hill and Hillsborough; and the University of North Carolina at Chapel Hill.

Chair Jacobs said this was based on the Board's conversation at their work session. He said this lists some parameters as to what a group might discuss. He said there has been discussion of having the Commissioners volunteer at the next meeting to be on this group. He said the clerk would advertise for public positions if this is approved, and the elected officials and UNC participants would choose among the applicants.

Chair Jacobs said he took this to the managers' breakfast on Friday, and two of the three said there was no problem with getting people appointed in June. He said the mayors were comfortable with moving forward. He said the purpose of this item was to consider things in context and with input from partners, moving expeditiously and having interconnected and well articulated short and long term goals.

Commissioner Price asked about the number of representatives and whether this was weighted voting.

Donna Baker said this was just the way the positions were listed and numbered, but there is no weighted voting.

Commissioner Rich asked if Hillsborough and UNC had representatives on the original SWAB.

Chair Jacobs said SWAB had a UNC position, but the university never appointed anyone and sent a staff person instead, so they were never officially a member. He does not remember if Hillsborough had one or not.

Commissioner Rich said she attended some meetings years ago, and she did not remember any one from Hillsborough being there. She asked if Chair Jacobs has spoken with any at UNC about this.

Chair Jacobs said no. He said he and Commissioner McKee were waiting for the new manager to set up a meeting with the new Chancellor. He said there has been discussion of