

APPROVED 5/21/2019

**MINUTES
BOARD OF COMMISSIONERS
REGULAR MEETING
April 16, 2019
7:00 p.m.**

The Orange County Board of Commissioners met in regular session on Tuesday, April 16, 2019 at 7:00 p.m. at the Southern Human Services Center in Chapel Hill, N.C.

COUNTY COMMISSIONERS PRESENT: Chair Penny Rich and Commissioners Mark Dorosin, Sally Greene, Earl McKee, Mark Marcoplos, and Renee Price

COUNTY COMMISSIONERS ABSENT: Commissioner Bedford

COUNTY ATTORNEYS PRESENT: John Roberts

COUNTY STAFF PRESENT: County Manager Bonnie Hammersley, Deputy County Manager Travis Myren, and Clerk to the Board Donna Baker (All other staff members will be identified appropriately below)

Chair Rich called the meeting to order at 7:02 p.m.

Chair Rich said that Commissioner McKee will be late, and Commissioner Bedford will not be attendance tonight.

1. Additions or Changes to the Agenda

Chair Rich noted the following items at the Commissioners' places:

- PowerPoint presentation for Item 5-a: UDO amendments
- Green sheet: Revised abstract for Item 11-c

Chair Rich pulled item 8-d on the consent agenda to make one change.

PUBLIC CHARGE

Chair Rich acknowledged the public charge.

Arts Moment

Ashley Harris is part of Hear & After, a group of individuals, former youth poets, activists, musicians, and community organizers who have come together to create spaces for community art and expression. We seek to empower the people through the tools of spoken and written word, performance, and artistic expression. Based in Chapel Hill, NC and serving the Triangle area, Hear & After's goal is to provide a platform to both its members and the community we serve.

Ashley Harris read a poem dedicated to her grandmother, who passed away a year ago, about the inequitable honoring on African Americans in southern history.

2. Public Comments

a. Matters not on the Printed Agenda

Riley Ruske said the light rail is dead and buried, but there is still waste in the public transit system. He said the only way to get government waste under control is to cut off the funding, and he asked if the Board of County Commissioners (BOCC) would immediately delete the Article 43 half cents sales tax.

Seamus O'Neill said he is here to speak about Linda Sarsour, whom he considers the radical left's version of David Duke. He said the BOCC would understandably never invite David Duke to speak, and he questions why the BOCC would invite Sarsour, who is equally polarizing. He said local government has a lot of responsibilities to account for, and he hopes it will no longer waste funds on something so destructive and divisive. He said if the BOCC wants to unify the community, it should agree that the Sarsour incident was a mistake that will not be repeated.

b. Matters on the Printed Agenda

(These matters will be considered when the Board addresses that item on the agenda below.)

3. Announcements, Petitions and Comments by Board Members

Commissioner Dorosin said he attended the North South Bus Rapid Transit meeting, and in September a request will be sent to the FTA to have the project evaluated and voted on to get into the President's budget for 2021-22. He said any rating medium or above is good, and a rating should be issued by early 2020. He said they are working to get the design drawings to 30%, at which point it will be turned over to the environmental team for evaluation. He said some decisions have yet to be made regarding the area from Eubanks to North Street, as to whether to construct or convert additional lanes. He said it may vary in different parts of the road, but the decision will be made by the time it is submitted in September. He said if all stays on track, there will be two years of construction, a year to order the buses, with service beginning in 2023. He said buses will be on the outside lanes, and some questions still remain about the area around the UNC hospital now that light rail will not be present.

Commissioner Greene asked if it is still true that there will not be dedicated lanes below Cameron Avenue.

Commissioner Dorosin said yes, probably from North Street to south of Mason Farm Road.

Commissioner Greene said it may or may not make the stops on time.

Commissioner Dorosin said that is certainly a reality. He said it will really be a BRT system from Eubanks to North Street and from 54 to Southern Village. He said in between it will likely function as a regular bus. He said he will forward the presentation that was shown at the meeting to the Board

Commissioner Marcoplos handed out a draft resolution that he would like to be considered at the next BOCC Meeting on May 2nd to honor Daniel Aaron Toben, a lifelong resident of Orange County, who has voluntarily spent thousands of hours and thousands of dollars of his earned income over the past ten years cleaning up trash and tires in some of the most neglected parts of Orange County.

Commissioner Marcoplos petitioned the solid waste department to educate the public on how to terminate the delivery of catalogs.

Commissioner Price said she attended the Metropolitan Planning Organization (MPO) meeting, where they voted to end the light rail project. She said there was one amendment made to the resolution to mention the role of the State Government, and its impact, on the outcome of the project.

Commissioner Price said she attended the Family Success Alliance (FSA) meeting and when summer comes many children may not get meals. She said there may not be enough slots for summer camp, and the camps are cost prohibitive for some families. She said she would like a matrix as to what summer programs are available to children to go on the website, which can also allow the Board to see where gaps may exist.

Commissioner Greene said she attended a TARPO meeting, and a resolution was passed to initiate the amendment process to the Orange County CTP to prioritize the project to widen highway 54 from Carrboro west towards the County line.

Commissioner Greene congratulated Carrboro on the dedication it had this evening of the marker recording the history of the name of Carrboro, repudiating any investment in Julian Carr's positions on race.

Chair Rich said she also attended the MPO, and it was on the day of the gas explosion in Durham. She said it was a scary day, but gave a big thank you to all first responders. She said there was one fatality, and 25 injured, including one firefighter.

Chair Rich said the Board has been getting a lot of emails about the Greene Tract, and she is working with staff to put an FAQ on the website. She said the Greene Tract, and plans for it, have been around for 17 years, and it is not a new project.

4. Proclamations/ Resolutions/ Special Presentations

a. Proclamation Recognizing Fredrick Lewis Battle

The Board considered voting to approve a proclamation recognizing the life and services of Frederick (Fred) Lewis Battle for the people of Orange County and authorize the Chair to sign.

Commissioner Price read the proclamation, and Jesse Gibson was present to receive it:

ORANGE COUNTY BOARD OF COMMISSIONERS PROCLAMATION RECOGNIZING FREDERICK LEWIS BATTLE

WHEREAS, Frederick (Fred) Lewis Battle was a leader in Orange County and throughout his life worked tirelessly to improve the quality of life for the people of Orange County and beyond; and

WHEREAS, our entire community mourns the passing of Fred Battle on April 1, 2019 and expresses our sincere sympathy to his family and friends; and

WHEREAS, over the course of his lifetime, Fred Battle fought for justice and social equality, starting as early as the 1960's with a history making protest against Woolworth's in Greensboro, North Carolina, pushing forward the nationwide civil rights movement; and

WHEREAS, as local activists, Fred Battle and Yonni Chapman co-founded the Orange County Rainbow Coalition of Conscience in 1982; and

WHEREAS, continuing the fight for social justice, Fred Battle founded the Chapel Hill-Carrboro Branch of the National Association for the Advancement of Colored People (NAACP) in 1987, and served as its president for over 20 years; and

WHEREAS, Fred Battle gave freely of his time, energy and talents in serving the community; and

WHEREAS, he helped to improve the way of life for area residents by serving on the Orange County Board of Health, the Orange Water and Sewer Authority Board of Directors, the Solid Waste Advisory Board, the Joint Orange Chatham Community Action

Board, the Intergovernmental Parks Work Group, and the Chapel Hill-Carrboro Schools Board of Education; and

WHEREAS, in the 2015 Salute to Community Heroes, the Chapel Hill-Carrboro Chamber of Commerce recognized Fred Battle with the Irene Briggaman Lifetime Achievement Award; and

WHEREAS, Fred Battle fought the fight to move forward the human rights of all people for equality and social justice and in his words, “the struggle continues”;

NOW, THEREFORE, we, the Orange County Board of Commissioners, on behalf of the residents of Orange County, express our deep appreciation, gratitude and respect for the services rendered by Frederick Lewis Battle to the County and beyond over the course of his lifetime.

This the 16th day of April 2019.

A motion was made by Commissioner Price, seconded by Commissioner Greene for the Board to approve the Proclamation Recognizing Frederick Lewis Battle and authorize the Chair to sign.

PUBLIC COMMENT:

Jesse Gibson said he echoed all the comments made in the proclamation. He said Fred Battle entered the Lincoln High School hall of fame, and his name will be added to the breakfast club. He thanked the BOCC for honoring Fred Battle.

VOTE: UNANIMOUS

b. County Government Month Proclamation

The Board considered voting to approve a proclamation designating April 2019 as County Government Month and authorize the Chair to sign.

Commissioner Dorosin read the proclamation:

**ORANGE COUNTY BOARD OF COMMISSIONERS
PROCLAMATION
County Government Month - April 2019
"Connecting the Unconnected"**

WHEREAS, Orange County is one of 3,069 counties in the nation that provide cost-effective, essential services to create healthy, safe and vibrant communities; and

WHEREAS, through National Association of Counties (NACo) President Greg Cox’s “Connecting the Unconnected” initiative, NACo is demonstrating how counties deliver “people-centered” services to residents; and

WHEREAS, many Orange County departments offer programs and services that meet this initiative, including the departments of Health, Housing and Community Development, Criminal Justice Resources, Social Services, Aging, Sheriff’s Office, Child Support Services and many more; and

WHEREAS, Orange County’s motto is “Our Residents Come First,” which guides our employees to

treat all residents with fairness, respect and understanding;

NOW, THEREFORE, BE IT RESOLVED THAT we, the Orange County Board of Commissioners, do hereby proclaim April 2019 as County Government Month and express our appreciation to the county employees who make our community such a special place to live, to work and to raise a family.

This the 16th day of April, 2019.

A motion was made by Commissioner Dorosin, seconded by Commissioner Price for the Board to approve the proclamation and authorize the Chair to sign the proclamation.

Todd McGee, Community Relations Director, said staff continues to try to promote all of the great things the County does throughout the month of April.

VOTE: UNANIMOUS

Commissioner Greene said the fact that it is National Government and National Poetry months is not a coincidence.

c. Resolution in Response to Recent Acts of Racial and Ethnic Intimidation on the Campus of UNC-Chapel Hill

The Board considered voting to approve a Resolution in Response to Recent Acts of Racial and Ethnic Intimidation on the Campus of UNC-Chapel Hill and authorize the Chair to sign.

Chair Rich said five of the Board of County Commissioners attended the 110th NAACP Celebration, and had conversations with Damon Seils, who penned the resolution for Carrboro. She said the BOCC took this same resolution and added to it for the County's purposes. She said in the meantime, there was some anti-Semitic activity on campus, and the Board wants to call this out, as hatred cannot be the new normal.

Commissioner Greene read the resolution:

ORANGE COUNTY BOARD OF COMMISSIONERS

**A RESOLUTION IN RESPONSE TO RECENT ACTS OF RACIAL AND ETHNIC
INTIMIDATION
ON THE CAMPUS OF UNC-CHAPEL HILL**

WHEREAS, Orange County is home to many students, employees, and alumnae/-i of the University of North Carolina at Chapel Hill, including an estimated 29,000 undergraduate, graduate, and professional students, and the life of the southeastern portion of our County is intertwined with the life of the University; and

WHEREAS, on March 31, 2019, two persons desecrated the Unsung Founders Memorial in McCorkle Place on the UNC-Chapel Hill campus by defacing it with racist graffiti and with urine; and someone vandalized an installation outside Hanes Art Center with racist language; and

WHEREAS, on March 16, 2019, persons associated with a white supremacist group carried firearms and other weapons onto the UNC-Chapel Hill campus in violation of the North Carolina General Statutes and campus policy; and an Alert Carolina emergency notification was not issued; and no arrests were made and no citations or trespass notices were issued; and

WHEREAS, on April 10, 2019 a statement was released by UNC Hillel that a number of anti-Semitic flyers have been found in Davis Library with references to “an evil Jewish plot” and the missive, “do everything you can to fight the silent covert Jewish attempt to enslave and kill good Americans”; and

WHEREAS, student anti-racist activists have been prohibited indefinitely from entering certain areas of the campus, including McCorkle Place, despite having been found not guilty of the criminal charges related to their trespass notices or having had those charges dismissed; and

WHEREAS, the Chapel Hill-Carrboro Branch of the National Association for the Advancement of Colored People (NAACP), the Carolina Black Caucus, and others have called on UNC-Chapel Hill to take bolder action in response to acts of racial and ethnic intimidation and threats by white supremacists to the safety of the community; and

WHEREAS, the Orange County Board of Commissioners appreciates Interim Chancellor Kevin Guskiewicz’s statement that “we must nurture an environment where all people in our community can live, learn and work without fear”; and the Board is encouraged by the arrests on April 8 of the persons believed to have desecrated the Unsung Founders Memorial;

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners urges its neighbor and partner, UNC-Chapel Hill, to rescind trespass warnings against student anti-racist activists; to press charges and issue trespass warnings against persons who on March 16 carried firearms onto the campus; to clarify when the community may expect the presence of an armed person on or near the campus to trigger an Alert Carolina emergency notification; and to invite community members not necessarily affiliated with the University to participate in the campus safety commission being convened by the interim chancellor.

BE IT FURTHER RESOLVED that the County wishes to partner with UNC-Chapel Hill in a shared commitment to helping students feel safe through better communications, education about the Orange County Sheriff’s Office and other law enforcement agencies, opportunities to participate in County programming and advisory committees, continued participation in the Good Neighbor Initiative, and other efforts.

BE IT FURTHER RESOLVED that the Board asks the Clerk to the Board to share this resolution with the interim chancellor of UNC-Chapel Hill and the members of the Chapel Hill Town Council, the Hillsborough Board of Commissioners, and the Carrboro Board of Aldermen.

This the 16th day of April, 2019.

A motion was made by Commissioner Greene, seconded by Commissioner Price for the Board to adopt the attached draft resolution and authorize the Chair to sign the resolution.

Commissioner Price said this resolution actually was developed at the NAACP meeting, and while this happened at UNC, it affects the entire County. She said she is in full support of this resolution, and working together to insure the safety of the community.

Commissioner Marcoplos said he presumed this resolution will be sent to UNC, and asked if the Board is going request an answer to its questions in this resolution: to rescind trespass warnings against student anti-racist activists; to press charges and issue trespass warnings against persons who on March 16 carried firearms onto the campus; to clarify when

the community may expect the presence of an armed person on or near the campus to trigger an Alert Carolina emergency notification.

Chair Rich said yes, the Board can do this.

PUBLIC COMMENT:

Riley Ruske said, as a Veteran, he is a strong believer in the rule of law, but this resolution is an example of blatant hypocrisy and bias of local government. He said it was not long ago that mobs were damaging property on the UNC campus, but the Board supported and condoned these actions, even when the historical monument Silent Sam was destroyed by these same mobs. He said now other mobs are harassing other individuals and property, and the BOCC is condemning the actions and calling for prosecution. He said he agrees with this call, but feels the BOCC should have done the same thing for the other mobs. He said the BOCC needs to advocate for equal justice under the law for all members of the community when laws are broken, regardless of the ideology of the lawbreakers. He said if this evening's resolution must be passed, he would ask that the BOCC modify it to condemn the actions of all thugs and mobs that break the law. He asked if there is a reason this same resolution was not passed when the mobs broke the law during the Silent Sam protests.

Seamus O' Neill suggested adding two additional whereas statements to the resolution:

1. After the first whereas, to add, "whereas on August 20, 2018 a mob of certain students, faculty, and persons known and unknown tore down the Silent Sam statue at risk to themselves, police officers and others, in violation of State law and UNC rules"
2. After the third whereas, to add, "whereas on March 22-24 Duke-UNC sponsored the conference on Gaza, many parts of which degenerated into an anti-Semitic rant and mockery"

Jamie Paulen said she is a local attorney, was a magistrate for two years, and knows a lot of law enforcement officers. She said she left that office and is now involved in anti-racist issues. She said through her work she was present at two events at UNC, the night when the smoke bombs went off and the night of the dance/can party. She said she was shocked to see police officers that she knew basically attacking students. She said some of this is born out of the criminal proceedings that have occurred in the interim, and there is a request for reconsideration for one of the young people that was convicted because the evidence shows that the young person was shown to have not been able to do that which she was convicted of doing. She said she comes to her work with no anti-police bias, but what she saw was shocking. She said she is grateful for this proclamation and holding UNC accountable. She said there is video of evidence of a UNC police officer telling those carrying the firearms that these people were on campus, and UNC can take out an arrest warrant against these people today.

Ashley Harris said when she went to UNC she was a part of the Silent Sam coalition, and it is very interesting that people equate the active practicing of hate speech and crimes with people of color addressing something that has been historically racist. She said she would like people of color to feel comfortable in this County, and she supports the resolution.

Commissioner Dorosin echoed the last speakers' comments, and said the assertion that the Board's previous resolution and this resolution are inconsistent makes no sense to him. He said the Board has consistently opposed racism, racial intimidation, white supremacy, etc. He said the student protestors were treated one way, and the white supremacists were treated another way. He said it is critical for the Board to continue to speak out.

Commissioner Price echoed Commissioner Marcoplos' request for action from UNC.

Chair Rich said she and Commissioner Marcoplos met with the UNC Director of Communications, and agreed to on-going monthly conversations, which have occurred. She said she has mentioned this resolution, and also asked UNC to send updates to the Board as it

is working on this process. She said Kristen Smith Young is going to be the new Community Relations person (starting 4/23/19), and will also be a point of contact for the BOCC.

VOTE: UNANIMOUS

5. Public Hearings

a. Unified Development Ordinance (UDO) Table of Permitted Uses

The Board considered holding a public hearing, receive the Planning Board recommendation, and take action on Planning Director initiated Unified Development Ordinance (UDO) text amendments to the tables of permitted land uses and other sections as needed. Specifically, the amendment collapses existing tables of permitted uses as contained in Section(s) 5.2.1 (general use zoning districts), 5.2.2 (EDD general use zoning districts), and 5.2.3 (Conditional Zoning districts) into a centralized table in order to clarify permitted and prohibited land uses consistent with recent court decisions.

Michael Harvey, Current Planning and Zoning Supervisor, presented this item:

PURPOSE:

To hold a public hearing, receive the Planning Board recommendation, and take action on Planning Director initiated Unified Development Ordinance (UDO) text amendments to the tables of permitted land uses and other sections as needed. Specifically, the amendment collapses existing tables of permitted uses as contained in Section(s) 5.2.1 (general use zoning districts), 5.2.2 (EDD general use zoning districts), and 5.2.3 (Conditional Zoning districts) into a centralized table in order to clarify permitted and prohibited land uses consistent with recent court decisions. The amendment also updates existing regulations and addresses formatting issues to ensure legal sufficiency.

BACKGROUND: This project was initiated to address the findings of the State Supreme Court in *Byrd versus Franklin County* related to the delineation of prohibited land uses. The court, in rendering its decision, placed the onus on local governments to ‘spell out’ what land uses were allowable and prohibited within their respective jurisdictions. A copy of the Court’s ruling in the Franklin County case can be viewed at: <https://www.nccourts.gov/documents/appellate-court/opinions/byrd-et-al-v-franklin-county>.

Work on the project began in the spring of 2017 with staff focusing on collapsing the existing tables and creating an ‘exhaustive list’ of permitted and prohibited land uses. This was to address concerns from the Planning Director, Director of Economic Development, and several BOCC members over ensuring developers were readily able to ‘verify’ if a proposed land use was permitted within the County.

In August 2017, the BOCC held a work session with Planning staff and the County Attorney to review the status of this project and provided the following direction:

1. Abandon the concept of an exhaustive list of allowable land uses;
2. Collapse, where feasible, similar land uses into single categories;
3. Review existing definitions to eliminate the reliance on ‘example land uses’ with respect to outlining what constitutes a permitted land use within that category; and
4. Consolidate and eliminate, where feasible, duplicative references to regulations within the UDO.

The Planning Board Ordinance Review Committee (ORC) reviewed this item at several ORC meetings beginning in January 2017. Agenda materials from these various meetings can be

viewed at: <http://www.co.orange.nc.us/AgendaCenter/Planning-Board-26>.

A total of four open house meetings were held soliciting public input and comment on the proposed amendments. Meetings were held on the evenings of July 25 and 27, 2017 and August 23 and 27, 2018. Notices of the meetings were placed on the County website, and further advertised through press releases issued through the County's Community Relations Department.

Staff finalized an amendment package (Attachment 7 including 7-a, 7-b and 7-c) that:

- a. Collapses existing tables as contained in Section(s) 5.2.1 (general use zoning districts), 5.2.2 (EDD general use zoning districts), and 5.2.3 (Conditional Zoning districts) into a centralized permitted use table.
- b. Collapses similar land uses into single land use categories.

STAFF COMMENT: Current regulations, for example, define retail land uses differently within Section(s) 5.2.1 and 5.2.2.

There are different methodologies employed to denote various permitted retail land uses in both sections that appear to contradict one another.

All retail land uses have been collapsed into a single category versus listing out individual uses. Staff has also established development criteria within Article 5 to address the impacts of such development consistent with existing regulations (i.e. building size limits, operational requirements, screening, etc.).

The result is a streamlined table and a concise description of development requirements.

- c. Modifies Article 10 *Definitions* of the UDO to incorporate new and/or revised definitions of various land uses, consistent with the proposed new table.
- d. Incorporates modifications to the Economic Development Hillsborough (EDH) districts as discussed by the BOCC late in 2016.
- e. Includes processes allowing for 'reasonable accommodations' as requested by the County Attorney's office. As part of this request, staff added language clarifying the burden of proof for variance, interpretation, and special use permit applications including adding references to an applicant's 'burden of persuasion'.

Attachment 1 contains the legal advertisement for the April 16, 2019 public hearing. Attachment 2 contains a summary of the proposed changes for reference purposes. Attachment 3 is a project fact sheet, including frequently asked questions, concerning the impacts of this amendment package.

Analysis: As required under Section 2.8.5 of the UDO, the Planning Director is required to: '*... cause an analysis to be made of the application and, based upon that analysis, prepare a recommendation for consideration by the Planning Board and the Board of County Commissioners*'.

The amendments are necessary to address the legal sufficiency of the UDO with respect to the findings of *Byrd versus Franklin* by spelling out allowable and prohibited land uses. Staff is

eliminating the unnecessarily repetitive, and often confusing, delineation of allowable land uses by creating a central table of permitted uses and has combined similar land uses into single categories to ensure uniformity with respect to application of development criteria and permitting.

Planning Board Recommendation: The Board began review of the finalized amendment package at its March 6, 2019 regular meeting, with continued discussion at a special meeting held on March 20 to allow for additional review on Attorney recommended language associated with the burden of persuasion for certain processes (i.e. variances, interpretations, and special use permits). The Attorney prepared a memo for Board review, which is contained in Attachment 4.

At the March 20 special meeting, the Planning Board voted **7-1** to recommend approval of the amendments with the elimination of language in Section(s) 2.10.3, 2.11.3, and 5.3.2 establishing a 'burden of persuasion' for those applying for a variance, interpretation, or special use permit. In recommending approval, members indicated they were not comfortable keeping language referencing an applicant's '*burden of persuasion*' as they were unpersuaded by the County Attorney's arguments the language was necessary. An excerpt of the minutes from the March 3 and 20, 2019 meetings, as well as the Planning Board's approved Statement of Consistency, are contained within Attachment 5.

Planning Director Recommendation: The Planning Director recommends approval of the Statement of Consistency (Attachment 6) and the Ordinance amending the UDO (Attachment 7 including 7-a, 7-b and 7-c) which includes the language within Section(s) 2.10.3, 2.11.3, and 5.3.2 establishing a 'burden of persuasion'. Staff is recommending keeping language, as recommended by the County Attorney, concerning the 'burden of persuasion' in Section(s) 2.10.3, 2.11.3, and 5.3.2.

The Director believes the language is necessary to ensure the legal sufficiency of the UDO, as indicated by the County Attorney, by spelling out an applicant's obligations when applying for a variance, interpretation, and special use permit.

It should be noted that Attachment 7 consists of three parts, with Attachments 7-a and 7-b attached to this abstract and also available electronically at:
<http://www.orangecountync.gov/DocumentCenter/View/7012>.

Attachment 7-c containing the Strikethrough/Delete/Underlined/ Highlighted Text Amendments pages from the UDO are only available electronically at
<http://www.orangecountync.gov/DocumentCenter/View/7012>.

In addition, as noted in the Public Hearing Notice (Attachment 1), the full text of the amendments pages and other information has been available from the Orange County Planning Department.

Michael Harvey made the following PowerPoint presentation:

BOCC PUBLIC HEARING

April 16, 2019

Unified Development Ordinance (UDO) Text Amendment(s)

Table of Permitted Uses

Background

- UDO has 3 different tables outlining permitted land uses;
 - STAFF COMMENT: General use zoning districts (i.e. Rural Buffer, Rural Residential, General Commercial, etc.); Economic Development (EDD) general use zoning districts ; Conditional Zoning Districts;
- Tables contain unique, distinct, and often contradictory list(s) of allowable land uses.
- In 2015 State Supreme Court (*Byrd versus Franklin County*) found the omission of listing a land use within a table of permitted uses did not mean same was prohibited;
- Court stated: ‘.... law favors uninhibited free use of private property over government restrictions’.
- Onus placed on local governments to ‘spell out’ what land uses were **allowable** and **expressly prohibited** within their respective jurisdictions.
- Project started in January of 2017;
 - Planning Board Ordinance Review Committee (ORC) reviewed project at approximately 10 different meetings;
 - BOCC and County Attorney reviewed status of project at August 2017 work session providing additional direction;
 - Four open house meetings (July 25/27, 2017 and August 23/27, 2018) held soliciting public input;

Proposal

What the amendment does:

- Collapse 3 existing tables into central table;
- Collapse similar land uses into single categories to eliminate the ‘exhaustive’ list of land uses;
 - Retail land uses are now a single land use category versus 6 to 10 separate ‘retail’ land uses;
 - Overnight accommodation (i.e. hotel, motel, bed and breakfast) now condensed into 3 categories

Commissioner Dorosin asked if the goal is to simplify the UDO, and if any substantive changes have been made.

Michael Harvey said in many instances the list was condensed due to unnecessary size, but in other instances there have been definitions added to provide additional framework to that which staff considers land uses to be. He said this provides additional direction for both staff and the property owner. He said this effort is a streamlining attempt of the UDO; to make it more user friendly. He said this ordinance also collapses and condenses existing land uses, while maintaining existing policy.

Commissioner Dorosin asked if there is some use that was prohibited somewhere in the previous 10 uses of retail, that is no longer permitted anywhere.

Michael Harvey said no, not from that perspective.

Michael Harvey referred to overnight accommodations, which include hotel, motel, motor lodge, motor inn, inn, tourist inn, hotel residential, rooming house, rural guest establishment (bed and breakfast, bed, breakfast inn), etc.

Michael Harvey said with this example they have condensed everything into “Short term rentals,” and the policy initiatives that form the backdrop of these regulatory standards is maintained in this ordinance, with these changes. He said short-term rental is a prime example: he said there is a requirement in the current code, where short-term rentals in residential zoning districts require a property owner to be on site. He said that policy is maintained in the revised UDO.

Commissioner Dorosin said there used to be a list of everything one could do, and the operating presumption was that anything not listed was prohibited; but now case law says anything that is not prohibited is essentially allowed.

John Roberts said yes. He said land use is a fundamental right, and any regulation that is in derogation of land use must be clear and interpretable, as to what it is prohibiting. He said any reliance on something that says one can do this, and conceivably one cannot do this, will no longer be interpreted in favor of the County.

Commissioner Dorosin said he assumes the court would not accept: here are the five things that are permitted, and anything else not listed is expressly prohibited.

John Roberts said that is correct, that cannot be done.

Michael Harvey said that is how the County had been operating, as well as every other local government for decades. He said this is a fundamental correction.

Commissioner Dorosin said this is a fundamental correction that all local governments should be doing.

John Roberts said every local government should be doing so, and it is not unique to Orange County.

What the amendment does:

- Modify Article 5 *Uses* incorporating development standards for land uses;
 - Language identifying uses that are and are not permitted through Conditional Zoning process,
 - Clarifying setbacks and land use buffers.
- Modify Article 10 *Definitions* incorporating new and/or revised definitions;
- Incorporate modifications to the Economic Development Hillsborough (EDH) districts as directed by BOCC.

What the amendment does not do:

- Alter existing development restrictions (i.e. setbacks, minimum lot sizes, required land use buffers, etc.)
- Impact/alter the County's Watershed Protection Overlay Districts (i.e. impervious surface limits, required density limits, etc.)
- Alter required application submittal and review criteria.

Planning Board Recommendation

- Planning Board reviewed final amendment package at its March 6, 2019 regular meeting,
- Continued discussion at a March 20 special meeting
- Voted **7-1** recommending approval of amendments eliminating language, as recommended by the County Attorney, establishing a '*burden of persuasion*' for those applying for a variance, interpretation, or special use permit.

Planning Director Recommendation

- Approval of Statement of Consistency (Attachment 6) and UDO amendment (Attachment 7);
- Keep '*burden of persuasion*' language as recommended by the County Attorney;
- Director believes language is necessary to ensure the legal sufficiency of the UDO, as indicated by the County Attorney, by spelling out an applicant's obligations when applying for a variance, interpretation, and special use permit.

Manager Recommendation

The Manager recommends the Board:

1. Receive the proposed amendments;
2. Conduct the public hearing;
3. Close the public hearing;
4. Approve the Statement of Consistency (Attachment 6);
5. Adopt the Ordinance as recommended by the Planning Director (Attachment 7) keeping language establishing the '*burden of persuasion*' consistent with the recommendation of the County Attorney.

Commissioner Price referred to the prohibition of pawnshops and payday loans, and said she is not in support of them, and they are non-existent now; but some folks need these services, and asked if the BOCC has the legal authority to prohibit them.

Michael Harvey said yes the BOCC can say these businesses are not permitted in the County's jurisdiction, and reminded the Board that this prohibition comes from meetings that occurred in 2017, and it was maintained. He said he and Commissioner Marcoplos have had long conversations on this topic.

Commissioner Price said one of the pawnshops has been very supportive of the schools, and she is concerned about residents that need pawnshops to survive.

Commissioner Marcoplos said the Board should figure out a way to allow pawnshops, as they can work if regulated properly. He said this may work best in town.

Commissioner Dorosin said if these businesses are located in the towns, the towns would regulate them not the County.

Commissioner Dorosin asked if there are any businesses that would be forced to close by this provision.

Michael Harvey said no.

Commissioner Marcoplos said the Board should find a way to allow businesses that provide products or services that the County uses, like asphalt plants.

Michael Harvey said the proposal does not allow asphalt plants.

Commissioner Marcoplos said but the County uses asphalt, and this strikes him as hypocritical; and the same goes for meat processing facilities. He said the County needs to find a way to accommodate these services while regulating the bad effects.

Commissioner Greene said she agreed with the butcheries. She said she recalled discussing this with Michael Harvey, but could not recall his response.

Michael Harvey said under the agricultural uses land use category, on page 118, it refers to agricultural processing facility allowances, and farmers are allowed to process their own meat.

Michael Harvey said from a manufacturing standpoint, on page 121, there are allowances in the proposed text for animal feed preparation, manufacturing, packaging and distribution. He said the animal slaughtering process has been left out. He said there was concern about allowing this in the Economic Development Districts (EDDs), where they may negatively impact adjacent commercial operations, or could detract from locating in an EDD. He said it may be time to look into whether this could be done in an industrial district, as opposed to an economic district.

Commissioner McKee arrived at 8:08 p.m.

Commissioner Greene referred to the Agricultural Use District, and asked that included slaughtering of livestock would that be just for that property's own use, or could the service be marketed to others.

Michael Harvey said the Agricultural processing facility land use could market to non-farmers, and are currently allowed in industrial districts.

Commissioner Greene said this exists currently, but not for animals.

Michael Harvey said correct.

A motion was made by Commissioner Greene, seconded by Commissioner Dorosin for the Board to open the public hearing.

VOTE: UNANIMOUS

A motion was made by Commissioner Price, seconded by Commissioner Greene to close the public hearing. (Note that, because this is a legislative decision, additional comments at a later date are permitted).

VOTE: UNANIMOUS

Chair Rich said the Planning Board voted 7-1 about the burden of persuasion, and she did not want to discount the work put in by the Planning Board. She asked if John Roberts could explain this a bit.

John Roberts said the burden of persuasion issue is trying to make this clearer in what is required. He said during a quasi-judicial hearing, the applicant has a burden of proving by clear or competent material that they have met all the requirements in the ordinance, and are entitled to their permit, variance, etc. He said part of the burden of proof is that you persuade the fact finder that you have presented sufficient evidence, and met your burden in complying with all of the requirements. He said courts do look at the burden of persuasion. He said the opponent has a burden of persuading the fact finder that the applicant has not met their burden of proof, and must present evidence as such. He said having the burden of persuasion included, is an attempt to clarify, but it will not get the UDO thrown out of court, and it is not absolutely necessary if the BOCC decides to not include it.

Michael Harvey said currently under section 5.3.2 (dealing with special use permits) there is language establishing a burden of proof, that through competent material evidence and sworn testimony an applicant is obligated to demonstrate that he/she complies with the ordinance. He said when he reviewed the UDO text amendment with the Attorney's office, it was noted that similar language did not exist in sections 2.10 variances and 2.11 interpretations, so it was moved. He said the issue then came down to establishing, what the state statute already spells out, which is there has to be a burden of persuasion. He said the applicant does have the burden to convince the board he/she is before that the evidence presented is sufficient for the permit to be presented.

Michael Harvey said the Planning Board did not understand how the term persuasion was going to be used, and was seeking a standard. He said much of this is summarized in the Attorney's memorandum (attachment 4), which he read. He said there is concern over legal sufficiency and staff advocated to leave the language in, as the County's obligation is to insure there is an ordinance that withstands legal muster.

Commissioner Marcoplos said in almost all cases, the applicant would be able to make the case, and only few would need more explanation, information, or the services of a lawyer.

Michael Harvey said there is no provision in state law or in the UDO that mandates an applicant to hire an attorney. He said he feels ethically obligated to advise a person going through a quasi-judicial process to consult with or hire counsel. He said if one does not hire counsel, it does not mean there will be an automatic denial; and in his tenure there have been several special use permits that were denied, despite having an attorney.

Commissioner Marcoplos said the simplification of the UDO makes it easier for residents to persuade.

Michael Harvey said he would hope so, but does not want to discredit the Planning Board's observations that they have a concern about what this language does.

Commissioner Dorosin clarified that the change in the language does not change the burden on an applicant.

John Roberts said no it does not.

Commissioner Dorosin said if one is seeking a variance, it is incumbent on the applicant to meet the criteria of the variance. He said it is important to clarify that this does not change anything substantive for what an applicant must do.

John Roberts said the only disagreement is in the highlighted section; the burden of persuasion, and the rest of the paragraph needs to be in the additional places where it has been put. He said the burden of persuasion language does not change anything.

Commissioner Dorosin said, given that it does not change anything, and it actually may provide some legal support for the ordinance, it is worth keeping in, potentially with some additional explanation that nothing has changed.

Commissioner Greene said she came to the meeting with the intention to leave the language in, but since nothing has changed, and it is fine with John Roberts to remove the word "persuasion", she is now comfortable taking it out. She wants to avoid unnecessary confusion.

Commissioner Dorosin asked if staff could read the highlighted sentence.

Michael Harvey said this is on page 86, section 2.10, page 92, 2.11, and page 134, section 5.3.2, and the disputed sentence reads: "further, the applicant shall have the burden of persuasion on those issues" (this is in a link, not in the abstract).

Chair Rich asked if the burden of proof comes before the burden of persuasion.

Michael Harvey said yes.

Commissioner Price said she would be in favor of the changes, other than the pawnshops and the payday lending. She said she also agreed with the hypocrisy pointed out by Commissioner Marcoplos earlier.

Chair Rich said she could be convinced either way.

Commissioner Greene said in the Planning Board minutes a member said she was confused about the difference between burden of proof and persuasion. She said the lawyers response was that the burden of proof can be broken down into the burden of production plus the burden of persuasion. She said this is technical lawyer stuff, and this leads her to be more convinced of taking the persuasion language out.

Commissioner Marcoplos said the burden of proof covers it.

Michael Harvey said the Board's first action could be to make a recommendation whether the language establishing the burden of persuasion as contained in section 2.10 on page 86, section 2.11 on page 92, and section 5.3.2 on page 134 should be stricken.

A motion was made by Commissioner Greene, seconded by Commissioner Marcoplos, that language establishing a burden of persuasion for variance, interpretation, and special use permits as currently contained in Section(s) 2.10 (page 86) ; 2.11 (page 92) ; and 5.3.2 (page 134) reading as follows: 'Further, the applicant shall have the burden of persuasion on those issues' be stricken from the proposed table of permitted uses text amendment consistent with the approval of the County Attorney.

VOTE: UNANIMOUS

Commissioner Marcoplos said the section on airport regulations needs to be updated, and the scenario when one has a small private airstrip. He asked if Michael Harvey could refresh the BOCC on these topics.

Michael Harvey said currently an airport is allowed through the approval of a class A special use permit (SUP) in the rural buffer, agricultural residential and rural residential general use owning districts. He said it was decided that airports are not really wanted in the residential zoning districts, so this amendment package eliminates them from the RBAR and R1, and

would allow them in the industrial (I1, I2 and I3) instead, through a class A SUP. He said he has been asked if regulation and standards should be developed, not only governing the development of a private air field for personal use, but also for airport regulations, which are several decades old. He said staff has attempted to do this on two occasions, but were not met with much public support. He said there may need to be additional review of these standards, and reminded the Board that this was designed to address the immediate need of clarifying the table of permitted uses (TOPU).

Commissioner Marcoplos said he could see a small personal landing strip as being less intrusive than an airport, and would be worth considering.

Commissioner Marcoplos said he and Michael Harvey talked about alternative energy. He said conventional wisdom says that wind power does not work in the Piedmont, but this is wrong, and there needs to be some understanding of this as well as regulations around wind turbines.

Michael Harvey said the County policy currently focuses on solar panels. He said staff attempted a comprehensive review previously, and were directed to focus on solar panels as they were the immediate concern.

Michael Harvey summarized what he has heard from the BOCC this evening:

- Staff to further study potential allowance and development of regulations for pawnshops and payday lending;
- Give additional review to products and services the County uses to ensure there are products that can be used locally; e.g.: asphalt plant
- Pay additional attention to animal processing and slaughterhouses, currently listed in manufacturing land use category;
- Comprehensive review of existing airport regulations, and closer look at air strips
- Explore ways to incorporate additional sources of alternative energy policy into the code

Michael Harvey said this could be its own independent motion to direct staff to begin the process.

Commissioner Dorosin said he does not support approving payday lending businesses, and feels these facilities prey on people and should be banned everywhere.

Commissioner Dorosin said the language of “stuff we use” is ambiguous and broad.

Commissioner Dorosin said he does not see himself supporting a private airfield, and cannot understand how one would not adversely impact those living near by.

Commissioner Dorosin said the meat issue is more narrowly focused, but he would need more information on some of the summarizations.

Chair Rich said she agreed with Commissioner Dorosin, and would want more information before making a motion.

John Roberts said staff is working with Planning to look at other portions of the UDO that can be streamlined, and planned to present it as an information item. He said this evening’s topics could also be added to that work.

Commissioner Greene agreed that she would not support some of these proposals, especially the payday lending for sure.

Commissioner Marcoplos in regards to the “stuff we use,” he would like to take it on a case-by-case basis, such as meat processing plants. He said it does not hurt to withhold judgement until the Board gets more information and can explore these issues.

Commissioner Marcoplos said the Board should at least explore to see if any of these uses fit into the UDO. He said the core issue is that he does not want to be a city sitting on a hill while the core dirty work is being done somewhere else.

Michael Harvey said it is not a waste of staff time to look at other issues and report back to the Board, once there is an updated TOPU.

Chair Rich said Anthony Carey sent the Board an email about his concerns about short-term rentals, which is below:

Good Morning Orange County Commissioners,

On behalf of the Orange County hospitality industry and the Chapel Hill-Carrboro Chamber of Commerce, I am writing to ask the Board to consider modifications to a text amendment being considered in your public review and approval process at your April 16 meeting. Please refer to my attached letter, and thank you for your consideration in this extremely important and delicate manner.

Date: April 16, 2019

To: Board of Orange County Commissioners; Penny Rich, Renee Price, Mark Dorosin, Earl McKee, Mark Marcoplos, Jamezetta Bedford.

From: Anthony Carey, General Manager, Siena Hotel

Cc: County Manager, Bonnie Hammersley; Deputy County Manager, Travis Myren

Re: Draft Text Amendment to Unified Development Ordinance on April 16 agenda addressing Short Term Rentals in Orange County.

Orange County Commissioners,

On behalf of the Orange County hospitality industry and the Chapel Hill/Carrboro Chamber of Commerce, I am writing to ask the Board to consider modifications to a text amendment being considered in your public review and approval process at your April 16 meeting.

Specifically, we are alerting the Board of County Commissioners to the fact that many of Orange County's hospitality owners and operators are currently working with Chapel Hill and Carrboro elected and staff leaders to regulate non-host occupied dwellings of Airbnb (also known as Short Term Rentals) to operate in the towns' limits.

To this end, we ask the Orange County Board carefully consider the amendment which states:

New definition of the various categories of Short-Term Rental... "allows non-host occupied dwellings which provide guestrooms for overnight rental or lease but is not occupied by a host."

With the rise of AirBnB and other online rental platforms, regulation has become a complex and evolving issue for local governments. While many imagine that this is an issue for larger cities or tourist destinations, there are in fact over 2,700 U.S. cities and counties with more than 50 short-term rental (STR) listings.

In Orange County we currently have 300 short-term rental listings, but the number grows exponentially each year. In 2018, it is estimated that these Short Term Rentals generated \$9 million in revenues in Orange County. Many of these dwellings hosted visitors in private homes, apartment complexes and dwellings that are not obliged to follow the same inspections that traditional Orange County accommodations are required to follow.

Private residences generally are not held to the same safety standards. For instance, that are no requirements for sprinkler systems or handicapped access, as there are with commercial rentals, as well as emergency exit directions, emergency lighting and fire doors.

The Short Term Rental Industry is a threat to the local rental market and to traditional hotels as well.

A coordinated group of hotels, Chapel Hill/Carrboro Chamber members and various tourism leaders are working to develop a policy recommendation to the Town of Chapel Hill and the Town of Carrboro. We would like to share that recommendation to the BOCC and county staff as soon as it is completed. We anticipate finishing our draft very soon.

It's important to note that this group doesn't oppose "true home sharing," – a traditional dwelling attached to a main home, for instance. Rather it objects to rental property used exclusively for short-term stays.

We understand this issue is a divisive issue for many communities. There are persuasive arguments on both sides. While some celebrate the additional income for residents as a boon to the local economy, others fear the degradation of their neighborhoods and lack of affordable housing.

In summary, we hope our elected boards will recognize that hotels employ dozens of local workers to provide housekeeping, reception, concierge services, kitchen-hands. Without them, the entire industry would grind to a halt. Providing local workers with jobs is critically important; providing visitors with safe places to stay is equally important. And working together as a county to support a level playing field is an ethos that Orange County has always worked to achieve.

Thank you for considering modifying this text amendment to Short Term Rentals.

Chair Rich said it is very different in the towns versus the County, and she is fine with the way it is written in the ordinance and it covers what Anthony Carey is saying.

Commissioner Dorosin asked John Roberts to clarify if AirBnBs can be regulated/restricted.

John Roberts said he sent a memo on how to regulate them.

Commissioner Dorosin said the provision in the UDO basically prohibits them if the host does not live at the property.

Chair Rich asked if there are only specific areas in Orange County where an AirBnB can exist.

Michael Harvey said that is correct.

Commissioner Dorosin asked if this is enforceable.

Michael Harvey said by report, which staff investigates.

John Roberts said there are three ways to regulate this use: 1.) through zoning; 2.) operational (parking, insurance, inspections, etc.); 3.) quantitative restrictions (caps on the number of uses within the zone, distance from each other, etc.). He said this is a geographical restriction.

Commissioner Dorosin said this is the only one that would not require advance registration.

John Roberts said yes.

Laurie Paolicelli, Visitors Bureau (VB) Director, said the subject of short-term rentals has exploded, and the VB has developed a subcommittee to study it. She said, in summary, the short-term rental industry in Orange County has exploded, generating \$9 million. She said the biggest issue is the short-term rental of non-occupied units being listed as a hotel accommodation. She said there is no oversight to short term rentals, and there are concerns about safety. She said it is also affecting the affordable rental inventory. She said AirBnB is not

a concern, in and of itself, but more the out of state investors buying units and renting them out with no real regulations or oversight. She said these properties are taking away from hotels, jobs, etc.

Commissioner Dorosin said he is not sure how he feels about resolving this.

Chair Rich agreed. She said AirBnBs are here to stay, but the regulations available to the County should be used, and it is more of a town issue and not so much in the County.

Laurie Paolicelli said the bigger North Carolina cities are seeing and tackling these issues, and noted that Durham is handling this differently by accommodating and embracing the AirBnBs. She said Asheville has banned AirBnBs in the downtown area.

Commissioner Dorosin asked if the Asheville ban has been challenged.

Laurie Paolicelli said she does not know, and the AirBnB issue is forever changing.

Commissioner Price said she thought the letter from Anthony Carey asked the Board if it would wait until Chapel Hill or Carrboro vote on the issue, in order to establish consistency.

Michael Harvey said the County has a different set of issues/opportunities/constraints than the municipalities, and the County's regulations ought not to mirror, or be based on, Chapel Hill or Carrboro that has completely separate issues. He said the Board has a policy that is currently reflected in the UDO, and it serves the County well. He said he sees no need to change the current policy.

Chair Rich said the UDO is a living document, and the BOCC can always revisit the issue. She said she will update Anthony Carey.

Commissioner Dorosin said all are fine with the host occupied units.

Chair Rich said problems arise when it starts affecting affordable housing. She agreed this is more of a town issue.

A motion was made by Commissioner Greene, seconded by Commissioner Marcoplos to approve the Statement of Consistency (Attachment 6)

VOTE: UNANIMOUS

A motion was made by Commissioner McKee, seconded Commissioner Marcoplos to adopt the revised Ordinance as recommended by the Planning Director (Attachment 7 including 7-a, 7-b and 7-c, as has been modified by the Board, and removing (<http://www.orangecountync.gov/DocumentCenter/View/7012>), removing language within Section(s) 2.10.3, 2.11.3, and 5.3.2 establishing the 'burden of persuasion' consistent with the recommendation of the County Attorney; and directing staff to provide an follow up on comments made about additional land uses.

VOTE: UNANIMOUS

Commissioner Price asked if the Board is prohibiting pawnshops that support the schools.

Michael Harvey said staff will provide the Board with a report.

6. Regular Agenda

a. Potential Addition of an Environmental Impact Section to Agenda Abstracts

The Board received a recommendation from Commission for the Environment regarding the addition of an Environmental Impact section to the agenda abstracts; and considered approval of the updated abstract and prompts based on the County's Environmental Responsibility Goal.

Brennan Bouma, Sustainability Director, reviewed the information below:

BACKGROUND:

At its November 8, 2018 work session, the Board of County Commissioners (BOCC) reviewed staff-generated options on how environmental impacts could be holistically addressed in the framework of an agenda abstract. The Board provided feedback and proposed that the Commission for the Environment (CFE), which looked at the subject several years ago, review and advise on the topic.

The CFE began discussing this topic in December 2018. Over the course of two subsequent meetings in January and February, staff presented the two draft agenda abstract templates that had been discussed by the BOCC, as well as several examples of the way an agenda item would be presented using each of the templates under discussion.

The CFE endorses this initiative and recommends the attached Draft Abstract Template (Attachment 1) and the environmental impact prompts provided in Attachment 2 which are based on the County's Environmental Responsibility Goal and summarize relevant County goals. The memorandum provided at Attachment 3 provides more details regarding the CFE's rationale.

The Manager has evaluated the prior discussion by the BOCC, as well as the feedback from the CFE. In light of all the input received, the Manager recommends that the Board consider moving forward with the abstract template provided at Attachment 4 and the environmental impact prompts provided in Attachment 5 which are based on the County's Environmental Responsibility Goal.

FINANCIAL IMPACT: The addition of a consideration of environmental impact will add staff time to the development of agenda abstracts. To the extent that a consideration of environmental impact could lead to efficiencies in the use of County facilities and vehicles, the lifecycle benefits of those efficiencies may lead to avoided costs.

Brennan Bouma made the following PowerPoint presentation:

Potential Addition of an Environmental Impact Section to Agenda Abstracts
ORANGE COUNTY BOARD OF COMMISSIONERS
April 16, 2019

Current Abstract Template

Proposed Abstract Template

Proposed Prompts Page

Summary

- The Manager's recommendation:
 - Is simple and easy for staff
 - Maintains the open response format
 - Provides for statements on environmental impacts
 - Helps avoid staff confusion and conflict with current required development impacts assessments

Commissioner Greene asked if the avoidance of the production of greenhouse gases should be mentioned somewhere in the abstract.

Commissioner Price suggested somewhere in attachment 2.

Commissioner Marcoplos asked Brennen Bouma if there is a simple formula.

Brennen Bouma said attachment 2 is not recommended. He said these prompts were created to summarize what the Board of County Commissioners had adopted in 2005, and these prompts open to change.

Commissioner Greene proposed “resultant impact on natural resources and air quality,” and “minimize reduction of greenhouse gases”.

Commissioner McKee said he will vote against this, and this item will clutter up the abstract, which is already cluttered. He said this is not worth doing.

Commissioner Marcoplos said this is a good way for the Board and the public to focus on the environmental impacts.

Commissioner Greene said it is good to have it stated clearly on the impacts, in order to keep it front and center in everyone’s mind.

A motion was made by Commissioner Dorosin, seconded by Commissioner Greene to approve the abstract template provided in Attachment 4 incorporating an Environmental Impact section into agenda abstracts, and approval of the environmental impact prompts provided in Attachment 5 which are based on the County’s Environmental Responsibility Goal, with suggested changes from Commissioner Greene.

VOTE: Ayes, 5; Nays, 1 (Commissioner McKee)

b. Letter to North Carolina Association of County Commissioners Expressing a Regional Preference for Medicaid Tailored Plans

The Board considered voting to authorize the Chair to sign a letter to the North Carolina Association of County Commissioners expressing Orange County’s preference to align its Medicaid Tailored Plan Region with Durham and Wake counties.

Travis Myren presented this item:

BACKGROUND:

In February 2019, the North Carolina Association of County Commissioners was asked by the North Carolina Department of Health and Human Services to assist with phase two of Medicaid transformation by coordinating and facilitating a process to develop recommended regions for Tailored Plans.

The Association has organized a committee to coordinate recommendations. The Committee consists of county commissioner representatives from each Managed Care Organization (MCO) region. This Committee has invited stakeholder input on the composition of Tailored Plan regions. The deadline to provide input is April 17, 2019.

At the April 2, 2019 regular Board meeting, a petition was made requesting that the County communicate Orange County’s preference to be part of a Tailored Plan region that also includes Durham and Wake counties. Staff has attached draft language for a proposed letter addressing that interest. It is proposed that the Board formally authorize the Chair, on behalf of the Board, to sign a letter expressing the County’s preference, and requested that the Clerk to the Board submit the letter before the April 17 deadline.

Chair Rich said Commissioner Bedford brought this petition forward.

Commissioner Dorosin asked if Orange County is grouped with particular counties currently.

Travis Myren said for behavioral health purposes, Orange County is grouped in the Cardinal Innovations MCO region, which does not include Durham and Wake counties, which are with Alliance. He said it does include Mecklenburg County.

Chair Rich said the Board received a letter from Cardinal earlier today, detailing some of the actions that Cardinal Innovations takes, which supply support for Orange County locally.

Commissioner Dorosin asked if this change is made, would Orange County be with Alliance, instead of Cardinal Innovations.

Chair Rich said yes.

PUBLIC COMMENT:

Trey Sutton, CEO Cardinal Innovations (CI), asked if the BOCC would consider the potential disruptions of this proposed change to members. He said he also questions the issues with the geography, as the CI provider network includes UNC, Duke, Wake Med, etc. He said historically CI has had a strong relationship with Orange County, and last year CI received capitation with care costs associated with members of \$26 million, but spent \$35.4 million. He said this is a loss, but CI is not a business, it is a mission-focused organization that has a commitment to this County. He said CI also made several investments in community organizations, including Compass Center, El Futuro, YMCA, Special Olympics, etc. He said IC has as many employees in Orange County as it does in other counties, as well as an office. He said the stakes are of this decision are high for the organization and the County.

Commissioner Greene asked him to relay how long he has been in charge, and the issues he has had to address.

Trey Sutton said he joined Cardinal Innovations about 18 months, a month prior to the Department of Health and Human Services rating, which dissolved the CI board, escorted executives out of the building, and put him into the interim CEO role. He said he was the CFO at the NC Department of Health and Human services prior to being at CI. He said since taking the position, CI has reconstituted its board, implemented a corrective action plan, and began focusing on a strategic plan that contains 5 focus areas:

- Members
- Providers
- Communities
- Invest in CI employees
- Tailored plan (integrated care for all members)

Commissioner McKee referred to the \$9 million deficit for Orange County, and said he would like to know the overall profit/loss balance sheet for last year.

Trey Sutton said CI lost \$30 million last year, and are on track to lose a little bit less this year.

Commissioner McKee said this is surprising to him. He said he sat on the local CI board several years ago, and found the corporate board difficult to work with. He said he is aware of families that are still struggling to get the necessary services with Cardinal. He said it was like pulling teeth to get CI involved with Club Nova.

Trey Sutton said he disagreed, and Club Nova spent a fair amount of time at CI board meetings. He said he has entertained all of Club Nova's requests, and CI remains committed to the \$500,000 it has promised to Club Nova.

Commissioner Dorosin asked if Commissioner Price had any thoughts.

Commissioner Price said Commissioner Bedford is the current BOCC representative, and also uses the services personally.

Commissioner Price said she was on the board during the transition, and it is a night and day difference for the better. She said she understands about the geography issue, but the grass is not always greener, and many changes have to come from the state.

Trey Sutton said he is working with Representative Verla Insko and have been partnering on the language. He said Orange County is about 26% above the per capita, and Representative Insko is introducing some legislation that would disregard the prior allocation methodology and moving forward would be different.

Commissioner Marcoplos asked if the deadline of April 17th came from anywhere specific.

Travis Myren said this is a NCACC imposed deadline, which was set in the fall.

Commissioner Price said this date is in line with getting ready for November.

Commissioner Marcoplos said he has more questions and the deadline is tomorrow. He said he is not sure he can resolve how he feels about this in time.

Chair Rich asked if there is a regular interval at which changes can be made.

Ric Bruton, CI, said the standard plans will have a contract period of 4 years, and during the initial contract phase for the tailored plan there will be no changes. He said the only opportunity for change will come after the next contract cycle.

Ric Bruton said he has been with CI for 9 years, and with this new management it is night and day for the better.

Commissioner Dorosin said the letter is to the NCACC, but asked if it is known who will make the decision as to whether Orange County can change grouping.

Staff answered that the State will make this decision.

Commissioner Greene said she would not be comfortable changing from Cardinal at this time.

Bonnie Hammersley said the letter would be a letter to support the County going with Wake and Durham, and while it may carry some weight there is no guarantee that it will happen. She said NCACC is gathering information from all counties. She said the reason this agenda item has been brought up so close to the deadline is because, in talking with the Department of Social Services and Travis Myren, it was decided that a letter would not be sent at all, but Commissioner Bedford petitioned for the Board to make that decision.

Chair Rich asked if the change might be made whether Orange County supports it or not.

Bonnie Hammersley said that is her understanding, and all counties across the state are being reviewed.

Commissioner Price said the NCACC will not be making the decision, but a representative from each of the LMEMCOs will meet, and the map will be reviewed and the state divided accordingly.

Ric Bruton said when the standard plan was created there were maps of regions. He said when these maps came out, it was clear that they did not line up with the LMEMCOs. He said LMEMCOs are the only people able to apply for those contracts for the first year. He said NCACC is trying to gather input on what these maps should look like.

Commissioner McKee said this does not mean they will be moved or not moved, but if the County remains with CI, it would send a very strong signal to Cardinal Innovations that the County expects its residents to be taken care of.

Commissioner Dorosin said Commissioner Bedford is the BOCC representative on the Cardinal Board, and he will defer to her recommendation and will vote for this tonight.

A motion was made by Commissioner Dorosin, seconded by Commissioner McKee that the Board authorize the Chair to sign a letter to the Committee recommending the composition of Tailored Plan Regions that communicates Orange County's preference to be in a Region that includes Durham and Wake counties, and for the Clerk to the Board to submit the letter before the April 17 deadline.

VOTE: Yeas, 3 (Commissioner McKee, Commissioner Dorosin, Chair Rich); Nays, 3 (Commissioner Greene, Commissioner Price, Commissioner Marcoplos

(since there were only six members and it was a tied vote, the motion does not pass)

7. Reports
NONE

8. Consent Agenda

- **Removal of Any Items from Consent Agenda**
8-d
- **Approval of Remaining Consent Agenda**

A motion was made by Commissioner Greene, seconded by Commissioner Dorosin to approve the remaining items on the consent agenda.

VOTE: UNANIMOUS

- **Discussion and Approval of the Items Removed from the Consent Agenda**

8-d Approval of Proposed Changes to the Affordable Housing Bond Program

The Board considered voting to approve the second phase of proposed changes to the Orange County Affordable Housing Bond Program.

Chair Rich said she read an article in the NY times about sustainable affordable housing, and the fact that much affordable housing is being built in areas that flood. She asked Sherrill Hampton, Housing Director, if she would include something about sustainability (page 2 of handout, with item D being added. All else remains the same).

Sherrill Hampton referred to section D on page 2, and said staff change items 1 and 4. She said staff researched sustainability, and broke the criteria out. She said item 1 deals with the building aspect of sustainability, and noted that the list is not exhaustive. She said item 4 deals with the site of the housing itself. She said no other changes were made; particularly no changes were made to the point system.

Commissioner Marcoplos said this is great.

Chair Rich said after the most recent rains, she spoke to Hillsborough Mayor Tom Stevens who said a road got washed out, as well as Gold Park. She said affordable housing cannot continue to be built in areas where the residents will lose repeatedly lose everything.

Commissioner Dorosin asked if there was a "4" before.

Sherrill Hampton said only minimally, and did not spell it out. She said staff felt it was good to add some clarification.

Commissioner Dorosin said the point allocation remains the same.

Sherrill Hampton said yes.

Commissioner Price said the points are different from what is in the agenda packet.

Sherrill Hampton said since staff expanded the language, staff expanded the points.

Commissioner Greene referred to #4, and asked if it covers not building in a flood plain.

Sherrill Hampton said staff has to go by the Orange County regulations, and will attempt to mitigate issues of flooding.

A motion was made by Commissioner Dorosin, seconded by Commissioner Price to approve with changes the second phase of proposed changes to the Orange County Affordable Housing Bond Program.

VOTE: UNANIMOUS

a. Minutes

The Board approved the minutes from April 2, 2019 as submitted by the Clerk to the Board.

b. Resolution to Support Juvenile Crime Prevention Council Allocation Expansion

The Board considered voting to approve a resolution in support of increased funding to the local Juvenile Crime Prevention Councils (JCPC) in North Carolina and authorize the Chair to sign.

c. Approval of Budget Amendment #7-E for Repair of the District Attorney Building

The Board approved Budget Amendment #7-E for the repair of the District Attorney Building.

d. Approval of Proposed Changes to the Affordable Housing Bond Program

The Board approved the second phase of proposed changes to the Orange County Affordable Housing Bond Program.

e. Lease Modification for Hillsborough Commons

The Board approved a modification of the lease for Hillsborough Commons (113 Mayo Street, Hillsborough) and authorized the Chair to sign the appropriate documents upon final review of the County Attorney.

9. County Manager's Report

Bonnie Hammersley reminded the Board of the upcoming April 23 joint meeting with both school boards, and also that the Board canceled the April 25th work session.

10. County Attorney's Report

NONE

11. *Appointments

a. Nursing Home Community Advisory Committee – Appointment

The Board considered making an appointment to the Nursing Home Community Advisory Committee.

A motion was made by Commissioner Greene, seconded by Commissioner Marcoplos for the Board to appoint the following to the Nursing Home Community Advisory Committee:

- Stephanie Miller for Position #3 for an At-Large Partial Term with an ending term of 09/30/2020.

VOTE: UNANIMOUS

b. Orange County Parks and Recreation Council – Appointments

The Board will consider making appointments to the Orange County Parks and Recreation Council.

A motion was made by Commissioner Dorosin, seconded by Commissioner Greene for the Board to appoint the following to the Orange County Parks and Recreation Council:

- John Greeson for Position #2 - Hillsborough Township – for a Second Full Term with a term ending date of 03/31/2022.
- Robert Smith for Position #5 At-Large for a Second Full Term, with a term ending 03/31/2022.
- Timothy Braddy for Position #6 - Cheeks Township – for a Partial Term, with a term ending 03/31/2021.
- Haywood Rhodes for Position #12 - At-Large Second – for a Full Term, with a term ending 03/31/2022.

VOTE: UNANIMOUS

Donna Baker reminded the Board of the information at the bottom of the abstract that the Parks and Recreation Council would like to defer filling the Cedar Grove Position (even though it has been vacant for more than 6 months), for them to be allowed to continue to solicit for this position, as the potential exists to find someone from that township who could provide needed added diversity on the Council. She said the Council has reached out to the Cedar Grove Neighborhood Association for assistance in this recruitment.

A motion was made by Commissioner Dorosin, to appoint Jennifer Moore to the Cedar Grove Township -- Position # 3 – with a term ending 3/21/2021.

No Second.
Motion Fails.

A motion was made by Commissioner McKee, seconded by Commissioner Marcoplos to defer this appointment for 6 weeks – to the first regular Meeting in June (June 4th) while he assists in trying to recruit for this position.

VOTE: Yeas, 5; Nays, 1 (Commissioner Dorosin)

c. Orange County Planning Board – Appointments

The Board considered making appointments to the Orange County Planning Board.

This item was revised – position 6 is no longer viable; add position 10 – at large

A motion was made by Commissioner Dorosin, seconded by Commissioner Greene for the Board to appoint the following to the Orange County Planning Board:

- Melissa Poole for Position # 2 - Little River Township for a Partial Term, with a term ending 03/31/2021.
- Hathaway Pendergrass for Position # 8 - At-Large for a First Full Term, with a term ending 03/31/2022.
- Jessica Aguilar for Position # 10- At Large- for a First Full Term, with a term ending 3/31/2022.
- Susan Hunter for Position # 11 - Chapel Hill Township for a Partial Term, with a term ending 03/31/2020.

VOTE: UNANIMOUS

12. Information Items

- April 2, 2019 BOCC Meeting Follow-up Actions List

13. Closed Session

A motion was made by Commissioner McKee, seconded by Commissioner Dorosin to go into closed session at 9:38 p.m. for the following purposes of:

“To discuss matters related to the location or expansion of industries or other businesses in the area served by the public body, including agreement on a tentative list of economic development incentives that may be offered by the public body in negotiations,” NCGS § 143-318.11(a)(4).

Closed Session Minutes

VOTE: UNANIMOUS

RECONVENE INTO REGULAR SESSION

A motion was made by Commissioner McKee, seconded by Commissioner Dorosin to reconvene into regular session at 10:10 p.m.

VOTE: UNANIMOUS

14. Adjournment

A motion was made by Commissioner McKee, seconded by Commissioner Dorosin to adjourn the meeting at 10:10 p.m.

VOTE: UNANIMOUS

Penny Rich, Chair

Donna Baker
Clerk to the Board