



UDO PLANNING BOARD SUBCOMMITTEE MINUTES

Thursday, February 23, 2023, at 6pm

GoTo Webinar Pittsboro, NC

Attendance: Subcommittee Members: Jon Spoon, George Lucier, Eric Andrews, and Clyde Frazier.

Ex-officio: Richard Poole (Affordable Housing Advisory Committee), John Graybeal, and Alicia Koblansky (Climate Change Advisory Committee)

Planning Staff: Jason Sullivan, Angela Plummer, Chance Mullis, and Hunter Glenn.

Public Attendance: Geoff Green.

I. CALL TO ORDER

Chair Spoon called the meeting to order at 6:00pm and asked Mr. Mullis to go over the virtual meeting guidelines.

II. APPROVAL OF MINUTES

Consideration to approve the December 1, 2022, minutes. Minor corrections were required, the motion made by Mr. Lucier to approve, second by Eric Andrews the minutes were approved 4-0.

III. NEW MEMBERS:

Chair Spoon stated there are two new ex-officio members to consider, Mr. John Graybeal and Ms. Alicia Koblansky, who are both currently serving on the Climate Change Advisory Committee. Mr. Lucier made a motion to elect Mr. Garybeal and Ms. Koblansky as ex-officio members to the UDO subcommittee, second by Mr. Frazier. The two new ex-officio members were approved by a vote of 4-0.

IV. UDO PROJECT UPDATE

Mr. Mullis stated tonight the review will be of the Watershed Protection draft and revisit the use regulations chapter with the consultants' revisions we have provided them. The consultants will be providing a presentation on Module 1 to the BOC at the March 6th meeting and at the Planning Board on March 7th.

V. UDO DRAFTS REVIEW

- Chair Spoon stated the first document we will be reviewing is Chapter 9, Watershed Protection. We will start by asking if anyone has comments regarding this chapter as a whole and then we will dive deeper as we move forward. Mr. Lucier asked if this chapter has been reviewed by the Environmental Review Advisory Committee (ERAC), and if not, they should have an opportunity to review it because they are also the Watershed Review Board. Mr. Mullis stated they have not reviewed it yet, but we will make it available to them for their review and comments. Mr. Andrews stated we have had issues in the past about spray systems being either apart of open area or natural area. This specifically states that sewage will not be allowed in the watershed area, so will that include spray as well?

Chair Spoon stated we need to put a lot of thought into this chapter because this is a fundamental change into how we have addressed watershed protection in the past. The table with percentages is changing dramatically as well and we need to consider other jurisdictions that have already adopted their UDO so we get these number correct. We also need to look at the density balancing. A conservation trust fund and conservation credits were we can do this in a way that pure density balancing if it is just allowed for maximum profit, developers will purchase really nice parcels of land and make the density as much as they can and use the undesirable and no perk parcels to balance the density. We need a mechanism where we are able to focus our conservation efforts on the ecologically

significant areas of the county. Mr. Poole asked is there a list of what is defined as a river and the areas around it when it is heavy rain? Mr. Lucier stated that is considered a flood plain which is listed in this chapter and only has certain things allowed within that area. The rivers are identified by perennial, intermittent, and ephemeral which has their own buffer designation for each classification.

- Chair Spoon stated now we will go page by page of the chapter and allow for concerns or comments. On page 9-3 within the first footnote, the first key change is that we are getting rid of the low-density development option, that was removed because everywhere is going to require stormwater management. What is the logic behind that change and are there no development models that we see as low impact enough not to include stormwater management? Mr. Green stated this was the direction referred to by staff for the consultants to simplify how the regulations operate and all projects will require stormwater management. Chair Spoon asked if there was a certain acreage that would trigger stormwater management or is it any size project? Mr. Green stated it will be any size project, but the actual management may change to the different sizes of the projects.
- Mr. Sullivan stated implementing the recommendations from the Comprehensive Plan and our current regulatory framework will not accommodate those kinds of concepts particularly with the Watershed Protection Ordinance as it stands now. There are two options that the State will provide for local government, which is low density option and a high density option. The commissioners in 1993 & 1994 chose the low-density option, which has limited built upon area for non-residential development and limitations on residential density. We are more restrictive than the States requirements under low density. As of right now we allow one dwelling unit per acre, but the State allows two per acre. If we look at some of the recommendations in the Comprehensive Plan, more intensive development is recommended in certain areas of the county in the designated nodes.

This will call for more density in both residential and non-residential areas and the only way to achieve this is to switch to the high-density option in the Watershed Protection Ordinance. In some areas of the county, we have the 10/70 Rule, this allows for 70% built upon area within 10% of that watershed district. Because of the VinFast announcement and the applications they have submitted, all of that 10/70 allocation is used between TIP west and TIP east, there is no more 70% allowance in the Cape Fear watershed drainage. So the dilemma is, if we want to have more intensive development within the Cape Fear watershed drainage, we currently can't do it, unless we switch to the high density option. Likewise in other areas of the county, with the 10/70 Rule we cannot achieve what the Comprehensive Plan recommends, such as apartments or condominiums. This is why, on the staff side, we have suggested this transition to high density. Even though you see some significant changes within this chapter, the idea is with the zoning ordinance chapter, that will now be the limiting factor for built upon area.

Chair Spoon stated it seems like the State could have provided a medium size density option for us as well, but beyond that, does it need to be a whole county designation or could we have zones of high and low density? Mr. Sullivan stated we actually discussed that option, one of the things we are trying to achieve with the UDO is more predictability, flexibility, and efficiency in our operations. If we were to provide a more hybrid model, it would be extremely difficult to process on the staff side and even more confusing for the advisory boards and elected officials to transition between areas that are low or high density. Chair Spoon stated it is an option but didn't seem feasible and advisable. Mr. Sullivan stated that is correct. What we believe as staff is if we become high density in watershed, but then let zoning be the driving force, it may be easier for staff, advisory boards, and developers to understand as we move through a development review process. Everything will be tied to the Land Use map, which will line up with the zoning districts and that will regulate the density of built upon area instead of watershed regulations. Mr. Lucier asked if they had gone through some examples of how that might work with those zoning classifications? Mr. Sullivan stated we have created a crossover table that looks at the future land use designations on the map and having those correspond to the zoning districts. Looking at specific examples, will take place in the future in the UDO process. Mr. Lucier stated that will need to be conducted for this to work properly.

- Mr. Lucier asked where is the stream buffer regulations now and where will they be located once this is completed, the stormwater ordinance? Mr. Sullivan stated right now they are within the watershed regulations and will be shifted into the stormwater section, and we are still having discussions about the finer details of the riparian buffer standards. Mr. Lucier stated, wouldn't make more sense for it to be located in the watershed ordinance rather than the stormwater? Also, with our stream buffer regulations being more stringent than the State and us putting ourselves at risk of the State overruling us in our current regulations? Mr. Sullivan stated that has been part of our internal discussions and we do not want to damage anything we currently have, but with that being said, any changes that we make have to be vetted by NCDEQ staff before it is approved by the commissioners. Chair Spoon stated it seems like we will be shifting the enforcement from Watershed Protection department over to the Planning department, is that something we are comfortable with and have the capacity to make that change? Mr. Sullivan stated the riparian buffers and other watershed processes will stay with the Watershed department and they will be involved in the review process just like they are now, that will not change. The only change is the built-up area and density will be regulated under zoning, which would involve staff but will also involve advisory boards and the elected boards.
- Mr. Frazier stated single family development is assumed to include 100% built-upon area, does that mean there needs to be some area in subdivisions that is not in a lot? Mr. Sullivan stated one of the issues we have discussed internally is when you move to a high-density option, the densities will not allow for us to exceed the 70% built-upon area provision because we will be regulating density in a way that would not exceed the low-density threshold. Because tracking the built-upon area is so difficult in subdivisions, what we have done is allow for 100% built-upon on the single-family development, which we know will not happen, but we assume all of that, then we are protected. Then we only have to address the built-upon area for the non-residential portions, and we still will be compliant with watershed protection requirements at the State level. Mr. Lucier stated how will that work in a WS-II-CA which is 50% limitation? Mr. Sullivan stated in that area from the zoning side, we will never exceed the low-density option. We will have mechanisms in place that will allow us to not be in violation of the 50% built-upon area. We will provide some diagrams and examples to show you how this will work. Mr. Frazier wanted some clarification on subdivisions, because normally they are all lots, so will we not be seeing that in the future, will they have to have a certain amount of land set aside? Mr. Sullivan stated we know they will not be allowed to build on buffers, they can cross, but not build. It is possible that they will need to have open space set aside.
- Mr. Frazier stated on 9.3 Watershed Areas, the WS-II-CA that is list here, is listed in other places as WS-III-CA, it needs to be consistent. Chair Spoon asked why are some of the delineations based on elevation and some of them based on mileage in table 9.3-1? Mr. Green stated these are converted from the current code and staff is going through to make sure it is accurate. These are just general descriptions; staff maintain the GIS map that is more accurately delineated. Mr. Sullivan stated this is how the State has it recorded for simplification though out the state.
- Mr. Andrews stated in 9.3.2 Amendment B.1, do we have a definition of "expert testimony"? Mr. Green stated there is some language pertaining to expert testimony in the State Planning Statute, but we can make it clear for purposes of the watershed. Chair Spoon stated these amendments will pass through the Planning Director and Planning Board, but I imagine these will most likely just end up on the consent agenda for the BOC meetings. If there is push back or issues they can pull it from consent, but is that how we see this working? Mr. Lucier stated we might see a few on consent, but most likely they will be discussed.
- Chair Spoon stated in table 9.4.1-1 Maximum Development Intensity, there is a lot of change and it is important that these are the correct numbers. We need to ensure we limit correctly and efficiently. Mr. Lucier stated that is why I mentioned earlier it is important to provide examples of development in Chatham and how does that fit with these new numbers. Chair Spoon stated it would also be good to look at jurisdictions that are topographically and geographically similar to ours that have gone through this kind of development and see what numbers they use and if they are functioning well. Jurisdictions

like Cary and Apex would be good examples to look at. Mr. Andrews stated he has worked with other Planning departments and it is not uncommon to see 7% and 15% built-upon areas. Mr. Sullivan stated Chatham County is unique in that we have watershed districts that cover the entire county. The State did not mandate and does not mandate watershed protection districts throughout an entire jurisdiction. It is only within certain distances and certain surface water intakes, a bulk of the county is not in a watershed district. We have large portions that we created that are outside of the State mandated districts. If you were to look at other jurisdictions they will not be as stringent as Chatham. That is some of the struggle because we have been so restrictive, how do we merge these processes together? Chair Spoon stated a lot of people have liked the results of how we go above and beyond what the State requires, but it will be interesting how we merge with our municipalities.

- Chair Spoon stated at the top of page 9-9, number 4, what was the thinking behind these calculations? Mr. Green stated this is a State law requirement. Chair Spoon also stated on page 9-9 is where offset credits for density averaging system would be allowed so we can focus our conservation efforts on special places, rather than leaving it up to the developer to decide. Mr. Sullivan stated on density averaging, one thing to point out is that is mandatory language that the legislature implemented a couple years ago, so if a developer meets those criteria, we have to allow it.
- Mr. Andrews stated on page 9-9, Density Averaging, in number 5, it states “irrevocable”, but is it movable? Mr. Green stated this is part of the density averaging program, which is a new State requirement and this language, irrevocable, is from the State Statute. Mr. Lucier stated on number 6 is states, “Vegetated buffers comply with the standards of this Chapter”. That is not true because we have moved the stream buffers to stormwater. That is another reason why it doesn’t make sense to remove buffers from the watershed chapter.
- Mr. Green stated on table 9.3-2 Uses Prohibited in Watershed Area, this should be labeled Activities Prohibited in Watershed Area because we are merging two tables from the existing watershed ordinance into one. As a landowner you can come to this table and see what district you are in and what watershed your property is located in. There will be one place they can look to see if the use they want to do is permitted in the zone district and is it prohibited in the watershed district. Chair Spoon stated it would be good if we could have uniformity throughout all the tables in the UDO because some tables use dots and some use X, S, L, and P’s. Mr. Green stated we will welcome other ways to use and identify within the tables to make it easier to understand. Mr. Frazier raised a question about how sewage is only allowed within the River Corridor per this table. Mr. Green stated they still need to fill in the blanks for the non-State mandated watersheds.
- Chair Spoon stated on page 9-12, section C, the RC and RCSA how often are they updated and what factors is that based on? Mr. Sullivan stated these are updated by the North Carolina Department of Public Safety Flood Plain Management branch and they update different sections of the county periodically, about every year or two we have a couple panels that are updated.
- Mr. Lucier stated on page 9-13, paragraph C, says, “vegetated setbacks may be cleared or graded and then replanted”, this conflicts and is an inconsistency with our stream buffer regulations, where that is not allowed. Chair Spoon stated in paragraph D, it says, “but only if it is not practical to locate the built-upon area elsewhere.” Who makes that decision, the Watershed Administrator? Mr. Green stated that is a good question and will get clarification. Mr. Lucier asked who is the Watershed Administrator now? Mr. Sullivan stated it is a split responsibility between himself and Ms. Rachael Thorn. The County Manager has been appointed the Watershed Administrator by the Board of Commissioners and he has delegated his responsibilities to the Watershed Protection Director and the Planning Department Director. Mr. Sullivan stated if the watershed protection meets the requirements, they have to approve it and if it does not the Watershed Review Board will review appeals and sometimes it can go to the Environmental Management Commission for review.

- Chair Spoon stated on page 9-16 under Watershed Review Board section B, it seems like we are opening ourselves up to potential litigation. Mr. Green stated this section will most likely come out, this is language from the State Statute and applies to any decision making and advisory boards, so it will only be located in one central location within the UDO as a blanket statement for all boards.
- Mr. Lucier stated on page 9-17 there seems to be two permits to be required, the watershed protection permit and the other is a watershed protection occupancy permit procedure, how do these two permits differ? Mr. Green stated these are permits that are currently in the Watershed Protection Ordinance, and the permit is at the beginning of the process and the occupancy is at the end of the process. Chair Spoon stated for the watershed protection occupancy permit, if it is denied by the Watershed Administrator, is that a final determination or can the applicant resubmit? Mr. Sullivan stated it could be resubmitted, but our process is so rigid it would not get that far in the process and then have the occupancy permit denied.
- Chair Spoon stated on page 9-19 under Types of Variances, we group all of these together and 5-10% of a vegetated setback is not a large impact potential, however 5-10% maximum density lot size requirement allowed is a big change. Mr. Green stated he needs to verify, but he believes this is a State Statute. Mr. Andrews asked if we could see an example that would require this type of variance? Mr. Sullivan stated he does not believe we have ever had one to provide an example. The riparian buffer rules are so rigid that we wouldn't get to a point for this type of variance. There was some discussion about different scenarios that may require this variance such as medical hardship.
- Chair Spoon asked the subcommittee if there were any closing thoughts on the Watershed Protection Chapter. Mr. Lucier stated it does still need some work and revisions. We want the stream buffers protected and back in this chapter where they belong. Chair Spoon stated density averaging is not good enough for what we want to see out of Chatham County and would like to explore conservation credits or trust fund for developers to use and we can use it towards targeted conservation in special areas and get those off the list of potential developed areas forever. Mr. Lucier agrees and stated maybe we could incorporate what we had done in the conservation subdivision revisions and require areas to preserve and incorporate that idea into this to ensure conservation protection.

Chair Spoon stated we will move onto reviewing the changes to the Use Regulations that was Chapter 4 and changed to Chapter 3. A lot of the questions and concerns we discussed previously were reviewed by the consultants and included in this chapter.

- Mr. Lucier stated on page 7, where we have two detached homes could be on one lot if the lot was large enough, we had wanted manufactured home removed from the second dwelling. Ms. Plummer stated yes, that needs to be removed.
- Chair Spoon stated on page 3-28 within the table under churches and places of worship, to what degree are we supporting uses for churches and places of worship, because a lot of them will want a fellowship hall with a commercial kitchen and some will want community centers. Will all of that be permitted as a place of worship, or will they be looked at as separate processes? Ms. Plummer stated those are secondary uses to the worship center. Environmental Health department would issue the commercial kitchen permit. If the original Special Use Permit site plan does not include a community center or fellowship hall and they would like to add that feature, they will be required to go through the application process.
- Mr. Frazier stated on page 3-31, breweries, distilleries, and wineries, not sure why they could not be allowed in Neighborhood Business, Neighborhood Center, or Office and Institutional. Also, corner stores, Neighborhood Business, Neighborhood Center, & Community Business should be allowed. eating and drinking establishments are allowed in those areas, but not corner stores?
- Chair Spoon stated on page 3-32, lawn and garden shops, should be permitted or special use of agricultural areas.

- Mr. Lucier stated the revision to the table looks very good, but on page 3-30 why would not duplexes be allowed in R5 district? Mr. Lucier also asked what does the NC zoning district stand for? Mr. Mullis stated it is a new district called Neighborhood Center (NC). This district will allow commercial and residential together. Mr. Lucier stated on page 3-34, training and conference centers, they should be allowed in Office and Institutional. Also, on page 3-39, electric vehicle charging stations should also be allowed in Office Institutional. Mr. Frazier asked why they are not allowed in light and heavy industry, if there are employees working there, they may want to charge their vehicle while at work. Mr. Frazier also asked why gas stations are not allowed in Neighborhood Business.
- Mr. Poole stated on page 3-49, cottage courts, we are only allowing three units per acre, that is a third of an acre for a little cottage? This is one of the easier ways to create affordable units, but it seems like we don't want anyone to do it with such a small amount allowed. Maybe something like 10 or 12 units per acre. Mr. Lucier stated that might be too many because we require a common area within the acre as well. There was some discussion as to how many units could be utilized on the acre.
- Chair Spoon stated on page 3-62, tobacco retailers, the population is using vaping a lot as well and should be included in this topic.
- Mr. Lucier stated on page 3-68, backyard chicken keeping, this section needs to be revisited because it seems to be too restrictive. Mr. Andrews stated the subdivisions have their own restrictive covenants, but it should not be at the county level. Mr. Sullivan stated this needs to be revised because we do not want to have to enforce this regulation.
- Chair Spoon stated on page 3-75, private use airports, do we have to allow that or do we want to allow that use in any zoning district? Mr. Andrews stated it would be good to grandfather the existing airstrips, but not allow them anymore, they do seem to cause a lot of problems.

Chair Spoon stated he appreciates all the work that went into this revision and the explanations in the footnotes.

VI. NEXT MEETING & DISCUSSION TOPICS

- Chair Spoon stated he would like to see the meetings in a six-week interval depending on material to review. Mr. Mullis stated right now we are focusing on preparing for the Module 1 presentation, but will ask the consultants when will the next material be ready for review and follow up with the subcommittee to schedule the next meeting.

VII. ADJOURNMENT

The UDO subcommittee was adjourned at 7:40pm.