UDO PLANNING BOARD SUBCOMMITTEE MINUTES
Thursday, March 28, 2024, at 6:30pm
Webinar Pittsboro, NC

Attendance: Subcommittee Members: Jon Spoon, Mary Roodkowsky, and Eric Andrews.
Ex-officio: Mary Gillogly, John Graybeal, and Chuck Walker.
Planning Staff: Chance Mullis, Angie Plummer, Kim Tyson, Hunter Glenn, Thanh Schado, and Dan Garrett.
Public Attendance: Jeannie Ambrose.

I. CALL TO ORDER
Chair Spoon called the meeting to order at 6:45pm.

II. APPROVAL OF MINUTES
Consideration to approve the January 25, 2024, minutes. The UDO Subcommittee did not have a quorum and could not take action on this item. Some corrections were suggested and Mr. Garrett said he will make the corrections and provide the committee with both the January 25th and March 28th meeting minutes at the April meeting.

III. UDO DRAFTS REVIEW

- Chair Spoon stated the documents the UDO subcommittee will be reviewing are the Chapter 14 Nonconformities, Chapter 15 Enforcement, and Chapter 16 Rules if Interpretation.

Chapter 14 Nonconformities:

- Chair Spoon asked if anyone had any general concerns or comment about the chapter to address them now and if there are specific concerns about a particular section of the chapter to address them as we discuss them. Chair Spoon said if we have a Rehab Code or historical sites that to not seem to fit into the ordinance anywhere, will we be able to preserve them here in this chapter? Ms. Plummer said the way non-conformities work, if a structure is existing, they can refurbish it, they can continue to use it for what it was used for, all of that is okay and will stay non-conforming. What will not be allowed to stay as a non-conforming structure is if they want to increase a non-conforming structure by having more land, and additions. We would need to look at things like that on a case-by-case basis.

- Chair Spoon said on page 14.5 in section 14.1.3 an established lawful non-conformities, would this burden be on the property owner to inform that their property is a non-conforming property, or is this something we will be doing actively as a county? Ms. Plummer stated non-conformities are not tied to ownership, someone can purchase a property that is already non-conforming and continue to use it as it is and increase as the non-conforming section allows. Chair Spoon confirmed that a person could purchase a property that is non-conforming even after the UDO is adopted and continue to use it for that specific use. Ms. Plummer said that is correct. Mr. Andrews asked the absence of a perk site on a parcel that may have been labeled as non-buildable, is that a non-conforming situation or is it something the property owner could still have an opportunity of doing something with it? Ms. Plummer said they could still investigate for a perk site or invest in a state system and once that is approved, they could use the parcel once it is surveyed and deemed a buildable lot.

- Chair Spoon said on page 14.6, footnote #6, Building on Subdivision Lots of Record, could someone explain exactly how this will work because it looks like we may have different sections of our UDO that could conflict with each other. Ms. Plummer said she will explain with two scenarios. If a lot is legally created a half-acre in size in the past, which means it is non-conforming to our current lot size

regulations, it is still considered a legal lot and if they can get a perk site with a structure on it, they are allowed to do that. Another scenario is the subdivision Highland Forest Estates which was approved prior to 1990 when the setback regulations changed. They are allowed to continue to utilize the 15' side setbacks and not conform to the current 25' setback requirements.

- Chair Spoon said on page 14.7 has a lot of blue highlighted areas which are referring to sections that are not completed yet or are still in progress. Mr. Mullis said the public review draft will include these sections which will be reviewed next month in April. Ms. Roodkowsky said is section 14.3.2.A., "it is relocated, upgraded, or relaced." This is referring to lighting, and there is new types of bulbs and fixtures coming out all the time, the term "replaced" can mean a lot of different things, if you are replacing the same bulb and fixture with the same kind of bulb and fixture, does it need to become conforming? Ms. Plummer stated we do not regulate residential lighting such as a porch light. However, if there is street lighting in a subdivision and they want to replace that entire light it will be required to conform to the current regulations. Ms. Roodkowsky asked if one light fixture has to be replaced, then the whole series of light fixtures in a subdivision would need to be replaced as well? Ms. Plummer said if they need to replace one fixture, then it would require to conform to current regulations, but we do not have a mechanism in place to require them to replace every light fixture in the subdivision just because they replaced one fixture. That would create an undo burden we would not want to get into.

- Mr. Andrews said in section 14.3.3. A.1., what is the definition of the floor area? Is this if someone wanted to extend a structure and have a cement floor with a lean-to, or a porch, or patio, is this floor area defined as heated or cooled? Ms. Plummer said this is a definition we will need to define more clearly because generally speaking if someone has a structure and they want to expand it just a little to have a lean-to for storage and materials, that technically would be expanding the non-conforming structure. Ms. Plummer said you may find 10% too restrictive and if so, we can look at increasing that percentage. Keep in mind, if there is a 10,000 sqft commercial space and they want to add 10% that is 1000 sqft, which is a considerable amount. Mr. Mullis said on the staff side we discussed this and thought about a scalable option depending on what the use is, if it is an intensive use opposed to something non-intensive. Mr. Andrews said in a previous chapter he had mentioned he thought 10% was a bit to strict. Chair Spoon said in section 14.3.3.B., this section is to prevent people from actively circumventing the rules by making small changes one year at a time over a long period of time. Ms. Plummer said that is correct and that has happened.

- Ms. Roodkowsky said on page 14.8 under section 14.3.5.B., Off-Premises Signs (Billboards), "nonconforming billboards may remain in use and may be repaired, reconstructed, and relocated." Ms. Roodkowsky asked for more clarification because it sounds like we want them to remain non-conforming even if they are reconstructing it. Isn't this the opportunity to bring them into conformity? Ms. Plummer said there are other factors such as lighting if they are going to bring it into conformity, but as far as where the billboard sits, new material or updated material come out all the time to make them safer, something like that would be allowed. Anything other than that, the billboard would need to be brought into compliance. Chair Spoon said this is a good point, if you are allowed to rebuild a billboard on the same site even if it has not been conforming for 30 years. Chair Spoon said he is interested in knowing more about the relocating aspect as well. Ms. Plummer said the relocating comes from the North Carolina General Statute under the state outdoor advertising regulations, a billboard is allowed to be relocated within 660' of its existing location due to whatever reason it is needing to be moved, they are allowed to do that. As local government we cannot tell them no. Chair Spoon gave an example if a road was to be widened then they would be allowed to push the billboard back. Ms. Plummer said that is correct and this really does not happen often, she has seen it happen once in 20 years.

- Chair Spoon said in section C., Temporary Signs, after 90 days we will have the authority to inform them that this sign is now not in compliance and does that include the fabric banner type signs? Ms. Plummer said yes, it includes all signs but political signs or signs deemed as free speech.

- Cahir Spoon asked on page 14.8 in section 14.4 Nonconforming Structures, what if a building was not permitted but was built many years ago, for example, if a garage was built with an apartment above it over 30 years ago, how would we deal with a situation like that? Ms. Plummer said we would first check all of our resources to see if anyone ever knew there was a garage apartment and if that comes back as no, then they will receive notice that they have an illegally operated accessory dwelling and they will either need to get permits for it or remove it. We do this because if anything were to happen in that garage apartment, we the county are one of the first persons the insurance company calls and they will want to see if the structure was permitted and inspected. If we tell them no, then they will not pay the claim, and that is what we try to express to the property owners. Chair Spoon asked once we adopt the UDO will we allow any grace period where we allow people to inform us of what they have on their properties or are we going to go with what we currently have on the books? Ms. Plummer said we work with property owners because there is just no way they know about all of these rules, so we work with them and so will the other departments that issues permits.

- Mr. Andrews said on page 14.9 in section B., Damage or Destruction of a Nonconforming Structure, where did we arrive at the 60% threshold? Mr. Andrews said he does not think 60% or more of the tax value is a clear representation of what we are dealing with as far as flooding or fire damage. Ms. Plummer said 60% is the standard percentage you will see around the state because building materials and supplies is a fluctuating market. Ms. Roodkowsky said she does not understand why it is 60% or more, should it not be 60% or less? Suppose the damage is at 50%, does that mean you cannot rebuild? The logic here does not seem to make sense. Ms. Roodkowsky said if the structure is damaged just 40% or 30%, now is when it needs to be brought up to current regulations, it doesn't seem correct. Ms. Plummer said if a structure was destroyed 60% or more, they can rebuild exactly as it was in the same spot as it was prior to destruction based on this 60% threshold. If it is destroyed at 50%, they can rebuild it, but it will need to conform to the current regulations.

- Ms. Plummer said you are free to change the 60% threshold if you feel it is too much or too little. Chair Spoon said if the 60% threshold is consistent throughout the state it would be interesting to understand the logic behind it. Ms. Roodkowsky said she is concerned about the person who has 45% of damage and because of this regulation, the cost of construction will be much higher do to making it a conforming structure. Ms. Roodkowsky said if this is the common standard then we should keep it, but the logic is not clear because it could put more of a burden on someone with lesser damage. Chair Spoon said we do not want people to resist calling the fire department because they need more than 60% of their structure to burn. Ms. Plummer said we can dig into this a little more and show you an example of what this looks like.

- Chair Spoon said on page 14.9 in section 14.5, Nonconforming Uses, will people need to declare the use of their property at the time of the adoption of the UDO or is there going to be an opportunity for that? Ms. Plummer said for anything non-residential that is existing we have tax records and fire records, the chance of us not knowing of one is slim to none. If something does come up and we cannot verify it and they cannot verify it, then they will be required to conform. Chair Spoon said he knows there will be a lot of rezoning and will there be a window for declaration of uses? Ms. Plummer said yes it will be just like when we did the countywide zoning in the past.

- Mr. Andrews asked on page 14.10 in section 14.5.5.B., for an example of a nonconforming use changing to another nonconforming use? Ms. Plummer said let us say there is an auto repair shop in a district that is not allowed based on zoning regulations that has been operating for 20 or 30 years. That is a legal nonconforming use. What they cannot do is say they are tired of being an auto repair shop and now want to be a hair salon, if that use is not allowed in the zoning district, then they will not be allowed to do that. Mr. Andrews agrees with this section but wants to make sure there are not any gray areas, such as if it is an auto repair, but now we want to be motorcycle repair, or an auto body shop. Ms. Plummer said we would consider those similar activities and would be allowed. Chair Spoon said he had a question in section 14.5.4.A. about the extension of nonconforming uses, if someone sells the repair shop and as long as the new owner continues to use it as a repair shop, that is allowed as long

as they do not change the footprint of the building? Ms. Plummer said that is correct because it is not tied to ownership.

- Mr. Andrews said on page 14.11 in section 14.5.7, “Discontinuance of a Nonconforming Use, we are allowing for 365 days and in the example, it says, “the failure to rent one apartment in a nonconforming apartment building for 365 days does not result in a loss.” Mr. Andrews stated in the real estate game people can get tricky. Let us say we have a nonconforming commercial building up for sale and they can take up to 2 to 3 years to sell, could the owner put it up for rent at an unreasonable amount and get the extension for the nonconformity? Something like this happened a few years ago, someone wanted to build a residence on the piers in Beaufort, NC, and only commercial was allowed. They asked if they put a commercial building on the property with a residence above it and the Planner said that was okay to do. So, they build this beautiful house and below it was a restaurant at which he posted for rent at $40,000 per month when the market was $10,000 per month. The property owner complied with it but made the rent so high nobody would ever fill the commercial space under his house. Mr. Andrews said he could see the same thing happening here where they are nonconforming and ask for an unreasonable amount for rent. Ms. Plummer said the example in the UDO may not have been the best one to use because this is referring to an apartment unit within an apartment complex. If that unit has not been rented for more than a year, it does not take away the right to use it for an apartment. Ms. Plummer said this example is a little misleading. Ms. Plummer gave this example if there was a mobile home park in the county, and nobody has lived there for over 365 days. Because mobile home parks are no longer allowed in the county, they are considered nonconforming by zoning districts rights, they no longer have the right to use it as a mobile home park anymore, it would revert back to R1 zoning.

- Ms. Roodkowsky asked to discuss the 60% or more damaged in section 14.5.6.B. What if we were to remove the phrase 60% or more property taxed value? Ms. Plummer said let us say the auto repair shop caught on fire and 60% or more of that building has to be rebuilt, they are allowed to do that with approved permits to the state it was in before the fire, they do not need to be brought into current regulations and use it they way it was. Ms. Roodkowsky asked, but if it is only 40% damage, what happens to them? Ms. Plummer stated they will need to bring it into compliance with the current regulations. Chair Spoon said we could have it read if it is damaged it can be rebuilt to its previous status, that would remove the percentage threshold. Chair Spoon said he would like to know more as to why 60% is used throughout the state and what are we opening ourselves up to if we just say you can build the structure back just the way it was regardless of the amount of damage. Ms. Plummer said we will get more clarity on this subject. Ms. Roodkowsky said if a building was damaged at 90%, it would be more ideal to bring in into compliance at that point, rather than a low percentage. Chair Spoon said the historical courthouse burned and it is not clear as to what the percentage was of that damage, but they were allowed to build it back exactly the way it was, and despite the cost, that is how people wanted it to be handled and we need to be able to accommodate this like that in our code.

Chapter 15 Enforcement:

- Chair Spoon asked if anyone had any big picture comments regarding this chapter. Chair Spoon asked can we make UDO compliance a prerequisite for recording properties with the Register of Deeds? Ms. Plummer said we have battled this before and the Register of Deeds Official informs us that that the state says a person can file a deed however and whenever they want it, even if it goes against current regulations. Ms. Plummer said when they decide to build something is when they normally get caught. Mr. Andrews asked what happens when plats and easements recorded on deeds that are not on the plat slides? Ms. Plummer said this does happen and when they come into the Planning department and nothing is officially mapped, it is between them and their land use attorney if they want to have it officially mapped, a title search would be required and a survey of the property if they want to utilize it.

- On page 15.4 Chair Spoon said in section D, “Making a Lot or a Yard Nonconforming.” This probably happens a lot where people decide without any approval to add a pool or a patio to their home and made

their lot nonconforming because they do not have the required permeable space or setback for those things. Ms. Plummer said in the watershed regulations residential uses are not typically complied with built upon areas. In the definition section we only enforce structures and buildings within those required yards. Patios and inground pools are something we do not regulate, but if they decide to put in a pool house or a deck around that pool, that would be regulated. Chair Spoon said we have seen these issues, but they are coming from HOA's who are enforcing their rules. Ms. Plummer said that is correct. Mr. Andrews asked if there is ever a point where something happens when the HOA has enforcement, but whatever did happen made it out of compliance with the county regulations? Ms. Plummer said we are currently dealing with a situation in Briar Chapel right now. That neighborhood has an overall impervious surface maximum limit of 24%, and one of their landscaping contractors put some metal storage pods in their open space. Because of the way this development was approved, open space must stay as open space, nothing can be used. This is something we would regulate. Now, if those pods were placed on existing impervious surface, that would fall on the HOA and we as the county would not get involved.

- Chair Spoon said in section E, "Increasing the Intensity of Use," what if a business is under new management and is operated better and due to that there is more traffic and more perceived intensity, but nothing has changed in the nature of the business, would this trigger and concerns or enforcement action? Ms. Plummer said it would not trigger anything from the county unless they added more parking area or signage, that is when we would get involved.

- Chair Spoon said in section L, "Conveyance of Land Without Approved Plat," why would the sale or use of land even be possible for what is described in this section? Ms. Plummer said this takes us back to the legality of the Register of Deeds Official.

- On page 15.5 Chair Spoon said he is sure the highlighted ellipsis will be filled in eventually. Ms. Plummer said yes, they are working on that and want to make sure we have specifics.

- On page 15.6 Chair Spoon asked 15.3.2. in section 4, "establish the number of days within which the person must correct the violation," will we develop a standard table for how many days for certain violations or will this be completely discretionary? Ms. Plummer said it is not discretionary, we are strictly instructed by the North Carolina General Statutes on the timeframes we have to give. Chair Spoon said we should reference the General Statute timetables here if we can. Ms. Plummer said it should be later on, but we will add it.

- On page 15.8 Chair Spoon said in section 15.3.4.B, "otherwise, staff must secure an appropriate inspection warrant," is this something outside of the legal system where there is an inspection warrant that is enforceable to gain access to property? Ms. Plummer said yes, we are allowed access to the front door and the curtilage around the dwelling or structure. If the property owner tells us to leave, we must leave. If the property has no trespassing signs posted, we cannot enter the property. We then go to the magistrate and pull an administrative search warrant and that has to be delivered within 24 hours with a sheriff deputy and then we can conduct our business, this is all under the General Statute. Ms. Roodkowsky asked about the $500 a day fine. There is a huge difference if this is a fine for someone's house opposed to a large corporation. Chair Spoon said he agrees and thinks this should be a sliding scale based on the cost of the project or property. It should get their attention without drowning them in debt. Ms. Plummer said this particular one we are discussing is when a stop work order has been posted on a property. That means there is an immediate threat to safety, health, and welfare of the area. This is for the really serious stuff and is tied into the building code. This comes from the General Statute for these types of situations. Our notice of violations (which have a set amount from the state), if they do not come into compliance after a notice of violation and we have to issue a citation, it is $50.

- On page 15.9 in 15.4.4 section B, Chair Spoon asked if they would still pay any penalties, they incurred from acting prematurely? Ms. Plummer said not generally because we will have this figured out before the 30 days is up.

- On page 15.10 Chair Spoon asked if there is any monetary penalties for premature timber harvesting? It is clear we can keep a property owner from development for 3 or 5 years, but do we have any fines or penalties? Ms. Plummer said she does not think we can because of property rights. The only way we can have any recourse is to hold any type of development. Mr. Andrews asked if there was a property owner that had 100 acres and they clear cut the property legally, but then sell the land and the developer decided to make it an equestrian development, will they have to wait to develop that subdivision? Ms. Plummer said they would not have to wait to start development. Chair Spoon asked if someone cleared the land a month before they sell it because they want to get as much money out of it as they can, are they giving the new owner this 3 to 5 year pause because of what they did and is there any way we can penalize the seller for that? Ms. Plummer said yes, the new owner is stuck, this is what happened in Vickers Village, and we cannot do anything to penalize the seller. Chair Spoon said he would like to see if there is any way we can prevent those things from happening.

- Chair Spoon asked on page 15.10 in section D, Appeal of Revocation," if something is approved and things start to go bad, the staff will recommend revoking the development approval and that will make the applicant go through the whole process again like the public hearing, or will it be handled administratively? Ms. Plummer said it could be both. If it is a large development we will go through the process with the BOC, if it is something small, we can handle administratively. Chair Spoon asked about the appeal process and confirmed our Board of Adjustment can override the BOC decision. Ms. Plummer said that is correct, it is General Statute.

- On page 15.12 in section C, "Payment of Citation," where we are giving them 15 days to comply, there must be violations that require more than 15 days to remedy, is this enough time? Ms. Plummer said the citation comes after the notice of violation, so we have already been working with them for that 30-day period. If they do not pay, then we move to the $50 a day fine. Chair Spoon asked if there is a point where we do not let people apply anymore within the county? Ms. Plummer said not that they cannot apply anymore, but we will eventually take someone to civil court and we could take control of the property.

- Chair Spoon asked if we have the authority to send people to jail for being unlawful with their property? Ms. Plummer said before Chapter 160 D was adopted, there was a provision that allowed us to issue Class 1 felonies and if they failed to comply and went to court, the judge could sentence to jail. Now, there have been modifications and only misdemeanors are the penalties not felonies.

Chapter 16 Rules Of Interpretation & Measurement

- Chair Spoon asked if anyone had big picture comments for this chapter. Chair Spoon said we need to have an up-to-date live digital map to accompany all of this and that could be a big undertaking. Ms. Plummer said when we go through the mass rezoning there will be a new digital map put on-line.

- On page 16.4 Mr. Andrews said in section C. 10, there are terms of property owners and will this encompass entitlement contracts, where we have an applicant that is not the property owner, they have the legal representation. Ms. Plummer said yes.

- On page 16.5 Ms. Roodkowsky said in section B,2. a. "Stricter Standards in Other Statutes, Ordinances, or Regulations," this seems to contradict with section B.1. There should be something added to the beginning like, when stricter standards appear in other statutes and regulations, this UDO is not intended to interfere with them. The language needs to be clearer.

- On page 16.7 Mr. Andrews said in section E, "Boundaries That Split an Existing Lot or Parcel," with the new zoning will they be allowed to pick what jurisdiction that want the parcel to be? Ms. Plummer said there is an example with a piece of property on the Chatham and Orange County line, they wanted to build a daycare and if the building was on the Orange side, Chatham was going to relinquish the parcel to Orange

County control. The same thing happened near the Harnett County line as well. Mr. Andrews asked what about municipalities ETJ like Pittsboro? Ms. Plummer said those are hard lines set by the state. Mr. Andrews said he thought there was a new ruling that the parcel owner could pick their jurisdiction. Ms. Plummer said if that is the case it needs to be clearly stated in the UDO.

- On page 16.8 Chair Spoon said this is the area he is trusting experts that they are using intelligent developed ideas from somewhere else or themselves. Mr. Andrews stated in section 16.4.3.3., the definition of what an acre actually is. In the real estate business, we are getting significant differences on old surveys and new surveys with change in acreage because of satellite areal survey or points and iron that are set rather than the old rod and chain. We need a clear definition and will we be enforcing the new survey? Ms. Plummer said it might be beneficial to put in a comment to have based on the most current, reliable survey or something like that. Mr. Smith said he agrees it should be the most current reliable data.

- On page 16.11 Chair Spoon said he would like to limit the height of a mast you can place on top of a structure.

- On page 16.12 Mr. Smith asked in section 16.4.8.C., "Lots on Cul-de-Sacs," some municipalities have minimum lot widths at the building lines and some at the Right-of-Way lines, how does this group feel about the difference? Ms. Plummer said the front setback is set at the front property line.

- On page 16.13 Chair Spoon said in section 16.4.9.B., "How to Calculate Net Land Area," if you have a half-acre pond that counts as land, but is you have a 1.2-acre pond you subtract that from the land area, is that how this operates? Ms. Plummer said that is correct and the way it is currently written.

- On page 16.5 Mr. Andrews said in section F. "Encroachments," is there any relief given to the applicant when they are the victim of encroachment? Ms. Plummer said the applicant would not need to bring anything into compliance, it would be the neighbor who is in violation.

IV. NEXT MEETING & DISCUSSION TOPICS

Chair Spoon said the next meeting will be held on April 25, 2024.

- Mr. Mullis showed the UDO subcommittee all of the chapters that have already been reviewed and said the only chapter left for review are chapters 12, 13, and 18.

V. ADJOURNMENT

The UDO subcommittee was adjourned at 8:29pm.