

SUMMARY NOTES
ORANGE COUNTY PLANNING BOARD
NOVEMBER 3, 2021
ORDINANCE REVIEW COMMITTEE

NOTE: A quorum is not required for Planning Board Ordinance Review Committee meetings or Training Sessions.

Due to current public health concerns, the ORC meeting/training session was virtual. Members of the Planning Board and staff participated in the meeting remotely.

MEMBERS PRESENT: David Blankfard (Chair), Hillsborough Township Representative; Adam Beeman (Vice-Chair), Cedar Grove Township Representative; Lamar Proctor, Cheeks Township Representative; Kim Piracci, Eno Township Representative; Carrie Fletcher, Bingham Township Representative; Statler Gilfillen, At-Large Representative; Randy Marshall, At-Large Representative; Susan Hunter, Chapel Hill Township Representative; Whitney Watson, At-Large Representative; Melissa Poole, Little River Township Representative; Charity Kirk, At-Large Representative;

STAFF PRESENT: Perdita Holtz, Planning Systems Coordinator; Michael Harvey, Current Planning Supervisor; Ashley Moncado, Planner II; Tina Love, Administrative Support

AGENDA ITEM 1: CALL TO ORDER

AGENDA ITEM 2: UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENTS – DECRIMINALIZATION OF ORDINANCE VIOLATIONS- To review proposed UDO amendments in response to Session Law 2021-138 (Senate Bill 300) which decriminalized violations of certain types of ordinances, including ordinance regulating planning and development.
PRESENTER: Michael Harvey, Current Planning Supervisor

Michael Harvey gave the Planning Board members background and information regarding the need to amend the UDO in response to legislative changes regarding decriminalization of violations as it related to some planning and development land use regulations and answered questions.

Charity Kirk: We have to do this because the state has made a law change, we don't really have a choice.

Michael Harvey: Correct, state law now says you can no longer do this (i.e. impose criminal penalties) to enforce a land use regulation. We're engaging in an ordinance amendment to make sure we are consistent with state law.

Lamar Proctor: You are still permitted to seek criminal charges for some violations, right?

Michael Harvey: Correct, we still have legal authority to seek a criminal charge for a violation of erosion control and flood plain regulations.

Statler Gilfillen: This is mostly procedural and you've not had experiences in the past where you've ever had to formally file a criminal charge.

Michael Harvey: Correct, in 25 years as a planner and being an enforcement officer, I have never filed a criminal charge for violation of land use regulations.

Statler Gilfillen: As an extreme hypothetical, if someone had 100 acres and decided to bring in truckloads of nuclear waste and dump it in the middle of the property and they do it consciously and willfully, where does something like that fall?

Michael Harvey: We would seek an order of cessation and abatement through the court system. We could not seek criminal charges any longer. The federal or state governments may be able to seek some sort of criminal redress but we cannot.

54 Perdita Holt: The UDO deals with land use issues and there are other laws that apply to nuclear waste being dumped so I
55 don't want people to go away thinking this is the only way for recourse.

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57 Lamar Proctor: As a prosecutor of Orange County for 13 years, I have only had one case referred to me and that was by the
58 Carrboro Planning Department. The criminal court is really poorly equipped to deal with these sorts of cases that deal with
59 injunctions and civil penalties. You are much better off seeking injunctive relief and civil relief. If there's an environmental
60 problem or violation that gets to the level of state statutes, then the State Department of Environment Quality will jump in, the
61 AG's office and I have dealt with that. I had a case once with illegal sewage that was going into a stream. If it gets to a certain
62 level, state authorities would jump in.

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64 Carrie Fletcher: What initiated this?

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66 Michael Harvey: I wish I could tell you. I'm sure that local district attorneys did not want to deal with some of the idiosyncrasies
67 of a land use issue through a criminal proceeding. The burden of proof becomes more difficult for criminal proceedings versus
68 seeking an injunction or getting payment for civil penalty. It's probably an attempt to try to guarantee a more effective use of
69 the court's time. This only impacts the methods available with respect to the enforcement of local land use regulations.

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71 Kim Piracci: Mine is more of a comment than a question. I actually feel better that Lamar feels ok with this because if he didn't
72 feel ok with it I would really feel not ok with it. In my mind there's what's legal and there's what's moral and ethical. Just
73 because the state is saying this, I can imagine a situation where there is a land use violation and it's pretty extreme and this
74 person doesn't care because nothing is really going to happen. Financially, he or she is going to come out ahead by breaking
75 the law so even though we have to do this, I'm going to vote no. I feel like this is a tool that might come in handy sometime
76 somewhere. I'm not trying to convince anybody else that they have to vote my way, I'm not getting it.

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78 Michael Harvey: I respect your opinion. Unfortunately, this is not something that we're going to have the authority under state
79 law to pursue. I'm not saying that you are not entitled to your opinion and I'm certainly not saying you are wrong in an attempt
80 to diminish the value of your opinion. What I am saying is that the law no longer gives me this as a viable option to address an
81 identified violation of a local land use law. This is what I've been asked to do, state law no longer gives me the authority to do it
82 so we are eliminating it because state law has taken it out of our toolbox.

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84 Kim Piracci: Right, and it doesn't matter how we vote the County Commissioners are going to do what they need to do
85 anyway.

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87 Michael Harvey: Where we have violations that transcend land use issues, we've always had willing partnerships at the state
88 level to assist us and we not only involve state offices but also Orange County Solid Waste. I think that we have enough
89 arrows in the quiver to address the problem and effectively guarantee compliance. Yes, there's a component of the
90 enforcement strategy being eliminated, I don't think it's that effective.

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92 Lamar Proctor: I do think that the State Legislature seems to have streamlined things for developers to make things easier for
93 economic development and I think part of that is because developers and lobbyist didn't want to be subject to criminal penalties
94 if something goes sideways on a land use thing. It could be an attempt to remove any threat for criminal prosecution. I do
95 understand Kim's point. Removing criminal penalties for egregious land use violations feels wrong but I agree with Michael
96 that most DA offices don't want to deal with those sort of cases. This doesn't strike me as giving away the environment.

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99 **AGENDA ITEM 4: ADJOURNMENT**

100 The ORC session was adjourned at 8:04 p.m.

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