

**A RESOLUTION SPECIFYING FOLLOW-UP TO THE DISCUSSION WITH LOCAL
FARMERS REGARDING CONCERNS WITH REGULATIONS**

Resolution No. 150/2008-09

WHEREAS, the Board of Aldermen heard of local farmers meeting to discuss concerns associated with regulation..

NOW, THEREFORE BE IT RESOLVED by the Carrboro Board of Aldermen that the Aldermen has received the farmers' comments, articulated several questions, and requests staff follow-up.

notes on some farmer issues

From: Matthew Barton [matthew.barton@ieee.org]
 Sent: Sunday, May 17, 2009 6:13 PM
 To: Heidi Paulsen, 1st Vice Chair, Carrboro Planning Bd; Damon Seils, 2nd Vice Chair, Carrboro Planning Bd; Patricia J. McGuire; Lydia Lavelle - Carrboro Alderman; Thelma Paylor; James Carnahan - Carrboro Planning Bd; David Clinton; David Shoup; Rich Bell; Rose Warner; Debra Fritz; Susan Poulton - Carrboro Planning Bd; Sharon Cook; Matthew Barton
 Subject: notes on some farmer issues

Hi,

I attended an informal meeting called by several local farmers, where the following concerns were raised, which are directly relevant to the farm code topic we are scheduled to discuss on Thursday. The farmers presently farm on land in Carrboro ETJ, some which is within the watershed restricted area, and some outside it. There was some general concern about loss of farmland in NC due to development pressure by builders, and hard times. What follows are the specific concerns I heard.

1. are there any intentions to create Carrboro-specific rules applying to fertilization of farmland? How will the current state-Durham-CH-Carrboro area rules aimed at Jordan Lake affect them?
 The participants state they already comply with state and EPA regulations, not to mention the economic incentive to be as sparing with fertilizer as possible. They are concerned that suburban and urban development places an intense fertilizer and storm water runoff burden generally and on Jordan Lake, and the small percentage of that burden currently used by the farms in the ETJ might be subject to some kind of rule change which reduces their ability to fertilize crops, in order to benefit the town residents who have immaculate heavily fertilized lawns.
2. are there any intentions to prohibit or otherwise limit livestock on farms within Carrboro jurisdiction?
3. ability to house laborers, farm families, apprentices, or any other people useful to continue with farm operations in a changing marketplace.
4. ability to subdivide land as an ongoing process over many years, (for example to allow children a home, or to sell to a developer for retirement money), without losing the right to eventually reach the maximum number of subdivided parcels which are allowed. The concern is that Carrboro has some kind of ordinance relating to a one-time right to subdivide the parcels which existed in a certain year, and how the current rules seem to contain a 'gotcha' mechanism which could be easily overlooked in the process of a subdivision, thereby losing the right to further subdivide. A detailed discussion is in a memo from Mike Brough titled "Interpretation of LUO 15-181(b)", Apr 23, 2008 and it would be useful to have that memo.
5. why, when Carrboro gains the right to regulate farms by having an ETJ, did it not create a farm code which would make clear the rules for farmers, so they do not have

notes on some farmer issues
to
worry about possible changes in town rules?

Regards,
Matthew Barton

From: MMKille@aol.com
Sent: Monday, May 18, 2009 5:21 PM
To: matthew.barton@IEEE.ORG
Cc: robandann@nc.rr.com
Subject: fwd: May 17th MEETING SUMMARY: Southern Orange County Farm and Land Owners Comm.
Attachments: "AVG certification"

MEETING SUMMARY: SOUTHERN ORANGE COUNTY FARM AND LAND OWNERS COMMITTEE

Held: Sunday, May 17, 2009 at McDougle Public Library
Guest Speaker: Matthew Barton, Chairman, Carrboro Planning Board

Public Hearing scheduled by Carrboro Planning Board, review to begin at 8PM, Thursday, May 21, 2009

The following matters were discussed and agreed upon unanimously by membership during the May 17 meeting:

1. Area farmers expressed general concern about the significant loss of farm land to urban development within NC (650,000 acres reported by NCDA&CS in Feb. 2009), and particularly within the Carrboro/Chapel Hill area. Discussed also was OWASA's 1989 projection that then-current 11% watershed acreage dedicated to farming (7% pasture; 4% crops) is approaching OWASA's projected reduction of 0.5% because of continuing development pressures.
2. Carrboro ETJ/WR area farmers support implementing a version of the Text Amendment to allow accessory dwellings proposed on May 7, 2009
3. Farmers demand the right to house laborers or related family members in accessory dwellings because doing so is essential to operating farms successfully, and for providing critically needed back-up and emergency supervision.
4. Farmers want assurance that Carrboro will not regulate the use of fertilizers on legalized farms in the future whereas farms already must comply with State and EPA regulations. They indicate that the high cost of fertilizer (recent doubling) is more than adequate incentive to use fertilizers as sparingly as possible at all times and according to State lab recommendations.
 - a. Farmers seek an explanation of how changes in the current and future management of Jordan Lake and the Cape Fear River Basin are likely to impact local farming? And seek assurances that their disproportionately fewer numbers will not be disregarded by the majority in favor of urbanization.
 - b. Farmers do not wish to be subjected to restrictions by Carrboro which they view as not having the expertise to oversee fertilizer, annual and seasonal implications, and soil maintenance. They also view Carrboro as having a pro-development bias.
 - c. Farmers expressed concern that continuing urban development will increasingly shift the burden for urban storm water (contaminant) run-off onto ETJ farm land. And that the relatively small percentage of the EPA allowance that farms currently use will be transferred to benefit urban residents known to routinely over-fertilize lawns, at the expense of farm preservation.
5. Southern Orange County/ETJ/watershed farmers do not support Carrboro's "one time right to subdivide" rule which Orange Cty reportedly abandoned in 1988. Similarly, they feel entitled to subdivide successively over the years provided each subdivided parcel meets applicable zoning and building codes. Preserving these options ensures that, as future farming needs change, owners can satisfy taxes and farm related indebtedness without losing their entire farms, homes and livelihoods. [SEE Memo entitled: "Interpretation of LUO 15-181 (b)"; April 23, 2008 by town counsel, Mike Brough.
6. Farmers are concerned that Carrboro will eventually impose limitations on the keeping of livestock as another way to transfer the burden for storm water run-off, as has begun in other NC communities where expanding municipalities have begun imposing Residential Codes on longtime farms, and thus driving them to extinction.
7. Farming needs are distinctly different from those of urban needs. Why did Carrboro not create a Farm Code when the State transferred jurisdiction from counties to municipalities in the 1980s. Area farmers want a Farm Code implemented now.
8. Farmers want Carrboro to cease imposing its Residential Code upon ETJ/W-R farms so that they can feel confident about the future without feeling threatened unreasonably by municipal regulations.
9. Farmers feel that Carrboro's urban leadership fails to comprehend and to provide for the needs of the area's farming community.

43 described matrix he had formatted from information provided by Clinton and Carnahan. Noted that there
44 was not much overlap; seems like product is more complicated than envisioned. This was noted as
45 especially important so that the matrix could define and guide and make the desired types of development
46 much easier. Bell described that some local governments are selecting LEED Neighborhood Development
47 (ND) as their potential standard. LEED ND is now in its second round of public comment; enactment of
48 the program is expected soon. This strategy makes the US Green Building Council the responsible,
49 enforcing party and some see this as legally problematic, so a local approach may be for the Town to seek
50 and take on an enforcing role. Main point is that if there is already an excellent, flexible, standard that
51 pushes for better development, and makes it easier, we should consider using it. A few concerns to this
52 idea were noted: LEED ND is still draft; the Town's existing regulations might exceed LEED; might wish
53 to keep the Town's standards, if more stringent and add in other standards from LEED that are not at all
54 or are not sufficiently met; LEED ND is extensive with broad scope and applicability, but many standards
55 may not apply; LEED itself is largely information-gathering process, but the process is one that seeks
56 monitoring to evaluate performance.

57
58 General discussion included the following comments: Revisit why this process was started – to make it
59 easier, clear, expedited and therefore less expensive for folks to receive approval if they incorporate
60 desired environmental features or establish a higher minimum standard for all development. There was
61 some worry that a homegrown approach will take a longer time to get to rigor that comes with LEED
62 right out of the box. PB members need to review LEED ND. Put LEED in a matrix that PB can
63 review/work in. Look at LUO, find what is good, find what is missing, and change through text
64 amendments; if necessary.

65
66 Specific comments were offered on draft preface - include particular examples of local weather conditions
67 faced now rather than statements about possible extremes. Need for the preface to include strong,
68 negative, expected consequences of global warming/reduction in oil supply was emphasized.
69 Barton will provide document to Carnahan in an editable format. Planning Board will continue discussion
70 of this item.

71

72 IV. NEW BUSINESS

73 A) Discussion of Town Code Provisions and barking dogs/tethering - McGuire informed the PB
74 that she did not prepare a formal report for this discussion, had placed a call to the Police Department on
75 the subject and is waiting for them to get back to her. Carnahan reported that he had called in several
76 problems with barking dogs and a tethered dog, that the Animal Control officer and police had responded,
77 but the regulations did not seem to provide sufficient mechanisms to deal with the problem. The penalties
78 seem low and could be increased, and the lack of an ordinance on tethering seems problematic. Carnahan
79 stated that he would like to make a recommendation to the Board of Aldermen on tethering. PB members
80 discussed the issue with some mention of whether this topic was within the purview of the PB. Lavelle
81 and others stated that it could be; if the Board of Aldermen eventually received a PB recommendation,
82 they would likely also send it to other boards if they wished. Carnahan and Seils will discuss further with
83 plans to bring a possible recommendation to a future PB meeting.

84

85 B) Discussion of possible farm code – McGuire prepared a packet of information for the
86 discussion, including: maps showing properties in 'use value' for agricultural purposes, per the Orange
87 County Land Records data, and an accompanying list of parcel information; an interpretation memo from
88 Town Attorney, Mike Brough, on the subdivision of lands in the University Lake watershed in relation to
89 May 15, 1990 establishment of current University Lake watershed regulations; a memo from Trish
90 McGuire for the Board of Aldermen responding to questions Sharon Cook raised at the public hearing on
91 the Kille watershed residential subdivision in October 2008. Questions and replies (in
92 parentheses) were as follows:

FN: pbmin_5-21-09_ADOPTED

93
 94 Is the web address in the handout? (No. McGuire will send web address for farm use provisions in
 95 General Statutes.) Does use value include properties with and without residences? (Yes, there is a method
 96 for extracting a portion of the property (for assessment at full value) that is used for residential purposes.
 97 The "1" code represents those with residences and the "2" code those only agricultural). Does the list
 98 include property in and out of the watershed? (Yes.) How many of the 44 are ETJ? (All shown on the
 99 southern map). Should the Planning Board discuss what it wishes to accomplish before looking at the
 100 properties further? (Looking at maps helps PB learn the facts about where farms are located and some of
 101 the other issues that have been raised about farming.) Does the right to subdivide go with the tract? (Yes,
 102 it runs with the land). Why does memo say that you don't lose the right, but then says that if a note
 103 regarding the right is not included, the right is lost? (This is an administrative issue; the record needs to be
 104 clear so that in the future someone would not try to argue that the right was available to more than one
 105 lot). If a farmer has two children and gives each a lot in the University Lake watershed, WR district, is
 106 one left with no right to subdivide? (The farmer can allocate some of the remaining property to each lot,
 107 but the limit for the 2-acre lots is five.) The memo seeks to make clear that people with lots in the
 108 UniversityLake watershed, WR district that existed in 1990 did retain some right to subdivide lots that are
 109 smaller than the 5-acre minimum lot size? (Yes.) If there was a farmer with children and grandchildren,
 110 that family cannot use their property the same way property owners outside the watershed can? (That is
 111 correct; regulations for the ULake watershed are different from areas outside the watershed (e.g. require
 112 larger lots and separate lots for each residence). Is there a fee for watershed subdivisions? (\$300 fee for
 113 conditional use permit for subdivision. Staff will check if others.) Farmers need to spend a lot of money
 114 and hire an attorney? (A surveyor is definitely needed for the subdivision, some stormwater engineering
 115 may be involved; will need to check to see further need for professional services related to watershed
 116 subdivisions.)

117
 118 What is the difference between ETJ and Transition Areas? (town has three types of jurisdiction.) Are
 119 bona fide farms in Transition Areas subject to county exemption? (Yes) Bona fide farms in ETJ and
 120 Town limits are subject to town's regulation? (Yes). Clarify limits of ETJ? (Most of ULake watershed,
 121 except for Winsome Lane, property just south of it, watershed commercial out on Hwy 54, and PH
 122 Craig's property near Bolin Creek.) Is it right that the text amendment that was proposed for barn
 123 apartments would apply to 18 owners, if you took out PH Craig and the NC 54 piece? (Not sure, have not
 124 checked this list against the parameters in the draft ordinance.) Sounds like there is land in active farming
 125 use that is not amongst these parcels in use values? (Staff would be surprised if folks are not taking
 126 advantage of use value. Karen McAdams does find some folks who have less than 10 cleared acres or
 127 are farming someone else's land who are those that we are talking about. Most is probably in use value, as
 128 allowed by state law, but as local food movement grows, expect more small farms that would not qualify.
 129 The issue of reducing the acreage has been taken up in committee, but did not advance. Orange County's
 130 Farmland Protection Plan is addressing preservation of small farms/economic viability, et cetera. Staff
 131 will seek copy to share with PB when it is available.)

132
 133 It was requested that the PB clarify what it hopes to prepare when discussing a 'farm code,' that this does
 134 not need to be a stand-alone document, but should result from a review of what is done presently and
 135 responds to concerns. Barton referenced summary notes of farm community meeting that he had
 136 forwarded to PB members. McGuire briefly summarized the Town's responsibilities for nutrient
 137 management, noting that the Town did not have pending requirements from state/federal mandated for
 138 regulating nutrients for farmers, but did have responsibilities for nutrients from existing and new
 139 development. The Town is not mandating changes to fertilizer/nutrient application for farmers. The Town
 140 will be required to comply with new rules for Jordan Lake (nutrient management noted above) in the
 141 future; regulations complying with the pending rule have not yet been prepared.

143 The floor was opened to speakers from the audience. Marilyn Kille described the historical use and
144 current fertilizer management and water quality monitoring on her property. Kille noted that the memo
145 relating to watershed subdivisions was prepared by the Town Attorney in April 2008 in response to her
146 request for information on subdividing her property, that she had not known that a major subdivision of
147 her property was required in order to place the illegal barn/apartment on a separate lot, that the need to
148 include a note reserving right to subdivide additional 2-acre lots in the future (per the April 2008 memo)
149 did not establish a precedent for other farms, that a major subdivision of her property was viewed as a
150 commercial use by mortgage lender and therefore opened up her mortgage to possible increases, that the
151 limitation of accessory units creates a burden to farmers by requiring a major subdivision, that
152 Commissioner Yuhasz stated that Kille's property would be taken into the Town of Carboro sometime in
153 the future and that Kille expected this and was prepared for this and wanted it to be above-board. Kille
154 also stated that she disagreed with the details of the chronology in the January memo responding to
155 Cook's questions, particularly the date of her submittal of the LUO amendment request and application
156 fee.

157
158 Barton noted that the PB should review the material that has been provided. Staff will continue to follow
159 up on the questions that have been raised. PB will continue discussion at the next meeting. Clarifications
160 regarding the size limit from OC on accessory apartments, if applicable, the definitions of accessory
161 apartments and accessory dwellings that are allowed on farms in OC's part of the watershed, role of
162 impervious surface in major subdivisions.

163
164 C) Discussion of Carolina North Traffic Impact Analysis – suggesting that this item be
165 rescheduled for June 4, 2009 meeting, particularly the traffic impact analysis and the Village Project
166 report.

167
168 V. **OTHER BUSINESS** – None was noted.

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170 VI. **ADJOURNMENT:** There being no further business, Seils moved for adjournment and it was
171 unanimously approved at 21:52 p.m.

MEETING WITH FARMERS

Alderman Coleman asked that Mayor Chilton speak with the Planning Board chair relaying the Board of Aldermen's desire to have farmers with concerns about the land use ordinance, address the Board of Aldermen with those concerns.

MOTION WAS MADE BY DAN COLEMAN AND SECONDED BY LYDIA LAVELLE THAT MAYOR CHILTON SPEAK WITH ROB HOGAN TO LET HIM KNOW THAT THE BOARD OF ALDERMEN WOULD LIKE FOR FARMERS TO ADDRESS THE BOARD OF ALDERMEN ON JUNE 16TH ABOUT ANY CONCERNS THAT THEY MIGHT HAVE. VOTE: AFFIRMATIVE ALL
