

MINUTES
CHATHAM COUNTY BOARD OF COMMISSIONERS
REGULAR MEETING
MARCH 18, 2002

The Board of Commissioners ("the Board") of the County of Chatham, North Carolina, met in the Superior Courtroom, located in Pittsboro, North Carolina, at 7:00 PM on March 18, 2002.

Present: Chairman Gary Phillips; Vice Chair Margaret Pollard; Commissioners Bob Atwater, Rick Givens, and Carl Outz; County Manager, Charlie Horne; County Attorney, Robert L. Gunn; Assistant County Manager, Paul Spruill; Finance Officer, Vicki McConnell; and Clerk to the Board, Sandra B. Sublett

The meeting was called to order by the Chairman at 7:06 PM.

The Chairman reviewed the items that were discussed during the work session held prior to the Regular Board meeting.

AGENDA

The Chairman asked if there were additions, deletions, or corrections to the Agenda.

The County Manager asked that consideration of a request to hold a public hearing on a Resolution Authorizing the Filing of an Application for Approval of a Financing Agreement for Repair of Moncure School be added to the Agenda as Item #21A; and that consideration of a Resolution Authorizing a Grant Application to the Land and Water Conservation Fund for Matching Funds to Develop the Southwest Community Park, be added to the Consent Agenda as Item #11B.

Commissioner Pollard asked that an appointment to the Solid Waste Advisory Committee be added to the Agenda as Item #25A.

Commissioner Atwater asked that an appointment to the Economic Development Commission be added to the Boards and Committees section of the Agenda.

Commissioner Pollard moved, seconded by Commissioner Outz, to approve the Agenda with the noted requests. The motion carried five (5) to zero (0).

CONSENT AGENDA

The Chairman asked if there were additions, deletions, or corrections to the Consent Agenda.

The Chairman asked that Item #2, Tax Releases, be removed from the Consent Agenda pending clarification from the Tax Administrator, and placed on the Agenda at the next meeting.

Commissioner Givens moved, seconded by Commissioner Pollard, to approve the Consent Agenda with the noted request. The motion carried five (5) to zero (0).

1. **Minutes:** Consideration of a request for approval of Board Minutes for meetings held February 18, 2002 and Work Session held February 18, 2002

The motion carried five (5) to zero (0).

2. ~~**Tax Releases:** Consideration of a request for approval of tax releases~~

This item was removed from the Consent Agenda pending clarification from the Tax Administrator to be returned to the Board at a later date.

3. **Refunds on Tax Bills:** Consideration of a request for approval of refunds on regular tax bills paid in error, attached hereto and by reference made a part hereof.

The motion carried five (5) to zero (0).

4. **Resolution for the Addition of Street or Road to the North Carolina System of Secondary Roads – Charlie Perkins Road:** Consideration of a request for approval of **Resolution #2002-05 for the Addition of Road to the North Carolina System of Secondary Roads – Charlie Perkins Road**, attached hereto and by reference made a part hereof.

The motion carried five (5) to zero (0).

5. **Private Road Names:** Consideration of a request to approve a request from citizens for the naming of private roads in Chatham County as follows:

- A. **Hoke Brooks Road**
- B. **Mudlick Trail**
- C. **Oldsmobile Drive**
- D. **Smoky Hollow Trail**

The motion carried five (5) to zero (0).

6. **Request to Set Public Hearing on Naming of State Maintained Roads:** Consideration of a request to hold a public hearing on April 1, 2002 to receive comments on the naming of three (3) State maintained roads in Chatham County as follows:

- 1993 Old Christian Chapel Road**
1823 Henry Webster Road
1756 Bynum Hill

The motion carried five (5) to zero (0).

7. **Funds Acceptance for the Health Department:** Consideration of a request to accept funds in the amount of \$10,000 from the Mary Reynolds Babcock Foundation for continued support of the Grassroots Leadership Development Program of the Chatham County Health Department

The motion carried five (5) to zero (0).

8. **Funds Acceptance for the Health Department:** Consideration of a request to accept funds in the amount of \$76,451 from the federal Safe Start initiative of the Chatham County Partnership for Children to expand the Health Department's Child Abuse Prevention Program, Healthy Families Chatham

The motion carried five (5) to zero (0).

Part II: Consideration of a request to approve the reclassification of a Community Social Services Technician position to a Social Worker II

The motion carried five (5) to zero (0).

9. **Funds Acceptance for the Environmental Health Division of the Health Department:** Consideration of a request to accept grant funds in the amount of \$2,500 awarded to the Environmental Health Division of the Health Department

The motion carried five (5) to zero (0).

10. **Notification of Medicaid Rate Change:** Notification of a change in Medicaid rates for public health departments effective February 1, 2002, attached hereto and by reference made a part hereof.

The motion carried five (5) to zero (0).

11. **Subdivision Final Approval of "Governors Village Townhomes, Phase 1B":** Consideration of a request by Robuck Homes, Inc. on behalf of Governors Club Limited Partnership for subdivision final approval of **"Governors Village Townhomes, Phase 1B"**, consisting of 15 townhouse lots on 1.11 acres off SR #1811 (Governors Drive) in Williams Township

As per the Planning Department and the Planning Board recommendation, final approval of the plat was granted as submitted. The motion carried five (5) to zero (0).

- 11B. **Resolution Authorizing a Grant Application to the Land and Water Conservation Fund for Matching Funds to Develop the Southwest Community Park:** Consideration of a request to approve **Resolution #2002-06 Authorizing a Grant Application to the Land and Water Conservation Fund for Matching Funds to Develop the Southwest Community Park**, attached hereto and by reference made a part hereof.

The motion carried five (5) to zero (0).

12. **Resolution Honoring Ray Womble:** Consideration of a request to approve a **Resolution #2002-07 Honoring Ray Womble**, attached hereto and by reference made a part hereof. The motion carried five (5) to zero (0).

13. **Resolution Honoring Ken Jeffries:** Consideration of a request to approve a **Resolution #2002-08 Honoring Ken Jeffries**, attached hereto and by reference made a part hereof. The motion carried five (5) to zero (0).

Chairman Phillips read both resolutions honoring Mr. Ray Womble and Mr. Ken Jeffries, in their

entirety.

INPUT SESSION

Mark Elliott, 191 River Bend Road, Siler City, NC, spoke with regard to the violence of the Watershed Protection Ordinance. He stated that the new use would require an amendment to the ordinance; that it would have to be applied for and issued within a 24 hour period; that it deserves more discussion and public input; that consideration needs to be given to the importance of this new use; and a public hearing would be required.

Lewis Caraganis, 285 River Bend Road, Siler City, NC, stated that he is a neighbor of the potential all-terrain vehicle track; that their concerns have evolved from the particular issue of the track and its impact on them, to the process itself. He encouraged the Board to be rigorous in letting the ordinances be effective, commended them on the good work that has been done, and stated that he hopes for a fair shake.

Roy Baroff, 240 Buteo Ridge, Pittsboro, NC, stated that he wanted to echo the prior comments; that he wants to make the process as transparent as possible and allow for public comment at various steps whenever possible.

Tim Gray stated that a lawsuit was filed against the County; that one doesn't sue people when they do not agree; that they are voted out of office; and that it is not fair for the Board to be put in that position.

PRESENTATION BY EMPLOYMENT SECURITY COMMISSION

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Elaine Doby, Employment Security Commission (ESC) Branch Office Manager, thanked the Board for their appointments to the Mid Carolina Workforce Development Board representing the private sector in Chatham County. Ms. Doby reviewed the ESC web site, business services, individual services, and labor market. She invited the Board and public to visit their office and observe their work at any time, to telephone, or e-mail any questions, suggestions, or comments and to call with any available job openings.

PLANNING AND ZONING

Public Hearing:

Revision to Existing Conditional Use Permit for Planned Unit Cluster Development: Public hearing to receive public comments on a request by Jeff N. Hunter on behalf of Colvard Farms Development Company, LLC for a revision to their existing Conditional Use Permit for a Planned Unit Cluster Development to allow a reduction to the side yard setback from 25 feet to 15 feet, consisting of 107 subdivision lots on 300 acres, off Highway #751, in Williams Township

The Chairman administered the oath to those in attendance who wished to make public comments.

Jeff Hunter, stated that in January, 2001, he came forward with his proposed planned unit development, a cluster development in Williams Township; that at that time, they made a request to cluster homes; that instead of the 40,000 square foot minimum, they asked for a revision to 20,000 square feet; that their densities are higher than what is required even with the revision to the one-acre minimum; that they are requesting a modification to an over-site on their part; that with the reduction from 40,000 to 20,000, they did not make a request in a smaller side yard requirement; that it does not affect the back on which there is a 50 foot building setback and no trees can be cut that have a greater than 18 inch diameter in the back of the

house; that the same setback applies to the front of the house as that which the County applies to all lots; that they are asking for a change, instead of 25 feet on both side yards, they are asking for 15 feet to accommodate their original request of the cluster development.

There was no one present who wished to make public comments.

The Chairman closed the public hearing.

Request for Subdivision Sketch Design Approval of “Heritage Point”: Consideration of a request by Chatham Development Corporation for subdivision sketch design approval of “**Heritage Point**”, consisting of 70 lots on approximately 297 acres, off US #64 East in New Hope Township

Commissioner Givens moved, seconded by Commissioner Outz, to accept the Planning Department and Planning Board recommendation and grant sketch design approval of the plat with conditions as follows:

- 1) Prior to preliminary plat submittal, the developer shall work with the Chatham County Historical Society to determine whether the existing structures and cemetery are of historical significance and if so, what steps should be taken for preservation.
- 2) The developer shall be required to connect to County water if County water is made available.
- 3) Prior to preliminary submittal, the developer shall meet with the Corps of Engineers and the U.S. Fish and Wildlife Service and shall incorporate a 100 ft. wide undisturbed buffer along the common boundary between the proposed subdivision and the Corps of Engineers property and any other requirements from said agencies into the preliminary design.
- 4) The stormwater management plan for the proposed subdivision shall be engineered such that there shall not be an increase to the existing stormwater runoff to Deer Run Subdivision.
- 5) Prior to preliminary review the developer shall submit all applications for state approved waste water systems to the appropriate state approval agency.

The motion carried five (5) to zero (0).

Request for Subdivision Final Approval of “Jones Ferry Landing, Phase 4”: Consideration of a request by Kathleen Sequeria for subdivision final approval of “**Jones Ferry Landing, Phase 4**”, consisting of 12 lots on 20.31 acres, off SR #1539 (Jones Ferry Road) in Baldwin Township

After considerable discussion, Commissioner Givens moved, seconded by Commissioner Outz, to accept the Planning Board recommendation and approve the plat as presented. The motion carried five (5) to zero (0).

Proposed Amendments to the Chatham County Zoning Ordinance: Consideration of proposed amendments to the Chatham County Zoning Ordinance Section 9 concerning non-conforming situations

After considerable discussion, Chairman Phillips asked that those in attendance who wished to make public comments be allowed to do so due to the difference in recommendations by the Planning Board and the Planning Department and due to the legal issue that did not arise, as it normally would have during the public hearing phase, but has arisen during the time of expected vote.

Garry Anderson, Planning Board Chairman, stated that it was after a lengthy debate that the proposed language was finally reached; that the debate was a seven to three vote; that one of the things they were trying to accomplish was to keep, what has happened over the last four or five months, from happening again; that by requiring an applicant who was working under a conditional use permit in an area that was perhaps zoned for further uses under an existing use permit from expanding that facility without going back through the process; that that was their primary objective in trying to develop language that would force that issue; that the Planning Board is in favor of the Chapter 17 application; that the Planning Board was trying to prohibit #19 from happening; that it was the opinion of the majority of the Planning Board that had this ordinance been in place, #19 would have never happened because a request for expansion would have had to go back through the process and been subjected to the review and the approval would have been in the County rather than an applicant being permitted to submit an application to the State and have the expansion approved without the consent, knowledge, or overall approval by the Planning Board.

Joshua Kricker stated that due process is not really an issue if Section 17 is adopted; that the fact is that any applicant for non-conforming expanding uses three chances to present their case; that is the initial application, at the public hearing for approval, and the Zoning Board of Adjustment; that the trouble is that if one goes to Section 15, the purpose of public input will be defeated; that in a quasi-judicial hearing, the applicant for non-conforming use will generally have an attorney and will have more money and attorneys than the general public will have; and that therefore, the attorney will always have the edge; that adopting Section 17 obviates it and still provides due process to applicants and public as well.

Roy Baroff, 240 Buteo Ridge, Pittsboro, NC, stated that he is an attorney but that he is not a land use expert; that he believes the law in North Carolina allows the court to go under Chapter 17, primarily because this issue is not about conditional uses; that Chapter 15 is about conditional uses when one changes the type in a particular district and one wants to attach conditions to it; that this is different; that it is a non-conforming use that is grandfathered in; that it is in effect when one wants to change the use of a non-conforming use; that it is like amending the zoning ordinance; that therefore, Chapter 17 is more appropriate; that the North Carolina Court of Appeals, last August, in the Massey Case, reviewed a fifteen year history of conditional use cases; that they indicated if one is going under a conditional use, one might want a quasi-judicial hearing, but that it is not required; that he believes going under Chapter 15 creates a judicial requirement and doesn't allow for public input; and that if the Board does decide that Chapter 15 is the appropriate route to follow, the Board should consider adding additional language to the last sentence which says, "a change in the degree of activity of a non-conforming situation shall only occur after application" and the following should be added, "public comment and approval as set forth in Chapter 15"; that this will allow the public to still have comment; that under Chapter 15, there is no opportunity for public input other than the experience the Board had several weeks ago; that the law does allow the Board to exercise its legislative authority, that it is what the Court of Appeals recently said on the subject, and it does provide due process capabilities.

Commissioner Givens moved, seconded by Commissioner Atwater, to accept the Planning Board recommendation in total and that the only change be that the wording be included to exclude non-conforming residential situations from going through the review procedure. The motion carried three (3) to two (2) with Commissioners Pollard and Outz opposing.

ZONING BOARD OF ADJUSTMENT

Commissioner Pollard moved, seconded by Commissioner Atwater, to recess as the Chatham County Board of Commissioners and convene as the Chatham County Zoning Board of Adjustment. The motion carried five (5) to zero (0).

BREAK

Commissioner Givens moved, seconded by Commissioner Atwater, to recess for a ten-minute break. The motion carried five (5) to zero (0).

Meeting of the Zoning Board of Adjustment on Kricker Appeal: Consideration of a meeting of the Zoning Board of Adjustment for making findings of fact and rendering a decision on an appeal by Joshua Kricker from an action of the Zoning Enforcement Officer and/or petition for an interpretation of the Zoning Ordinance. The request concerns the issuance of a local zoning consistency letter, for a state air permit, for the S. T. Wooten property on Sugar Lake Road.

After considerable discussion, Commissioner Pollard referenced the attached Findings of Fact, Conclusions of Law and decision and read Item #5 and the Board's decision that the appeal is hereby denied.

After further discussion, Commissioner Outz seconded the motion. The Chairman called the question.

Commissioner Pollard and Commissioner Outz voted in favor of the motion. Commissioner Givens, Phillips, and Atwater opposed the motion; therefore the decision of the Planning Director was upheld because a vote of 4/5 is required to overturn the decision.

BOARD OF COMMISSIONERS

Commissioner Pollard moved, seconded by Commissioner Givens, to adjourn as the Chatham County Zoning Board of Adjustment and reconvene as the Chatham County Board of Commissioners. The motion carried five (5) to zero (0).

TIME WARNER

Review of Time Warner Cable FCC1240 & FCC1205 Rate Filings: Consideration of a request to review time Warner Cable FCC1240 and FCC1205 Rate Filings for 2002

Bob Sepe, Cable Consultant through Triangle J, stated that they have reviewed Time Warner Cable's FCC1240 and FCC1205 filings, documents gathered by the County and consulted related FCC rules, regulations and publications; that the values stated in the Company's FCC rate requests is the responsibility of the cable operator; that on October 1, 2001, Time Warner Cable submitted a FCC1240 Basic Cable Service Tier and FCC1205 Equipment and Installation charges to seek an upward adjustment in the rate charged for basic cable television service, installation and equipment rental for the 2002 calendar year; that the consultant evaluated the information Time Warner Cable submitted, requested and received supplemental information and evaluated the information with respect to conformance to FCC rules; that the consultant performed independent calculations to verify the proposed rate structure sought; that they found the FCC1240 rate-making forms and proposed rates as true and correct; that they found Time Warner Cable's FCC1205 rate-making form materially deficient because the company did not show, as required by FCC G.S. 76.923(c)(1) and FCC G.S. 76.923(c)(3) that its averaging methodology produces reasonable rates; that, in conclusion, he had no problem with Time Warner's basic rates; however, he did have a problem with the installation charge.

Commissioner Givens moved, seconded by Commissioner Outz, to adopt the report. The motion carried five (5) to zero (0).

Request by Time Warner to Delay Action on Rate Filings: Consideration of a request to delay

action on the recommended FCC1240 and FCC1205 rate filings from consultant

Commissioner Givens moved, seconded by Commissioner Outz, to table the motion. The motion carried five (5) to zero (0).

FINANCE OFFICE

Public Hearing:

Resolution Authorizing the Filing of an Application for Approval of a Financing Agreement for Repair of Moncure School: Public hearing to receive public comments on a Resolution Authorizing the Filing of an Application for Approval of a Financing Agreement for Repair of Moncure School

There was no one present who wished to make public comments.

Commissioner Outz moved, seconded by Commissioner Atwater to close the Public hearing. The motion carried five (5) to zero (0).

Resolution Declaring Property Surplus and Authorizing the Sale of Said Property: Consideration of a request to approve **Resolution #2002-09 Declaring Property Surplus and Authorizing the Sale of Said Property**

Commissioner Pollard moved, seconded by Commissioner Outz, to approve **Resolution #2002-09 Declaring Property Surplus and Authorizing the Sale of Said Property**, attached hereto and by reference made a part hereof. The motion carried five (5) to zero (0).

BOARDS AND COMMITTEES

Solid Waste Advisory Committee:

Commissioner Pollard moved, seconded by Commissioner Atwater, to appoint Tamsi Hughes, 109 Shalestone Drive, Chapel Hill, NC, to the Chatham County solid Waste Advisory Board. The motion carried five (5) to zero (0).

Mid Carolina Workforce Development Board Appointment: Consideration of a request to appoint a member to the Mid-Carolina Workforce Development Board to replace Howard Stier

This item is to return to the Board at a later date.

Recreation Advisory Board Appointments: Consideration of a request to appoint four members to the Recreation Advisory Board, one each by Commissioners Pollard, Atwater, Outz, and Givens

Commissioner Atwater moved, seconded by Commissioner Pollard, to appoint Kevin Mitchell, 1190 Lamont Norwood Road, Pittsboro, NC, to the Recreation Advisory Board. The motion carried five (5) to zero (0).

Commissioner Pollard moved, seconded by Commissioner Atwater, to appoint Kathryn Neal Poe, 241 River Forest Road, Pittsboro, NC to the Recreation Advisory Board. The motion carried five (5) to zero (0).

Human Relations Commission Appointment: Consideration of a request to appoint members to the Chatham County Human Relations Commission by Commissioners Phillips, Givens, and Atwater

This item is to return to the Board at a later date.

Agriculture Advisory Board Appointment: Consideration of a request to appoint a member to the Agriculture Advisory Board to replace Harvey Harmon by Commissioner Phillips

This item is to return to the Board at a later date.

Chairman Phillips asked that an announcement of vacancies be placed on the web site, announced prior to Board meetings, and announced in the Chatham County newspaper.

Economic Development Commission Board:

Chairman Phillips moved, seconded by Commissioner Givens, to appoint Commissioner Bob Atwater to the Chatham County Economic Development Commission Board. The motion carried five (5) to zero (0).

BOARD OF COMMISSIONERS' MATTERS

Resolution Requesting Governor Michael Easley Release Funds: Consideration of a request to adopt **Resolution Requesting Governor Michael Easley Release All Funds Obligated to NC Cities and Counties**

Commissioner Givens moved, seconded by Commissioner Outz, to adopt **Resolution #2002-10 Requesting Governor Michael Easley Release All Funds Obligated to NC Cities and Counties**, attached hereto and by reference made a part hereof. The motion carried five (5) to zero (0).

MANAGER' S REPORTS

There were no additional Manager's Reports.

COMMISSIONERS' REPORTS

Wildlife Officer:

Commissioner Outz asked the County Manager when a Chatham County Wildlife Officer would be able to come before the Board to discuss an extended deer season.

The County Manager stated that he was trying to get a time set for an officer to appear before the Board.

Board Opinions:

Commissioner Givens stated that the night's meeting was a perfect example of how people have opinions and disagree and still remain friends; that a lot of boards are not able to do so; that everyone's opinion should be respected; that if a person doesn't win one issue, they need to go on and choose another issue.

Commissioner Pollard stated she did not feel that the S. T. Wooten issue was an issue of whether it was healthy or not; that she felt that the issue was different.

Chairman Phillips stated that he did not want to run any businesses out of Chatham County, but that he wanted every business in Chatham County to be responsible.

ADJOURNMENT

Commissioner Outz moved, seconded by Commissioner Givens, that there being no further business to come before the Board, the meeting be adjourned. The motion carried five (5) to zero, and the meeting was adjourned at 9:36 PM.

Gary Phillips, Chairman

ATTEST:

Sandra B. Sublett, Clerk to the Board
Chatham County Board of Commissioners