

MINUTES
CHATHAM COUNTY BOARD OF COMMISSIONERS
RECESSED MEETING FROM SEPTEMBER 20, 2004
OCTOBER 04, 2004

The Board of Commissioners (“the Board”) of the County of Chatham, North Carolina, met in the Superior Courtroom, Courthouse Circle, located in Pittsboro, North Carolina, at 6:00 PM on October 04, 2004 to continue with their recessed meeting from September 20, 2004.

Present: Chairman Tommy Emerson; Vice Chair, Carl Outz; Commissioners Margaret Pollard, Bunkey Morgan, and Bob Atwater; County Manager, Charlie Horne; County Attorney, Robert L. Gunn; and Clerk to the Board, Sandra B. Sublett

The meeting was called to order by the Chairman at 6:20 PM and opened the floor for comments on Booth Mountain.

Will Garner, North Carolina Department of Transportation engineer, stated that he was in attendance to answer questions with regard to the traffic, not to voice an opinion on the matter.

Bob Hornik, 1829 E. Franklin Street, Chapel Hill, NC, attorney, stated that he was present on behalf of many residents of the area that have concerns about the development; that he wanted to remind the Board that they do have a choice in the matter; that the Board must make five findings in order to approve the proposed development; that the Board can consider testimony on both sides of the issue; that the only finding that is not an issue is the first issue (land use); that the second finding (public welfare) is very subjective; that many believe that it is not essential but the question is whether it is desirable; that the third finding considers whether the development is consistent with the character of the community; that the fourth is whether it is consistent with the purposes of the Land Development Plan; that the fifth finding deals with utilities, roads, access, etc.; that this boils down to three issues: WWTP, schools and roads; that he has signed statements from some of his clients; that the Board can require a traffic impact analysis; that they recommend peer review for some aspects of the proposal; that there are two significant environmental concerns: Booth Mountain and Herndon Creek; and that it may be beneficial to hear testimony one more time, especially after new evidence is entered this evening.

Danny Addison, 368 Boothe Hill Road, Chapel Hill, NC, stated he was a resident of Boothe Hill; that the proposed development does not meet the requirements for a conditional use permit; that finding #2 requires that it is essential; that there is no need for this development among current residents; that this housing is beyond the income potential of most residents of Chatham County; that there is no business boom that brings workers here; that new people would be drawn from outside the County; that if this development only attracted current residents, it would not make an impact on property taxes because they are already here; that the market in Research Triangle Park and Cary isn't there; that Governor's Club is not sold out and they are having a hard time selling lots; that the lots for sale are below appraised tax value; that The Preserve has many lots in the resale market; that there is no market in Chatham for this development; that the proposal impairs the integrity of the surrounding district; that County map size shows that average lot size around the development is ten acres; that by contrast, lots in Booth Mountain would average one acre; that this is a radical change for the surrounding area; that appraising real estate is based on what people want; that in northwest Chatham it

is not convenient to anything, yet there is elbow room; that this development would fundamentally change the value of the surrounding property; that they do expect some consistency regarding residential density in that part of the County; that there should be some point at which they can be heard and the integrity of the place they moved to can remain the same; that the developer makes a claim of entitlement to develop this property because the density can be higher; that they also must meet the requirements of the conditional use permit; that they urge the Board to reject the conditional use permit for this development.

Steve Lanning, 713 McNeil Road, Sanford, NC, stated that he was an adjacent property owner to the development downhill and downwind; that he is concerned with the smell issue and potential property value; that the treatment system that they put in must be right from the start; that at The Preserve they were also told it wouldn't smell but it clearly does; and that his property is affected because he is downhill.

Tom Franks, 350 Preserve Trail, Chapel Hill, NC, stated that his daughter and son-in-law own property downwind; that he did not hear from MacGregor that they would do the right thing and guarantee it would be smell-free; that he has experience with environmentally friendly wastewater systems; and that he smells a sewer smell in The Preserve every day.

Pierce Cassidy, 2956 Lystra Road, Chapel Hill, NC, stated that he is an adjacent property owner just to the east of the development; that his home and land are his primary financial investment; that he is concerned that his property values will be affected; that he is concerned about the spray field; that he is downhill from the spray field; that surface water consistently comes off the mountain during wet periods; that the smell would negatively affect his property value; that he has concerns that the state does not have the resources to monitor the waste treatment facility; that Board members are the stewards of the people and must be prepared to guarantee the integrity of the development.

Dr. Joel Eisner, 6 Wisebrook Lane, Durham, NC, stated he currently lives in Durham but owns property adjacent and downhill from the proposed development; that his property is in a development that has large lots and are in line with the surrounding area; that the placement of the wastewater treatment plant is of great concern; that the developments in the area use septic systems; that in the spring and other wet periods, there is run-off onto his property; that his background is in endocrinology; that he questions the affects on wildlife and humans; that when it rains there may be problems with drainage; that the treatment plant at The Preserve smells; that he asks whether people would be happy to live near a wastewater treatment plant; and that as the project stands right now, it endangers the integrity of the neighborhood.

Halford House, 611 Vickers Road, Chapel Hill, NC, stated that he is in opposition to the application as it stands with relation to findings #3 and #4; that the Estate section will accept water sufficiently; that water will be moving into other areas that do not accept water satisfactorily; that the Board of Education owns land downhill; that from the wastewater system perspective, at some point the line will break and the water will go downhill; that the lift station will malfunction at some point; that the waste will go into Herndon Creek and eventually into Jordan Lake; that the Compact Communities Ordinance encourages low-impact design with regard to water; that this development tries to get the water off the property as fast as possible; that there is a chance of increased flooding downstream; that there are other ways of doing this to lessen the impact; that there are other systems for waste treatment; that these options lessen the chance of broken pipes and lift stations and run-off into the creek; that he strongly encourages that this project is denied as it stands; and that there has been a flurry of developments that have the potential to impact the drinking water of the County.

Nick Robinson cross-examined Mr. House.

Dr. Barrett Kays, PO Box 30069, stated that he is a soil scientist hired by the adjoining property owners; that there are a number of things that would improve the project to make it fit better with the existing properties; that he recommends that the Planning Board subtract any land that is part of the existing Department of Transportation future widening; that the Planning Board should subtract floodplain land and deduct all other lands in the 100-year flood plain; that a flood study should be submitted; that all streams and wetlands and environmentally sensitive lands should be subtracted; that all existing and proposed water areas should be subtracted; that all non-buildable lands should be subtracted; that 60,000 square feet per dwelling unit is recommended; that the Planning Board should increase the setbacks; that it would result in a substantial increase in the setback; that additional conditional use requirements should be instituted; and that the health department should be used to help permit and examine the area.

RECESS

The Chairman called for a ten-minute recess.

CONTINUATION

Peter Theye, 1065 Boothe Hill Road, Chapel Hill, NC, stated that he is a resident of the Boothe Mountain area; that the roads are operating at maximum efficiency now, so added traffic from Boothe Mountain; that a right-hand turn lane would be more dangerous; that the solutions are only short-term solutions; that a separate entrance and exit should be installed; that the County school system is over capacity this year; that the entire fifth grade has been moved into trailers; that the development has not thought through the impact on the school system; that the student generation rate calculated by the developer is 0.4; that other student generation rates are much higher in other developments with higher density; that the rate in Boothe Mountain is too low; that the collection of impact fees does not cover the cost of new facilities; that the impact fee should be over \$4,200 in order to cover facilities for new schools; that Boothe Mountain needs to add a voluntary impact fee of over \$6,000 to make up for the underestimate per student cost; and that schools are not mentioned in their findings.

Edward Fahrback, 2854 Lystra Road, Chapel Hill, NC, stated that his property may be affected by the run-off from the wastewater treatment plant; that the density of the development and the proximity of the wastewater water treatment plant will have an adverse impact on the value of their property; that Lystra Road is already very intense and is a popular connector road; that the traffic snarl at North Chatham School is particularly disturbing; that some SUV owners choose to hit the ditch to make their own path; that in reported accidents in the last four years, there have been 42 accidents between Highway #15-501 and Jack Bennett Road; that the terrain makes the road treacherous; that Lystra and Jack Bennett Roads handle large amounts of traffic every day and this development and others pose a great threat to the safety on the roadway. He urged the Board to scale back the development in order to not adversely impact the residents in the area.

Denzil Thorn, 315 Boothe Hill Road, Chapel Hill, NC, stated that he and his family live on Boothe Mountain Road; that they have lived in Chatham for nearly 20 years; that the proposal does not meet finding #3 because it will affect the character of the adjoining area and will be a detriment to the surrounding community; that finding #5 is also in question; that traffic on Lystra Road is a growing concern; that he tells his family and guests that Lystra Road is very dangerous; that there have been many accidents and near-misses on Lystra; that he purchased a radar gun to check average speed at rush hour on Lystra; that on one day there were 453 vehicles from 7:00 AM – 9:00 AM; that the intersection is particularly dangerous with regard to westbound travelers on Lystra; that on average, 75% exceed the speed limit; that weather conditions or bicyclists can make the situation more dangerous; that he urged

the Board to drive his area and examine the various intersections and proposed entries to the subdivision; that their traffic analysis uses build-out estimates for surrounding developments; that their traffic analysis was 66% higher than the developers; that there is no doubt that the traffic will be at least three times higher at build-out; that there needs to be a more careful and comprehensive traffic study; that development of some kind is inevitable, but they would like a development that is acceptable to current residents and new residents alike; that scaling down the number of homes will help may make a win-win for everyone.

David Watts, 205 West Moore Street, Apex, NC, stated that he co-owns the fifteen acre tract that is downslope and downwind from the proposed development; that he supports higher density neighborhoods and smart growth; that he is concerned with the use of a wastewater treatment plant within 600 feet of their property line; that the true cost should be examined; that increased smell, run-off and noise from the pumps are all issues; that he met with the developer to determine how the costs would be handled by the developer; that the project manager stated that there would be no smell and if there was, it would smell good; that they have perfuming agents to mask the smell; that he proposed that the wastewater treatment plant be approved with regard to basic engineering principles that water runs downhill and sewage generally smells bad. He asked that the odor be kept on their own property.

Jeanne Martin, 276 Boothe Hill Road, Chapel Hill, NC, stated that she has lived in Chatham for 26 years; that her comments focus on traffic impact; that in the community, it is believed that the roads are already dangerous; that North Carolina ranks #9 of 50 states with roadway deaths; that Lystra and Jack Bennett Roads have characteristics that make them more risky; that they are two-lane roads that are more dangerous by nature and design; that each road has a large number of access points (driveways, other roads); that accidents are more likely with more access points; that the amount of truck traffic is increasing; that Jack Bennett is one leg of a recommended bicycle route; that motorists speed regularly on the roads; that the chance of an accident increases when vehicles travel at differing speeds; that adding traffic makes the roads much more dangerous; that there are economic costs of accidents and they have impacts that ripple into society; that their traffic counts are 29% higher than the developers adjusted numbers; that she did computations that took into account slope, speed, and velocity to determine if vehicles stop without dangerous collisions; and that the proposed number of entrances onto Lystra Road shows that the conditions make it dangerous.

Jennie DeLoach, 276 Boothe Hill Road, Chapel Hill, NC, stated that she was an original resident of Boothe Hill; that she has spent time looking at traffic analysis at various developments in Chatham County; that Jack Bennett Road is one of four roads with a poor crash rating; that it is a very dangerous area; that with the addition of this number of houses in such a small area will generate 42,000 vehicle trips per day; that new vehicle trips in the area will be more than 147% than the developer estimates; that this data uses Briar Chapel numbers; that there will be a 355% increase in the traffic on Jack Bennett Road at build-out; that it is impossible to predict future crashes, but the situation is certainly elevated in this area for dangerous crashes; and that adding 875 new trips on Lystra Road would not be safe.

Bram Esperon, 2223 Lystra Road, Chapel Hill, NC, stated that Lystra Road is extremely dangerous; that there are several blind spots near the proposed entrance to the Estate section; that it doesn't make sense to put a driveway serving that density in that location; that there are eighty-eight Estate lots coming out of one entrance; that it doesn't make sense to have a single point of access; that the developers did analysis of the three intersections that their development would create; that the wait time at the Jack Bennett and Lystra Road intersection is projected at over 220 seconds in the Briar Chapel development proposal.

Allison Weakley, 311 Boothe Hill Road, Chapel Hill, NC, stated that she is a biologist working

with the US Forestry Service; that her comments focus on findings #2,3,4; that the average acreage in the Booth Mountain area is approximately 10 acres; that high density development is not in keeping with the integrity of the area; that an uncalled for remark was made to her by Mark Whitehead at the public informational meeting on September 29th; that there are two natural heritage areas in the area; that Herndon Creek area will be adversely affected, as well as Bush Creek Marshes, the location of federally protected bald eagles; that the Herndon Creek ravine is one of the steepest in the County; that there is a significant inventory of natural species and habitats and hardwoods; that the significant natural heritage areas warrant larger lots and less intrusive development; that the open space preserved is primarily wastewater spray field and the area along Herndon Creek; that the natural heritage areas are not even identified in the application; that leaving only a 220 foot corridor along Herndon Creek will have a serious impact on species that depend on this area for survival; that the Booth Hill was developed in keeping with the natural area; that the purpose of the designation of a natural heritage area is to alert landowners and homeowners of the protection in the area; that the homeowners should not hold the conservation easement to the creek area; that it could be too easily dissolved; that there have been many archeological artifacts found to the west of the development; that the developers did not survey for artifacts and should be required to do so; that the Land Use Plan states that significant natural heritage areas should be preserved.

Bob Hornik, stated that at the prior hearing there was little discussion of the sewer pipe across Herndon Creek or the pump station near the amenity center; that pump stations fail through the years; that the wastewater treatment plant is about 150-200 feet higher than other more dense properties; that the Planning Board has the responsibility to determine how dense this area will be developed; and that he doesn't want the Board to be rushed and wants them to make the right decision.

Judy Ingram, stated that she is a resident of Jack Bennett Road and a teacher at North Chatham School; that she would like to ask what is essential and what is desirable; that when the significant natural area is destroyed, no one or their money can replace it; that her effectiveness as a teacher is dependent on the number of kids in her class; that the development has no plan to help fund the schools; that there is no bond issue on the ballot in November; that the new development cannot be approved without new schools; that she canvassed everyone on Jack Bennett Road to inform them of the development and the public hearing; that not one person was in favor of the development; that everyone said that it was a "done deal" because the developers money and influence meant more to elected officials; and that she does not believe that the Board does not matter.

Jane Oliver, stated that she is concerned about the dense development that borders Jack Bennett Road, particularly the ¼ acre lots; that she looked at Governor's Village as an example; that there were not a lot of natural areas; that the high density is in stark contrast to the low density area she is in; that many of the residents on Jack Bennett Road are low to moderate income families; that the effect on property values in the area may be affected and will hurt those that are on low or fixed incomes; that it is the Board's responsibility to make sure that the impact on the community is taken care of; and that many of the families on Jack Bennett Road have small children that wait for the school bus.

Catherine Deninger, representing the Haw River Assembly, stated that there are over 1,300 members in the Haw River Assembly; that this land is unsuitable for development due to the steep topography; that the whole area drains into Herndon Creek, Bush Creek and Jordan Lake; that the development cannot be built without damaging Herndon Creek; that it will be impossible to prevent stormwater run-off into the creeks; that the proposed wastewater treatment system poses great risk for run-off into the creek; that this development cannot be built without excess nutrient run-off into Jordan Lake; that Jordan Lake is an impaired water source; and that they request that the Board present a full environmental impact analysis.

Cacie Ragsdale, stated that she represents Horse Farms, LLC; that her clients are concerned

with maintaining the integrity of the surrounding area; that the wastewater treatment plant facility is close to her clients' property; and that the developer's plan concedes that smell will be an issue.

Loyse Hurley, President of Chatham Citizens for Effective Communities, stated that the developments in the northeast section of the County is 4,500 units at build-out; that at build-out there will be over 11,000 more people in this area without Booth Mountain; that the cumulative effect of all these developments is overwhelming; that with Briar Chapel, it would be over 17,000 people; that many of the developments include wastewater treatment that have not performed well; that special measures need to be taken to insure that water is protected; and that the Chatham Citizens for Effective Communities urges the Board to carefully consider the findings.

Greg Solomon, stated that one of his biggest concerns is the run-off into Jordan Lake; that the people in the western part of the County have finally gotten water and the County owes it to them to insure it is of good quality; that the sewer will stink, but there is a relatively low cost to treat the smell; that North Chatham is already over capacity again; that the student generation rates are too low; that buying trailers before building a school is paying twice; that he drives Jack Bennett Road to commute to Research Triangle Park; and that he is concern about the wildlife.

Bob Eby, stated that the Board may ask MacGregor to modify its plan; that the traffic impact statement is greatly underestimated; that estimates were done in the summer when school was not in session; that the impact of a new high school is sorely underestimated; that in 2014 at Jack Bennett and Lystra Roads at peak hours there would be 1,450 cars; that he requests that left turn lanes be required at all entrances; that the County should be establishing values for use in analysis; that a consultant should be hired to realistically estimate value and per student costs; that the results of the analysis are dependent on the assumptions used; that the 0.4 per student generation ratio is too low; that Booth Mountain will have no apartments, townhomes or condominiums s, but will be all single-family units; and that the size of the proposed homes up the student generation ratio to .92 kids per household.

Nick Robinson, stated that all of the prior applications and statements are their testimony; that the Booth Mountain Fact Sheet addresses items from the evening; that the economic analysis takes into account the total number of students based on what the school system uses; that there will be nine additional students per year over eight years; that it is less than one student per grade level per year; that despite that, the economic analysis takes into account the capital costs per student; that after one deducts the capital cost, he will arrive at the additional ad valorem tax revenue to the County; that this subdivision will add \$87 million in tax value to the County; that the wastewater treatment plant has been a hot issue; that the permit requires any water run-off be drinking quality water; that the people that have spoken from the community have been very well-spoken and very prepared; that with regard to the wastewater treatment plant, he asks the Board to defer to the state permitting agencies; that the Department of Transportation has already approved the traffic plan, and if at some time in the future turn lanes are needed, they will be installed; that the Herndon Creek ravine has self-imposed buffers that are more than adequate to protect the area; and that the Board is being asked whether or not the five findings are met.

ADJOURNMENT

Commissioner Morgan moved, seconded by Commissioner Pollard, to adjourn the meeting. The motion carried five (5) to zero (0), and the meeting was adjourned at 11:04 PM.

Thomas J. Emerson, Chairman

ATTEST:

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