

**MINUTES**  
**CHATHAM COUNTY BOARD OF COMMISSIONERS**  
**REGULAR MEETING**  
**OCTOBER 15, 2012**

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The Board of Commissioners (“the Board”) of the County of Chatham, North Carolina, met in the Agricultural Building Auditorium, 45 South Street, Pittsboro, North Carolina, 6:00 PM on October 15, 2012.

Present: Brian Bock, Chairman; Walter Petty, Vice Chairman;  
Commissioners Mike Cross, Sally Kost, and Pamela Stewart

Staff Present: Charlie Horne, County Manager; Jep Rose, County  
Attorney; Renee Paschal, Assistant County Manager; Vicki  
McConnell, Finance Officer; and Sandra B. Sublett, Clerk to  
the Board; and Lindsay Ray, Deputy Clerk to the Board

**INVOCATION AND PLEDGE OF ALLEGIANCE**

Commissioner Cross delivered the invocation after which the Chairman invited everyone present to stand and recite the Pledge of Allegiance.

**CALL TO ORDER**

Chairman Bock welcomed those in attendance and called the meeting to order at 6:04 PM.

**AGENDA AND CONSENT AGENDA**

Commissioner Cross asked that his appointment of Joseph Wach be added to the Agriculture Advisory Committee.

Commissioner Kost moved, seconded by Commissioner Cross, to approve the Agenda and Consent Agenda with the noted request as follows:

1. **Minutes:** Approval of Board Minutes for the September 17, 2012 Regular Meeting and the September 17, 2012 Work Session

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

2. **Tax Releases and Refunds:** Vote on a request to approve the tax releases and refunds, attached hereto and by reference made a part hereof.

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

3. **Domestic Violence Awareness Month:** Vote on a request to approve a **Resolution #2012-\_\_\_\_\_ Proclaiming October, 2012 as Domestic Awareness Month in Chatham County**, attached hereto and by reference made a part hereof.

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

4. **Removal of Planning Board Member:** Vote on a request by the Planning Board to remove the at-large member and advertise for a replacement

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

5. **Fieldstone Subdivision:** Vote on a request by George J. Retschle, P.E. on behalf of Sheryl-Mar Co., LLC for final plat approval of Fieldstone, Phase 2, consisting of 13 lots on 19.16 acres, located off Mann's Chapel Road, SR #1532, Baldwin Township

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

6. **Funds Awarded to Health Department:** Vote on a request to accept \$11,875 in funds awarded to the Health Department from the Wake Forest Baptist Medical Center for the North Carolina Living Partnerships to Prevent Diabetes

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

7. **Funds Awarded to Health Department:** Vote on a request to accept \$7,500 in funds awarded to the Health Department from the UNC Health Initiatives

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

8. **Educational Outreach Assistance Funds:** Vote on a request to accept \$1,000 Educational Outreach Funds from the NC Institute for Public Health

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

9. **Health Department Debt Write Off:** Vote on a request to approve the Debt Write-Off in the amount of \$51,595.27 for the period of July 1, 2010 through June 30, 2011 for the Health Department

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

10. **Fiscal Year 2012-2013 Budget Amendments:** Vote on a request to approve budget amendments as proposed by staff, attached hereto and by reference made a part hereof.

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

11. **Grant Application for Easement:** Vote on a request to approve a grant application to NC Agricultural Development and Farmland Preservation (ADFP) Trust Fund and USDA Farm and Ranchland Protection Program (FRPP)

- Silk Hope 2013 Proposed Projects
- Grant approval form-Lindley
- Budget-Lindley
- Aerial- Lindley

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

12. **Nursing Home and Adult Care Home Advisory Committee Appointment:** Vote on a request to approve the appointment of Kim Hutter, by the full Board, to a one-year term to the Nursing Home and Adult Care Home Advisory Committee

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

13. **Board of Health Appointment:** Vote on a request to appoint Brian Glover, DDS to the Board of Health, by the full Board, to a three year term ending October 31, 2015

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

14. **Agriculture Advisory Committee Appointments:** Vote on a request to approve the appointment of the following members to the Agriculture Advisory Committee:

- Robert Payton Lee, by Commissioner Stewart, to a two-year term
- Henry Stinson, by Commissioner Petty, to a one-year term
- Robin Kohanowich, by Commissioner Cross, to a three-year term
- Jarome Womble, by Commissioner Kost, to a one-year term
- Joseph Wachs, by Commissioner Cross, to a one-year term

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

**END OF CONSENT AGENDA**

**PUBLIC INPUT SESSION**

**Caroline Siverson**, 5560 Castle Rock Farm Road, Pittsboro, NC, presented her comments to the Board and provided them in their entirety for the record as follows:

“My name is Caroline Siverson, and I live at 5560 Castle Rock Farm Road, Pittsboro. I am addressing you on behalf of the Chatham Citizens for Effective Communities.

CCEC strongly supports Comprehensive Land Use Planning that preserves our rural heritage and traditions and provides for environmental protection of our natural resources, economic development, recreation, schools, and farmland preservation.

A Comprehensive Land Use Plan is certainly an important component of a dynamic economic development strategy and CCEC commends the Board of Commissioners (BOC) for their recent commitment to an updated plan. We sincerely hope that this commitment is serious and realistic and that the result will be a comprehensive plan that includes a map as well as a resolve to zone at least those portions of the county that will be identified and designated for future growth and infrastructure. Anything short of that will simply be a waste of time and resources.

While applauding the BOC’s stated support of an updated, Comprehensive Land Use Plan, we find the request tasking the Economic Development Corporation (EDC) with “jump starting” this process to be rather unusual and lacking clarity. We understand the frustration that the EDC has expressed at the lack of an effective plan and we appreciate their willingness to take on this important task.

The EDC resolution states that EDC will start the “initial stage and related due diligence.” We have been told that they probably don’t have the proper resources or the will to fully engage in drafting a land use plan. We agree. We have been told that they will simply be compiling and mapping current land uses in the county, a task we believe would be more appropriately assigned to county staff. We have been told that the EDC will identify stakeholders and bring them to the table. We believe that the stakeholders in a countywide Land Use Plan are none other than all the citizens and communities of Chatham County. Any gathering of stakeholders needs to **involve those who have worked on related plans that have been recently completed in Chatham County such as the Strategic Plan for economic development, the Farmland Protection plan and the Conservation Plan. The plan also needs to recognize geographic differences that exist in the County and that one size might not fit all.** We have been told that the EDC will save the county the cost of a consultant, at least for initial steps. However, if an updated land use plan is vital to prosperity for Chatham County, then such an investment would be money well spent.

CCEC considers the drafting of an updated Land Use Plan to be a significant policy initiative and we are keenly interested in the process and the result. We hope this effort will avoid some of the mistakes of the past and will incorporate and build on the plans that have previously been adopted by the county. We encourage the commissioners to clarify the

EDC's role in this initial process. Ultimately we hope that this process will be completely transparent and inclusive of all citizens and that the results will be truly comprehensive.

Thank You”

**Sonny Keisler**, 3006 River Forks Road, Sanford, NC, presented his comments to the Board and provided them in their entirety for the record as follows:

”My name is Sonny Keisler. I live at 3006 River Forks Road. I am speaking tonight concerning the Commissioner's decision to authorize the Chatham County Economic Development Corporation to “Jump Start” the development of a comprehensive land use plan for Chatham County. Whether such a plan actually is developed remains to be seen. However, it is my understanding that a comprehensive land use plan supported by a land use map and necessary implementing ordinances has never been developed in Chatham County.

The one point I wish to make tonight is this. A well designed, comprehensive land use plan is needed in Chatham County as never before. While there are many reasons for this conclusion, the main reason can be summed up in five words: global warming and climate change.

According to recent polls, the majority of Americans now realize that global warming and climate change is occurring and is having a definite impact on weather. The drought this summer has helped create this long overdue awareness.

The question is whether the majority on the Chatham County Board of Commissioners will also take adequate notice of climate change and try to fashion a land use plan that can help Chatham County adapt to what now appears to be irreversible changes in global climate and as a result, irreversible changes our local weather, in our water supplies, in the health of our forests, in the productivity of our farms and in the economic well-being of the county.

These observations are supported by thousands of scientific studies published by leading scientific organizations such as the National Academy of Sciences in the United States and the Royal Society in the United Kingdom. Some of the published findings include the following. In terms of our climate, the Global Carbon Project states the world is “firmly on course” to meet the worst case scenario depicted by the 2007 report of the United Nations Panel on Climate Change. The worst case is a world that by 2100 is 10-12 degree Fahrenheit warmer than now and warmer that it has been in approximately 65,000,000 years. In this regards, atmospheric carbon dioxide (CO<sub>2</sub>) now at 395 parts per million (ppm) is higher than in 800,000 years. Also, according to a 2012 report issued by European Space Agency, by 2022 the Arctic Ocean will be ice free in summer for the first time in at least 700,000 years. These types of observations have lead America's foremost climatologist, Jim Hansen to state "If humanity wishes to preserve a planet similar to that on which civilization developed and to which life on earth adapted, ... CO<sub>2</sub> will need to be reduced ... to at most 350 ppm."

The increase in atmospheric CO<sub>2</sub>, which is absorbed by the oceans, also has resulted in more acidic oceans. According to a 2011 study by the International Program on the State of the Ocean, ocean acidification “is occurring faster than in the past 55 million years”. The study also states that because of acidification, habitat destruction, over fishing, rising ocean temperatures, falling ocean oxygen levels and increased pollution “the world's ocean is at high risk of entering a phase of extinction of marine species unprecedented in human history”.

These types of studies and thousands more make one simple point. The foundations of civilization are in the early stage of collapse. As you may know, civilization has existed for approximately 10,000 years. This means that public leaders, such as the Chatham County Board of commissioners have a responsibility to engage in first class land use planning and help prepare their citizens for difficult times ahead.

Thank You.”

**Harold Pillsbury**, 350A Plaza Drive, Chapel Hill, NC, stated that his topic is the Cole Park issue where the community homeowners association is being asked to take on the responsibilities of a trailer park next to their community which is in a state of disrepair. He stated that they were 3½ years behind in their taxes, they have several issues regarding the land which are poorly managed, because of an impervious land issue of which they had no knowledge, it doesn't seem fair for a group of homeowners to be stuck with the responsibility of upgrading the trailer park to a level that is not within their means. He stated that community has a vested interest in preserving the well-being of the County and for the owner of the trailer park to allow it to go into a bad state of disrepair and hold them accountable for what would be needed to bring it up to standards is against every principle he can imagine. He implored the Board of Commissioners to reconsider this position and leave the Cole Park Homeowners Association out of whatever happens to the trailer park, make them bring it up to standards, and pay their back taxes and not put them in a position of having to take on the responsibility for that land.

**Larry Ballas**, 139 Indian Creek Lane, Apex, NC, stated that the oil industry developed, from the late eighteen hundreds to the twentieth century and where we are now, and gave us all our conveniences. There are a lot of environmentally sensitive issues such as fracking and air pollution. The Board of Commissioners usually stakes a stand on these issues. Fracking is now being studied in North Carolina which he feels will probably never occur in Chatham County. The idea is that we are a polluting society, but we are not approaching what is causing the pollution now. We are always looking to the future for something that is going to cause pollution and ignoring the problem now. He stated that he believes that we need to get back to basics. If we want to save things like Jordan Lake, we have to stop Greensboro, Durham, and a lot of Chatham County, from polluting it. Global warming is also a big issue.

**David Holdaway**, 350 Chapel Hill Plaza Drive, Chapel Hill, NC, raised a few concerns regarding Cole Place residents which they have with the modification: 1) Presence of broken concrete and steel on part of the property which represents a potential safety hazard to children playing in the area. Prior to accepting that property, they feel it should be cleaned up. 2) Back taxes on the property should not be conveyed to the homeowners association. 3) There is a large pine tree that is in danger of falling and presenting a safety hazard to anyone in the area. 4) The condition of the drain/stormwater system is in need of work as it has not been properly maintained.

**Andrew Hunt**, 285F Plaza Drive, Chapel Hill, NC, stated that there is a problem with the drainage basin. He stated that they hired a land surveyor who said that the land was not converted to a drainage basin from a sediment basin after construction of the area. There was an estimated 250 cubic yards of sediment in the bottom of this drainage basin along with trees, weeds, and other plant life. The water that stands there now creates a mosquito breeding ground which causes a health problem. It was their understanding that maintenance of the pond was the responsibility of the owner and that this was not done. In order to bring the pond back up to proper codes, they estimated it would cost approximately \$15,000.

**Kathleen Hundley**, 136 Rocky Falls Road, Sanford, NC, presented her comments to the Board and provided them in their entirety for the record as follows:

“My name is Kathleen Hundley, and I live at 136 Rocky Falls in Southeast Chatham County.

During the years of the previous Board of Commissioners, the citizens of Chatham became comfortable, knowing that we would be given the right to have a voice in decisions made by elected leaders that would impact Chatham County and, potentially, private land owners. The leadership saw the wisdom of seeking and considering the opinions provided by the citizenry. Not only was information provided that could give the leaders a different viewpoint to decisions, but there was a trust and security in the certainty that decisions would be made fairly.

It was decided then that Chatham needed a land-use plan adopted through a careful study of the County that would identify where centers of commerce and business could best be located. Not only was the land-use plan considered a good thing for the County a few years ago, but a land-use plan approved within the past five years is a requirement for the 30-year Comprehensive Transportation Plan that the NCDOT is working on now. A consideration of equal importance is how private landowners can be assured that their land will remain free from threat of “flex growth” encroachment by commercial interests. Today, it is necessary that there is a plan – a map, if you will – that will make every effort to fairly locate areas of commercial development that leave the rural agricultural areas and local business interest in Chatham County under owner control.

The process of addressing land use in Chatham will be a complex one that the members of neither the Board of Commissioners nor the EDC have the skills nor the expertise required for a land-use study. Such an undertaking needs a professional effort that will be unbiased and protect privately owned lands while at the same time setting aside ample acreage to entice new commercial opportunities to Chatham. The NC Department of Commerce has a GIS site for demographics, buildings, lot of data, and the Chatham County GIS also has environmental data about the County that was gathered through the Chatham Conservation Partnership, all of which is on the County GIS website in the Conservation Planning folder. Since this information has already been gathered and is available, it is not necessary to burden the members of the EDC who have their own obligations when both County and state GIS data could turn those data into the much-needed land-use plan.

The Board of Commissioners should ask for and seriously listen to the citizen voice on this matter and recognize the value of acquiring a land-use plan in Chatham, acknowledging that the process of determining such a plan will best be served by utilizing professional expertise along with the capabilities of GIS data that can focus on and provide data for a land use plan appropriate for Chatham County.

Thank you.”

**Susan Mish**, 181 Meadow Branch Road, Pittsboro, NC, stated that she feels minimum housing standards should be set. She also recommended that the current Sheriff’s Office be dissolved and a YMCA be established which would be a better use of taxpayer dollars.

## **PLANNING AND ZONING**

**Briar Chapel Waiver Request:** Vote on a request by Nick Robinson, on behalf of Newland Communities, for a partial reduction of the 100 foot perimeter buffer (Section 9.2 of the Compact Communities Ordinance (CCO)) for Briar Chapel, pursuant to Section 15 of the CCO

Jason Sullivan, Planning Director, explained the specifics of the request as follows:

The most recent preliminary plat submittal for Briar Chapel (Phase 6 North, Sections 1 & 2) shows a partial encroachment of a stormwater feature in a 100’ perimeter setback that cannot be re-vegetated, other than grass. It is staff opinion the stormwater feature should be located outside of the buffer based on the application materials submitted as part of the conditional use permitting process in 2004-2005, as well as discussions about perimeter buffer encroachments in previous phases. Newland Communities is submitting this request to reduce the perimeter buffer in certain situations for phase 6 and future phases.

The Chatham County CCO states the following:

**Section 9.2 Perimeter Buffer**, “Perimeter buffers shall be utilized to minimize impacts of each compact community on adjacent properties along the entire perimeter of the compact community. Table 9.2 lists the minimum buffer width allowable, depending on the proposed land use in the adjacent property at any point along the perimeter.

Chatham County may allow a reduction in the perimeter buffer width required by this ordinance of up to fifty percent (50%) if it determines that the impact of the compact community is adequately mitigated by community design or topography.”

**Section 15. Waiver**, “With the approval of the Board of Commissioners, the requirements of this ordinance may be adjusted, modified, reduced or waived based upon the absence of any reasonable relationship or nexus between the impact of the compact community development and the inclusionary or other requirements set forth herein.”

In the 2004 original application materials submitted by Briar Chapel regarding Design Guidelines/Buffers, Briar Chapel stated “*Stream buffers, perimeter buffers, and view-shed buffers are to consist of preserved existing vegetation. Buffers may be selectively cleared and thinned of dead, leaning, and diseased trees, as well as undesirable brush and vines. Where perimeter and view-shed buffers do not contain adequate plant materials, buffers are to be re-vegetated, primarily with native species.*” The recent 2012 CUP revisions did not change this language.

For a more detailed discussion about the proposed stormwater pond in Phase 6 North, Sections 1 & 2, please see the agenda abstract for that preliminary plat included with this agenda.

This waiver request is being submitted directly to the Board of Commissioners without review and recommendation by the Planning Board and follows the process outlined by the Board in a waiver request approved in August 2010. The waiver provision was previously used as part of the original conditional use permit approval to modify the moderately priced dwellings requirements of the CCO.

Chairman Bock asked if Section 9.2 Perimeter Buffer was part of the ordinance. Mr. Sullivan replied yes.

Nick Robinson, Attorney, explained that on behalf of NNP Briar Chapel, he adopted Mr. Sullivan’s summary of what had happened to date. He stated that they had filed a Phase 6 North Preliminary Plat Application. He stated that they worked with the Planning Staff to resolve all issues except one. The question discussed was regarding grading for a stormwater pond and access easement allowed within the 100 ft. perimeter buffer. The Compact Communities Ordinance does not directly address that issue. They took the issue to the Planning Board who recommended approval of the preliminary plat with conditions but excluded conditions that Planning Staff had suggested about taking the grading out of the 100 ft. perimeter buffer; however, they then added that they would like for the developer to sit down with the Planning Staff before the Board of Commissioners’ meeting to see if something can be worked out. He said stated that he feels they understood, as a result of the conversation, that it was policy question more than a legal issue. This will not be the only time this issue arises. It will come up over and over as stormwater ponds which are in part intended to capture and collect stormwater runoff before it leaves the project, are generally going to be located near the perimeter of a project. He stated that the Compact Communities Ordinance is interesting on perimeter buffers. It establishes a one hundred foot buffer all the way around the perimeter of the project. In many places in Briar Chapel, the perimeter is wooded. In other places it is pasture and some places a combination of both. There is no obligation under the Compact Communities Ordinance for the developer to plant trees through the 100 ft. if it is pasture. The terms of the Compact Communities do not prohibit stormwater structure in the 100 ft. perimeter buffer. They had a disagreement about that at which time the Planning Staff suggested that they try to work it out. As is their custom, they took them up on that request. They met on September 20<sup>th</sup> to work through it. Planning Staff suggested the possibility of a waiver because the Compact Communities Ordinance allows for a 50% reduction of the perimeter buffer. They talked about limiting it to this particular instance or discussed putting stormwater structures up to 50 ft. into the perimeter buffer in the rest of the project so they don’t have to fight this battle every time another phase of the project is done. He stated that he felt it was the agreed opinion with the Planning Staff that it would be better if it could be resolved once and for all at this time.

He stated it would be better for Planning Staff in terms of their work load and better for Briar Chapel for future phases with regard to what they are allowed and not allowed to do within the buffer.

Mr. Robinson reviewed the buffer on the map. He stated that he drafted an order for the Board's consideration that would allow for a 50% reduction of the perimeter buffer but only where stormwater easements, grading, or access can go in. They would voluntarily agree that they wouldn't put a pond or other structures there. He stated that the County Attorney has prepared a red-lined version which narrows it down and eliminates the possibility that other utilities could be placed there and narrows it to this particular phase. He stated that they agreed that it did not have to include other utilities, the order would be fine with his changes with respect to narrowing it to stormwater, but they do not agree that it's a good policy reason to narrow it to just Phase 6.

Mr. Sullivan stated that they discussed it and noted that since there were going to be upcoming encroachments, the Board might want to request it.

Commissioner Petty asked if the boundaries would be limited to stormwater drains only. Mr. Sullivan replied yes.

Commissioner Stewart asked how many more phases are there. Mr. Robinson replied, sixteen, but that doesn't mean there would be a stormwater pond in every perimeter buffer. Some are interior phases; however, there are probably six to eight more circumstances where it could get close

Chairman Bock stated that it makes sense to him as it doesn't violate the intent of the original ordinance, especially not talking about the pond. He stated that it seemed to him that this was a perfect situation of why the 50% waiver provision was put in originally.

Commissioner Kost asked Chairman Bock if he supported applying this to the entire project.

Commissioner Kost stated that she did not support it for the entire project. She stated that the waiver procedure does not provide for public input and public hearings. This project, more than any project in the history of Chatham County, had more public involvement. She stated that she has heard from several property owners who were very concerned with changing the perimeter buffers as it was put in to be a screening. The buffer, Mr. Robinson says, is for visual screenings. The visual screening is there in this case; however, without knowing where all the other devices are, they cannot answer that as they don't know where they are. They could plan for them not to be in the perimeter buffer and they would have complete certainty. She stated that she was uncomfortable granting a global reduction of the perimeter buffer without having citizen input. She stated that she would support doing this for Phase 6.

Commissioner Stewart asked if each case would be done the same way.

Mr. Robinson stated no, a lot depends on topography.

Commissioner Stewart stated that since each would be on a case-by-case basis, so there could be different circumstances for each which would allow for sending it to the Board for review.

Mr. Robinson explained that it goes both ways. In many cases there would be no need, but in other cases there may be a small need to do it. The question, he said, do you have to have the conversation over and over. He stated that he thinks it is important to keep in mind, in this case, all of the adjacent property owners received notification of the preliminary plat and could view it.



Commissioner Kost restated that Mr. Robinson was talking about the entire project. If you have notified all of the adjacent property owners to Briar Chapel, and they are all okay with it, then it is a different story. She asked if that had been done.

Mr. Robinson stated that they had not done so. The response to the direct question about what is going to happen in the future, is that there is the ordinance that doesn't speak directly to whether or not this can happen. The ordinance gives an escape valve stating that the buffer can be reduced by 50% and the conversation would not have to be held. He stated that they feel they have done a good job. They are basically saying that when they need to, they will use it and they will only use it for a very thing, grading, easements, and drainage, and not for any structures. He stated that he feels there is a situation where the ordinance did not give a lot of guidance, but they have jointly crafted a solution which they feel works for everyone, the project, the community, and for a good compromise and interpretation of a vague provision in the ordinance.

Commissioner Stewart asked if it would only be when this particular case presents itself.

Mr. Robinson stated that it would have to be a request by them for stormwater easements.

Mr. Rose stated that he didn't feel we had that situation here. The order would have to be changed. By definition when something is being waived, it should be specific as to what is being waived. In a way, he cautioned, that you are amending the ordinance without a public hearing if it is waived going forward for all uses.

Commissioner Kost moved, seconded by Commissioner Cross, to grant Briar Chapel the waiver for stormwater devices only as presented by the County Attorney in the revised red-line version so that this would be specific to this phase of the project and only include stormwater.

Commissioner Kost stated that the attorney's point is what she was trying to say in that it seems if we do this for the entire project, we are basically amending the Compact Communities Ordinance without public input.

Commissioner Stewart asked if there needed to be anything done to amend it going forward.

Commissioner Kost stated that she thought that was fair; however, if that was done, it would not be a waiver, it would be an amendment of the Compact Communities Ordinance and it would be a much more public process.

Chairman Bock called the question. The motion carried five (5) to zero (0).

**Briar Chapel Plat Approval:** Vote on a request by Bill Mumford, Sr., Project Manager, on behalf of NNP Briar Chapel, LLC for preliminary plat approval of Briar Chapel, Phase 6, North (Sections 1 & 2), consisting of 115 lots on 30 acres located off Andrews Store Road/Parker Herndon Road, SR #1528/SR #1526, Baldwin Township

Jason Sullivan, Planning Director, explained the specifics of the request as follows:

Zoning:	Conditional Use District / Compact Community
Water System:	Chatham County
Sewer System:	Private Wastewater Treatment Plant
Subject to 100 year flood:	No floodable area in Phase 6 North

This request is a portion of the Briar Chapel Compact Community, consisting of 2,389 dwelling units on 1,589 acres, located off Hwy 15-501 N and Mann's Chapel Road (SR-1532), approved by the Chatham County Board of Commissioners on February 15, 2005. A copy of "*An Ordinance Amending the Zoning Ordinance of Chatham County*" and

“A Resolution Approving An Application For A Conditional Use Permit For A Request By Mitch Barron On Behalf Of Newland Communities for Briar Chapel Planned Residential Development” may be viewed on the Planning Department website at [www.chathamnc.org/planning](http://www.chathamnc.org/planning), then click on Rezoning & Subdivision Cases, Miscellaneous Prior to 2005, Briar Chapel. The conditional use permit was revised in June 2012 and a copy of “A Resolution Approving a Revision to a Conditional Use Permit Request by NNP-Briar Chapel, LLC” may be viewed online under the 2012 cases. A copy of the Compact Community Ordinance can also be found on the Planning Department web page. **Briar Chapel is reviewed and regulated under the Subdivision Regulations prior to 2008 and the Compact Community Ordinance.**

The developer is requesting preliminary plat approval of Briar Chapel, Phase 6 North (Sections 1 & 2) consisting of 115 single family residential lots on 30 acres. The roadways, except for one (1) private alleyway are designed as public, state maintained roads. All lots will have frontage on a state maintained road.

Phase 6 has an archaeological site, labeled 31CH824/824, as identified in the ‘Intensive Cultural Resource Investigation’, completed in 2006. Per the report, “the site consists of the remains of two domestic structure, two wells and two possible outbuildings.....There is a large collapsed house in the center of the site on the north side of a dirt road.....Recommendation: Investigations revealed that the main house burned at this mid- nineteenth to mid-twentieth century site, thus depositing the domestic contents of the structure in situ. The presence of in situ domestic remains within the footprint of the main house, confirmed by the excavation of two test units, shows that the site has the potential to yield significant data pertaining to history. As such this site is recommended eligible for the National Register.....It is recommended that a 5-meter buffer surrounding the main house be preserved in place and avoided by proposed construction.....If avoidance of the significant portion of the site is not an option, this area should be subjected to data recovery activities.” Per a note on the preliminary map, “A 5-meter buffer has been designated around this site as indicated on this site plan.”

Agency reviews as required for a preliminary plat submittal have been received as follows:

NCDOT	Road plan approval	August 10, 2012
CHATHAM COUNTY	Erosion and Sedimentation Control Permit	August 01, 2012
CORPS OF ENGINEERS	404 Stream Permit	August 21, 2009
NCDENR	401 Water Quality Certification	August 31, 2009
Modification		
NCDENR	Wastewater Collection System Extension	June 26, 2012
NCDENR	Wastewater Treatment	May 18, 2009
	Irrigation and Non-Conjunctive Reclaimed Water Utilization System-Modification	
NCDENR	Water Main Extension	August 13, 2012
NCDENR	Authorization to Construct Water System	August 14, 2012
NCDENR	Stormwater Management Plan Modification	July 30, 2012

A copy of the above permits can be viewed on the Planning Department website at [www.chathamnc.org/planning](http://www.chathamnc.org/planning), Rezoning and Subdivision Cases, 2012.

The Chatham County Emergency Operations Office has approved the following road names for submittal to the Board of Commissioners for approval: Cliffdale Road, Tarwick Avenue, Buttress Way Drive, Greenleaf Drive, and Weathersby Drive. The road names Buttress Way and Weathersby Way shown on the preliminary map will have to be changed to read the exact way EOC approved them. Serenity Hill Circle also is to be changed to N. Serenity Hill Circle. These changes will be made on the final plat.

There is a perimeter buffer shown on the Phase 6 North map adjacent to the Marvin Meacham property, the Wade Rook Meacham, ETAL property, and the TC&I Timber Company, LLC property. A perimeter buffer as defined in the Compact Community Ordinance is “Land that either obscures or significantly softens the external view of the compact community from adjacent properties”. Perimeter buffers are required to be 100 feet wide. As stated in the CCO Section 9.2 *“To the extent practicable, existing native forest vegetation shall be utilized for the perimeter buffer.....Vegetative plantings in the buffer shall produce the effect of a natural forested area, using native species. The planting does not have to be opaque, but should function to significantly soften the visual impact of buildings, both initially and in the longer term. The visual buffering provided by vegetative plantings shall be effective in all seasons.”* In the 2004 original application materials submitted by Briar Chapel regarding Design Guidelines/Buffers, Briar Chapel stated *“Stream buffers, perimeter buffers, and view-shed buffers are to consist of preserved existing vegetation. Buffers may be selectively cleared and thinned of dead, leaning, and diseased trees, as well as undesirable brush and vines. Where perimeter and view-shed buffers do not contain adequate plant materials, buffers are to be re-vegetated, primarily with native species.”* The recent 2012 CUP revisions did not change this language.

The perimeter buffer areas shown on the preliminary plat are currently forested. The stormwater pond adjacent to the Marvin Meacham property is shown to be located outside of the perimeter buffer, however, the pond dam and associated easements are located within the buffer. The construction plan submitted as part of the preliminary plat application shows the grading that will be required in order for the dam and the embankments to be constructed. The stormwater wet pond construction specifications states that “no trees/shrubs of any type may be planted on the proposed dam embankment (fill areas).” Since the perimeter buffer will be required to be graded in order to construct the dam, the existing native vegetation removed, and no re-vegetating (except with grass) is allowed, it is staff’s interpretation of the CCO that the intent of the perimeter buffer is not being met. Staff has brought this to the attention of the developer and has received a response from Nick Robinson, Attorney-at-Law. See attachment #3, item #7. Mr. Robinson’s opinion is that easements, grading or maintenance access areas could be allowed in the 100’ perimeter buffer and that those components are not considered part of a stormwater device and should be allowed within a perimeter buffer. Staff asked Dan LaMontagne, Environmental Quality Director, to define a stormwater device/feature. In an e-mail dated 8/31/12, Mr. LaMontagne stated, “I interpret a ‘stormwater feature’ to include the engineered structural components of the stormwater BMP and inspection and maintenance easements or access areas....” In an e-mail to Kevin Hamak, RLA, The John R. McAdams Co, Inc, dated November 8, 2007, Jason Sullivan (then Assistant Planning Director) stated that “the perimeter buffers are to remain undisturbed. All of the grading and components associated with the stormwater devices should be located outside of the perimeter buffer.....”

Mr. Robinson stated in his e-mail that “grading and stormwater pond easements were allowed in the 100’ perimeter buffer in Phase 5 N.” During the final plat review for Phase 5 N., staff noted that the 100’ perimeter buffer along the Meacham line was not shown on the plat. Review comments were given back to the developer. Item # 11 of those comments stated “Show 100’ perimeter buffer along Marvin Meacham property line. All stormwater devices are to be located outside of perimeter buffers”. The response from Grant Livengood, P. E., McKim & Creed was “100’ perimeter buffer has been shown along the Meacham property. The use of existing vegetation and the planting of native species, if necessary, will preserve the intent of the buffer.” The final plat was revised to show the stormwater pond location and the majority of the associated easement outside the perimeter buffer. A small portion of the easement area did show as extending into the 100’ foot buffer, however, the grading and other features, i.e., a dam and embankment were shown to be located outside the perimeter buffer.

In the e-mail from Dan LaMontagne, attachment 4, he confirms that the “CCO specifically prohibits stormwater features in riparian buffers, except in limited circumstances, in ephemeral buffers only. The CCO only allows this if low impact techniques or other controls are used to meet or exceed the pollutant removal performance of a fully functioning riparian buffer. I believe that this provision was intended to allow, on a limited basis,

discharges from stormwater BMP's into ephemeral buffers." Mr. Robinson indicated in his e-mail that perimeter buffers should be treated the same as riparian buffers in regard to stormwater features. Per Dan's e-mail, only limited discharges from a stormwater BMP are allowed in an ephemeral riparian buffer not stormwater features and not in all riparian buffers. Riparian buffers serve to protect water quality and perimeter buffers serve to minimize the impact of the compact community on adjacent properties.

There is also a storm drainage easement shown at the back of Lots 667 – 677 that encroaches into a perimeter buffer and the construction plan shows grading within that area. Staff recommends that the developer provide a re-vegetation plan with the final plat submittal for all areas that are graded within that portion of the perimeter buffer adjacent to the TM&I Timber Company.

It is staff's interpretation of the regulations/ordinances that all stormwater features (including easements, grading and maintenance access areas) should be located out of the perimeter buffer areas. Staff recommends that the final plat be revised to show no storm drainage easements or stormwater features located within a perimeter buffer, except for limited grading that can be re-vegetated.

The following items will be changed on the final plat:

- A. Label the Storm Drainage Easements 'private', except those maintained by NCDOT.
- B. Number open spaces
- C. Show vicinity map
- D. Word floodplain note to state that Phase 6 North does not contain any floodable area.

Lee Bowman was at the Planning Board meeting representing the applicant along with Nick Robinson, attorney for the applicant. Mr. Robinson gave a brief summary of the Briar Chapel development and explained his interpretation of the regulations / ordinances regarding riparian and perimeter buffers. Mr. Robinson distributed three hand-outs to the Planning Board and staff, see attachment #6. Mr. Robinson stated that the CCO does not include a requirement that a stormwater easement be outside of the perimeter buffer. Mr. Robinson stated that the applicant proposes an alternate condition to help alleviate staff's concern regarding re-vegetation of the perimeter buffer. He submitted a plan, attachment 6, hand-out 2, showing plantings outside the 'toe' of the dam since trees/shrubs are not allowed to be planted on the dam or the embankment. Mr. Robinson also handed out revised conditions that the applicant requested be approved, see hand-out # 3. The applicant requested conditions 1 & 2 be revised as shown on hand-out #3, condition 3 be deleted, and staff conditions 4, 5, & 6 to remain as stated.

The Planning Board discussed the reasoning behind the six (6) conditions proposed by staff and the language submitted in the 2004 Briar Chapel original application materials regarding perimeter buffers. The Planning Board requested that the applicant meet with staff between then and the Commissioner's meeting to try to work on a compromise to reduce the amount of buffer that is being disturbed.

On September 20, staff (Jason Sullivan and Lynn Richardson) met with the applicant (Lee Bowman and Nick Robinson) to discuss the issue. It was discussed that the applicant would request a waiver from the Board of County Commissioners regarding disturbance within a perimeter buffer. If the Commissioner's approve the waiver request, therefore eliminating conditions 1, 2, & 3, staff recommends that conditions 4, 5, and 6 remain.

The Planning Department recommends approval of the road names Cliffdale Road, Tarwick Avenue, Buttress Way Dr., Greenleaf Drive, and Weathersby Drive and approval of the request for preliminary plat approval of **Briar Chapel, Phase 6, North (Sections 1 & 2)** with the following conditions:

1. The final plat be revised to show no storm drainage easements or stormwater features located within a perimeter buffer, except for limited grading that can be re-vegetated.

2. Prior to final plat submittal a re-vegetation plan be submitted to staff for review and approval for those areas that require limited grading within the perimeter buffer.
3. A revised construction plan for the stormwater pond adjacent to the Marvin Meacham property be submitted for review by staff prior to any land disturbing activities associated with construction of the stormwater pond.
4. A deed restriction, satisfactory to the County Attorney, for the perimeter buffers that permanently protects the land as a buffer and identifies the maintenance responsibility that rests with the homeowners association, shall be recorded with the Chatham County Register of Deeds prior to recordation of the final plat.
5. The road names Buttress Way and Weathersby Way shown on the preliminary map shall be changed on the final plat to read Buttress Way Dr. and Weathersby Drive. Serenity Hill Circle also is to be changed to N. Serenity Hill Circle.
6. The following items shall be revised on the final plat:
  - A. Label the Storm Drainage Easements 'private', except those maintained by NCDOT.
  - B. Number open spaces
  - C. Show vicinity map
  - D. Word floodplain note to state that Phase 6 North does not contain any floodable area.
  - E. Number stormwater pond

The Planning Board (by unanimous vote [9] members) recommends approval of the road names Cliffdale Road, Tarwick Avenue, Buttress Way Dr., Greenleaf Drive, and Weathersby Drive and approval of the request for preliminary plat approval of **Briar Chapel, Phase 6, North (Sections 1 & 2)** with conditions 4 – 6 as stated above (with the exception of Conditions 1, 2, and 3 stated above); and that the applicant and Planning Department staff meet to discuss a compromise to minimize the disturbance within the perimeter buffer before the October 15, 2012 Board of Commissioner's meeting.

Commissioner Kost moved seconded by Commissioner Petty, to approve the road names Cliffdale Road, Tarwick Avenue, Buttress Way Dr., Greenleaf Drive, and Weathersby Drive and approval of the request for preliminary plat approval of **Briar Chapel, Phase 6, North (Sections 1 & 2)** with the six conditions listed and adopt **Resolution #2012-\_\_\_\_\_ Authorizing a Partial Reduction of the 100' Perimeter Buffer for a Stormwater Easement, Maintenance, Grading and Access for Phase Six North by NNP Briar Chapel, LLC**, attached hereto and by reference made a part hereof. The motion carried five (5) to zero (0).

**Cole Place Conditional Use Permit:** Vote on request by IS Development Company, LLC for a revision to an existing conditional use permit for Cole Place on Parcel #65804 to remove and transfer 3.22 acres from the existing CUP to an adjacent parcel and transfer the remainder of the residual property subject to the existing CUP to the Townhomes at Cole Place Owners Association, Inc.

Angie Birchett, Land Use Administrator II, explained the specifics of the request as follows:

**(Planning Board meeting discussion can be viewed below in "Bold")**

A quasi-judicial public hearing was held on August 20, 2012 and planning staff presented the application. Also present were the president of the Cole Place Townhomes Homeowner's Association (HOA), David Holdaway, who voiced some concerns as well as the applicant/landowner, Greg Isenhour, who also spoke. No one else spoke on the issue.

Cole Place Development was approved April 1984. Since then, there have been several amendments and revisions to the CUP. The townhomes were approved for

development in August 2003. When the project was completed, the residual lands were not transferred to the HOA but were retained by the developer/landowner, Mr. Isenhour. Mr. Isenhour currently has an interest in developing a parcel of land on US 15-501 N, which has a general use B-1 Business zoning. However, as standards have changed and policies and ordinances have been updated, that parcel does not have enough area to develop a small business and allow for the amount of pervious surface needed.

This request is to remove some of the residual lands from the Cole Place development that will later be recombined with a portion of an adjacent tract, which will then be added to the parcel on US 15-501 N. That recombination will come after an approval is granted.

Generally, in order for a matter to be considered for approval, there are five findings that must be addressed and proof given that each one can be supported. They are:

- FINDING #1 – The use requested is among those listed as an eligible conditional use in the district in which the subject property is located or is to be located.
- FINDING #2 – The requested conditional use permit is either essential or desirable for the public convenience or welfare.
- FINDING #3 – The requested permit will not impair the integrity or character of the surrounding or adjoining districts, and will not be detrimental to the health, safety, or welfare of the community.
- FINDING #4 – The requested permit will be consistent with the objectives of the Land Use Plan.
- FINDING #5 – Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary facilities have been or are being provided consistent with the county's plans, policies, and regulations.

Due to the nature of this application, it is planning staff's opinion Findings 1, 4, and 5 remain valid as currently approved with no changes taking place.

It is planning staff's opinion Finding #2 continues to be met with this request. In order for a currently vacant tract of land to be developed, there must be enough land to comply with the watershed protection regulations for impervious surface. The addition of the 3.22 acres from this tract would provide the potential for this site to be developed and lend to the economic growth of the County.

It is planning staff's opinion Finding #3 continues to be met with this request. By removing 3.22 acres from the Cole Place tract, an additional parcel of land will have more flexibility to be developed and the required open space for the impervious surface for Cole Place will remain sufficient and in compliance with regulations.

During the public hearing, Mr. Holdaway voiced concerns over items, in his opinion, needed to be addressed. The concerns were the playground area, some fencing, and concrete needed to be removed from the property. He also stated the southern border of the property across from the mobile home park needs repairs and there are pine trees falling that need to be removed. Mr. Holdaway also wanted to know what the tax liability for the HOA would be.

Mr. Isenhour responded there are approximately 7 to 7 ½ acres currently under his ownership of which only the 3.22 will remain under his name. The remainder will be offered over to the HOA. Commissioner Kost asked Mr. Isenhour about the concerns raised by Mr. Holdaway to which he responded he will address the tree issue, but wasn't sure the wooden fence is on this property. He also stated he inherited the playground when he started developing the property and it was his understanding it was to be cleaned up then. Planning staff advised the Board these are issues to be worked out between the landowner and the HOA and the county would not be involved in these matters.

Based on the information submitted, testimony provided, and the notes from planning staff, the five (5) findings may be made. All conditions approved on this project shall continue and be allowed to proceed as stated in those approvals.

The Planning Board met at their regularly scheduled meeting on September 11, 2012. Mr. David Holdaway, president of the Cole Place Homeowner's Association, was present as well as the applicant. Due to the quasi-judicial nature of this request, Mr. Holdaway asked to speak in the public input session since he could not speak on the CUP for Cole Place.

Mr. Holdaway stated he felt the issues he raised at the public hearing needed to be addressed by the applicant but understood from staff it would be a private, civil matter between the HOA and Mr. Isenhour. He was here to ask what the processes are for revisions to conditional use permits, making sure all previous conditions are met, reviews are done, and any issues are addressed before approving revisions. He asked about easement for utilities, roads, stormwater, etc. His concerns were noted and addressed by staff.

The Planning Board had questions regarding why the open space was not turned over to the HOA when the development was completed. They noted that they thought statutes covering covenants requires a developer to turn over open space once the project is 100% complete. Mr. Isenhour stated he was aware. However, the applicant stated there was still land available that he had development rights for and had hoped to expand but the economy fell and he couldn't move forward.

The Planning Board asked if all the legal easements were in place for access to the wastewater treatment plant which is located on an adjacent tract. Should this approval be granted, it will create a separation between the WWTP (owned and maintained by Aqua NC) property and the Cole Place open space. Staff stated a deeded utility easement across Mr. Isenhour's land, which will be recombined to an adjacent tract later, may be needed to retain access to the plant.

The Planning Board asked if all previous conditions had been met on the original CUP. Staff stated it was discovered during this application process that the condition that the applicant provide certification that the stormwater pond was installed to meet the 2 yr/24 hour storm event was not submitted. The Planning Board asked that an additional condition be placed on this approval that would require the documentation be provided from an engineer to validate the system was installed per the requirement in Condition No. 3 of the 12-18-2006 approval.

It is the Planning Department and Planning Board opinion (by a vote of 7-2) that the five findings may be made and recommend approval of the request as submitted with the following condition:

1. Owner/Applicant shall provide documentation from an engineer to validate that the stormwater system was installed per the requirement in condition #3 of the 12-18-2006 conditional use permit.

Chairman Bock asked if there was any way to interpret approving this as transferring the liability to a homeowners association.

Mr. Sullivan stated that Mr. Isenhour wants to transfer the balance to the homeowners association. He stated that he didn't know that the Board of Commissioners had the authority to force that transfer. If it was approved, it would be set up so that it could be.

Jason Pfister, Attorney for the homeowners association, stated that there is no legal authority to force the transfer. He stated that their issue, with respect to opposition of the application, is that they do not believe that the applicant has the legal authority to pursue the conditional use permit. The applicant, IS Development Company, LLC, and the application was filed on July 5, 2012. In April, 2012, well before the application was filed, the Secretary of State administratively dissolved the LLC. It was not an operating legal entity at the time at the time it filed its application. All an LLC can do after it has been dissolved is conduct affairs that are consistent with winding down of the limited liability company. In this instance, the application speaks for itself. It is not a winding down of this property. This is a modification of a conditional use permit to allow further development and recombination. There is a legal entity that has no legal authority to act, filing an application to continue

business, irrespective of the merits of the BMP pond and the other issues. On top of that, it is their belief, that the County Attorney has instituted foreclosure proceedings on this subject property. Taxes have not been paid in over four years. He asked that the application be denied because the applicant does not have the legal authority to pursue what it is asking for.

Trey Sanders, Attorney, stated that the application has been filed to take 3.22 acres and to recombine those at some point into the existing HOA property. The problem with the assumption is that the HOA is under no contractual responsibility to take this property, and under no legal authority to take the 3.22 acres at some future point and recombine it with the HOA property. In essence, if this property is approved, is to walk down a road where you could be creating a non-conforming lot. One thing that the Zoning Ordinance tries to do is prevent non-conformities. If the Board takes this step, the developer does not do all the things that he should do, a non-conformity could be created which is in contradiction to the County's own ordinance.

Chairman Bock stated that Mr. Sanders reaffirmed what he was thinking stating that the approval of this item in no way transfers any liability or forces the HOA to take the land.

Mr. Sullivan pointed out that if the balance of the property remains, the conditional use permit for Cole Place Townhomes remains intact.

Commissioner Petty stated that it sounds almost like new evidence to him.

Mr. Rose stated that the public hearing could be reopened, but that it would need to be advertised.

Mr. Isenhour stated that he agreed with all of the comments that are being made. He stated that he wanted to object to the new evidence being presented. The public hearing was closed in August. All the procedures were followed for making public announcements including advertising. Anything else heard tonight should be stricken from the record. He stated that he agrees that the LLC was administratively dissolved. Council for the HOA is correct. One of the provisions of the LLC was that it could continue to conduct business in the winding down of the business affairs of the LLC. This piece of property is the last that IS Development Company, LLC owns. He stated that they do owe taxes. The past five years have been some of the worst years that he has lived and experienced in his life; that he has had property foreclosed on him; that the company has had foreclosures; they ran an office in northern Chatham County at Cole Park which they were forced to close due to the recession. He stated that all he is trying to do is wind down stating that he doesn't live here anymore. In 2008, he placed everything he owns on the market for sale. His home in Chatham County sold first. He drove here tonight because he is trying to wind things down. He is trying to get this property sold which owes Harrington Bank. He stated that he hears the concerns from the HOA, but he is not asking them to pay taxes. Before the taxes can be paid, however, he must have a revenue source to pay them. There may be funds to take care of their other concerns if he can sell the property. That is his only objective, to get the bank paid off, fully dissolve the company, and be done. He asked the Board to approve this item so that he can go forward and wind down his company.

Chairman Bock stated that it seems to him that if the public hearing was reopened, they would hear a lot of the same things as before. If the Board's approval was placing a burden on the HOA, if they were asking the HOA to pay the unpaid taxes, and if they were transferring any liabilities to the HOA, he would not consider approving it; however, he feels that they have to be careful of hearing new evidence after a public hearing is closed.

Commissioner Kost stated that she didn't think they had heard any new evidence.

Chairman Bock stated that his recommendation is approval recognizing that a legal appeal might come later.



Commissioner Stewart asked for confirmation that this will not be a transfer of any liability or accountability for anything on the current property if the change is approved for the conditional use permit.

Mr. Rose stated according to his understanding, no.

Mr. Isenhour stated that the property that is being removed to join it to other property he has. He stated that if the HOA would like to have the property, there are still discussions to be held during the multiple processes.

Mr. Sullivan stated that it might be worth the County Attorney reviewing the application materials submitted prior to a decision being made.

Mr. Rose stated that cutting the tree down is not related to transferring the rights to the 3.22 acres.

Commissioner Kost stated that there are legal questions for which they need to make certain that the County Attorney is clear on what the Board is doing. She asked that a decision on the matter be deferred.

Chairman Bock stated that there was no question about the HOA and transferring the liability. The only legal question is if this is a winding down or expanding situation and if he has a right to make the application.

Mr. Sullivan read directly from the application stating that “this proposed modification to the existing CUP is twofold. The first is to allow the removal or transfer of the 3.22 acres from the existing CUP and to be recombined with properties owned by an adjacent third party owner. The second purpose of this modification is to ensure that the existing CUP is to allow for the remaining residual property subject to the restrictions of the CUP to be transferred to the townhomes at Cole Place Owners Association, Inc.”

Commissioner Kost moved, seconded by Commissioner Cross, to defer this matter to give counsel a chance to review materials in the application in order to provide the Board with legal advice.

Commissioner Petty asked if this was something that the Board could vote on based on its own merits and then allow an appeal process to take place if need be.

Mr. Rose stated that that could be done, but something may get resolved between now and November 19<sup>th</sup> so that they do not have to go to court.

Commissioner Stewart stated that if they take it as face value as it reads now, then Mr. Sullivan’s recommendation is the right one to follow. She stated that they are speculating now on what may be a legal issue.

Chairman Bock stated that he felt they were getting into dangerous territory when they start trying to think what might happen in the future. If they look at what they heard during the public input process, look at the comments they have received so far, he feels that the only issue is the definition of “winding down”.

Commissioner Petty stated if they have to make their decision tonight based on the evidence presented during the public input and by staff, he can support it; however, they have heard something tonight which he questions whether it is additional evidence and from that standpoint, their decision has to be based on the evidence they have heard before tonight. He stated that he would rather see it approved and then handled in court.

Commissioner Stewart stated that it would be with the stipulation that it would not negatively impact the homeowners.

Chairman Bock called the question. The motion failed two (2) to three (3) with Commissioners Bock, Petty, and Steward opposing.

Commissioner Petty moved, seconded by Commissioner Stewart, to approve the request and adopt **Resolution #2012-\_\_\_ Approving a Revision to a Conditional Use Permit Request by IS Development Company, LLC**, attached hereto and by reference made a part hereof. The motion carried three (3) to two (2) with Commissioners Kost and Cross opposing.

Commissioner Kost stated that if the Board had gotten the legal questions answered, there is a good chance she would have voted for this; however, she felt that there were questions from a legal standpoint that she would like to have had answered. She also stated that she didn't feel that the Board heard any new evidence tonight; what we heard were legal questions which is not evidence.

**Walter Lewis Rezoning Request:** Vote on request by Walter Lewis to rezone approximately 3.415 acres, Parcel #17717, located on Beaver Creek Road, New Hope Township, from Residential (R1) to Conditional Neighborhood Business Zoning District (CD-NB) to construct a RV and Boat Storage facility

Angie Birchett, Land Use Administrator II, explained the specifics of the request as follows:

**(Planning Board meeting discussion can be seen in "Bold" below)**

A legislative public hearing was held on this request August 20, 2012. Planning staff presented the application and reviewed the supporting documentation submitted. Mr. Jerry Turner, representative for the applicant, and Mr. Walt Lewis were present and spoke. One neighbor, Ms. Suzanne Dixon, spoke in opposition of the application. She asked the Board not to approve the request because, in her opinion, strangers will use the facility, a non-Chatham resident is developing the site, it lowers the curb appeal of the area, and they moved there expecting it to remain residential development only.

The applicant, Mr. Walt Lewis, took a moment to respond. He stated his current facility located at 25 Bob Horton Rd. and US 64 E intersection has been open for five (5) years. He stated he has remained at capacity for some time and has been looking for an area in Chatham County to expand. He stated, in his opinion, the location on Beaver Creek would provide a shorter distance for boaters to travel from storage to the boating ramp. He stated Ebenezer boat access is approximately 1 ½ miles south of the proposed facility and is adjacent to the area of the campground. He feels this will keep traffic off the main thoroughfare being US 64 and create better accessibility. Mr. Lewis also stated the parcel does not have suitable soils for a septic system so it could be cost prohibitive to develop residentially or for another use that would require septic and water. This facility will require neither.

Mr. Lewis also read a letter to the Board from a neighbor in support of the project. A copy of the letter from Mr. Mike Poe is attached.

**The Planning Board met at their regularly scheduled meeting on September 11, 2012. The applicant and his representative were also present to answer any questions or concerns.**

**The Board stated the change the applicant agreed to regarding the color of the building and the added vegetation along the front perimeter was acceptable. They did not recommend any other changes to the site plan. It was also stated Jordan Lake is a recreation destination and it would be consistent with that type of activity for businesses to locate in and around those areas. No other discussion was made.**

**The Planning Board voted 8-1 to approve the request as presented by staff with the below conditions.**

Conditional Zoning districts are zoning districts in which the development and use of the property is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of a legislative decision creating the district and applying it to the particular property.

Some land uses are of such a nature or scale that they have significant impacts on both the immediate surrounding area and on the entire community, which cannot be predetermined and controlled by general district standards. The review process established in this Ordinance provides for accommodation of such uses by a reclassification of property into a conditional zoning district, subject to specific conditions, which ensure compatibility of the use with neighboring properties. A conditional zoning district is not intended for securing early zoning for a proposal, except when that proposal is consistent with an approved land use plan or the proposal can demonstrate that public infrastructure needed to serve the development will be made available within a reasonable time period.

The applicant held the community meeting, which is now required prior to submittal of an application to the Planning Department, on July 2, 2012 at his current facility at 25 Bob Horton Rd. A report of that meeting was included in the application packet and is subject to consideration by the Board.

The applicant met with the Chatham County Appearance Commission as required for pre-submittal of the application. There were some recommendations by the commission that have been agreed to by the CCAC and the applicant. The recommendations of the CCAC have been incorporated below as Condition No. 1.

The Conditional Zoning Neighborhood Business (CZ-NB) district does permit the use of the site as a boat and recreational vehicle storage facility. The site plans submitted, along with recommendations from the CCAC, meet the standards as approved in the zoning ordinance. The proposed stormwater plan has been preliminarily reviewed by the Environmental Quality Director, Dan LaMontagne and will follow the regulations required for implementation. This has also been conditioned below within the standard site conditions. Although new stormwater regulations were approved by the BOC August 20, 2012, this application was already in process and the plan they submitted falls under the previous stormwater regulations per Mr. LaMontagne.

There are four items listed in the Zoning Ordinance that must be addressed by an applicant when submitting a rezoning application. The applicant has addressed those items in the application materials and they are also discussed below.

Item #1: The alleged error in this Ordinance, if any, which would be remedied by the proposed amendment with a detailed description of such error in the Ordinance and detailed reasons how the proposed amendment will correct the same.  
The applicant stated this was not applicable.

Item #2: The changed or changing conditions, if any, of the area or in the County generally, which make the proposed amendment reasonably necessary to the promotion of the public health, safety and general welfare.

The applicant listed continued growth and development in the Triangle area and Chatham County and the unmet need for boat and RV storage; Jordan Lake is a major attraction for recreational and tourism activities; campgrounds on Corps of Engineers property are close to this property; and the project will have a limited visual impact based on the inverted design and on the recommendations from the CCAC. Bays will only be accessible from the inside of the facility.

Item #3: The manner in which the proposed amendment will carry out the intent and purpose of any adopted plans or parts thereof.

The applicant states even though this portion of the county is planned for residential uses, recreation is a major attraction to residential areas. The Land Conservation and Development Plan states a county recreation plan is under development as seen on page 52. However, that plan has not been completed. Page 47 shows that almost 14,000 acres of water in the county form one of the major attractions for the Jordan Lake State Recreation Area. Although the plan specifically encourages more stringent development practices around the lake, these are generally tied to the development of subdivisions. Subdivision development would require mass grading, septic and water installation, roadways, etc. This site will be leaving a large portion of the existing vegetation around the perimeter and installing new vegetation that is over and beyond what the regulations require.

The most recent county recreation master plan has not been adopted or a map for the Land Conservation and Development Plan that expressly states where such activities are best suited.

Item #4: All other circumstances, factors, and reasons which the applicant offers in support of the proposed amendment.

The applicant states the tax revenue will significantly increase. At present, the stated tax value is approximately \$85,000. The applicant projects based on his other facility's value, which is valued at \$1.1 million, to increase to approximately \$650,000.

The watershed classification for this site is WSIV-CAJL (Critical Area Jordan Lake) which only allows for up to 24% impervious surface. Two bio-retention basins will be provided to manage any stormwater runoff and collection requirements.

**The Planning Board recommended a consistency statement for the approval. This request is consistent with the Land Conservation and Development Plan by encouraging uses that will enhance the recreational areas for use. By allowing a boat and recreational vehicle storage facility in close proximity to a boat access point and a campground area, traffic will be minimized within a 1-2 mile distance and off the major thoroughfare.**

The Planning Department and Planning Board (by 8-1 vote) recommend approval of (1) a resolution adopting a plan consistency statement for the rezoning and (2) an ordinance amending the Zoning Ordinance of Chatham County as submitted with the following conditions:

**Site Specific Conditions:**

1. The recommendations of the Chatham County Appearance Commission shall be followed and implemented by the end of the next optimal planting season following the issuance of the building permit. This includes but is not limited to the extra planting area proposed by the applicant and the change in planting material, the change in the color of the building from beige to green to match the roof, and all other items as stated in the attached, approved minutes. (Attachment A) It shall be the applicant's responsibility to ensure the survival and maintenance of all landscaping required. Inspections will be conducted by planning staff and/or the CCAC as needed to ensure compliance.

**Standard Site Conditions:**

2. The application, standards and adopted regulations of the applicable ordinances and policies, and the approved recommendations as provided for and/or conditioned, are considered to be the standards as set forth and shall comply as stated. Changes or variations must be approved through the Planning Department or other approving board before any such changes can take place.
3. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Erosion & Sedimentation Control,

Environmental Health Division, Stormwater Management, Building Inspections, Fire Marshal, etc.) shall be obtained, if required, and copies submitted to the Planning Department prior to the initiation of the operation/business.

4. A Certificate of Occupancy shall be obtained within two years of the date of this approval unless other approval/s has been given for an extension, or the conditional use permit becomes null and void.

**Standard Administrative Conditions:**

5. Fees - Applicant and/or landowner shall pay to the County all required fees and charges attributable to the development of its project in a timely manner, including, but not limited to, utility, subdivision, zoning, and building inspection, established from time to time.
6. Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued compliance with the plans and conditions listed above.
7. Non-Severability - If any of the above conditions is held to be invalid, this approval in its entirety shall be void.

Non-Waiver - Nothing contained herein shall be deemed to waive any discretion on the part of the County as to further development of the applicant's property and this permit shall not give the applicant any vested right to develop its property in any other manner than as set forth herein.

Commissioner Petty moved, seconded by Commissioner Stewart, to adopt **Resolution #2012-\_\_\_ Adopting a Consistency Statement for the Approval of an RV and Boat Storage Facility for Walt Lewis**, attached hereto and by reference made a part hereof. The motion carried five (5) to zero (0).

Commissioner Petty moved, seconded by Commissioner Stewart, to approve the request to rezone and adopt **An Ordinance Amending the Zoning Ordinance of Chatham County For Rezoning to Conditional Neighborhood Business District**, attached hereto and by reference made a part hereof. The motion carried five (5) to zero (0).

**BOARD PRIORITIES**

**ABC Board Travel Policy:** Vote on a request to approve the Chatham County ABC Board Travel Policy

Walter Harris, ABC Board Chairman, asked the Board of Commissioners to allow the ABC Board to use the ABC Board Travel Policy.

Commissioner Kost moved, seconded by Commissioner Petty to approve the Chatham County and Chatham County ABC Board Travel, Training and Business Expenses Policy, attached hereto and by reference made a part hereof. The motion carried five (5) to zero (0).

Mr. Harris presented a check to the County in the amount of \$51,000 which brings the total revenue produced this year to approximately \$74,000.

He also stated that they are renovating and relocating Store #1 to Chatham Crossing. It is a 5,000 sq. ft. space of which 3,000 sq. ft. will be retail. They think that this will allow them to bring in more money for the County.

**Financing to Construct the Jail:** Vote on a request to adopt a **Resolution Required to Proceed with Obtaining Financing to Construct and Equip the New Chatham County Jail** and vote on a request to set November 19, 2012 as the public hearing date to receive public comment on the proposed borrowing

Vicki McConnell, Finance Officer, explained the specifics of the request.

Commissioner Kost stated that the amount requested was not what they had talked about regarding the jail.

Ms. McConnell explained that if construction goes over fifteen million, they would have to hold a public hearing along with all the notices. She stated that the budget is fifteen million and they will not go over that amount without the Board's approval.

Commissioner Cross moved, seconded by Commissioner Petty, to adopt **Resolution #2012-\_\_\_\_\_ Authorizing the Negotiation of an Installment Financing Contract, Directing the Publication of Notice with Respect Thereto and Providing for Certain Other Related Matters Thereto**, attached hereto and by reference made a part hereof. The motion carried five (5) to zero (0).

### **MANAGER' S REPORTS**

The County Manager reported on the following:

#### **Department Head Retreat:**

Department heads will be in a staff retreat on Tuesday, October 16, 2012.

### **COMMISSIONERS' REPORTS**

#### **Arts:**

Commissioner Kost stated that she attended a "Third Friday" in Siler City and saw an incredible exhibit of photography of Chatham County. She stated that the exhibit has been moved to Galloway Ridge and encouraged all of the Commissioners to go see it.

#### **Gas Company:**

Commissioner Kost thanked the gas company in Chatham County stating that she had had complaints from citizens regarding the pump station that was built along the 15-501 Corridor. She took those complaints to the gas company. They met with her on-site, and they agreed to do additional landscaping. She stated that she told them that she was acting as an individual Commissioner and not as a member of the Board and that she was acting on behalf of the citizens who had brought this to her attention. They completed the landscape around two weeks ago and it looks great. She stated that she wanted to publicly thank them for what they did.

Commissioner Stewart stated that it would be a good opportunity when contacted by citizens to bring it to the attention of the entire Board.

#### **School System:**

Commissioner Petty stated that the hard work efforts of the PTA produced another \$95,000 above last year to be given to the school system. He thanked them for all their hard work and dedication.

#### **911:**

Commissioner Stewart stated that they would like to have Joe Frasier to come to the next Board of Commissioners' meeting to talk about the 911 project.

**Vote:**

Commissioner Cross encouraged everyone to vote on Tuesday.

**ADJOURNMENT**

Commissioner Cross moved, seconded by Commissioner Stewart, to adjourn the meeting. The motion carried five (5) to zero (0), and the meeting adjourned at 7:39 PM.

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Brian Bock, Chairman

ATTEST:

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