

CHATHAM COUNTY PLANNING BOARD

MINUTES

February 1, 2005

The Chatham County Planning Board met in regular session on the above date in the multipurpose room of Central Carolina Community College, in Pittsboro, North Carolina. A quorum was present to begin the meeting. The members present were as follows:

Present:

Charles Eliason, Chair
Jeff Austin, Vice-Chair
Jennifer Andrews
Angela Brown
Clyde Harris
Mark McBee
Caroline Siverson
Winifred Smith
Chris Walker
Cecil Wilson

Absent:

Planning Department:

Keith Megginson, Planning Director
Jason Sullivan, Planner
Lynn Richardson, Land Use Administrator II
Kay Everage, Secretary to the Board

6:30 P.M. Meeting of the Public Information Committee and other interested Planning Board members and citizens.

7:00 P.M.

I. CALL TO ORDER – Chair: Chairman Eliason called the meeting to order at 7:05 P.M.

II. APPROVAL OF AGENDA: Mr. Austin made a motion; seconded by Ms. Andrews to approve tonight's agenda as submitted. The motion passed unanimously.

III.

A. CONSENT AGENDA: Ms. Siverson stated that there are some questions regarding the January 4, 2005 minutes relative to the discussion about the Sandra Tripp property. Ms. Siverson made a motion; seconded by Mr. Walker to remove said minutes from the consent agenda for discussion following approval of the consent agenda. The motion passed unanimously.

~~A. Minutes:~~

~~— Consideration of approval of minutes for January 4, 2005 Planning Board meeting.~~

- B. Preliminary Plat Review:
Request by Dan Sears, Sears Design Group on behalf of Fitch Creations, Inc. for preliminary design approval of "Camden Park South, Phase I, Fearrington Section XIV", consisting of 20 lots on approximately 9 acres, off SR-1812, Weathersfield and East Camden (not yet numbered), Williams Township.

- C. Miscellaneous Requests or Required Actions:
Request by Nicolas P. Robinson, Bradshaw & Robinson, LLP, on behalf of Chapel Ridge for a waiver from Section 6.2 D (3) (h) of the Subdivision Ordinance.

Mr. Austin made a motion; seconded by Mr. Walker to approve the remaining items on the consent agenda (items B. and C. listed above). The motion passed unanimously.

End Consent Agenda

III.

B. MINUTES:

Consideration of approval of minutes for January 4, 2005 Planning Board minutes.

Chairman Eliason stated that there seems to be some clarification needed in reference to Sandra Tripp's concern regarding a 100 foot buffer along the eastern side of her property adjacent to the proposed Briar Chapel development (page 12 of the January 4, 2005 Planning Board minutes); and that clarification apparently is that Ms. Tripp requested that there be a 100 foot perimeter buffer all along her property line rather than what seems to be included in said minutes.

Sandra Tripp was present and stated that she is still requesting a 100-foot perimeter buffer; that the proposed fence did not take the place of the buffering; that the wording of said minutes implied that fencing is sufficient as a buffer; and that it is not the case that she is ok with just the fencing.

Mr. Walker stated that he recalled that Ms. Tripp was not satisfied with just fencing; that Ms. Tripp thought that fencing would be better than nothing but that it did not replace the 100-foot perimeter buffer.

It was also noted that wording regarding the landscaping should be revised to reflect that the landscaping would be on the developer's side of the fence to the extent desired by Ms. Tripp and not on the side facing Ms. Tripp's property (as stated in said minutes).

Mr. Wilson arrived at this time.

Ms. Everage stated that she listened to the tape again; that the sound was not clear on the tape; but that her notes did indicate that Mr. Walker had referenced a 100-foot perimeter buffer.

Following discussion among the Board, Mr. Walker made a motion; seconded by Ms. Siverson that the January 4, 2005 Planning Board minutes show that Ms. Tripp is still requesting the 100 foot perimeter buffer even with the condition in place. The motion passed 9-0-1 with all Board members voting in favor of the motion except Mr. Wilson who abstained.

IV. SKETCH DESIGN REVIEW:

- A. Request by Pittman – Korbin, Inc. on behalf of Ronald Shearin for sketch design approval of “The Cottages at Stonegate, Phase II”, consisting of 15 lots on approximately 46 acres, located at the intersection of SR-1535, Gilmore Road and SR-1534, Poythress Road, Baldwin Township.

Ms. Richardson reviewed the agenda notes for this request.

Scott Pittman, Pittman-Korbin, was present representing the property owner, Ronald Shearin.

Chairman Eliason asked if any wetland areas were on the proposed property.

Mr. Pittman stated that to his knowledge there are no wetlands on the property; that the soil scientist did not locate any wetlands during the soil and site evaluation; but that a wetlands determination would be done at preliminary plat submittal. Ms. Richardson stated that the soil scientist has indicated that if there were any wetlands on the first five lots that they were within the 50-foot water hazard area; and that he did not think that there were any wetlands on this larger parcel.

No adjacent landowners spoke.

There were no concerns noted by the Board at this time.

Mr. Wilson made a motion; seconded by Ms. Siverson to grant sketch design approval of the plat as submitted and as recommended by the Planning Department. The motion passed unanimously.

At this time, Mr. McBee made a motion; seconded by Mr. Wilson to temporarily recess as the Planning Board and convene as the Watershed Review Board. The motion passed unanimously.

Due to a conflict of interest, Chairman Eliason excused himself from the next three issues, i.e. Item V. (A., B., and C.). The Chairman asked Jeff Austin, Vice-Chair, to direct the Board in the discussion of these three issues.

V. ZONING AND ORDINANCE AMENDMENTS:

Items from November 15, 2004 Public Hearing:

- A. Request by attorney Nicholas P. Robinson on behalf of Bynum Ridge, LLC for amendments to the Chatham County Watershed Protection Ordinance Sections 303 (A) and Section 600. The proposed amendments would allow single-family cluster developments located within more than one watershed to share density in the different watersheds without exceeding the maximum allowed in the combined watersheds.

Mr. Austin asked Mr. Megginson to recap the procedure that requires that only those Board members in attendance of the public hearing are eligible to vote on the issue. Mr. Megginson explained that the Chatham County Watershed Protection Ordinance (a county-wide ordinance) allows the Board of Commissioners to appoint a Watershed Review Committee; that the Commissioners appointed the Planning Board as the Watershed Review Committee; that our regulations are modeled after a State model; that the ordinance states [Section 506 (F)] that only Board members who were present at the public hearing can vote on the items that are before the Committee; that the ordinance does not say anything about who can participate in the discussion about items; and that Board members with conflicts of interest should not participate in the discussion or voting. Mr. Megginson stated that the following Planning Board members attended the November 15, 2004 public hearing (according to the attendance register):

Jennifer Andrews
Caroline Siverson
Winifred Smith
Mark McBee
Cecil Wilson, and
Charles Eliason.

Ms. Siverson stated that there have been some questions from members of the public who attended the November 15, 2004 public hearing regarding whether all six (6) of the Board members (stated above) were actually in attendance when the Williams Pond request was discussed. Mr. Megginson stated that only those Board members know whether they were in attendance or not but that the Williams Pond request was one of the first items on that night's agenda.

Mr. Austin stated that for the record, there are five (5) Planning Board members eligible to vote, eligible to make a motion, or eligible to second a motion; that all Board members could take part in the discussion except for Mr. Eliason; and that this is the procedure for the following review of this request. It was noted that the Watershed Review Committee makes their recommendations to the County Commissioners.

Regarding tonight's review of the proposed text amendments, Mr. Austin asked the Board's opinion about allowing, 1.) additional public comments from those people who did not submit comments during the public hearing, and 2.) a response from the developer (team). Following discussion, Ms. Brown made a motion; seconded by Ms. Smith to allow a three-minute time period (per party) for additional comments from individual citizens and the developer. The motion

passed 8-0-2 with Brown, Smith, Austin, Harris, McBee, Siverson, Walker and Wilson voting in favor of the motion; and Andrews (who was out of the room during the vote) and Eliason abstaining.

Mr. Austin asked if Board members had a preference of any particular order to approach the proposed text amendment to the Watershed Ordinance, i.e. overview from staff, developer's proposal, options. No suggestions were noted from the Board and Mr. Austin opened the discussion with public comments as follows:

Public comments:

Beverly Wiggins, 481 Pokeberry Lane, Pittsboro, NC, stated that her development is next door to the proposed Williams Pond; that she is a scientist; that she has sympathy for the notion that we might benefit by taking these proposals on a one-by-one basis and judge each one in terms of merit of exactly how this proposal would affect the environment; that we need to make sure that the required standards of evidence be sufficient; that the Watershed Ordinance currently does not have a standard for what constitutes sufficient evidence; that as a citizen she would like to have the information that lets her decide; and that if the Planning Board decides to change the Ordinance in this way, that there be built in very strict requirements that this kind of information be provided as part of the applicant's packet to the public before the public hearing so that the citizens feel comfortable with the ultimate decision that is made.

Ms. Andrews stated that these projects still come through the application process; that the applications will be subject to conditions added by the Board; that standards could add further restraints; that if a project meets the current standards then the Board does not have a choice but to pass the request; that being flexible would allow conditions to be added to a specific request to make the Board more comfortable with a decision; and that the burden of proof is always on the developer.

Bob Eby, 19 East Madison, Pittsboro, NC, stated that at the recent public hearing he spoke against changing the Watershed Ordinance and spoke for keeping the five (5) acre zoning there; that we need to be sure that if this is spot zoned for this particular development that it doesn't in fact change the zoning for the entire watersheds that are protected by this Ordinance; that if the request is accepted and the proposed buffers are put into place (i.e. 400 foot buffers with different requirements) that buffers be extended for other protective areas and not just for this one site.

Jim Wiggins, 481 Pokeberry, Pittsboro, NC stated that he affirms what his wife (Beverly Wiggins) said earlier; that he would like to speak against the averaging proposal as part of an amendment to the Watershed Ordinance; that staff's suggestion to allow the developer to provide evidence should not be part of the amendment; and that an opportunity for comparative evidence and analysis should be a flexibility in order to have an opportunity to compare them on a case by case basis.

Elaine Chiosso, 1076 Rock Rest, Pittsboro, NC, stated that the existing zoning would have been an excellent way to protect the State natural area; and that she is concerned with staff's recommendation which states: "The Board could limit the text to apply only to the Jordan Lake watershed area and this would exclude areas along the Haw River north of Bynum, which drain to the Pittsboro intake on the Haw, and it would exclude other water supplies in the county as well". Ms. Chiosso noted that it doesn't sound like staff is suggesting spot zoning; that only the zoning in this particular area could be changed; but that it would be within designated watershed areas.

Dave Klarman, Landco Realty, stated that he would like to see the five acres (per dwelling) maintained for everybody along the rivers; that he and others have had to retain the three acre minimum/five acre average in these areas; and that the applicant could still do very well developing the large tract with the existing RA-5 zoning.

Catherine Deininger, 124 Goldberry Lane, Pittsboro, stated that she is an adjacent property owner and that she does not understand why the applicant doesn't ask for a variance instead of going through this whole Ordinance change.

Mr. Megginson explained that this application is not eligible for a variance, i.e. has reasonable use of land as it is presently zoned; and that any other change to the watershed rules would have been more drastic [and still try to fit within the general format of the different watersheds].

Sharon Garbutt, 595 Pokeberry Lane, Pittsboro, NC, stated that it seems the developer has come in with an army of hydrologists and experts; that the existing Watershed Ordinance is the best possible way to protect our environment; that we have a good Ordinance in place; that our Ordinance is a model for the State; and that we should be leading the State.

Mr. Harris stated that Board members are not experts in everything; that people of expertise can better explain things; and that this procedure assists Board members in making a more intelligent decision.

Nick Robinson, attorney representing the applicant, responded to the above comments. Mr. Robinson stated that he appreciates the above concerns regarding the Chatham County Watershed Protection Ordinance; that the applicant could have done a straight subdivision (240 lots instead of 185 lots); that the Subdivision Regulations would only require a 100 foot setback from the river; that the developer is proposing a 400 foot setback from the river; that the Subdivision Regulations require a 100 foot buffer from Pokeberry Creek; that the developer is proposing 200 foot buffers on both sides of the creek; that there are no setback requirements for wetlands outside the buffers but the application proposes a 25 foot setback on both sides; that more environmentally friendly crossings are proposed along Pokeberry Creek.; and that 1.) the proposed ordinance amendment, 2.) the request for the reduction in zoning density, and 3.) the conditional use permit, are more beneficial for the watershed.

Mark Ashness, with the CE Group distributed a map showing the straight subdivision option. Mr. Ashness stated that the 240 development lots were based on detailed soil evaluations on the property (that meets the Subdivision Regulations). He explained the general drainage patterns (using a large map) on the proposed property with significance regarding the Haw River, Pokeberry Creek, and several other perennial and intermittent channels.

Nick Robinson stated that the issue currently before the Watershed Review Board is the question of whether to amend the Watershed Protection Ordinance, 1.) the way the developer has asked to do it, or 2.) the way the Planning Department staff has suggested as an alternative and summarized as follows:

- When the property is within two different watershed areas and is within either the zoned area of the County or the drainage area of Jordan Lake and the proposal demonstrates that the change would be as good or better for the watershed.

Mr. Robinson noted that he would support either of the above since he feels both to be appropriate; that the applicant is perfectly behind staff's recommendation; and that he requests that the Board adopt the proposed amendment to the Watershed Protection Ordinance as recommended by staff.

Mr. Austin asked Mr. Megginson to give a brief summary of the recommendations proposed by the Planning Department. Mr. Megginson reviewed tonight's agenda notes. He stated that the developer is requesting a change in two sections of the Watershed Protection Ordinance; that Section 303 (A) is concerning cluster development that would allow added density; and that Section 600 is the definition section of the Watershed Protection Ordinance that would allow cluster development. Mr. Megginson gave an overview of the various watershed and zoning jurisdictions (i.e. Pittsboro, Siler City, Cary, Chatham County).

Mr. Austin restated the following Planning Board members eligible to vote on this particular issue:

Jennifer Andrews
Caroline Siverson
Mark McBee
Winifred Smith
Cecil Wilson (note: Mr. Eliason excused himself from the issue due to a conflict of interest.)

Discussion followed regarding restricting the zoned areas and the Jordan Lake drainage basin. Mr. Walker stated that the protection is in the Ordinance itself and should remain strict and as is until there is a better process to provide flexibility. Ms. Andrews stated concern regarding the environment and Pokeberry Creek if the developer uses another plan (straight subdivision with additional lots). Ms. Smith stated that she was pleased that spraying would not be used. It was the consensus of Board members that this is a reasonable situation in which to change the Watershed Protection Ordinance.

Ms. Andrews made a motion; seconded by Mr. McBee to approve the request based on staff's recommendation (that the proposed text be adopted with additional underlined language inserted as shown below:

“Clustering of development may be allowed in all Watershed Areas in the zoned portions of the County under the following conditions:

A. Minimum lot sizes...the project is located.
The applicant shall provide evidence supporting the cluster design as compared to the design allowed under the standard provisions of the Ordinance. “

[See copy of applicant's proposed text attached.]

The motion passed 4-1 with Andrews, McBee, Smith, and Wilson voting in favor of the motion; and Siverson voting against.

At this time, Ms. Andrews made a motion; seconded by Mr. Harris that the Planning Board adjourn as the Watershed Review Board and reconvene as the Planning Board. The motion passed unanimously.

Mr. Austin called for a five-minute break.

B. Request by Bynum Ridge, LLC for a Conditional Use District (CU-RA-90) on 650 acres (presently 242 acres zoned RA-5 and 408 acres zoned RA-40) on the south side of SR 1711, Bynum Ridge Road.

Mr. Megginson stated that, since this request is for a conditional use district, a conditional use permit is also required; that the applicant is requesting that 650 acres (i.e. 242 acres currently zoned RA-5 and closest to the Haw River, and 408 acres currently zoned RA-40) be rezoned to CU-RA-90; that the current RA-90 (approx. 2 acres/lot) zoning district only occurs in the area where University Lake watershed is located and drains into Orange County; that the combining of two watershed districts (as far as density) acts similar to the two zoning districts; that the developer is requesting a down zoning of what could be attained; and that staff recommends approving the request as submitted. Mr. Megginson noted that the decision to change the zoning on property is a legislative decision ultimately by the Board of County Commissioners and doesn't require sworn testimony.

Following a brief discussion among the Board, Ms. Andrews made a motion; seconded by Mr. Wilson to approve the request, to zone the specified 650 acres to Conditional Use RA-90 district as submitted and as recommended by the Planning Department. The motion passed 7-1-2 with Andrews, Wilson, Austin, Brown, Harris, McBee and Smith voting in favor of the motion; and Siverson voting against; and Eliason and Walker abstaining.

C. Request by Bynum Ridge, LLC for a Conditional Use Permit for a Planned Unit Development, Williams Pond Residential Community, consisting of

185 lots on 650 acres, located on the south side of S. R. 1711, Bynum Ridge Road, Baldwin Township.

Mr. Megginson gave a slide presentation showing various sections of the proposed and surrounding lands. He reviewed the agenda notes and the nine (9) conditions recommended by staff.

Discussion followed.

Mr. Robinson referenced condition #6 that states,
“There shall be a 400 foot undisturbed buffer area from the bank of the Haw River. Existing vegetation shall remain except for invasive species, which may be removed according to environmentally safe standards. (This distance may need to be adjusted based on existing vegetation and the variable distance of lots from the riverbank. It may be refined by staff at the Planning Board meeting for the Board’s consideration.)”

Mr. Robinson suggested that the wording, “except as provide above” be added at the beginning of the above sentence (highlighted) that currently states, “Existing vegetation shall remain except for invasive species”.

Ms. Andrews referenced condition #7 that states,

“The developer shall deed to the State of North Carolina the area along the existing upper trail where it is located on the developer’s property and a distance of 20 feet along the landward side of the trail on lots 12-23 and lots 135 & 136”.

Ms. Andrews asked if the deeding of the area (versus providing some sort of perpetual easement for walk ability) affects lot size or setbacks. Mr. Ashness stated that the deeding does not impact the lot size or setbacks and that the developer is willing to deed the land as requested in staff’s condition #7.

Beverly Wiggins stated that allowing gazebo-like structures seems incompatible with the whole idea of the visual buffering.

Elaine Chiosso asked the Board to reconsider allowing these structures within the buffer zone. She stated that residents of the Bynum community have been using the existing trail along the river forever; that children frequent the area; and that allowing these structures is providing attractive nuisances.

Mr. Ashness stated that there is a significant elevation change through these areas and that more specific detail of proposed structures could be provided at preliminary plat phase.

Jim Wiggins voiced concern regarding the distance of the watersheds shown on the exhibit map, i.e. the distance traveled and the best protection provided.

Mr. Ashness explained that the more defined channel [intermittent or perennial streams] has a better-defined corridor so that when it does rain the water tends to move through it more thoroughly.

End of discussion.

At this time, Ms. Andrews made a motion; seconded by Mr. McBee to grant approval of the request with nine (9) conditions as recommended by staff including the changes to conditions #4, 6, #7, and #8 as follows:

Condition#4 – add language, “except where the US Army Corps of engineers approves an impact area”.

Condition#6 – add language to last sentence as noted underlined: “existing vegetation shall remain except as otherwise provided in these conditions and except for invasive species, which may be removed according to environmentally safe standards”.

Condition# 7 – lot numbers referenced as lots 12 – 23 and lots 135 & 136
Change to read: lots 10 – 21 and lots 135 & 136.

Condition #8 – for clarification list lot numbers along Pokeberry Creek and language read as follows:

“There shall be a minimum undisturbed buffer area of 200 feet from the bank of Pokeberry Creek for lots that abut NC State Park land along Pokeberry Creek (Lots 21, 22, 31, 125, 127, 128, 134 & 135), plus a 100-foot buffer along the rear property line of 129 and 134. There shall also be a 50-foot buffer along the back property line of other lots along said creek and state lands. Existing vegetation shall remain except for invasive species, which may be removed according to environmentally safe standards and indigenous plants may be planted”.

The motion passed 7-1-2 with Andrews, McBee, Austin, Brown, Harris, Smith, and Wilson voting in favor of the motion; Siverson voting against the motion; and Eliason and Walker abstaining. The nine conditions are stated as follows:

1. The roads in the development may be private but will be built to the NC DOT standards for the hilly condition. The private roads may be gated, provided access is made available to emergency vehicles.

2. A preliminary field reconnaissance archaeological survey, to determine the existence or absence of any site of likely archaeological significance will be performed by a professional archaeologist (as listed on the NC Dept. of Cultural Resources website). The reconnaissance survey shall be performed in areas of ground disturbance which would adversely impact potential sites, such as areas of future roadways, active recreation areas to be graded, and lots to be developed (i.e. not including buffers, open space or irrigation areas). Areas determined by the NC Department of Cultural Resources, Archaeology/Historic Preservation Section as a low probability of likely significant sites are not

required to be surveyed. Any site identified with likely archaeological significance shall have an intensive survey to determine significance. If a site is determined as a candidate for nomination to the "National Register of Historic Places" it shall be preserved or documented prior to being disturbed. The field reconnaissance survey shall be performed prior to preliminary plat submission. Any recommended intensive survey shall be performed prior to ground disturbing activity in the area of concern. The surveys shall be performed at the developer's expense.

3. The developer shall continue to work with the Chatham County Historical Association in the documentation of historic structures and cemeteries on the property.

4. Wetland areas as designated on maps and in the field shall remain in an undisturbed state and shall have a minimum undisturbed buffer of 25 feet, except where the US Army Corps of Engineers approves an impact area.

5. A survey of the habitat area of the buttercup phacelia on the development property shall be conducted in the Spring prior to any land disturbing activity. If the species is found appropriate measures for its preservation shall be taken.

6. There shall be a 200-foot undisturbed buffer area from the bank of the Haw River. The next 100 feet landward shall be undisturbed except that trees smaller than six inches dbh (diameter at breast height) may be removed and there may be pervious landscape paths to gazebo-like structures. There shall be no turf planted. The next 100 feet landward shall be undisturbed except that trees smaller than six inches dbh may be removed. There shall be allowed pervious landscape paths to gazebo-like structures and 50% of the area may have turf. Within the 400 foot buffer area described existing vegetation shall remain except as otherwise provided in these conditions and except for invasive species, which may be removed according to environmentally safe standards and indigenous plants may be planted.

7. The developer shall deed to the State of North Carolina the area along the existing upper trail along the Haw River, where it is located on the developer's property, and a distance a minimum of 20 feet along the landward side of the trail on lots 10-21 and lots 135 & 136.

8. There shall be a minimum undisturbed buffer area of 200 feet from the bank of Pokeberry Creek for lots that abut NC State Park land along Pokeberry Creek (Lots 21,22,31,125,127,128,129,134, &135), plus a 100-foot buffer along the rear property line of 134 and 129. There shall also be a 50-foot buffer along the back property line of other lots along said creek and state lands. Existing vegetation shall remain except for invasive species, which may be removed according to environmentally safe standards and indigenous plants may be planted.

9. According to the application booklet all street lighting shall comply with the proposed Chatham County Draft Lighting Ordinance to minimize light pollution

and light trespass. The development's covenants shall also require residential lighting to meet the Draft Lighting Ordinance.

At this time, Chairman Eliason returned to the Board.

Item from January 18, 2005 Public Hearing

- D. Request by the Chatham County Planning Department for revisions to Sections 10.6, 10.7, and 15.5 of the Chatham County Zoning Ordinance and Attachment A of the Chatham County Watershed Protection Ordinance regarding campgrounds and RV parks.

Mr. Austin made a motion; seconded by Ms. Siverson to table this issue until next month's Planning Board meeting [March 1, 2005]. The motion passed unanimously.

VI. NEW BUSINESS:

A. Planning Director's Report

1. RC & D Representative [Central Piedmont Resource Conservation & Development Area, Inc.]
2. Discussion of request by Commissioners that the Planning Board process requests for road closings.
3. Discussion of procedures for submission of minority reports

B. Planning Board Member's Reports

Due to time restraints, Ms. Andrews made a motion; seconded by Mr. Harris to table the above issues until next month's Planning Board meeting. The motion passed unanimously.

- VII. ADJOURNMENT: Mr. Austin made a motion; seconded by Mr. Wilson to adjourn tonight's meeting. The motion passed unanimously and the meeting was adjourned at 9:50 p.m.

Charles Eliason, Chair

Date

Attest:

Kay Everage, Secretary to the Board

Date