

**MINUTES**  
**CHATHAM COUNTY BOARD OF COMMISSIONERS**  
**WORK SESSION**  
**AUGUST 06, 2007**

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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, located in Pittsboro, North Carolina, at 10: 20 AM on August 06, 2007.

Present: Vice Chair George Lucier; Commissioners Patrick Barnes, Mike Cross, and Tom Vanderbeck; County Manager, Charlie Horne; County Attorney Kevin Whiteheart; Assistant County Manager, Renee Paschal; Finance Officer, Vicki McConnell; and Clerk to the Board, Sandra B. Sublett

Absent: Chairman Thompson

The meeting was called to order by the Vice Chair at 10:23 AM.

***Work Session***

1. EmPOWERment MOU
2. JOCCA Request
3. Confirm Meeting with Cary on September 18
4. USACOE Information Request
5. Streams and Wetlands Reservation: James Gregory, NCSU
6. Update: Westfall
7. Planning: 1. Subdivision Options; 2. Conditional Use Subdivisions
8. Planning Board indemnification question
9. Legislative Update: LTT, Recreation, Occupancy Tax
10. Next steps: Tax Referendum?

Commissioner Lucier noted that two items had been added to the beginning of the agenda: a short presentation by the Tax Office regarding the County’s new web site; and issues to be addressed regarding water system improvements.

**TAX OFFICE/NEW WEB SITE**

Tina Stone, Business and Personal Property Appraiser with the County’s Tax Office, noted that Frances Wilson, Tax Collector, would provide a demonstration of the new web site and additional features available for use by taxpayers.

Frances Wilson, Tax Collector, provided a demonstration of the new format, noting it was more user friendly. She went through the types of information that could be obtained from the new system and its advantages. Ms. Wilson noted that taxpayers could now view their tax bills and transaction history on-line, as well as pay the taxes and print out a receipt.

**PUBLIC WORKS/WATER SYSTEM IMPROVEMENTS**

David Hughes, Public Works Director, stated that the need for these improvements was noted while performing replacement line work on Lystra Road at the back of the Governor’s Club; that they had discovered that some of the lines were PVC lines and needed to be replaced; and that they also needed to put a line up to the tank at the Governor’s Club. He asked that the Board approve the contract provided with the packet.

Commissioner Vanderbeck asked if they had any recourse with the previous installers; that is, a recovery of funds. Mr. Hughes said the pipes had been installed in 1995, so he believed they were well beyond that point.

Commissioner Barnes moved, seconded by Commissioner Cross, to approve expenditures, as recommended by the Public Works Director, for the North Chatham Hydraulic Improvements for Governor's Club PVC Replacement in the amount of \$117,520.00, contract attached hereto and by reference made a part hereof. The motion carried four (4) to zero (0).

### **PUBLIC WORKS/ENGINEERING SERVICES**

David Hughes requested that the Board approve a contract for engineering services for the elevated water storage tank located in Moncure. He stated a copy of the contract was provided in the packet.

Commissioner Cross asked the location of the new site. Mr. Hughes stated it was on Pittsboro-Moncure Road behind the health clinic, where the old water tower had stood.

Commissioner Lucier asked if the cost was similar for the other sites considered. Mr. Hughes stated they were similar, so it would not have any significant additional financial impact.

Commissioner Cross moved, seconded by Commissioner Barnes, to approve the engineering services contract for the elevated water storage tank located in Moncure, as recommended by the Public Works Director, in the amount of \$70,000.00 (Preliminary and Design Phases, \$40,000.00; Bidding and Awarding Phase, \$5,000.00; Construction and Post Construction Phases, \$25,000.00), contract attached hereto and by reference made a part hereof. The motion carried four (4) to zero (0).

### **EMPOWERMENT MEMORANDUM OF UNDERSTANDING**

County Manager, Charlie Horne, provided some background information regarding the Memorandum of Understanding (MOU) and the options available to process the property.

County Attorney, Kevin Whiteheart, stated that the concern of the Affordable Housing Task Force was what the best way might be to convey ownership of the lots to them. He said that concern had led to a number of conversations, and many different models for providing affordable housing had been studied. Mr. Whiteheart provided examples of how some of those models worked, particularly that used by Orange County Housing and Land Trust and the mechanisms in place to oversee that program to ensure its success.

Mr. Whiteheart stated that Delores Bailey and he had discussed the best way to proceed, which had led them to request that the Board of Commissioners direct Newland Properties to convey to the County whatever lots they have that are currently ready; that that they be held, and then he and Ms. Bailey will prepare a presentation that summarizes both the Land Trust option, the deed restriction process or model, and then present a combination of deed restrictions with a Land Trust component for consideration by the Board. He said that such a model could become policy to be used in the future when considering the creation of affordable housing by any entity within the County.

Commissioner Lucier asked when a decision would have to be made. Mr. Whiteheart said they would be ready by August 20.

Delores Bailey stated that another option would be deed restrictions, noting they also had First Right of Refusal. She said that there were three methods used in Orange County, which was EmPOWERment, Habitat and the Land Trust, and they all worked collectively towards a common goal. She stated the urgency for Habitat was that they were negotiating with Newland Properties and others to build affordable homes in Briar Chapel that blended with the neighborhood; and that they had until December to apply for some available State funds to assist with that.

Commissioner Cross stated the request now was to have Newland Properties convey to the County the two lots that were ready. Ms. Bailey responded that was correct.

Mr. Whiteheart stated that the Board might want to consider today a process that would allow them not to have to come back to the Board when additional lots were ready to be conveyed.

Commissioner Vanderbeck moved, seconded by Commissioner Cross, for Newland Properties to execute separate Warranty Deeds to Chatham County for the two (2) lots in the Briar Chapel Subdivision designated for Affordable Housing, as recommended in the draft Memorandum of Understanding proposed by EmPOWERment, Inc. For all future lots in Briar Chapel which become available for development under the required Affordable Housing program, the County Attorney shall make a presentation to the Board regarding the adoption of a County policy for an Affordable Housing program for qualified non-profit developers. The motion carried four (4) to zero (0). A copy of the Memorandum of Understanding is attached hereto and by reference made a part hereof.

Commissioner Lucier confirmed that Mr. Whiteheart would return to the Board at their August 20, 2007 Board of Commissioners' meeting with information regarding a process for future development of affordable housing.

### **JOCCA REQUEST**

County Manager, Charlie Horne, provided a brief presentation regarding a request from JOCCA to reallocate funds in the amount of \$5,750.00, necessary due to the transfer of some services to other agencies.

Nick Robinson, Vice Chair of Board of Directors for Joint Orange Chatham County Action, stated that JOCCA had received from the County \$13,250.00 in the current budget, which had been allocated between four different programs. He stated that since that allocation, two of those programs had been shifted to other agencies, so their request was that the funding for those programs be reallocated to the remaining two programs, Weatherization Assistance and Heating and Air Replacement and Service. Mr. Robinson said the reallocation would help fund overhead costs and all the other programs not directly funded.

Commissioner Lucier asked for a staff recommendation. Mr. Horne responded that the staff recommendation was to approve the reallocation.

Commissioner Barnes moved, seconded by Vanderbeck, to approve JOCCA's request to reallocate funds in the amount of \$5,750.00. The motion carried four (4) to zero (0).

### **CHATHAM/CARY JOINT MEETING**

The County Manager stated that the Board had previously agreed that September 18, 2007 was an appropriate date for a meeting, but the meeting place was still not decided. He stated that Cary's suggestion was, since Chatham County had hosted the last meeting, that the September 18<sup>th</sup> meeting be held at Crosspoint Church on Fire Station Road at 7:00 PM.

Commissioner Barnes commented that at the last two meetings with Cary, not all of the elected board had been present and that he hoped that this meeting would be better attended.

Commissioner Lucier asked if there were any objections to the location as suggested by Cary. There was no objection from the Board.

By consensus, the Board agreed to meet with the Cary Town Council on September 18, 2007 at Crosspoint Church at 7:00 PM.

### **USACOE INFORMATION REQUEST**

The County Manager stated that in late April, the Board had requested that the Corp of Engineers provide the County with a range of data regarding the definition of streams and how those definitions were created. He said the response included a per-hour charge of different services and a questionnaire used to determine if the property owner wanted information revealed, along with a waiver clause.

Commissioner Lucier stated then the issue was whether or not the Board wanted to move forward with the request for information, as well as a request for the waiver of any fees. He said waiver of fees was a legitimate request since they were a County government serving the public interest, and that the information gathered would assist in that local decision-making process.

Commissioner Vanderbeck agreed that the Board should move forward with requesting the information as well as requesting a waiver of any associated fees.

The County Manager said he could go forward with that direction, and would provide the Board with a copy of the letter requesting continuation plus a waiver.

### **STREAMS AND WETLANDS RESERVATION**

**by James Gregory, Professor, NC State University**

Commissioner Lucier stated that James Gregory, a Professor at NC State University, would provide the Board with various information regarding streams and wetlands reservation, timely subjects for the County.

Dr. Gregory's PowerPoint presentation is included in its entirety for the public record as follows:

#### **Headwaters Streams, Riparian Zones, and Me**

- Co-Chair, with John Dorney, NCDWQ, of the NC Stream Technical Advisory Committee, 1998-present.
- Technical advisor – Neuse Buffer Rules Stakeholder's Committee – 1998-99
- NCDWQ stream identification methods, 1998-present – development, implementation, training (13 workshops in 2007)
- Research
  - Hydrologic and water quality impacts of riparian zones
  - Hydrologic, biologic, and geomorphic characteristics of headwaters streams and their catchments (cooperative with NCDWQ)
  - Development of LIDAR/GIS methods for improved mapping of headwaters streams (cooperative with NCDWQ)
- Field experience – headwaters streams of all types all over NC

#### **Topics**

- Headwaters streams – hydrologic role; i.e. why are they important
- Stream Types – definitions, variability, map issues
- Field identification of stream types and origins
- Development of GIS methods for improved stream maps

#### **Headwaters Stream**

- Refers to the first order and second order streams of a watershed without regard to location in the watershed or their classification as intermittent or perennial.

#### **Hydrologic Role of Headwaters Streams**

- Approximately 75-85 % of the land area of the humid US drains to them.
- Approximately 75-85 % of total stream length in river basins is in headwaters streams.
- Headwaters streams are bordered by a major portion of the total length of riparian zones.
- Headwaters streams are the piping network for transport of pollutants from the land to rivers and estuaries.

#### **Headwater Stream Types**

- Flow duration classification is most common: ephemeral, intermittent, perennial
- Characteristics of headwater streams vary among physiographic regions: Coastal Plain streams, Piedmont streams, Mountain streams, Triassic Basin streams
- Headwater streams vary within physiographic regions
- All of these types of variability and the factors that cause them are the subjects of continuing research

#### **Ephemeral Stream**

- 'Ephemeral (stormwater) stream' means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.

**Intermittent Stream**

- ‘Intermittent stream’ means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water

**Perennial Stream**

- ‘Perennial stream’ means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

**Physiographic Variation of Headwaters Streams**

**NC’s Ecoregions**

**Types of Piedmont Stream Origins**

- Well-developed ephemeral to intermittent to perennial transition - ephemeral and intermittent reaches are usually no more than 150 ft in length, often much shorter
- Slope wetland to intermittent or perennial stream transition
- Ephemeral to perennial stream transitions at springs, often large head cut or steep slope segment, western Piedmont

**Triassic Basin Streams**

- First order streams begin at slope wetlands; slope wetland to intermittent stream transition
- Distinct ephemeral stream segments are uncommon, usually very short when present (less than 100 ft long)
- Very, very long intermittent segments, up to ½ mile long; third order streams often stop flowing in late summer

**Accuracy of USGS Topographic Maps and NRCS Soils Maps in Depicting Headwaters Streams--Issues in Map Accuracy of Stream Networks**

- There is much variation among USGS map sheets in how small streams are depicted. Some examples:
  - The density of streams is dramatically different between adjacent maps
  - Streams on one map stop at the boundary to an adjacent map
  - Streams are depicted as flowing across ridge-tops
- USGS topographic maps always greatly underestimate the number and total lengths of headwaters streams, except in the Coastal Plain where ditches were often mapped as streams.
- NRCS soil survey maps usually overestimate the number and total lengths of headwaters streams. NRCS has different stream mapping convention than USGS.

**Differences in streams between adjacent maps**

**Map Error in Total Stream Length in a Sample of 9 Small Watersheds\* in North Carolina (Slate Belt)**

Type of Map	Total Stream Length, km
National Hydrography Dataset, 1:24,000 scale GIS stream layer	41.99
NRCS Soils Maps: maps were scanned and the stream networks were digitized.	98.67
Ground Truth, Mapped by GPS	63.90

\*The study watersheds averaged about 2.5 km<sup>2</sup> (about 1 mi<sup>2</sup>) in size.  
 Colson, T. P. 2006. Stream Network Delineation from High Resolution Digital Elevation Models. Ph.D. Dissertation, NCSU Dept. of Forestry & Env. Resources

### **Field Identification of Headwaters Streams and Determination of Origin Locations**

- Method used for all NC buffer rules and Waters of the State determinations
- First developed and implemented in late 1998
- Standard 4-day training course – offered several times a year since 2002 (13 courses in 2007).
- The method or slight variants being implemented by other states, US Environmental Protection Agency, and US Army Corps of Engineers

### **The Future of Stream Mapping**

- Highly accurate LIDAR elevation data, GIS digital elevation and stream mapping models
- Requires much field data to test the methods: streams in 1.5 square mile catchments mapped by GPS
- Pilot study recently completed at NCSU – Dr. Thomas Colson, Ph.D. dissertation; Dr. James Gregory, Project Director
- Research continuing at NC Division of Water Quality

### **Example of the Mapping Methodology and Comparison to Current Stream Maps Study Watershed: Timberlake Community, Person County Carolina Slate Belt Ecoregion**

- 13,079 feet of streams are shown on the USGS 1:24,000 scale topographic map
- Step 1: digital topographic map of watershed produced from LIDAR elevation data; 5 foot contour interval
- Step 2: stream network as mapped from existing computer model – 24,036 feet of streams
- Step 3: 28,097 feet of streams in the actual stream network.

### **Summary – Timberlake study area stream length**

<b>Map source</b>	<b>Feet of streams</b>
<b>USGS topographic map</b>	<b>13,079 feet</b>
<b>Person County Soil survey</b>	<b>41,448 feet</b>
<b>Computer model prediction</b>	<b>24,036 feet</b>
<b>Field-determined</b>	<b>28,097 feet</b>

### **Some Conclusions:**

- Small catchments vary widely in character over short distances.
- Mapping methods need more work.
- Mapping methods must be region-specific.
- Acreage thresholds are problematic.
- Man-caused stream alterations are very common.

Commissioner Lucier stated that at the August 20, 2007 Board of Commissioners' meeting, the Board would be holding a public hearing on the buffer recommendations provided by the Environmental Review Board as well as on the environmental impact assessment minimum triggers. He asked that this presentation be made available for that hearing.

The County Manager asked for a description of LIDAR. Dr. Gregory explained it was for light detection and range, and that it was a laser methodology that used a laser instrument in a low flying airplane that fired a laser beam thousands of times per second to the surface to measure the amount of time it took for that beam to return. He said it was that elevation data that had made the new stream mapping possible and very accurate.

Commissioner Lucier asked if it had worked well when he had gone into the field to validate that approach. Dr. Gregory stated it had worked well, but that it was still a work in progress.

Commissioner Vanderbeck asked if there were any other counties he was working with to verify results. Dr. Gregory said the methodology was being put in place for use by the State, with the eventual goal to have the methodology regionalized. He added if funds were available for such work to be done in a particular county, then that would be possible.

The County Attorney asked if the Division of Water Quality had adopted this as its official modeling technique. Dr. Gregory said the LIDAR would be the basis for future stream mapping activities.

Commissioner Lucier commented on how the County looked at drainage areas and how the County regulations looked at ephemeral streams. He said anything that drained more than ten acres was considered an ephemeral stream and was required to have a certain buffer width, and so on for larger acreage. He asked how a simple approach like that fit in with the LIDAR applications. Dr. Gregory said that drainage via thresholds got you "in the ballpark," and in some cases you may find streams drawn that did not exist on the ground, and then streams on the ground that were not drawn. He explained in more detail how thresholds were used in small as well as larger areas. Dr. Gregory said there had to be some provision for when developers found that no stream existed although it had been drawn on the map. Commissioner Lucier stated then some method for appeal had to be included in the process for stream identification. Dr. Gregory responded that was correct.

Jim Hinkley, Planning Board member, asked that Mr. Gregory's presentation be made available to the Planning Board to help them better understand the information. Dr. Gregory offered to attend an upcoming Planning Board meeting and respond to questions.

Planning Director Keith Megginson stated that he understood that the LIDAR showed the elevations but not what was there. Dr. Gregory stated that the LIDAR was used to develop a topographic map in a digital format, and was much more accurate than the standard GIS approach. Mr. Megginson stated to determine if a stream were ephemeral or intermittent, you would have to actually be in the field. Dr. Gregory agreed.

### **WESTFALL UPDATE**

Commissioner Lucier stated there were a number of stormwater issues that had come up regarding the Westfall development, and suggested the Board hear from Mr. Megginson, the Environmental Review Board, and others to facilitate this discussion.

The Planning Director stated that the Board had received the text for a motion from the Planning Board and the Environmental Review Board to reinvestigate Westfall to determine if there were any existing violations on site. He said he knew of no existing violations based on recent inspections.

Allison Weakley, Environmental Review Board member, described the issues she had seen at Westfall, including: erosion control issues; turbidity, which was difficult to address; failure to follow their plan which resulted in a sediment event in April; the lag time for the State to address violations; stream identification questions that had not been adequately addressed and warranted future study; the beaver impoundment that had been drained in March which impacted downstream areas; doubts that the required 100-foot buffer for the stream had been met; that aerial maps indicated the buffer lines were being measured from a center line, which was not contained in the County's regulations; buffers of an intermittent stream that was not shown on the plat for Phase 1; and concerns about the impervious surface to be built and the effect on drainage to intermittent streams. Ms. Weakley said all of these issues needed to be addressed.

Ms. Weakley pointed out that a significant portion of the site had been identified as a significant natural heritage area and was a wildlife habitat. She said they needed to do everything possible to make sure that the water quality remained high.

Sally Kost, Planning Board member, stated that the developer had invited the Planning Board and the Environmental Review Board to an on-site visit last Saturday, and that they had learned quite a bit. She stated they had learned that Westfall was in compliance, but as the County rewrote its regulations, there were many things that might need to be changed. Ms. Kost said there was about forty acres of disturbed soil, so runoff into the creeks could not be avoided.

Jim Hinkley, Planning Board member, stated that with this project the onus was on the County. He said the original design had many flaws and that still showed today, even though it was in compliance. He said the County needed to do a better job in recognizing design flaws and should have the professional staff to do it, and to make recommendations to developers.

Jim Willis, Sedimentation and Erosion Control Officer, stated that in terms of recent inspections, Westfall had been in compliance with current regulations. He said the violation in April was due to a lack of stabilization of exposed areas, failure to install two devices for sediment traps, and an off-set sedimentation issue at the Lystra Road entrance, all of which had been corrected or satisfied. He noted that when regulations to protect watersheds were reviewed, these as well as off-site issues needed to be considered.

Elaine Chiosso, a member of the Environmental Review Board, concurred with remarks made by others who had visited the site, and requested that her Board be allowed to take up the current Sedimentation Control Ordinance to review it for possible revisions. She said they would like to have the input of the Planning Board as well, possibly with a joint meeting.

Commissioner Lucier asked the Commissioners if they believed that was a reasonable assignment for that advisory board to take on.

Commissioner Barnes stated everyone was concerned about erosion at this site, but the key was that the site was in compliance with the Erosion Control Ordinance. He said if the silt basin was designed to catch only 80%, then all you would get was 80% containment. He stated that the silt basins could be more efficient and the ordinance should be amended to reflect that. He said he believed up to 95% could be contained, and agreed that the standards and requirements needed to be strengthened.

Ms. Chiosso stated that the Environmental Review Board was in full agreement, and would like to get started on its review as soon as possible.

Commissioner Vanderbeck stated they needed to move in that direction, but believed that the staffing issue of the Environmental Review Board and the Planning Board needed to be looked at. He stated they needed to accelerate their actions and get more staff involved sooner.

Commissioner Lucier stated he believed the Board was in agreement that they would like the Environmental Review Board to take on this assignment.

Commissioner Barnes stated he did not believe the Environmental Review Board had the staff to take on this assignment, noting it would take people with a lot of free time to devote to it. He stated that he believed the Environmental Review Board had more than it could handle now. Ms. Chiosso said they were willing to try. Commissioner Barnes said this was not a small undertaking, since it would amount to a major rewrite.

Commissioner Lucier stated that the ordinance needed to be reviewed and recommendations made for changes, and the Environmental Review Board was the best one to do that. He said that the ordinance rewrite needed to be done quickly.

The County Attorney stated that any modification to the plan needed to come through the Health Department as the end product and then go to the State for approval of a new plan. Holly Coleman, Health Director, stated that the ordinance was under the administrative and enforcement control of the Board of Health, and it was understood that they were using the State's model ordinance and at some point it would have to be revised to meet Chatham County's needs. She noted that if the ordinance were to be revised, it would have to go to the State for approval. Ms. Coleman said before a rewrite was assigned to anyone, the Commissioners needed to have a clear understanding of the intent, and that the Board of Health needed to be involved in any decisions being made.

Commissioner Lucier stated the key component of any rewrite would require that all parties work closely together to achieve the common goal, noting this was an important issue for the County and the Board of Health should absolutely be involved. He suggested that they get moving and figure out what was needed in terms of support and where that support should be placed, and asked the County Manager for a recommendation. The County Manager stated that he would be happy to formulate some recommendations for the Board's consideration.

Commissioner Barnes asked how much staff was needed in the Health Department and on the Board of Health to implement new ordinance requirements. Ms. Coleman said it depended on the type of oversight expected, noting it did not take more staff to do a plan review



once a process was set, unless more inspections were required. She said she could not provide an answer until she saw what was being proposed.

Commissioner Barnes said he was not speaking so much regarding inspections; rather, he was referring to review and recommendations on the requirements in the ordinance to be revamped to keep sediment on-site rather than allowing it to escape. Ms. Coleman said she believed that would require the services of a consultant engineer for about six months to a year to work collaboratively on the ordinance rewrite.

Commissioner Barnes asked if this issue was on the Board of Health's agenda. Ms. Coleman responded it was on the agenda for their August 28, 2007 meeting, after which they would provide a response to Commissioners.

Commissioner Lucier asked that the County Manager work with Ms. Coleman to form those recommendations along with how to integrate the expertise of the Environmental Review Board, the Planning Board, and the Sedimentation and Erosion Control Officer. The County Manager stated that they would bring back some information for the September 4, 2007 Board of Commissioners' meeting.

The County Attorney stated that there were other jurisdictions that have higher standards above the minimum. He suggested talking with Ms. Chiosso prior to the August 28<sup>th</sup> meeting to look at the types of standards being used elsewhere. Ms. Chiosso said she would be asking the staff at the Division of Land Quality to provide copies of what they believed were the best ordinances from other local jurisdictions in the State. She noted they did have their own in-house expert in Jim Willis.

Commissioner Barnes said the first step was identifying what needed to be improved. Ms. Chiosso agreed. She said of concern was the long lag time between a violation and notice of that violation by the State, partially due to staff turnover. Ms. Chiosso asked the Board to communicate to the Raleigh Regional Division of Water Quality that the County wanted a quicker response to suspected violations.

Commissioner Barnes said he did not believe such communication would help, noting that office was severely underfunded and understaffed. Ms. Chiosso suggested sending a letter with copies of the County's State representatives to alert them that the Division of Water Quality required more staff and more funding.

Commissioner Barnes said the reality was that it would take the County implementing revisions to its ordinance to keep such violations from occurring.

Commissioner Lucier agreed, but stated it made sense to send the letter so that the problem was identified.

Commissioner Vanderbeck stated his agreement, and wanted to craft a letter that detailed Ms. Chiosso's concerns and send copies to their legislators.

Nick Robinson, speaking on behalf of MacGregor Development Company, stated that the Planning Board had requested that some investigation take place on the Westfall proposal, and that had now taken place; that this developer was a conscientious developer and was doing everything possible to make sure the development was put in place in an environmentally reasonable way; that the developer had engaged Eco Turf, Inc. to make sure that the erosion and sedimentation activity was done according to plan; that Eco Turf inspected the site every seven days; that if a rain event of ½" or more was experienced, Eco Turf inspected within 48 hours of the event; that in response to the Planning Board's concerns, Travis Blake with Blake & Associates was hired to verify the proper functioning of the erosion control measures; that all plans, inspection reports, company officials, and subcontractors were made available to Mr. Blake; and, that Mr. Blake reported that MacGregor Development Company was doing an excellent job. He referred the Board to Mr. Blake's report in the packet. Mr. Robinson offered to respond to the concerns brought forth by Ms. Weakley.

Commissioner Lucier stated that Ms. Weakley had brought up three concerns, one of which was the 100-foot buffer around the creek. Mr. Robinson indicated on the site plan how the 100-foot natural buffer was measured, which was from the bank of the creek and not the

center; that the beaver impoundment actually infringed onto the school property, and the beaver dam was causing water to flow over MacGregor property; that the creek was subject to being moved depending on where the dam was breached; that if breached in a particular area then the creek would flow back to its historic channel which would make it 400 feet away from anything; that even if the creek were not breached, the buffer would continue to be 100 feet; and that the Watershed Protection Ordinance allowed for clearing inside that 100-foot buffer as long as it was replanted.

Commissioner Lucier asked when that replanting would occur. Bruce Herbert, with the MacGregor Development Company, stated the area would likely be replanted by this time next year.

Commissioner Lucier said another issue raised was the intermittent stream. Mr. Robinson stated that the Corp of Engineers' stream delineation map did not show that, noting it was a non-jurisdictional area. He said that area was once some sort of agricultural feature and not an intermittent stream.

Commissioner Vanderbeck stated they needed some response to the issue of impervious surface that was brought up by Ms. Weakley. Mr. Robinson offered to provide a written response, noting he believed the concern centered on that supposedly undelineated stream and they had a map that responded to that. He stated that the development was well below the maximum impervious surface allowed.

### **LUNCH BREAK**

The Vice Chairman called for a thirty-minute lunch break. After the break, the meeting was reconvened.

### **PLANNING DEPARTMENT**

#### **Subdivision Options:**

The Planning Director provided some photographs taken at Westfall, and explained each. He pointed out the beaver dam and the feeder creeks on the site, the major silt basin, the wetlands area, and the main creek. Mr. Megginson said many times developers had to drain beaver impoundments because of flooding and because of tree damage.

Mr. Megginson stated since the moratorium was enacted, some had asked if subdivisions had to continue to be approved, and what could be done to slow things down and to address environmental issues. He listed several ideas for consideration to accomplish that, one of which was to increase lot size through subdivision regulations County-wide up to ten (10) acres. Mr. Megginson stated that would reduce the developable area of land by increasing the lot size from 1½ acres up to 10 acres, and would allow you to maintain the exemptions for family subdivision of land being passed down within families. He stated the downside of increasing the lot size was that you would be reducing the earnings people could expect to get from their land, and increasing lot sizes would make less land available.

Commissioner Barnes stated there were downsides to anything they chose to do. He stated discretion would need to be used in regards to the size of the lots, but believed increasing the lot sizes for subdivisions would be beneficial and he would like to pursue that. Commissioner Barnes asked that the Planning Department to study the issue and make recommendations to the Board regarding what lot sizes should be considered and any issues that might expose.

Commissioner Vanderbeck stated at one time it had been proposed that private roads be excluded. Mr. Megginson responded that issue had come about because of State regulations which said anything over five acres was not a subdivision and had been changed to anything over ten acres; and in 1980 when the County changed its regulations to conform to State regulations, there was an argument that if you excluded five-acre subdivisions with private gravel roads then you were excluding a segment of the market that could afford to pave those roads, so you needed to continue to allow those private roads to remain gravel on those larger lots. Mr. Megginson said the County had agreed, and that was how it remained today, but that the County saw very few subdivisions now that had private gravel roads because those were usually asphalted to State

standards; and the lots on those roads were usually more expensive. He said he did not believe that argument was a viable one for that reason, but large lot subdivisions may need to be considered should the ordinance be changed and lot sizes increased.

Commissioner Lucier asked if the Board wanted to have the Planning Department proceed with looking at this issue and getting a report back from them.

Commissioner Cross stated he was not against having the Planning Department look into this, but was cautious about taking too much property with large lot sizes.

Francie Henville-Shannon stated she was thinking about Fearrington Village and Carolina Meadows, and that if you had larger lot sizes then you would have no possibility for townhomes.

Commissioner Lucier stated not necessarily, although it would impact that in some ways. He said you could still have compact communities where you could have greater density provided there was more open space available, although it would limit the number of homes you could have on a total number of acres. Mr. Megginson said at the meeting with Cary the Board was considering recommending five acres for that area with the most growth in the County, but noted areas such as Silk Hope and other more agricultural areas had a 1½ acre lot size. He said consistency of policy would have to be considered, so decreasing density in the east might force it further west.

By consensus, the Board agreed to have the Planning Department study the issue and bring back recommendations.

#### **Conditional Use Subdivisions:**

Mr. Megginson stated a related issue was having major subdivisions handled as conditional uses in the zoned areas. He said many jurisdictions held public hearings on such issues, but that the County had only a public comment period since the land was already zoned. Mr. Megginson said the Conditional Use Permit request would trigger a public hearing, with findings that would have to be made including that there were adequate public facilities. He said that was a good way to address the issue of school capacity, in that if a development would cause a school to become over capacity, that would be grounds for denial of the Conditional Use Permit. Mr. Megginson asked if the Board wanted that pursued.

By consensus, the Board agreed to have the Planning Department pursue that.

Commissioner Cross noted there was a group in the County called Wake Up, and he had attended a recent meeting where issues of adequate public facilities were discussed. He promised to bring back more information regarding this group and its work.

Jim Hinkley, a Planning Board member, asked if his Board would have an opportunity to discuss this issue.

Commissioner Lucier stated certainly, noting that Mr. Megginson would provide his report to the Planning Board and that the Board could then decide how to respond. Mr. Hinkley said the Planning Board had not heard anything about this issue, and would like to be informed. Commissioner Lucier said they were all hearing about it at the same time.

#### **PLANNING BOARD INDEMNIFICATION QUESTION**

The County Manager stated that Mr. Megginson would provide information regarding the Planning Board's motion and the County Attorney would address the legal issues.

Mr. Megginson stated the motion was approved by the Planning Board and then read the motion in its entirety: "I move that the Chatham County Planning Board recommend to the Board of County Commissioners that members of the Planning Board and other official representatives of the County such as members of the Environmental Review Board and respective investigative task forces, be indemnified: 1) to be able to make inspections of all and any land use applications without liability of injury and of approved trespass excluding the cartilage of homes and dwellings; and 2) to be able to inspect any land use applications where

there are citizen complaints rendered or problems detected in respect to compliance with Chatham County ordinances and regulations, and stipulations set forth by the Planning Board and the Board of County Commissioners.”

The County Attorney stated that Jim Hinkley had made the motion, and he had asked the Planning Board to table the motion to allow him time to study it to make sure the gist of it was allowable under the law. He stated that based on the motion, it was not one that could be adopted by the Commissioners.

Mr. Whiteheart stated that after talking with Mr. Hinkley, he determined the concern was that quality inspections take place, and that each piece of property that came before the Planning Board be reviewed by County staff. He stated that his understanding from the Charter of the Planning Board was that they were charged with making recommendations to the Board of Commissioners, which they could certainly do in this case. The County Attorney responded that the current motion asked for indemnification for the Planning Board members when they made site inspections, so the question was what would happen if some incident occurred on the site during that inspection, and what would be the legal ramifications. He said he had checked to determine to what extent the County could indemnify Planning Board members or others, and the County’s general liability policy and the errors in omissions policy made it clear that the County could make indemnification available to them even though they were not paid employees but were in effect unpaid employees.

The County Attorney said that the County could indemnify Planning Board members and others when visiting a site only to the extent that they were acting within the scope of their employment, and only for negligent acts, and provided examples of such acts. Mr. Whiteheart suggested that if the Board wanted to adopt a resolution to indemnify the Planning Board members and others, that the Board could indemnify unpaid employees to the extent that they were acting only within the scope of their duties and only for negligent acts.

Mr. Whiteheart said since such unpaid employees were being treated as employees in this way, then logically they would have to be treated as employees in other ways, such as orientation on safety, and where and how to park when visiting sites. He suggested orange cones and yellow vests might need to be provided. Mr. Whiteheart said finally, as part of the process, they needed to amend the ordinance so that when applications were received, the ordinance would allow Planning Board members and others to visit the property for inspection.

The County Attorney stated that the second portion of the motion was more difficult to address since both the Board of Commissioners and the Planning Board, at times, acted in a quasi-judicial manner, and when a decision was rendered a third party was charged with checking to make sure the decision handed down was being upheld. He stated that agreeing to the second part of the motion could place the Planning Board in an awkward position, in that they could recommend approval of a subdivision and then make inspections of it, resulting in too close a connectivity for them to be enforcing officers as well as reviewing and approval officers. He stated that was why the ordinance called for the Planning staff to make those inspections.

Commissioner Lucier asked if the County Attorney needed to hear in what direction the Commissioners wanted to go, and then he would draft something to come back to the Board for consideration. Mr. Whiteheart stated that was correct, and suggested having something in the form of a resolution that would indemnify and hold harmless advisory board members for their actions provided they were acting within the scope of their duties. He said that Renee Paschal would speak to the other side of the issue, which was if an advisory board member did something that caused personal injury.

Renee Paschal, Assistant County Manager, stated that regarding the County’s Workers’ Compensation insurance that policy would have to be changed to cover advisory board members who may be injured while acting within the scope of their duties. She said if such coverage were to be extended to volunteers, she would encourage that it be limited to volunteers conducting field visits, and that they receive basic orientation and safety training just as other employees received.

Ms. Paschal stated the more people placed on the policy, the more expensive the insurance became. So, she said, they needed feedback from the Board on whether the policy should cover all volunteers or only those that conducted site visits.

Commissioner Barnes stated his concern was that the County already had Planning staff and an Erosion Control Officer, and inspections were their jobs; and, to the question of having the Planning Board make inspections, he would say no. He said making a site visit was one thing but making inspections was another, and he did not want to move in the direction of granting such broad authority.

Commissioner Lucier agreed he did want to make the Planning Board an inspections board, but they clearly should be allowed to make site visits in order to gain valuable information about a site. He said the Commissioners would have to justify insurance coverage and for whom, and decide how much they were willing to pay for it.

Commissioner Lucier stated he believed property owners should receive prior notice before a site visit was conducted, noting it was unfair for someone to decide they had a free hour one afternoon and just show up at a piece of property. Mr. Megginson said that Mr. Whiteheart and he had discussed that issue, noting that many times large pieces of equipment might be moving about a site, and it was not safe for a Planning Board member or others to be on the site at such times. He agreed that prior notice of a visit was necessary as a courtesy to the property owner and for safety.

Allison Weakley said it was important to provide flexibility to members who wanted to make these visits, since it was not always possible to provide prior notice.

Commissioner Lucier said in the case of visits by State officials such as a member of the Division of Water Quality, it would be appropriate for an Environmental Review Board member to accompany that person on the visit.

Jeffrey Starkweather asked what would happen if a property owner were to assault an advisory board member during such a visit and asked if the County pay for any resulting lawsuit. He said he believed such a potential existed and should be addressed. Mr. Whiteheart provided examples of how such an instance might be handled, including through criminal court and through civil damages. He suggested the proposed resolution speak to how that would be covered, noting it may take some time to do that.

Commissioner Cross asked if they would have to be aware of any potential OSHA violations committed by advisory board members walking onto a work site. Mr. Whiteheart said yes, and he and Ms. Paschal had already discussed that. He stated that was one reason they were recommending that advisory board members go through the orientation and safety process.

Commissioner Lucier stated it was reasonable that any advisory board member who had not taken the training would not be allowed to make site visits.

Commissioner Cross stated he did not believe the Planning Board should act as inspectors, and would like for them to visit sites in order to do what they were charged with doing. He stated that they had County employees who were trained, and if a Planning Board member saw something they believed was a violation, then they should report it to the Planning staff and not discuss it with the property owner.

Commissioner Lucier stated he believed the Board was in agreement with that.

Loyse Hurley stated that the County had many dedicated volunteers who had expertise in a variety of areas and many who served on more than one advisory board. She said they were seeing a change in tenure on these boards due to the burn-out being felt by those volunteers. Ms. Hurley asked the Board to seriously consider the need for these advisory boards to have back-up staff to support them.

Commissioner Barnes stated they had asked the County Manager to look into that because the Board believed that what Ms. Hurley had stated was true. He said they could not expect to get the job done without staff support, noting it was not fair to the advisory board members who volunteered so much of their time.

Commissioner Cross stated that was true in regard to the Environmental Review Board, noting they could not tackle more projects without more staff support.

## LEGISLATIVE UPDATE

### **Land Transfer Tax (LTT):**

Commissioner Lucier congratulated Commissioner Cross on his successful Land Transfer Tax efforts.

Commissioner Cross stated that he was pleased with the success as well, noting the efforts of many people had made it happen. He recommended that they place the Land Transfer Tax on the referendum for November and begin holding public forums to explain that they would not achieve things such as Medicaid relief or addressing school impact fees without the Land Transfer Tax. Commissioner Cross stated many other local jurisdictions would have this same tax on their November referendums and he believed there would be opposition within the County. He stated they would have to get out and “spread a lot of truth” between now and November.

Commissioner Lucier stated the way the Bill read, counties were authorized to either do the 0.4% in Land Transfer Tax or a .25 cent increase in sales tax. Commissioner Cross stated that was correct. Commissioner Lucier stated he believed the Board was in agreement that they would pursue the 0.4% Land Transfer Tax rather than an increase in sales tax, and asked if a formal vote was needed. Mr. Whiteheart responded yes.

Commissioner Cross moved, seconded by Commissioner Barnes, to place the “Land Transfer Tax” of 0.4% for referendum as the County’s option rather than Sales Tax option on the ballot.

Commissioner Vanderbeck asked the Board to consider deferring this matter until the Board’s August 20, 2007 meeting in order to gather more citizen input.

After some discussion, the Vice Chair called the question. The motion carried four (4) to zero (0).

Commissioner Lucier noted the next issue was when to place it on a referendum stating that the next possible time would be during the 2007 November elections.

The County Manager stated that if the referendum was placed on the November ballot, the Board of Elections had to be notified no later than August 20<sup>th</sup> of that intent. Secondly, he said they had met with a consultant who had been behind the successful Wake County school bond referendum to discuss how that consultant might assist the County with its referendum. Mr. Horne said it would be beneficial to put together an advocacy group to help balance the opposition, adding the consultant was putting together a proposal that she would bring back to the Commissioners for consideration.

The County Manager suggested that should be done through a formal resolution that the Attorney could draft that said the Board wanted to place this on the ballot for November.

Commissioner Barnes moved, seconded by Commissioner Cross, to have the attorney draw up a formal resolution stating the Board’s intent to place the Land Transfer Tax referendum on the November ballot (**Resolution #2007- 31\_ Resolution of the Chatham County Board of Commissioners to Place Before the Voters on the November 6, 2007 Ballot a Referendum to Enact a Land Transfer Tax of 0.4.**) and that the County Manager and staff proceed with negotiations for the consultant to provide a proposal for an informational campaign.

Commissioner Vanderbeck brought up the issue of “liquor-by-the-drink”. He stated that by being placed on the ballot with the referendum, it might bring out more voters.

A short discussion ensued regarding “liquor-by-the-drink” and whether or not it should be placed on the ballot for November. Commissioner Cross stated he believed just as many people would be against it as supported it, adding he knew his church would be against it as would Commissioner Barnes’ church.

Commissioner Barnes said he believed it would be a mistake to place “liquor-by-the-drink” on the ballot along with the Land Transfer Tax.

The Vice Chair called the question. The motion carried four (4) to zero (0).

**Recreation:**

The County Manager stated that both the recreation and occupancy tax were ratified that granted the County the discretion to use that money anywhere in the County they saw fit.

Commissioner Lucier said another advantage was that the funds could be used to build such things as a restroom at the ballfield. He asked if any part of that agreement weakened the County's position or authority. The Assistant County Manager noted the County had the same authority it had always had.

The County Attorney stated that was true, noting the statutes allowed the County to charge a recreation fee at any time under the subdivision statutes. He stated that he believed that at some time, a lobby for developers had placed that under the provisions for developer agreements, meaning that one could only charge a fee when there was a development agreement which was basically a voluntary agreement. Mr. Whiteheart said the question was how did the County entice developers into a voluntary agreement, and they had concluded that the County could offer a minor incentive in the form of a reduction in the fee.

Commissioner Lucier stated then the choice would be a voluntary agreement between the two parties or requiring the recreation fee when the property was subdivided. Mr. Whiteheart stated that what was now in place was that when developers came to the County for final plat approval, they paid a fee in the amount of \$928.00 per lot for the eastern section. He said the problem was that only allowed the fee through that final plat.

Commissioner Lucier asked if both options were still available. Mr. Whiteheart replied yes. Commissioner Lucier stated then depending on the situation, one or the other option might be preferable.

Ms. Paschal reminded the Board that it would require a public hearing.

Commissioner Lucier said that the public hearing could take place at the same time as the public hearing on the development proposal.

Commissioner Cross asked if a development agreement was always required. Ms. Paschal said only if the site was 25 acres or more. She said they would continue to charge for individual lots just as they did now, but if the fees were acquired through a development agreement those funds could be used for any facility in the County.

Commissioner Lucier asked what the next step would be. The County Manager replied that they would come back to the Board with more information at a later time.

Commissioner Cross stated that regarding the Land Transfer Tax, the counties given that resolution authority had specific uses for the funds received, which were all capital improvements. In effect, he said, those funds could be spent for whatever was needed and asked the Board to agree to spend it on what it was intended for, capital improvements, and not get sidetracked and spend it somewhere else.

**Occupancy Tax:**

The County Manager stated that the occupancy tax had been ratified, and it carried a requirement that an authority be created for tourism and that the funds received be spent on tourism. He said staff would have a proposal in the near future on how to proceed with that.

Commissioner Lucier stated then no action needed to be taken today. Mr. Horne replied that was correct. Commissioner Lucier asked when Mr. Horne expected to come back with that. Mr. Horne responded it would likely be September. Commissioner Lucier said the Economic Development Commission would meet on August 16 to discuss this as well, so any input from them could be included.

## **SCHOOL SETBACK REQUIREMENTS**

### **North Chatham School:**

Col. Gerald Totten, Chatham County School Board member, said that the School Board had discovered on July 31<sup>st</sup> that they were out of compliance with the setbacks for the two mobile units at that school, both of which had been there for over a year. He said they had to be able to open those classrooms on August 23<sup>rd</sup>, and they could adhere to a 70-foot setback but not the 110 feet required for an institutional building. Col. Totten asked that the Board of Adjustment approve that 70-foot setback request and waive the requirement for the 110-foot setback.

Commissioner Lucier asked if those two trailers were the ones to the right of the gymnasium. Col. Totten responded that was correct, noting they had been there over a year and both had been used as voting places in the spring and fall.

Commissioner Lucier asked if such an action would require a public hearing. Mr. Megginson responded that it would. Commissioner Lucier asked if the public hearing could be held on August 20<sup>th</sup> and the Board act on it that evening. Mr. Horne said the ordinance did not allow for that.

The Planning Director said that in actuality all four of the school's trailers violated the setback requirements. He said one way to solve that issue was to amend the Conditional Use Permit, but a better way would be to amend the text of the ordinance to reduce the setback requirements for mobile classrooms. Mr. Megginson said in order to do that, it would require a text amendment which had to be considered by the Planning Board, a public hearing held, and then the Board could vote on it.

Commissioner Vanderbeck asked about the possibility of leaving the classrooms where they are now and having DOT install guardrails. Mr. Megginson said that DOT was hesitant to do that because it would allow for no pull-off space for vehicles. He said there was a possibility that the school could install a guardrail on the other side of the ditch just outside of the right-of-way. Mr. Megginson said another option would be for the School Board to apply for a variance on a temporary basis for this school year, but that could not be achieved before school started. He stated the easiest way to solve this was to move the trailers to meet the 70-foot provisions and amend the ordinance to allow that. He said that two of the trailers could meet the 70 feet but the older two could not.

Commissioner Barnes asked if the Board were to follow that recommendation and school opened with the trailers in violation of the setback, what the legal ramifications would be. The County Attorney said if the School Board was in violation, they could be issued a fine, and the County's fine was dependent on what the Enforcement Officer believed was reasonable which could be nominal. He said they could be found in violation, they could erect a barrier on their property, and then it could come back to the County for some sort of variance. Mr. Whiteheart said that would amount to the County not condoning the violation since it would have issued a fine and a notice that it needed to be corrected.

Commissioner Lucier stated they could also begin the process for the zoning amendment change at the same time. Mr. Whiteheart stated that was correct. He stated that any time the health, safety, or welfare of the citizens was involved, the Commissioners had the authority to act immediately. Mr. Whiteheart said formal notice to the School Board would trigger the Commissioners saying that they had to get something done to correct the violation.

Commissioner Cross said since they had the priority of safety, could they move forward without a public hearing and change the ordinance. Mr. Whiteheart said they could not change the ordinance without a public hearing.

Col. Totten said that two of the trailers would still have to be moved to meet the 70-foot setback, but that was possible to do before school started. He said they could also get the barrier installed prior to August 20<sup>th</sup>.

Commissioner Lucier said since the County had already notified the school of the violation, the school could move the two trailers to the 70-foot line, the school could erect the



protective barrier on school property before school started, and the public hearing could be held on August 20<sup>th</sup>.

Mr. Megginson stated the public hearing could not be held on August 20<sup>th</sup> because the ordinance requirement was for a 30-day notice prior to the meeting and a variance required a 25-day notice.

Commissioner Lucier asked if that included when a safety issue was identified. Mr. Megginson said they had to follow the requirements of the ordinance.

Col. Totten stated they would be moving the two trailers before school started regardless of what the Board decided, noting that eighty children were housed in those four trailers.

Commissioner Lucier stated that he believed what the Board needed to do was to pass a motion to ask the Board of Education to move the two trailers and to erect the barrier prior to August 22<sup>nd</sup>. Mr. Megginson suggested that the Board not do anything, noting the school had already received the notice of violation. He said the trailers could be moved to 70 feet in anticipation that the Board would likely approve an amendment to allow that 70-foot buffer, and in the meantime, they could erect the barrier. Mr. Megginson said then after the public hearing the school would be in compliance. But, he added, they would not be in compliance until the ordinance was amended.

Mr. Megginson said the Board needed to decide on a public hearing date which would be the September 10<sup>th</sup> meeting on the highway corridor. He said it could then go before the Planning Board on October 2<sup>nd</sup> and the Board could approve it on October 15<sup>th</sup>. The Board agreed by consensus to those dates.

Commissioner Vanderbeck moved, seconded by Commissioner Barnes, to ask the Board of Education to take appropriate remedial measures to protect the children and address this issue. The motion carried four (4) to zero (0).

### **ADJOURNMENT**

Commissioner Vanderbeck moved, seconded by Commissioner Cross, to adjourn the meeting. The motion carried four (4) to zero (0), and the meeting was adjourned at 2:42 PM.

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Carl Thompson, Chairman

ATTEST:

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