

**CHATHAM COUNTY PLANNING BOARD  
MINUTES  
OCTOBER 2, 2007**

The Chatham County Planning Board met in regular session on the above date in the auditorium of the Cooperative Extension Building in Pittsboro, North Carolina. A quorum was present to begin the meeting. The members present were as follows:

Present:

Chris Walker, Chair  
Sally Kost, Vice-Chair  
B.J. Copeland  
Karl Ernst  
Barbara Ford  
Warren Glick  
Clyde Harris  
Jim Hinkley  
David Klarmann  
Judy Sharman  
Delcenia Turner

Absent:

Planning Department:

Keith Megginson, Planning Director  
Jason Sullivan, Assistant Planning Director  
Lynn Richardson, Subdivision Administrator  
Angela Birchett, Zoning Administrator  
Kay Everage, Clerk to the Board

County Attorney

Kevin Whiteheart

- I. CALL TO ORDER – Chair: Chairman Walker called the meeting to order at 6:05 p.m. He noted the following specifics regarding tonight’s agenda.
  - Brief explanation of consent agenda: Chairman Walker stated that tonight’s consent agenda consists of three (3) items (minutes and two final subdivisions); that consent agenda by definition is one on which the Board has one (1) vote to approve or disapprove all items on that agenda; that the Board needs to be aware if there is anyone present regarding a specific request on the consent agenda, i.e. “the Estates at Laurel Ridge, Phase 1A, or “Briar Chapel, Phase 4”, so that those items can be removed from the consent agenda for review; and that otherwise these items would be voted on without discussion.
  - Chatham Development Corporation rezoning and conditional use permit requests (Item VII. A. and B.): Chairman Walker stated that the applicant has withdrawn these requests.

- General Shale Brick, Inc. rezoning and conditional use permit requests (Item VII. C. and D): Chairman Walker stated that it would be okay to speak on the rezoning request; that no new information could be presented regarding the conditional use permit request since this was sworn testimony at the public hearing; and that clarification on an issue would be permitted but that no new questions or information would be received.
- Public input session: Chairman Walker explained that this time on the agenda is for public input only for issues that **are not** on the agenda; and that concerns from landowners regarding items on the agenda would be given an opportunity to speak during the time that particular issue is reviewed.

II. APPROVAL OF AGENDA: Mr. Ernst made a motion; seconded by Mr. Copeland to approve the agenda as submitted. There was no discussion and the motion passed unanimously (11 Board members).

III. CONSENT AGENDA: Ms. Sharman made a motion; seconded by Mr. Glick to approve the consent agenda as submitted. There was no discussion and the motion passed unanimously (11).

A. Minutes: Consideration of a request for approval of Board minutes for September 4, 2007 Planning Board meeting.

B. Final Plat Approval:

1. Request by Community Properties, Inc on behalf of Chatham Partners, LLC and Roanoke Investments, LLC for subdivision final plat approval of "The Estates at Laurel Ridge, Phase 1A" (fka Creekside Subdivision), consisting of 18 lots on 94 acres, located off SR-1520, Old Graham Road, Hadley Township.
2. Request by Joe Grady, Jr., PLS on behalf of NNP Briar Chapel, LLC for subdivision final plat approval of "Briar Chapel, Phase 4", consisting of 120 lots on 35 acres, located off SR-1532, Mann's Chapel Road and US 15-501 N.

End Consent Agenda

IV. PUBLIC INPUT SESSION: Fifteen-minute time of public input for issues **not on agenda**. Speakers limited to three minutes each.

There were no requests to speak at this time.

V. LIGHTING ORDINANCE:

Chairman Walker stated that this is a continuation from last month's Planning Board meeting; that the Board voted in principle last month and agreed that where the Ordinance refers to retrofitting fixtures that reach a certain percentage (i.e. certain percentage of fixtures that need to be replaced or repaired) that all fixtures may require retrofitting; that during a previous meeting the Planning Board approved the basic draft of the Lighting Ordinance; and that

the Board had concerns regarding neighborhoods where there are two (2) different utility companies and the existing problem with getting them to coordinate with each other.

Four (4) specific concerns were discussed as follows:

1. Page 8, Section 1 (h) Outdoor Sports Field / Outdoor Performance Area Lighting (4): “Non-conforming fixtures lighting sports fields may be replaced or otherwise changed on 30% or less with new non-conforming fixtures, however when over 30% of the fixtures are upgraded or otherwise changed, all the fixtures must be brought into compliance with the requirement of these lighting standards”.

Chairman Walker stated that staff raised the question whether the Board might consider that only the fixtures needing replacement be brought into compliance at that time (as they are replaced.)

- It was the consensus of the majority of the Board that fixtures be brought into conformity as they are replaced (and that there is not a threshold at which they all have to be retrofitted.)

2. Page 11, Section 1 (g) Nonconformities (3): “Vehicular Canopies do not qualify for this exemption and have five years from the adoption date of this ordinance to bring the outdoor lighting into compliance. If a major renovation of the canopy (25% or more of the existing light fixtures) occurs at this facility prior to the expiration of the five-year term, the earlier date will apply regarding compliance”.

Chairman Walker stated that the Board had asked for legal opinion on whether this could still be enforced and if staff wants to consider changing the proposed percentage (of 25% or more of the existing light fixtures.) He noted that this has primarily been considered as a safety issue because of the intense glare of the lights; and that this could be done safely with better fixtures (and was done at a station on Highway 15-501 N.)

Attorney Whiteheart stated that safety (in this context) comes under police power of the local government; and that the Board might want to discuss percentage of replacement fixtures, i.e. safety clarification, uniformity of look, lower carbon admissions, and etc.

Board discussion followed. Ms. Kost suggested considering applying uniformity throughout the county. She noted that the Board decided last month to apply the provisions to the entire county. Mr. Klarmann, Mr. Ernst and Mr. Glick voiced concerns regarding fixture replacements, i.e. cost, safety, and etc., and the need for additional information.

- It was the consensus of the majority of the Board to support staff recommendation that lighting be required to be upgraded when more than **50% of the lighting is replaced or within five years, whichever occurs first.**

Mr. Glick stated that he is willing to support staff recommendation on the grounds that additional information is not available at this time.

3. Page 7, Section 1 (f) Lighting in Outdoor Areas (residential and Non-Residential). (4) Exceptions (a.): “Non-cutoff decorative post-mounted fixtures may be used but must be equipped with a solid top and an internal polished aluminum top reflector shield to direct the light downward or meet the cutoff classification. Mounting heights of 18 feet or less above ground are allowed when the maximum initial lumens generated by each fixture does not exceed 9500 initial lamp lumens”.

Chairman Walker stated that Bob Henderson with Progress Energy has provided the following revised language for the Board to consider.

“Non-cutoff decorative post-mounted fixtures may be used but must be equipped with a solid top”.

Chairman Walker explained that this should allow similar fixtures provided by both Duke Power and Progress Energy to be used which has been an issue in the past (since they don't provide the same fixtures); that this would eliminate the requirement that all fixtures have to be cut-off but would require a solid top; and that there could be a problem getting the providers to supply the same fixtures (or finding out why they can't). He noted that Dave LeGrys has stated that he is willing to explore why the providers cannot provide the same fixtures. Mr. Megginson stated that the different fixtures are similar (as shown in the pictures provided Board members.)

Board discussion followed regarding adding language, “in the case of two (2) vendors” and “if / when available an internal polished aluminum top reflector shield to direct the light downward or meet the cutoff classification”.

John Henville-Shannon, 2951 Glenn Glade (Governors Club), stated that the issue is regarding decorative post-mounted fixtures; that whether there is one (1) or two (2) suppliers there is still a problem because of the availability of the decorative fixture in full cut-off; and that Duke Power has no reflector in their fixtures.

- Following discussion, it was the consensus of the majority of the Board to add language “**if / when available** an internal polished aluminum top reflector shield to direct the light downward or meet the cutoff classification”.

4. Page 6, Section 1 (f) Lighting in Outdoor Areas (Residential and Non-Residential) (1): “Other than flood lights and flood lamps, all outdoor area and parking lot lighting fixtures of more than 2,000 lumens shall be full cutoff fixtures, or comply with subsection (4) below”.

and,

Page 7, Section 1 (f) Lighting in Outdoor Areas (residential and Non-Residential). (4) Exceptions (b.): “Dusk-to-dawn open bottom security lights must be fully shielded to provide a full cutoff light distribution”.

Chairman Walker stated that regarding full cut-off classification for flood lights, the Board may want to allow these to be less restrictive than full cut-off; that there are other options that the Board could explore before the Commissioners actually make a recommendation, i.e. semi or full cut-off. He noted that staff recommends that gas station canopy lighting be required to be upgraded when more than 50% of the lighting is replaced or within five years, whichever occurs first.

- It was the consensus of the majority of the Board that language stated in Lighting Ordinance (Rev. 4 Draft) dated March 8, 2007 remains as proposed and as noted above as #4.

Discussion followed. Mr. Glick referenced the following language.

Page 11, Section 1 (g) Nonconformities (1) – last paragraph – “Any expansion of, or addition to, and existing lighting system must conform to the requirements of this ordinance”. He stated that the language suggests to him that if a fully developed community were to find an area where additional lights were needed for safety reasons, that said lights would be of a different nature than the other non-conforming lights in the community; and that the whole decorative scheme of lighting in that community would be thrown off by this addition. Mr. Glick inquired why this is needed if we are allowing them to remain non-confirming and why this addition could not also be non-conforming to match what is already there.

The Board discussed the above.

Mr. Henville-Shannon stated that another issue of Governors Club (and any community with dual suppliers) is that the power company owns the lights and the residents lease them; that there is a big financial hurdle because of the contracts in switching to the upgrade that is standing in the way; that the residents are willing to pay the smaller cost; that it would be appreciated if the Board could impress on the power company to forgive the residents on the penalty and then the residents of Governors Club would be glad to upgrade everything immediately; but that this financial hurdle is standing in the way of upgrading.

*Recommendation to the Commissioners:*

Mr. Glick suggested that the above be a recommendation to the Ordinance for the Commissioners to pursue.

Ms. Kost referenced Page 7 (4) Exceptions e. “Lighting of the United States of America and State of North Carolina flags and other flags or insignia of any governmental, non-profit or business organization”. She suggested striking the language, “business organization”.

Discussion followed. Mr. Glick recommended striking language, “Non-profit or business organization” and replacing it with, “or any other”. Discussion followed. County Attorney Whiteheart addressed the flying / lighting of flags, i.e. government, insignia. He stated that if Subsection e. of the Ordinance is to remain (to avoid confusion and arguments from business owners contending that they are exempt) the last two (2) entities (non-profit or business organization) should be removed; and that there should be something added that recognizes that the Federal Government is flying its flag on its own building and is exempt. Ms. Kost suggested language read, “Other flags or insignia of any governmental agency or entity” and strike “non-profit or business organization”. Mr. Glick suggested using our recommendation to the Commissioners in a different way by noting language that was stricken from the draft Ordinance by the Planning Board. Mr. Megginson clarified the Boards recommendation as follows:

“Lighting of the United States of America and State of North Carolina flags and other flags or insignia of any governmental agency or entity”.

Following discussion it was the consensus of the majority of the Board that the above specifics to the draft Lighting Ordinance could be voted on with one motion but that the motion needs to address each issue clearly.

Motion:

Mr. Copeland made a motion to pass the Ordinance as drafted with the following revisions to questions #1 – 4 reviewed and discussed above:

- #1 fixtures replaced as needed (outdoor sports fields)
- #2 50% or more of the existing light fixtures or the five-year term (Vehicular Canopies)
- #3 non-cutoff decorative post-mounted fixtures with solid top
- #4 as proposed draft

The motion died for lack of a second.

Motion:

Ms. Ford made a motion; seconded by Mr. Hinkley to approve the Lighting Ordinance (Rev. 4 Draft) dated March 8, 2007, as submitted with the following proposed changes:

- #1 outdoor sports fields – lights to be changed as needed but will not be subject to a percentage
- #2 canopy lighting – brought to conformity when 50% or more of the fixtures are replaced or within five-years (which ever occurs first)
- #3 language proposed: non-cutoff decorative post-mounted fixtures may be used but equipped with a solid top - with additional language, **“and if / when available”** an internal polished aluminum top .....
- #4 security – leave as proposed

- #5 Lighting of the United States of American and State of North Carolina flags and other flags or insignia of any governmental ~~profit or business organization~~ **entity**. – omit language as noted by strikethrough and revise as noted by bold / underline. Re: (f) (4)  
Exceptions: e.

There was no further discussion and the motion passed 8-2-1 with Ford, Hinkley, Walker, Kost, Glick, Harris, Sharman and Turner voting in favor of the motion; and Copeland and Ernst voting against; and Klarmann abstaining. Chairman Walker stated that the minutes will reflect the discussions including recommendations to the Commissioners.

## VI. PRELIMINARY PLAT APPROVAL:

- A. Request by Coffey Grounds of Chapel Hill, Inc. for subdivision preliminary approval of "Horizon", consisting of 62 lots on 103 acres, located off SR-1525, Hamlets Chapel Road, Baldwin Township.

Ms. Richardson reviewed the agenda notes for this subdivision request. She stated that at sketch design it was recommended that the developer work with the adjoining property owners to provide an entrance between Horizon Subdivision and Buck Branch property owners; that a revised map was provided Board members tonight that shows a proposed private easement through lot three (3); and that if this easement is feasible it would be shown on the final plat map. A copy of said map is filed in the Planning Department.

Board discussion followed regarding possible proposed stub-outs at the end of cul-de-sacs (i.e. Brookhaven Way and/or Coley Court) and creek crossing permit. Ms. Richardson addressed these concerns. She noted that the US Army Corps of Engineers (Corps) may never issue a creek crossing permit but that if the Corps of Engineers does not respond, then approval is automatic. Mr. Megginson noted that it is a matter of timing because of the existing backlog.

Mike Shachtman, Coffey Grounds of Chapel Hill, Inc., stated that Monty Matthews with the US Army Corps of Engineers visited the site; that Mr. Matthews agreed with the delineation of the two (2) wetland areas as noted by the county soil scientist.

Mark Ashness, Civil Engineer, C.E. Group, Inc., stated that he is not involved in this project but that from the Federal Government standpoint there are two (2) issues; that the issue has been resolved regarding the signing of maps and anyone can get a wetland delineation; and that the Corps has a rule that a permit is automatically approved if it is not acted on within a certain period of time (i.e. 45 or 60 days).

Discussion followed. Mr. Klarmann inquired if the proposed lots would support conventional septic systems. Mr. Shachtman stated that Karl Shaffer (NC Licensed Soil Scientist, Shaffer Soil Services) has stated that some lots would require pumping but that all lots would be conventional systems with permits for three (3) and four (4) bedroom dwellings. Ms. Ford asked about the culvert

servicing the creek crossing. Mr. Shachtman stated that culverts would be concrete pipe culvert under the road with likely headwalls.

John Harris, engineer, stated that there are no bottomless culverts on this project keeping within the limits of the covenants.

The following adjoining landowner spoke:

- Jeff Kleaveland, 495 Buck Branch Rd.

Mr. Kleaveland stated that he was excited about the two (2) driveways and the development. He asked that there not be a lot of nitrogen loading on the lawns; that the covenants suggests chemical lawn treatment due to all of the area wildlife; and that the rural character of the area not be interrupted.

No other landowners requested to speak at this time.

Mr. Shachtman stated that one of the builders, Gail Crabtree, does build energy star homes with green features (and uses other elements of green features); that he has other builders in mind that do energy star homes and green; that the developer would request that property owners try to do some green features; and that the covenants would state that property owners could not clear cut their property.

Discussion followed. Mr. Hinkley inquired if lots 14, 15, and 16 are considered to be double frontage lots. Ms. Richardson stated that a note on the plat map states that those lots would have access only from Coley Court.

Mr. Ernst made a motion; seconded by Mr. Klarmann to grant approval of the road names 'Horizon Drive', 'Coley Court', and 'Brookhaven Way' and preliminary plat approval of "Horizon" subdivision as submitted and as recommended by staff, with the following two (2) conditions:

1. No work is to commence in the Phase II area until the required erosion control modifications have been met and approved by Chatham County Erosion Control.
2. A determination shall be made in regard to a joint entrance between Horizon Subdivision and Buck Branch property owners and shown on the final plat with legal documentation provided regarding the abandonment of that specific portion of the easement.

There was no further discussion and the motion passed unanimously (11).

Ms. Kost thanked the applicant for working with the adjacent property owners.

Lunday Riggsbee, attorney, was present representing the applicant.

- B. Request by David Ferrell, Village Investments, Inc. for subdivision preliminary approval of NC751 Parcels, consisting of 12 lots on 47 acres, located off NC Hwy 751, Williams Township.



Ms. Richardson reviewed the agenda notes for this subdivision request. She stated that the subdivision name has been changed to "Lexington Subdivision"; and that road names would change to 'Lexington Drive' and 'Independence Court' and would be shown on the final plat.

Board discussion followed. Ms. Kost inquired about the number of lots proposed initially. Ms. Richardson stated that 14 lots were approved for sketch. Ms. Kost cited that since this land is within the joint land use area of Cary and Chatham, and because this is coming before the Board now for preliminary, she asked how this would affect the other lots. She inquired if the original approval had expired. Ms. Richardson stated that staff discussed how the balance of this land would be treated and the consensus was that once the applicant submitted for preliminary on a portion of the land then the balance could continue at a later date. Mr. Megginson stated that the situation with the remaining three (3) lots is that the applicant is not required to do any improvements; that the lots could be submitted through the minor subdivision process; that if the Board decides to zone this area (depending on what the zoning density requirement) it would determine how the grandfathering clauses of that action is handled and would reflect what stage of development things are in.

Mark Ashness, Civil Engineer, CE Group, Inc. was present representing the applicant. Mr. Ashness stated that the remaining three (3) lots is approximately 20 acres; that there is not a potential for adding several lots; and that when this area is planned it would be for three large (3) lots. Mr. Ashness noted that the landowner did not want to include these 20 acres in the plan at this time.

David Farrell, landowner, was present. He stated that he and his family have owned the land for approximately 70 years.

Board discussion followed. Mr. Klarmann inquired how the soil scientist determined the proposed septic systems. He stated that perk sites are difficult to find on soils in this area; that it appears that drip systems are probable for some sites; and that the purchaser should be made aware of the cost of systems other than conventional. Mr. Hinkley asked if lot #12 (10.73 acres) would have interior access or to NC 751. Mr. Ashness stated that lot #12 could have access to either location. Mr. Megginson noted that since this lot is greater than 10 acres it is not considered a subdivision lot. Mr. Hinkley stated that there is a difference between the 50 foot buffers and 25 foot setbacks on the sides and the rears. He asked why both of these are shown on the plat map. Mr. Ashness stated that the typical setback is shown with buffer overlay; that builders would have to adhere to the buffer in this instance; and that this could be revised so that the final plat map indicates only the 50 foot buffer setbacks. Mr. Hinkley stated that lot #6 shows a drainage easement that is not labeled. Mr. Ashness stated that the final plat map would indicate said drainage easement.

No adjoining landowners spoke.

Mr. Hinkley made a motion; seconded by Ms. Sharman to grant approval of the road names 'Lexington Drive' and 'Independence Court' and approval of the

preliminary plat as submitted and as recommended by staff with the following condition:

1. Language on the final plat shall be changed to read "50' wide per side water hazard setback / vegetative stream buffer."

There was no further discussion and the motion passed unanimously. (11)

### Break

At this time (7:58 p.m.), Mr. Ernst made a motion; seconded by Mr. Copeland that the Board take a 5-minute break. There was no discussion and the motion passed unanimously. (11)

Ms. Turner left the meeting at this time.

- C. Request by Dan Sullivan on behalf of Contentnea Creek Co. for subdivision preliminary approval of "Pennington South Subdivision", consisting of 50 lots on 68 acres, located off Hwy 64 E, New Hope Township.

Ms. Richardson reviewed the agenda notes for this subdivision request.

Board discussion followed. Mr. Glick was concerned about the access routes should Hwy 64 access cease to exist in the future. Ms. Richardson stated that NCDOT would have to provide a service road at that time.

John Harris, engineer for the project, stated that he previously worked for NCDOT; and that an access road would be provided by NCDOT since access cannot be taken away once provided to a property.

Karen Kemerait, attorney with Blanchard, Jenkins, Miller, Lewis & Styers, P.A. was present representing the applicant. Ms. Kemerait stated that the commercial driveway permit has already been allowed by NCDOT and was included with the packet information.

Discussion continued regarding 1.) utility to lot #20A, 2.) pump system for lot#2 septic field, 3.) density, 4.) wet weather streams on lots 11, 12, 13, 23 and 24, 5.) slopes, and 6.) violations. Ms. Sharman asked how the road would be accessed across the stream on lots #35 and #36. Mr. Harris stated that he would explore the possibility of a shared driveway for these two lots. Mr. Hinkley stated that lot #23 appeared to be almost unusable. He asked about the contour interval of the lot. Mr. Harris stated that there are 2 foot contours and that a ridge (not a draw) is on the lot; that the wet weather streams would be shown on the final plat map; and that there has not been a violation issued in over a year. Off-site septic systems were discussed. It was noted that Lot #28A on the plat map should read 24A; and that the 401 permit has been received but has not yet been posted on our web site.

Ms. Kemerait stated that Jonna Birtcher, Vice President of Development, Contentnea Creek Development Co., was present. She noted that Ms. Birtcher

has informed her that provisions are being taken to assure that there are no future violations on any Contentnea Creek projects.

Mr. Klarmann stated that after the developer does their job, individual homebuilders (contractors) need to implement erosion control on some of the home sites, i.e. steep slope lots.

The following adjoining landowner spoke:

- David Jesse, 532 Seaforth Rd.

Mr. Jesse stated that he was surprised that the land perked so well. He noted that only 4 perk sites were found on his 42 acres.

Ms. Ford stated that she was surprised that this land is zoned RA-40 and not RA-5 due to its proximity to Jordan Lake.

Motion to approve:

Mr. Ernst made a motion; seconded by Mr. Klarmann to grant preliminary plat approval of Pennington South as submitted and as recommended by staff (with approval of the road names 'Rustic Leaves Way', 'Windswept Circle', and 'Silver Lining Lane'). Discussion followed. Mr. Hinkley stated that recommendations discussed above have not been incorporated into Mr. Ernst's motion, i.e. shared driveway and drainage areas.

Motion to amend the original motion

Mr. Hinkley made a motion; seconded by Mr. Ernst to amend the above motion to include various aspects discussed tonight (and agreed to by the developer) as follows:

1. shared driveway on lots #35 and #36 and shown on final plat map  
*\*see clarification below*
2. unidentified drainage ways (on both sides of 'Silver Lining Lane') on lots 23 and 24 and lots 12 and 11 identified and shown on final plat map

Clarification of #1(shared driveway)

Discussion followed. Mr. Glick had concerns about requiring the shared driveway (i.e. setting up the project for the developer). Mr. Hinkley clarified his motion to amend the original motion to state that

1. \*the developer shall consider providing a shared driveway creating one creek crossing.

Vote on amendment to main motion:

The motion to amend the original motion passed unanimously. (10)

Vote on main motion to approve:

The motion to grant preliminary plat approval of Pennington South request as submitted and as recommended by staff (with approval of the road names

'Rustic Leaves Way', 'Windswept Circle', and 'Silver Lining Lane') passed unanimously. (10)

The five (5) conditions (3 conditions recommended by staff and 2 additional conditions recommended by the Planning Board) are as follows:

1. A note is placed on the final plat to read: "The North Carolina Board of Transportation has identified {Name of Facility} as a Strategic Highway Corridor. In order to protect the safety, mobility, and traffic carrying capacity of this Strategic Highway Corridor, the approved access along {Name of Facility} may be closed or relocated if an alternative access is developed in the future or if any safety concerns or other traffic impacts arise."
2. The final plat major subdivision application states the correct zoning district of RA-40.
3. Prior to final plat submittal, feature 'B' as shown on Burdette Land Consulting, Inc. map dated 7/20/06 shall be evaluated and, if the buffer affects the subject property, the buffer shall be shown on the final plat.
4. The developer shall provide 20 foot wide drainage easements along the ephemeral channels identified by Jennifer Burdette's on-site review, specifically within Lots 23 and 24 and Lots 11 and 12.
5. If necessary due to house site location on Lots 35 and 36, the developer shall consider providing a shared driveway creating one creek crossing.

Ms. Richardson stated that tonight's agenda notes refer to proposed road name 'Siler Lining Lane' but should state '**Silver Lining Lane**'; and that this typo would be corrected before forwarding to the Commissioners.

- D. Request by James E. Dixon for subdivision preliminary approval of "Fieldstone Subdivision", consisting of 27 lots on 83 acres, located off S. R. 1532, Mann's Chapel Road, Baldwin Township.

Ms. Richardson reviewed the agenda notes for this request. She stated that tonight's agenda notes state that the erosion control permit required some modifications but that this is not correct; that there were two (2) erosion control permits (one for the entrance work that was done and one for the balance of the property); and that both permits have been completed. Ms. Richardson used the large overview map to show existing wetlands and streams on the property. She noted that she visited the property several times and that the land is a very gentle rolling piece of property with no steep contours.

No adjoining landowners spoke.

Board discussion followed. Ms. Ford thanked the project engineer (George J. Retschle) for accompanying her at the site. She voiced concern regarding placement of the roadway on top of the non-jurisdictional wetland. She stated that she lives near this property and there is often water on the other side; that if

the intersection is moved back it would not impact the wetlands; and that the cumulative impact (on the creeks and rivers) is a concern. Ms. Kost and Ms. Sharman stated that they agree with Ms. Ford's comments and concerns. Ms. Sharman asked if the concern of moving the road is a cost factor (i.e. plans redrawn and potential of losing lots).

Patrick Byker, attorney, was present representing the applicant. Mr. Byker stated that the concern is with what the applicant has gone through with timing and permitting; that if the road is moved the process with NCDOT would begin again; and that the applicant does not want to pursue additional confrontation with the adjoining property owner (Mr. Hackney).

Mr. Klarmann made a motion; seconded by Mr. Ernst to grant approval of the road names 'Fieldstone Lane', 'Linda Lee Circle', 'Clarence Lane', and 'Runa Court' and preliminary approval of "Fieldstone" as submitted and as recommended by staff. There was no further discussion and the motion passed 7-1-2 with Klarmann, Ernst, Walker, Kost, Copeland, Glick and Harris voting in favor of the motion; and Hinkley voting against; and Ford and Sharman abstaining. (Note: Ms. Turner had left the meeting at this time.)

VII. ZONING AND ORDINANCE AMENDMENTS: *Items from September 17, 2007 Public Hearing:*

Items A. and B. withdrawn

- A. Request by Chatham Development Corporation to rezone approximately 15.16 acres located on the south side of US 64 E, 0.92 miles west of NC 751, New Hope Township, from RA-40 Residential Agricultural to Conditional Use B-1 Business.
- B. Request by Chatham Development Corporation for a Conditional Use B-1 Business Permit for a boat and RV storage facility on approximately 15.16 acres located on the south side of US 64 E, 0.92 miles west of NC 751, New Hope Township.

Kevin O'Neal, applicant, stated that the requests by Chatham Development Corporation (Items VII. A. and B. above) have been withdrawn at this time.

- C. Request by Nicolas P. Robinson, on behalf of General Shale Brick, Inc. to rezone approximately 192.5 total acres (3 tracts) located on Moncure Flatwood Road (SR 1924), Cape Fear Township, from RA-40 Residential Agricultural to Conditional Use Heavy Industrial (H-Ind.).

Ms. Birchett used the large overview map to provide a brief history of the property. She reviewed tonight's agenda notes.

Discussion followed. Mr. Hinkley inquired about noise generated from the operation and if there would be a way to reduce noise for the three adjoining properties. Ms. Birchett stated that this would be discussed during the permit request review to be reviewed next on the agenda. Mr. Ernst asked if comments had been received from Economic Development Corporation (EDC).

Nicolas Robinson, attorney, was present representing General Shale Brick, Inc. Mr. Robinson stated that he sent the application materials to Dianne Reid, President, EDC, and that he has not received a response.

Jeffrey Starkweather, Executive Director, Economic Development Corporation (EDC), and attorney, stated that the EDC does not have to comment on a particular site; but that the EDC might express the need for a particular business.

Ms. Birchett noted that the Land Development Plan encourages expanding existing commercial or industrial uses as this request has done.

No adjacent landowners spoke.

Mr. Hinkley made a motion; seconded by Ms. Kost to grant approval of the rezoning request as submitted and as recommended by staff. There was no discussion and the motion passed unanimously. (10)

D. Request by Nicolas P. Robinson, on behalf of General Shale Brick, Inc. for a Conditional Use Heavy Industrial (H-Ind.) Permit to allow for mining and brick manufacture, on approximately 407 total acres (4 tracts and a portion of 1 tract) located on Moncure Flatwood Road (SR 1924), Cape Fear Township.

Ms. Birchett reviewed the agenda notes for this request. She stated that this is the second part of the request for a conditional use permit; that no one spoke against the request at the recent public hearing; that three (3) people voiced some environmental concerns and dust control; that these concerns are addressed in tonight's agenda notes; and that a recommendation is based on the five (5) required findings as noted in tonight's agenda notes. Ms. Birchett referenced material (environmental report with maps) distributed to the Board earlier tonight dated October 2, 2007 from Robin L. Maycock, Maycock Environmental. (Note: Copies of this material are filed in the Planning Department.)

Ms. Ford inquired when the species were last checked (other than the annual Audubon check.) relative to the following statement in tonight's agenda notes:

“Per the environmental report, the observance of wildlife, specifically the Bachman's Sparrow indicates that the species has not been seen since 1993”,

In summary, Ms. Birchett stated that it was the opinion of staff that the application had not fully been supportive of findings #3 and #5 as noted below:

- Finding #3 – based on the lack of acknowledgement and protection measures for creeks, channels, tributaries or any other features as noted in the environmental report - this was clarified with the additional material distributed to the Board earlier tonight - this finding may be met through conditions placed on the development as specified in condition #6 in tonight's agenda notes.

- Finding #5 – based on information that has not yet been confirmed from Environmental Health, i.e. require rest room facilities, water, waste water management - this finding may be met through conditions as recommended in condition #2 as stated in tonight’s agenda notes.

Condition #1

Ms. Birchett referenced hand-out distributed to the Board earlier tonight with revised language to condition #1. She stated that staff has removed some language regarding the 25 foot vegetated buffers; and that the applicant is installing a 6 foot berm (between the entry driveway and Basin J) as noted below in revised language.

Condition #13

Ms. Birchett noted that the word “determination” was changed to “compliance”.

Ms. Birchett stated that staff recommends that this application request be approved with the 15 conditions as noted in tonight’s agenda notes (and with any changes that the Board may make).

Board discussion followed regarding the deepness of the digging at the site, safety, and ground water.

Warren Paschal, Environmental Compliance Manager, General Shale Brick, Inc., addressed the above issues. He stated that dust control is a concern for safety purposes (with the heavy equipment using the roads); that trucks routinely distribute water on the roads (interior and exterior roads); that the mining operation does not get deep enough to disturb ground water (only down to approximately 80 feet); that the operation follows a State mandated plan by the Division of Land Quality, i.e. establish certain slopes so that they do not exceed certain percentages of grade and reestablish vegetation; and that his firm works regularly with the Wildlife Resources Commission to intensify the value of wildlife.

Mr. Hinkley asked that Ms. Birchett restate major issues and staff recommendations. Ms. Birchett briefly summarized specifics stated in tonight’s agenda notes (last paragraph before recommendation) that staff did not think met the required findings as noted below:

“It is the planning staff opinion the application has not been fully supportive of all findings. Finding #3 has not been supported based on the lack of acknowledgement and protection measures for the creeks, channels, tributaries, or any other features as noted in the environmental report. This finding may be met through conditions placed on the permit (See condition #6). Finding #5 has not been supported based on information not confirmed from the Environmental Health Division on whether rest room facilities are needed. It has also not been supported on the requirement for storm water management. All required detention areas have not been identified and supplied on the site plan where new land disturbances will be made. This finding may be met through conditions placed on the permit (See condition #2, #5, #10). Therefore, the

planning staff recommends approval of the permit along with the below listed conditions”.

Ms. Birchett stated that if the conditions are approved this would be part of the resolution and that the applicant would be required to meet those conditions.

Motion to approve

Mr. Ernst made a motion; seconded by Mr. Copeland to grant approval of the application request as submitted and as recommended by staff (with 15 conditions); with revision to condition #1 (language as provided staff tonight and shown below in bold/ underline below); and with a word change to condition #13 (change the word “determination” to “**compliance**” as noted below) approved with the attached conditions.

Nick Robinson, attorney, stated that the applicant is willing to agree to all of the conditions; however, he suggested, for clarification purposes, that the first sentence in condition #3 be revised as noted below with bold/underline.

“A determination **as to whether an archaeological survey is required** from the Office of The State Archaeological Division shall be provided to the Planning Department and the applicant prior to beginning any additional land disturbing activity”.

Ms. Birchett stated that, to incorporate the above into condition #1 for the landscaping recommendations, with the exception of the language regarding removing the 80 foot requirement within the 25 foot vegetated buffers in the non-conforming area, the remaining language should remain.

Restate motion for approval

Mr. Ernst restated his motion; seconded by Mr. Copeland to grant approval of the request as submitted and as recommended by staff with a revision to conditions #1, 3, and 13 as noted below in bold / underline. Discussion followed. Mr. Hinkley inquired if the 6 foot berm referenced in revised condition # 1 is part of the buffer. Ms. Birchett stated that this is the buffer for the access road.

Vote on motion

The above motion passed unanimously. (10)

Conditions are as follows:

- 1) Landscaping shall be followed as indicated in the design guidelines. **Taking into account the recommendations of the Appearance Commission regarding residential properties that adjoin the conditional use district property, and with the intent of increasing privacy, noise abatement and dust abatement, the Applicant shall be required to install a seeded berm of at least 6 feet in height between the entry driveway and Basin J as depicted on the attached map. In addition, the applicant shall install a seeded berm of at least 6 feet in height from the southern point of Basin I to the northern point of Basin H as depicted on the attached plan.** If required, any additional plantings shall be done at the next optimal planting season following the approval



date and shall be maintained to thrive and provide the appropriate screening as required. Prior to planting, a list of proposed vegetation shall be provided to the Planning Department and the Appearance Commission to ensure the correct types of vegetation are being planted for this area and these soil types. The Appearance Commission with the Planning Department may review the landscaping and screening after one year of the initial planting to verify appropriate measures have been taken as requested. Should there be any changes in the landscaping for effectiveness of screening and environmental protections, they shall be given to the applicant at that time and the applicant will be given ample opportunity to take the corrective measures.

2) All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Erosion & Sedimentation Control, Environmental Assessment, Archaeological survey, Environmental Health Division, etc.) shall be obtained and copies submitted to the Planning Department prior to land disturbing activity.

3) (A) A determination **as to whether an archaeological survey will be required** from the Office of State Archaeology shall be provided to the Planning Department and the applicant prior to beginning any additional land disturbing activity. Should such a survey be required, no land disturbing activity may begin until said survey has been completed and any required protective measures taken. This may involve only the areas of concern where the other areas that do not require any further investigation may continue in developing the property for mining use.

(B) 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, areas to be cleared for mining purposes, and any other land disturbing activity associated with the new areas to be added to the existing site (i.e. not including buffers, open space or irrigation areas). Areas determined by the NC Dept. 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 land disturbing activity. Any recommended intensive survey shall be performed prior to ground disturbing activity in the area of concern. The surveys shall be performed at General Shale & Brick's expense.

4) The applicant shall install a minimum of 100 feet of rock/gravel along the entrance road for dust control or measures required by the Division of Land Quality in the mining permit (whichever is more stringent) and install other measures necessary to control dust.

- 5) Storm water management shall be placed and installed to meet the two year 24 hour storm event. A storm water management plan shall be provided to the Director of Public Works prior to beginning any additional land disturbing activity.
- 6) Stream buffers shall be established according to the County Water Supply Watershed Regulations according to stream delineations established in the field using Division of Water Quality criteria. A map showing said streams shall be supplied to the Planning Department prior to land disturbing activity in the areas of streams.
- 7) Off-site improvements required by NCDOT or any other agency shall be constructed at no cost to Chatham County.
- 8) Any and all lighting shall comply with the “draft” lighting guidelines applicable at the time of approval as described in the application.
- 9) Utility and Access Easements – Easement documents as required by the County for any public utilities used or furnished to the project area shall be recorded prior to the issuance of a certificate of occupancy.
- 10) Silt Control – The applicant and/or landowner shall take appropriate measures to prevent and remove the deposit of wet or dry silt on adjacent paved roadways.
- 11) Appeal - The County shall be under no obligation to defend any action, cause of action, claim, or appeal involving the decision taken herein. In the event a response is authorized by the County concerning this resolution, or any action to enforce the provisions hereof, the applicant, its successors or assigns shall indemnify and hold the County harmless from all loss, cost or expense, including reasonable attorneys fees, incurred in connection with the defense of or response to any and all known or unknown actions, causes of action, claims, demands, damages, costs, loss, expenses, compensation, and all consequential damages on account of or resulting from this decision. Nothing in this paragraph shall require the applicant to indemnify and hold the County harmless from any losses or costs associated with defense of the County’s actions or procedures in considering and acting upon this application.
- 12) Fees - Applicant and/or landowner shall pay to the County all required fees and charges attributable to the development of its project in a timely manner, including, but not limited to, utility, subdivision, zoning, and building inspection, established from time to time.
- 13) Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued ~~determination~~ **compliance** with the plans and conditions listed above.
- 14) Non-Severability - If any of the above conditions is held to be invalid, this approval in its entirety shall be void.

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

Sue Schwartz, Chatham County Appearance Commission Chair, inquired if the buffer would have to wait for conditions to be met since one of the conditions state that there would be no land disturbance (or is this something required by the State).

Mr. Robinson stated that with the existing mine dirt and soil are continuously being taken out so there would be a ready supply to create the berm without any new unapproved land disturbing activity.

E. Request by Chatham County for a text amendment to the Chatham County Zoning Ordinance, Section 10, Item 10.1, 10.2, 10.3 Residential Agricultural List of Permitted Uses specifically for public and private schools to reduce the double setback requirement to allow uniformity with the zoning district's minimum setback requirements.

Mr. Megginson reviewed the agenda notes for this request. He stated that the text change would eliminate the doubling of setbacks; that it has been discovered that the modular classrooms at North Chatham Elementary were placed too close to Lystra Road; that the request is to change the regulations at this time so that the modular units would be in compliance; that liability has been a concern; and that the text change would apply throughout the zoning districts of the County.

Board discussion followed. Ms. Kost was concerned that this has been recommended at this time based on the fact that North Chatham School is out of compliance. It was noted that the North Chatham Elementary School situation does not qualify for a variance.

Attorney Whiteheart stated that the units at North Chatham Elementary School were placed on the particular sites due to lack of space on the school grounds and that the school has just found out that they are out of compliance.

Mr. Glick stated that this is a severe issue for the schools; that he is surprised that the School Board is not represented at tonight's meeting; that being out of compliance and being sued is one thing but to change the zoning law to allow it to be out of compliance might also cause a lawsuit.

Attorney Whiteheart stated that the Commissioners undertook a considerable amount of discussion on how to resolve this issue; and that because of the limited amount of space; this is the only solution that is practicable at this time.

Mr. Megginson stated that the School Board does have other space on the property; that the units could possibly be moved to a soccer field, that a sewer line could be moved to accommodate space, or the units might be placed in a circle in the parking lot; and that basically this has been a timing issue with the

start of school. He noted that the units were permitted; that setbacks listed on the permit application (100 foot) were not met; and that four (4) units are in violation of the double setback requirement.

Motion to deny

Mr. Glick made a motion; seconded by Ms. Kost to deny the proposed text change. Ms. Ford inquired about options for the school if this request is denied. Mr. Megginson explained that the Planning Board recommendation would be forwarded to the Commissioners for consideration; that if the Commissioners deny the request the Planning Department would begin issuing violation fines; and that the school would probably not move the units unless their insurance carrier requires them to. The motion to deny passed 8-1-1 with Glick, Kost, Copeland, Ernst, Ford, Harris, Hinkley, and Sharman voting in favor of the motion; and Klarmann voting against; and Walker abstained.

Motion to send recommendation to Board of Commissioners

Mr. Glick made a motion to send a recommendation to the Board of Commissioners that the four units in violation should be moved during the Christmas Holiday break in order to bring the situation into compliance. Ms. Sharman seconded the motion. The motion passed 9-0-1 with all Board members present voting in favor of the motion except Mr. Walker who abstained.

Board comments

Mr. Copeland stated that the Planning Board should also make it clear to the Commissioners that the Board is not disobeying their request but that to change the Ordinance for a situation like this is not something that the Planning Board concurs with. It was the consensus of the majority of the Board that Board members would not want to be a party to a lawsuit where they voted to put kids in danger. Chairman Walker stated that this request could have gone through the process for a variance if the School Board had come before the Planning Board and explained the problem and requested a variance at that time.

VIII. OLD BUSINESS:

A. *Public Records Law – update on Chatham County’s List Serve*

Attorney Whiteheart stated that a list serve is something that can be set up so that Board members do not have to preserve documents on their personal computer; that members would have a password to allow them into the list serve with certain user rights; and that the general public could go on line and read material but would not have any input rights.

Following discussion, it was the consensus of the majority of the Board that Attorney Whiteheart arranges for a representative from the County MIS Department to speak to the Board about this issue at next month’s Planning Board meeting. (November 5, 2007) Mr. Ernst suggested that the County provide Board members e-mail addresses with access to members of the Board for privacy protection.

Jason Sullivan explained that the bulletin board type setup is where there is an account for log in access; that there is no e-mail address involved; and that information is sent to the bulletin board for posting on line.

Discussion followed regarding the legal jeopardy and organization involved with checking particulars such as spelling, punctuation, and etc.

This issue will be continued for discussion at next month's Planning Board meeting.

IX. NEW BUSINESS:

A. Planning Director's Report

1. Impacts of Senate Bill 831–Wireless Telecommunications Facilities on the Chatham County Communications Tower Ordinance.

Mr. Megginson stated that there are other things to be worked on regarding this issue as referenced in tonight's agenda notes; that staff anticipates presenting more detail during the November Board meeting; and that the Board may want to defer any discussion until next month.

It was the consensus of the majority of the Board to present this issue for discussion during the November 5, 2007 Planning Board meeting.

B. Planning Board Member Items

*I. Joint meeting with Environmental Review Board*

Chairman Walker reminded Board members of the joint meeting of the Planning Board and Environmental Review Board [ERB] tomorrow night. A draft agenda for the meeting and proposed text (by the ERB) was distributed to Board members. Mr. Megginson stated that proposed amendments to the Zoning Ordinance have been added to this agenda.

*II. Clyde Harris resigns*

Mr. Harris stated that he is resigning his seat on the Planning Board; that he recently accepted a new job that occasionally would require him to travel out of State; and that he appreciates the opportunity allotted him to serve on the Chatham County Planning Board.

Planning Board members thanked Mr. Harris (by applause) for his service to the Board.

X. ADJOURNMENT: There being no further business the meeting adjourned at 10:30 p.m.

\_\_\_\_\_  
Chris Walker, Chair

\_\_\_\_\_  
Date

Attest: \_\_\_\_\_  
Kay Everage, Clerk to the Board

\_\_\_\_\_  
Date