

CHATHAM COUNTY PLANNING BOARD

MINUTES

November 5, 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
Warren Glick
David Klarmann
Randall Sartwell
Judy Sharman
Delcenia Turner

Absent:

Barbara Ford
Jim Hinkley

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

Director of Environmental Services

Fred Royal

- I. CALL TO ORDER – Chair: Chairman Walker called the meeting to order at 6:05 p.m. He welcomed Randall Sartwell, new Planning Board member appointed by Commissioner Cross to replace Clyde Harris who recently resigned. Chairman Walker stated that Mr. Hinkley would not be attending tonight's meeting; that Mr. Copeland would be late.
- II. APPROVAL OF AGENDA: Ms. Kost made a motion; seconded by Mr. Ernst to approve the agenda as submitted. There was no discussion and the motion passed 7-0-1 with all Board members present voting in favor of the motion, except Mr. Sartwell who abstained.
- III. CONSENT AGENDA: Chairman Walker explained that all items on the consent agenda are voted on with one vote; that if a Board member or member of the public has a question about one of these items then the item is removed from consent agenda for discussion. He stated that some questions have been raised regarding Item III. B. 3. (Westfall, Phases 1A, 1B, and 1C) and therefore, this item would be removed from consent agenda for discussion.
 - A. Minutes: Consideration of a request for approval of Planning Board minutes for October 2, 2007 regular meeting and October 3, 2007 special joint meeting with the Chatham County Environmental Review Board.

B. Final Plat Approval:

1. Request by Lewis Metty Development Co., LLC for subdivision final approval of "Cedar Mountain Subdivision, Phase One", consisting of 18 lots on 62 acres, located off SR-1540, Jones Ferry Road and Cedar Grove Road (public), Baldwin Township.
2. Request by Roanoke Investments, LLC for subdivision final plat approval of "The Bluffs, Phase 1A", consisting of 12 lots on 54 acres, located off SR-1520, Old Graham Road, Hadley Township.
3. ~~Request by Over Jordan, LLC for subdivision final approval of "Westfall, Phases 1A, 1B, and 1C" (f/k/a Booth Mountain), consisting of 94 lots on 160 acres, located off SR-1721, Lystra Road and Sr 1717, Jack Bennett Road, Williams Township.~~
Note: This item was removed from consent agenda for discussion. See item VI. A.
4. Request by The John R. McAdams Company, Inc. on behalf of NNP Briar Chapel, LLC for subdivision final approval of "Briar Chapel, Phase 4, Section 3", consisting of 129 lots on 39 acres, located off SR-1532, Mann's Chapel Road and Great Ridge Parkway and US 15-501 N, and Briar Chapel Parkway, Baldwin Township.

Mr. Ernst made a motion; seconded by Mr. Klarmann to approve the consent agenda as submitted with the removal of Item B. 3. (Westfall, Phases 1A, 1B, and 1C) as noted above. There was no further discussion and the motion passed 7-0-1 with all Board members present voting in favor of the motion, except Mr. Sartwell who abstained.

End Consent Agenda

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

No one requested to speak at this time.

It was noted that the video photographer present tonight was representing the Westfall Subdivision.

- V. ZONING AND ORDINANCE AMENDMENTS: Chairman Walker stated that the following zoning issues (items A., B., C., and D.) have been through public hearing; and that the Board has previously discussed this material.

Item from September 25, 2007 Public Hearing:

- A. Request by the Chatham County Board of Commissioners to zone property located within the following areas and containing approximately 32.2 square miles to Residential-Agricultural 40 (RA-40):
- 1500 feet on either side of the unzoned portions of US 421,

- 1500 feet on either side of the unzoned portion of US 64,
- 1500 feet on either side of the unzoned portion of US 15-501/Highway 87 south of the Town of Pittsboro,
- 1500 feet on either side of the unzoned portion of US 1,
- 1500 feet on either side of the unzoned portion of Moncure-Pittsboro Road, and
- 1500 feet west of Highway 87, north of the Town of Pittsboro zoning jurisdiction to the Alamance County line, heading east to the existing zoned areas.

Jason Sullivan reviewed the agenda notes for this request. He used the overview map to explain, 1.) areas proposed for RA-40 zoning (currently unzoned), the various watersheds of those areas, and 3.) minimum acres per residential units (i.e. 1, 1-1/2, 2, and 5 acres). Mr. Sullivan stated that the proposed area includes approximately 2900 parcels (32.2 square miles); that staff has identified approximately 75 businesses (or vacant buildings previously used for business use) that will become non-conforming if these areas are zoned; that existing businesses currently in operation would continue, i.e. grandfathered and provisions for expansion; that one problem is existing non-residential buildings that currently do not have tenants; that the Zoning Ordinance states that a non-conforming use cannot be converted to another non-conforming use; that another issue is that if a business moves or goes out of business that building would be limited to its previous use (or go through the rezoning process); that the 1500 feet proposed zoning either side of the right-of-way line splits a number of parcels between being zoned and the balance remaining unzoned; that residential use should not present problems since there would not be a density issue; that non-residential properties could present a problem if the landowner wants to use the unzoned portion of the property (that may be to the rear of their property) for non-residential use and the front property is zoned RA-40; and that one situation where the proposed zoning boundary includes the road frontage of a former industrial site is property owned by Southern Wood Piedmont Products (located off R. Jordan Road of Hwy. 421 South). Mr. Sullivan showed the location of this site on the large overview map. He stated that to avoid limiting the future use of the balance of the property (approx. 45 acres / parcel #9869) that would remain unzoned and under a remediation plan (i.e. some contamination on the site) that it may be advisable to remove this parcel from the areas to be zoned; and that staff recommends approval of the request to zone these areas to RA-40 as a temporary measure and that the entire area is re-evaluated at the completion of the moratorium, with the exception of parcel #9869.

Gregory B. Kuntz, P.G., Senior Associate, Schnabel Engineering, was present representing Southern Wood Piedmont Products. Mr. Kuntz stated that Southern Wood Piedmont Products also owns another five (5) acres (parcel 9871) that is not in question; that they also own parcel #71765 that is in question because treated wood was stored on the property during the operation of the plant and the soil was contaminated; that this property would probably never be suitable for residential use; that everything that is proposed for use of these lands was based on future industrial and /or commercial use (that began approximately ten years ago); that they are currently under a remediation

plan that would take up to 30 years to complete; that part of the remediation required the owners to record restrictions on the future use of the property to prohibit residential uses. It was further indicated that parcel number 71765, which is entirely within the corridor zoning boundary, was also included as part of the remediation plan for parcel number 9869; and that he requests that the Board also consider not including parcel #71765 in this zoning. Mr. Kuntz noted that this would also affect parcel #9709 owned by Charles Oldham and is landlocked (only access is through Southern Wood Piedmont Products property).

Discussion followed. Ms. Kost questioned why we would consider not zoning these parcels at this time since the Board would be revisiting this issue again in six (6) months. Mr. Glick asked what would be the difficulty in exempting this piece of property temporarily from zoning until such time as reclamation, i.e. other kind of development other than industrial. Mr. Ernst stated that other tracts along this proposed corridor should also be considered for exemption if exemption is granted Southern Wood Piedmont Products. Mr. Sullivan stated that existing uses would be considered non-conforming and could continue and also expand if necessary; that the issue of concern is future changes of uses; and that the Board might want to consider zoning the existing uses, i.e. industrial. Mr. Ernst stated that during a recent meeting of the Major Corridor Ordinance Committee it was noted how rapidly this process was being moved forward; that it was not being given due consideration; and that the issue had not been brought to the public in a matter that would allow all involved to have an adequate say in this process. Mr. Sullivan explained that the Southern Wood Piedmont Products situation is an easy solution with the small area involved (32.2 square miles / 5500 square feet) versus trying to amend ordinance text at this time.

Motion to approve as staff recommendation- fails

Ms. Kost made a motion; seconded by Ms. Turner to approve the request as submitted and recommended by staff as follows:

- To zone these areas to RA-40 as a temporary measure and that the entire area is re-evaluated at the completion of the moratorium, with the exception that parcel #9869 remain unzoned in its entirety.

Following discussion, the motion failed by a vote of 2-5-1 with Kost and Walker voting in favor of the motion; and Ernst, Glick, Klarmann, Sharman and Turner voting against the motion; and Sartwell abstaining.

Mr. Copeland arrived at this time.

Motion / Withdrawn

Mr. Ernst made a motion; seconded by Mr. Klarmann to reduce the corridor zoning area from 1500 feet to 500 feet from either side of the right-of-way; that existing businesses be zoned to be consistent with the current use; and access be allowed to unzoned portions of property. Following discussion, Mr. Ernst withdrew his motion.

Motion / tie vote

After further discussion, Mr. Copeland made a motion; seconded by Mr. Ernst to reduce the corridor zoning area to from 1500 feet to 500 feet each side of the right-of-way (or the extent of the property beyond 500 feet); that existing

businesses be zoned to a district compatible with the current use; and that the remaining areas be zoned RA-40. Resulting in a tie vote of 4-4-1, the motion tied with Copeland, Ernst, Glick, and Klarmann voting in favor of the motion; and Walker, Kost, Sharman, and Turner voting against, and Sartwell abstaining.

Mr. Megginson explained that the Planning Board has three (3) meetings to send a recommendation to the Commissioners; that tonight there was a motion to approve the request that did not pass due to a tie vote; that a recommendation has not been made and no recommendation is being sent to the Commissioners; and that if a recommendation is not sent to the Commissioners after three meetings, the Board of Commissioners would consider the Planning Board's recommendation a favorable one.

Motion to recommend more detailed review - fails

Discussion followed. Mr. Glick made a motion; seconded by Ms. Sharman that the Planning Board recommends to the County Commissioners that a more detailed and extensive review of this issue (corridor zoning) occur and that until this is completed for a period not to exceed six (6) months no new developments be allowed along these major corridors.

Attorney Whiteheart referenced Section 17.7 of the Zoning Ordinance titled, Planning Board Action on the Amendment Application. He stated that this section addresses making a recommendation that a proposed zoning amendment is inconsistent with the Comprehensive Land Use Plan; and that Mr. Glick's recommendation could be added to a new recommendation.

The motion failed by a vote of 2-6-1 with Glick and Sharman voting in favor of the motion; and Walker, Kost, Klarmann, Copeland, Ernst, and Turner voting against the motion; and Sartwell abstaining

Chairman Walker stated that if the Board agrees that the request is in fact inconsistent with the Comprehensive Land Use Plan this could be the nature of a motion and that additional recommendations could be added to said motion.

Revisited motion

Mr. Ernst made a motion; seconded by Mr. Copeland to reduce the corridor zoning area to 500 feet or the extent of the property beyond 500 feet; that all properties in the zoned areas that currently have a zoning designation other than RA-40 retain their current zoning and that remaining areas be zoned RA-40.

Amendment to motion - passes

Following discussion, Mr. Ernst made an amendment to the motion; seconded by Mr. Copeland that any instrument of denial of access to properties beyond the 500 feet limit not be considered (i.e. we will not deny access through the buffer to properties behind the buffer in the zoned areas). The amendment to the motion passed 8-0-1 with all Board members voting in favor of the amendment except Mr. Sartwell who abstained.

Restated main motion - withdrawn

Mr. Ernst restated his motion to reduce the proposed corridor zoning area from 1500 feet to 500 feet; and that areas that are currently zoned other than RA-40 retain their existing uses. Following discussion, Mr. Ernst withdrew his motion for clarification of wording of the motion.

Motion – tie vote – reconsidered below

Mr. Copeland made a motion; seconded by Mr. Ernst to recommend to the County Commissioners to zone the proposed corridors to 500 feet or to the extent of properties within this 500 feet; that the existing use businesses be zoned to the appropriate zoning for that existing use; that RA-40 access in front does not deny access to existing uses behind the 500 foot buffer; and that the balance of the lands be zoned RA-40. Discussion followed. Ms. Turner voiced concern that the Major Corridor Task Force plans should not be adjusted and that the Board should not interfere with plans of the Task Force. Resulting in a tie vote of 4-4-1 the motion did not pass with Copeland, Ernst, Klarmann and Glick voting in favor of the motion; and Walker, Kost, Sharman, and Turner voting against; and Sartwell abstaining.

Motion to revisit the issue- no second

Discussion followed. Mr. Glick stated that part of the Planning Board rules is that the Board tries to reach a conclusion. Mr. Glick made a motion that the Board maintains the previous motion just on the table with one alteration to revert back to 1500 feet from 500 feet. There was no second to the motion.

Motion to re-consider previous question – tied vote

Mr. Ernst made a motion to reconsider the previous question to zone the proposed corridors to 500 feet or to the extent of properties within this 500 feet; that the existing business uses be zoned to the appropriate zoning for that existing use; that access to existing uses beyond the 500 foot buffer zoning is not denied; and that the balance of the lands be zoned RA-40. Mr. Copeland seconded the motion. Resulting in a tie vote of 4-4-1 the motion did not pass with Ernst, Copeland, Klarmann and Walker voting in favor of the motion; and Kost, Sharman, Glick and Turner voting against; and Sartwell abstaining.

Break

At this time, Chairman Walker called a 5-minute recess.

Chairman Walker stated that the Planning Board discussed these issues (items B., C., and D. below) during a special joint meeting with the Environmental Review Board (ERB) on October 3, 2007; that Board members have seen this material (consideration of Watershed Protection Ordinance revisions) in one form or another for some time now; that overall the Board has made progress with these discussions; and that some clarification and rearrangements would be reviewed tonight. It was noted that Board members received revised material from Mr. Megginson and Allison Weakley.

Mr. Megginson stated that the ERB did not address these issues that were sent out Friday (November 2nd) until Thursday night (November 1st) (day of Planning Board packet distribution); and that there are changes to some of the definitions, wordings and clarifications.

Adjourn as Planning Board and convene as Watershed Review Board

Mr. Glick made a motion; seconded by Ms. Kost to adjourn as the Planning Board and convene as the Watershed Review Board. There was no discussion on the motion and the motion passed 8-0-1 with all Board members present voting in favor of the motion except Mr. Sartwell who abstained.

Allison Weakley, Environmental Review Board Chair, gave a brief summary of changes made since the October 3, 2007 joint meeting of the Planning Board and the ERB.

Ms. Weakley stated that Fred Royal, Environmental Resources Director, and John Alderman, ERB member, were present tonight. She noted some of the major issues raised during the October 3rd joint meeting as follows:

- Definitions and clarifications to some definitions needed
- Buffer width language needed revision (i.e. change “at least” to “a minimum of”)
- Specifics of how buffers should be marked in the field needed
- Tree harvest in the buffer language needed some work
- Position of NCDOT regarding bridges and culverts needed
- Trail language needs more consideration
- Vested rights needs more clarification

Ms. Weakley stated that since the October 3rd meeting, Fred Royal began work with Chatham County (October 8th) and has been working with Kevin Whiteheart, Keith Megginson, Environmental Health (Andy Siegner), and her with details of the Watershed Ordinance to see how workable it is; that she and Mr. Royal have done some field work in western and eastern Chatham; that there has been further fact checking and method checking done; that there has been consultation with the county attorney, DWQ, NCDOT, and other Chatham County staff mentioned above; that what has been presented is:

- an expanded “Purpose and Intent”
- new and improved set of definitions
- further tweaking to Section 304, and
- the creation of a “Field Procedures” document.

Ms. Weakley stated that the ERB met on Thursday, November 1, 2007 to discuss the most current revisions; and that the material submitted to the Planning Board (i.e. four documents noted above) most recently reflects what took place at that meeting. She summarized the revisions as follows:

“Purpose and Intent” – added a preamble in first paragraph to more fully explain the purpose and intent of the proposed amendments and a footnote was added to cite the “Clean Waters Act”

“Definitions” – added new Section 109 that is a conformation of the old Section 600 definitions from the existing Watershed Protection Ordinance along with the ERB definitions recommended to the Commissioners this past June with minor modifications and additions by Mr. Royal with assistance from the county attorney

Ms. Weakley noted that it is intended to have all definitions in the new Section 109 and that “Agricultural Activities” and “Silvicultural Activities” are now defined in said section.

“Field Procedures” document – new document that:

- serves as a technical supplement to Section 304 that describes the criteria and procedures required to classify streams in Chatham County based largely on the DWQ methodology
- clearly defines methods used to evaluate streams and seeps and springs in the field and addresses natural variations in the field
- states that water body boundaries must be clearly flagged and labeled in the field
- allows Chatham County staff to make field inspections
- specifies training needed to classify streams
- insures access to property for stream classification, and
- requires data on streams to be submitted to Chatham County

“Section 304 – field located and classified streams, wetlands and other water bodies using the most current methodology with determinations that are subject to review and approval by Chatham County

Ms. Weakley stated that the USGS topo maps, soil maps, and the LiDAR previously discussed are all referenced as screening tools to be used to identify streams in the field but they do not represent the actual extent or location of streams in the field (must still be field located and classified); that the recommendations pertain to new development only and forestry and agriculture are exempt (as noted in Section 304 C.); that Section D. separates the buffers out by classification; and that the “at least” verbiage for each stream classification was deleted and buffer widths are now measured on all sides to indicate that they wrap around stream origins.

Mr. Klarmann asked how the 40 foot buffer from an ephemeral stream was determined. Ms. Weakley stated that the original language proposed was 30 feet; that many ERB members thought that 50 feet was needed given the variability seen in the field with DWQ methodology sometimes classifying a stream with ground water flow and defined channel as ephemeral even though it has ground water flow; and that 40 feet was a compromise.

Ms. Weakley continued her presentation with review of the following:

Section 304 E. - Is a new section for identification procedures; that this section states that origins and endpoints in riparian buffers must be clearly marked for flagging and located on a map for determinations that are then submitted to the county for review and approval; that this section specifies that productive measures be installed before land disturbance begins (such as tree protective measures); and that methodologies are fully explained in the “Field Procedures” document.

Section 304 F. - Covers allowed structures and uses; that drainage and forestry maintenance associated with forestry and agriculture are allowed uses

as long as best management practices are followed; that (i.e. references to those best management practices and to the Wildlife Resources Guidance Memorandum and DOT design standards were all added to Section 304 F.); and that maintenance activities associated with said uses would be an allowed use.

Section 304 F. 4. – Covers stream crossings; crossing types are better defined and discussed by type; and that more references were added.

Section 304 F. 8. – Covers trails; language condensed (compared from old Section 304 D. 3 from recommendations this past June); restrictions on land disturbances are more clear and limited to the outer landward -50 feet from top of bank for perennial streams, 30 feet for intermittent streams, and 20 feet for ephemeral streams (i.e. previous language stated the “outer third”); term management plan with its specifications was moved to definitions (Section 109).

Section 304 F. 9. – covers wastewater treatment and disposal components; this section was moved from “prohibited” to “allowed” with some restrictions (based on consultation that Mr. Royal and Mr. Whiteheart had with Environmental Health); allowed only where required by State or Federal Law for public health and safety purposes and only where no practical alternative exists.

Section 304 G. – covers prohibited structures and uses - utilities except where crossings are required, hazardous waste (old definition of hazardous materials), sanitary (this word added to qualify types of landfills prohibited) , fill, land clearing and excavation and buffer maintenance not otherwise allowed by permit.

Miscellaneous changes

- dealing with invasive species – still allowed to be removed within the buffer (references to specific plants included)
- old Section 304 H through K – policy oriented recommendations made will be incorporated into a County policy and were removed from recommended language.

Ms. Weakley concluded by stating that issues raised during the joint meeting of the Planning Board and ERB (October 3, 2007) have been addressed in these new documents; that the only issue not specifically addressed was that buffer width language still does not have a qualifier that says “a minimum of”; and that when the ERB made their recommendations the thought was that site specific considerations would probably be needed at some point to determine the best buffer widths but that this might be best done during the environmental assessment process or some other subdivision review process, i.e. design standards.

The Board reviewed the proposed documents as follows:

Purpose and Intent

Mr. Klarmann asked if there is evidence that wells have actually been contaminated by runoff. Ms. Weakley stated that there is a hydrologic connection between ground water and surface water. Mr. Megginson gave a couple examples where this has occurred. He stated that it is not so much non-point source pollution but point source pollution.

Ms. Turner was concerned with wetlands. Ms. Weakley stated that wetlands are addressed in Section 304.

Definitions

“Home Occupations” – Mr. Ernst referenced language (first sentence) that states, “Any use conducted entirely within a dwelling or accessory building not larger than 1500 square feet and carried on by the occupants thereof”. Mr. Megginson stated that the intent is for the accessory building not to be larger than 1500 feet and that the last sentence states, “and that not over twenty-five percent (25%) of the total floor space of any dwelling is used for the occupation”. He noted that the Zoning Ordinance references both “neighborhood home occupation” and “rural home occupation”; and that he is not sure if this proposed language captures the “rural” category that is in the Zoning Ordinance. Ms. Kost voiced concern that all definitions are consistent throughout the various ordinances. Attorney Whiteheart stated that this may never happen; that each different ordinance has a different definition for a specific reason; that each discipline defines something a little differently; and that he does not think this would be a problem with this proposal.

“Subdivision” - Mr. Klarmann was unsure about the meaning of #2 that states, “the division of land into parcels greater than 10 acres where no street right-of-way dedication is involved”. Mr. Megginson stated that parcels larger than 10 acres are exempt provided there is no public right-of-way being dedicated.

Field Procedures

Mr. Klarmann asked about the requirements and cost to become a professional to pass the training course for stream and surface water identification and become qualified to do these field procedures. Ms. Weakley stated that people do this all the time; that the course is offered at NC State at a cost of \$800; and that the course is open to anyone wishing to take the class.

At this time, Chairman Walker asked how Board members felt about these first three sections (Purpose and Intent, Definitions, and Field Procedures) and if a vote would be in order. Ms. Sharman inquired as to why “landfills” was changed to “sanitary landfills”. Mr. Royal explained that there are various types of landfills and that we could easily get caught up in language that does not apply. Ms. Weakley stated that the definition of landfill states, “A facility for the disposal of solid waste on land in a sanitary manner in accordance with chapter 130A Article 9 of the N.C. General Statutes. For the purpose of this ordinance this term does not include composting facilities”.

Motion to approve the above three sections

Ms. Kost made a motion to:

- accept the ERB recommendations for Section 109 General Definitions with the one caveat that we clarify the definition of “Home Occupation”
- adopt the ERB recommendations for the statement of Purpose and Intent
- adopt the Field Procedures for Classification of Streams and Water bodies which will be a technical document supplementing the ordinance.

Mr. Copeland seconded the motion with the addition that field procedures are compatible with new State rules. Ms. Kost accepted this into her motion. Discussion followed. Mr. Ernst stated that he has not had sufficient time to adequately review these documents. The motion passed 8-0-1 with all Board members present voting in favor of the motion except Mr. Ernst who abstained.

Items from August 20, 2007 Public Hearing:

B. Consideration of amendments to the Watershed Protection Ordinance including the following:

1. Amend Section 304:
 - a. Buffer Areas required, to increase stream buffer widths along perennial streams, intermittent streams, and unclassified streams countywide
 - b. Prohibit additional uses within these buffers.

Section 304 - discussion

Mr. Klarmann stated that the proposed 40 foot stream buffer (around ephemeral streams, not otherwise identified as intermittent or perennial streams) is too much and not necessary; that the proposal is taking away a persons opportunity to possibly have a home site; that he is not saying that things should not be buffered; but that this is the taking of land. Ms. Weakley stated that the proposed recommendations are for new development only; and that the property owner has the opportunity to plan in advance.

John Alderman, member of the Environmental Review Board (ERB) and a biologist, stated that water quality protection is an extreme concern; that a very high percentage of organisms that exist in these bodies of water in Chatham County or anywhere else in this Country are in the process of going extinct; that this is a serious issue because we are drinking this water; that it is essential to protect ephemeral streams; and that the leadership developed in Chatham County will serve as a model for the other communities and counties within this area.

Ms. Sharman asked how exemption addressed this concern. Fred Royal, Environmental Resources Director, Chatham County Public Works Department, stated that this ordinance was written in a way to allow certain uses in the buffer areas. Attorney Whiteheart stated that there was a meeting with Andy Siegner, Chatham County Environmental Health Director, regarding this issue; that their rules (provided they are followed) would keep their department from being held liable should something goes wrong; that if any buffer rules were interpreted to override Environmental Health rules they would lose their certification; and that the septic system would be allowed in these areas when there is no other practical alternative. Mr. Copeland noted that buffers also serve as a corridor for wildlife and birds and not just for runoff.

Ms. Turner stated that she encourages more buffering; that Section (D) 1. Perennial Streams states, "The riparian buffer **shall** be one hundred (100') feet landward"; that she has a problem with placing limits on buffers; that buffers should accommodate various areas, i.e. habitat (200 – 300 feet), wetlands (150 feet); that limits on buffers have created existing problems in Chatham County,

i.e. streams impaired, soil erosion; and that she does not want to see any limits on buffers.

Ms. Kost asked if anyone in the audience was present regarding trails in the buffer area. No one responded.

Page 3. (F.) 4. – Mr. Klarmann asked if bridging is now required over a ten foot span: and he asked for clarification for the following:

- c. “For roads, streets, driveways and railroads, bridging is the preferred crossing method associated with perennial streams”.
- d. “Bridging is required for crossing perennial streams with a bank full width greater than 10 feet, or if a public road as required by permit”.

Attorney Whiteheart stated that bridging is the preferred crossing if you dedicate the road to NCDOT (DOT) as per their guidelines and referenced in footnote #5 on page 3. Mr. Royal stated that DOT has standards and that they look at hydraulics (velocity of water flowing through the stream); that a public bridge would have to meet DOT standards; that if it is a smaller stream and hydraulics are not that great it is likely that DOT would not prefer or approve a bridge but rather a culvert or bottomless arch; and that before crossings occur the ERB would meet with the developer and NCDOT to find out the rules for the bridge. John Alderman stated that he has been consulting with DOT for twenty-two years on issues like this; that streams 10 foot wide and larger can present major issues due to development upstream (i.e. impervious surface, runoff, that additional development within the headwaters); that what was thought to be the right size culvert in a few years is no longer the correct size; and that it is best to have a wide span with a lot of opening to allow for the big flows (25 – 50 years).

- b. “Bents or other support structures for bridges are not allowed within the bank full area of perennial streams, except where necessary on the Haw and Deep Rivers”.

Mr. Megginson asked why the other rivers were not included in the above.

Mr. Royal stated that it is because the Haw and the Deep Rivers are so wide; but that the Cape Fear River and possibly Rocky River should be added.

Page 5, (H) Buffer vegetation requirements: “From the date of adoption of this ordinance, if any of the above riparian buffers shall have a minimum density of not less than 100 stems per acre that are greater than 5 inches diameter at breast height, the required buffer widths for all stream types must be doubled in width. This evaluation shall be completed by a forester, biologist, or environmental scientist”.

Mr. Ernst voiced concern that buffer widths are being doubled. Ms. Weakley stated that clear cutting down to the buffer shortly before development occurs was previously discussed; that the ERB considered the discussions from the joint meeting and composed this different definition; that this language comes directly from the DEHNR Storm water Manual for Impaired Riparian Buffers; and that the language should actually say, “if any of the above riparian buffers shall have a minimum density of **greater than or equal to 100 stems per acre**” instead of

“not less than 100 stems per acre”. For clarification, Mr. Ernst stated that if an ephemeral stream is running through a lot considered for development and it doesn’t have that density then the required buffer width would be doubled (i.e. 80 feet to 160 feet). Ms. Weakley stated that this is the way the recommendation currently reads; but that the intent is to discourage clear cutting of property shortly before development. Mr. Megginson stated that it was considered how this would be implemented; that the language states that the buffer would be doubled; and that staff discussed if the 100 foot buffer is doubled to 200 or if it includes the floodplain which may be 1,000 doubled to 2,000 since that is the buffer.

Page 3. (F.) 4.

- a. “Fill is not allowed within the 1% annual chance flood hazard areas”

Page 5. (G) 7. “Excavation, land clearing, grading or fill material that is not allowed by permit”.

Mr. Megginson stated that language appears to indicate that fill is permitted if you have a permit to do it. As an example, Ms. Weakley stated that storm restoration permit might require grading within the buffer.

Page 6. (I) “Determination of “No Practicable Alternative” or “Variances”

1. “No practicable alternatives” determination by the environmental Review Board or delegated authority”.

Mr. Ernst asked clarification for the definition of “delegated authority”. Attorney Whiteheart stated that the Commissioners decided to allow another entity or person to handle that determination; and that this would probably not happen unless another Board was considered to be better able to handle these types of requests in a more practical alternative authorization. Mr. Megginson stated that this was originally done by the watershed administrator who administers the Watershed Ordinance and then it was discussed about the Watershed Review Board who is in the position (as the Watershed Review Board) to consider variances or appeals; but that it ended up being this proposal.

Mr. Ernst voiced concern regarding additional language in Section (I) 1. that states:

“The Environmental Review Board or delegated authority shall grant an “Authorization Statement” upon a “no practicable alternatives” determination”.

Mr. Ernst stated that he understands that the Environmental Review Board (ERB) is an advisory board. He questioned what authority the ERB has to grant anything other than issue a recommendation. Attorney Whiteheart stated that he and Mr. Royal have discussed this and that this is a change that did not make it into this final copy.

As an example, Mr. Sullivan stated that the Subdivision Regulations and Zoning Ordinance allow six (6) lots on a six (6) acre tract (meets all the requirements); and that there are issues with ephemeral streams, wetlands, seeps and springs.

He inquired if these other regulations would reduce the lots to four (4). Mr. Megginson noted that he did not think that item (b) could be shown that states:

“The use cannot be reduced in size or density, reconfigured or redesigned to cause less land disturbance, preserve aquatic life and habitat and protect water quality”.

Mr. Megginson stated that the use could be reduced in size, i.e. density or reconfigured.

Ponds

Mr. Megginson stated that the issue of where man-made ponds are or are not allowed and whether they are or are not buffered is not specifically addressed but needs to be. Discussion followed. Mr. Royal stated that he has not discussed this with the ERB or staff. Ms. Kost stated that the Board could leave this issue out of the Planning Board recommendations and let it go as an ERB recommendation.

Discussion followed. Mr. Copeland inquired if action by the Planning Board could be postponed until next month’s Planning Board meeting. Ms. Kost stated that the Commissioners were expecting recommendations from the Planning Board after the October 3rd joint meeting with the ERB; that the Board has been reviewing these issues since last February; and that it is time to vote. Mr. Copeland was concerned that there have been several changes in the proposed language that the Planning Board has not seen. Chairman Walker stated that he would like to move the overall thrust and recommendation but to clearly note (to the Commissioners) that there are certain areas that have been identified and need to be refined. Ms. Kost stated that most concerns of the Board are very minor. Ms. Sharman asked if these could be noted. Ms. Kost stated the following concerns / revisions noted in tonight’s discussion:

- Page 3. Section (F) Allowed Structures and Uses in Riparian Buffer
#4. - clarify relationship to private roads
- Page 3. Section (F) #4 b. - add the Haw, Deep and Cape
Fear River
- Page 5. Section (H) Buffer vegetation requirements
Change this to go to the original intent which was to protect the buffers from being clear-cut prior to development (so that language would fit this intent)
- Page 6. Section (I) Determination of “No Practicable Alternative” or “Variances”
Change “*The Environmental Review Board* or delegated authority shall grant an “Authorization Statement” upon a “no practicable alternatives” determination” to read “***The Watershed Review Board***”.
- Language dealing with ponds would not be included in tonight’s motion.

- Page 5. Section (G) Prohibited Structures and Uses in Riparian Buffer #3. "Sanitary landfills – remove the word "Sanitary"
- Page 3. Section (F) Allowed Structures and Uses in Riparian Buffer #4. a., and
- Page 5. Section (G) #7
Clarify whether fill material is allowed or not allowed

Pat O'Neal, 762 Wooded Lake Drive, Pittsboro, NC asked to speak at this time. Mr. O'Neal stated that he owns hundreds of acres in Chatham County; that tonight he hears personal property rights going under; that this information was just submitted last Friday and there has not been adequate time for review of the material to see how it is affecting Chatham County and if it conforms with what was submitted for public hearing; that a number of discrepancies have been noted during tonight's discussion that are not clear; that these revisions are being pushed forward without having a full understanding; and that 30 days to get these points clarified and understood would be prudent. Mr. O'Neal thanked the Board for hearing his concerns.

Discussion followed. Ms. Kost stated that even though the Board only recently reviewed this version the Board spent many hours reviewing these recommendations during a special work session; that these recommendations could possibly change again since this is an advisory Board; and that she takes exception that the Board hasn't actually reviewed this. Mr. Klarmann stated that there was no opposition at the recent public hearing. Attorney Whiteheart stated that his recommendation would be that the Board holds another public hearing because of the number of changes that have been made to the documents as a whole. Mr. Ernst stated that documents submitted for public hearing have been altered and therefore another public hearing should be held on the revised material.

Dave Philbrook stated that he is working with the Terrells Ridge project. He referenced Page 3. Section (F) 5. concerning the utilities crossings. Mr. Philbrook requested one change to the language where two (2) methods currently being approved for crossings by attaching to bridges or directional boring; that there would be many crossings that are a culvert type crossing; that he recommends that utility lines also be allowed along the edge of the road when it is a culvert type crossing; that one reason for this is that leaks with directional boring can be corrected with the culvert type crossing; and that he suggests that a method three (3) be added that states, "along the edge of the road that a culvert type crossing is used". Mr. Philbrook noted that this recommendation was also requested at the recent public hearing.

Discussion followed. Ms. Weakley stated that the ERB had many discussions regarding crossings; that the ERB felt that utility crossings should be kept to a minimum; and that the ERB thought that the preferred methodology for crossings were, 1.) by attaching to bridges, or 2.) by directional boring. Mr. Glick stated that he is completely in favor of this document which the Board has been reviewing for some time now; but that he feels strongly that this Board should

never vote to approve or disapprove of a partially completed document. Mr. Ernst concurred with Mr. Glick's comments.

Motion to approve with revisions

Ms. Kost made a motion; seconded by Ms. Turner to accept the recommendation of the ERB and approve the proposed amendments to the Watershed Protection Ordinance including the following:

1. Amend Section 304:
 - a. Buffer Areas required, to increase stream buffer widths along perennial streams, intermittent streams, and unclassified streams countywide
 - b. Prohibit additional uses within these buffers.

with changes discussed and noted above with one addition as follows:

Page 4. Section (F) 5. – add language regarding utilities crossings
(3) “a culvert type crossing be used along the edge of the road”

There was no further discussion and the motion passed 4-3-2 with Kost, Turner, Sharman, and Walker voting in favor of the motion; and Ernst, Copeland, and Klarmann voting against; and Glick and Sartwell abstaining.

2. Amend section 501 (C) and (F), Watershed Administrator duties Administrator and Duties Thereof

For clarification, Ms. Kost noted that the Board voted on Section 501 (C) and (F) and Section 503 during the October 3, 2007 joint meeting of the Planning Board and the ERB. Mr. Megginson stated that what was voted on at that time was language that Rich Hayes had recommended some time ago; that the State commented that recommendations in these sections (501 and 503) were incorrect; and that the State recommended other wording that is before the Board tonight. Mr. Sullivan stated that not only was some naming of the various State agencies incorrect but also some of the sections had changed and were not correct. Mr. Megginson stated one way to handle this situation would be for the Board to say that this section would have the correct name as delineated by the State's present organizational chart for these various agencies and units.

Motion to postpone – Section 501 (c) and (f)

Mr. Ernst made a motion that continued discussion on (Section 501 (C) and (F) be postponed until the Planning Board has validated documents on which to make a decision. Mr. Glick seconded the motion. Discussion followed. Ms. Kost stated that if the Board was being asked to make substantial changes to the intent of the section she would agree with the motion; that the Board is only being asked to make sure that the State agency names agree with what the State agency calls themselves; and that she sees no reason for delay. There was no further discussion. Resulting in a tie vote of 4-4-1 the motion died with Ernst, Glick, Klarmann and Turner voting in favor of the motion; and Walker, Kost, Sharman and Copeland voting against; and Sartwell abstaining.

3. Section 503 (Changes and Amendments to the Watershed Protection Ordinance to correct references to state agencies.)

Motion to approve – Section 503

Mr. Ernst made a motion; seconded by Mr. Copeland to approve Section 503 (Changes and Amendments to the Watershed Protection Ordinance to correct references to state agencies) as proposed. There was no further discussion and the motion passed unanimously.

Break

At this time, Chairman Walker called a five-minute recess.

Adjourn as Watershed Review Board and reconvene as Planning Board

Mr. Ernst made a motion; seconded by Mr. Copeland to adjourn as the Watershed Review Board and reconvene as the Planning Board. There was no discussion and the motion passed unanimously.

C. Amendments to the Subdivision Regulations

1. Consideration of amendments to Section 5.2 A of the Chatham County Subdivision Regulations to specify threshold criteria of when environmental assessments are required. The proposal requires assessments for all residential subdivisions of six or more lots. Assessments are also required of residential subdivisions of less than six lots and non-residential subdivisions if located within specified areas of the County.

D. Amendments to the Chatham County Zoning Ordinance

1. Consideration of amendments to Section 11.3 of the Chatham County Zoning Ordinance to specify threshold criteria of when environmental assessments are required.

Ms. Weakley reviewed the ERB recommendations titled; “Thresholds for projects requiring Environmental Assessments” revised November 2, 2007 that lists twelve specifics that warrant an environmental assessment for non-exempt projects. A copy is on file in the Planning Department.

Discussion followed. Mr. Klarmann asked how these requirements would be implemented for minor subdivisions that are reviewed by Planning Department staff. Mr. Megginson stated that Jason Sullivan has gathered together the various attributes (such as slopes greater than 15%) and received data from the State; that because of the extent of the coverage (all Chatham County is covered) all subdivisions would be sent to the ERB; and that if only one hydrologic unit is addressed then that particular item would be referred for review to the ERB. Ms. Weakley stated that the ERB would be using data from the Natural Heritage Program that is readily available for review on their website. Mr. Klarmann asked about the time frame for review. Mr. Megginson stated that it would not be a one-day turn-around as it currently is; and that the requests would be forwarded to the ERB for review during their monthly meetings.

Mr. Ernst asked Ms. Weakley to offer a specific definition of an environmental assessment as compared to an environmental impact statement.

Ms. Weakley stated that State Statutes outline what an environmental assessment (EA) is at the State level; that the Department of Administration has EA guidelines that are recommended to be followed for the State Environmental Policy Act; that Chatham County does not have adopted criteria or guidelines for environmental assessments; that existing ordinances (Subdivision and Zoning) are currently used for guidelines; and that an environmental assessment is basically a decision making tool for assessing development sites (constraints of the site, existing features) and used as information to guide planning for the site. She noted that agriculture and silvicultural activities are exempt. For clarification, Ms. Weakley stated that a RUSLE K factor (see #12 of thresholds document referenced above) is a soil erosion factor and that a table of those factors can be found within the Chatham County soil survey. She explained that there are few soils that have a high rating; and that this criterion only gets triggered if this high rate ability factor soil is disturbed.

Motion to approve

Mr. Copeland made a motion; seconded by Ms. Sharman to approve the amendments as submitted (both items C. and D. listed above). There was no further discussion and the motion passed 7-1-1 with Copeland, Sharman, Walker, Kost, Glick, Ernst and Turner voting in favor of the motion; and Klarman voting against; and Sartwell abstaining.

Chairman Walker thanked the ERB for their hard and intense work, especially these last few weeks.

VI. A. FINAL PLAT APPROVAL: - *This item was removed from consent agenda for discussion.*

Request by Over Jordan, LLC for subdivision final approval of "Westfall, Phases 1A, 1B, and 1C" (f/k/a Booth Mountain), consisting of 94 lots on 160 acres, located off SR-1721, Lystra Road and Sr-1717, Jack Bennett Road, Williams Township.

Ms. Richardson asked if Board members had specific questions regarding the "Westfall" request. She stated that this section received preliminary approval November 2006; that conditions at that time have been met; that comments from Jacquelyn Wallace, Urban Wildlife Biologist, NC Wildlife Resources Commission were received too late for the developer to incorporate the comments into the design of the project (see attachment #4 in tonight's agenda packets) and staff does not recommend any of these changes at this time; that a couple of changes to the Mylar were recommended; and that staff has since made a change to asterisk #3 of the recommendations by deleting strikethrough language as noted below:

"Open space / common areas shall be labeled on the Mylar map ~~as they were shown on the preliminary map~~".

Ms. Richardson noted that staff recommends approval of the request with conditions noted in tonight's agenda notes with the one revision noted above.

Comments were heard as follows:

Allison Weakley, Environmental Review Board Chair, 311 Booth Hill Road
Ms. Weakley stated that she anticipates that prior to final approval the developer would address some issues raised that have not been sufficiently addressed; that DWQ made an on-site determination for an intermittent stream in Phase 1C that had not be previously recognized; that DWQ sent a letter (August 31st, 2007) to the property owner requesting that the stream deemed intermittent be shown on all future plans for the site; that this stream was not show on the plat; and that she requests that staff consider requiring that this intermittent stream be shown on the plat map. Ms. Weakley inquired if the acknowledgement of this intermittent stream changes anything that is being proposed in this section of the development. She stated that the stream should be buffered; that, given that a storm water pond is now within the channel of this intermittent stream, she questioned whether the storm water management plan for this site had changed; that Herndon Creek has a historic channel and that the 100 foot buffer was based on this channel; that the developer drained the beaver impoundment and cut at least two (2) cuts into the impoundment complex; that as a result of this the new channel now comes even closer to the development; that she questions if there are 100 foot buffers now along Herndon Creek; that a buffer shown along a stream on the plat for Phase 1C does not follow the course of the stream or indicate what type stream it is; that there may be other streams on this site that have not been acknowledged based on DWQ on-site determination; that she is concerned that storm water ponds may not have been sized appropriately to consider groundwater flow; that she is concerned that the ability of storm water ponds to catch all the surface runoff from a very dense development (with the added concern of ground water flow); and that the proposed trail from the Village (Phase 1C) and crossing (Phase 1B) ends at Jack Bennett Road and not at the school site. For the record, Ms. Weakley submitted her comments and a copy of letter dated August 31, 2007 from DWQ (these documents are filed in the Planning Department).

Peter Theye, 1065 Booth Hill Road, stated that the developer has not been communicating well with the school system regarding the proposed trail from the development to the school site; that he questions why a representative from the Board of Education is not present tonight; that there have been a lot of mistakes on this site; that DWQ and S&EC have not done their jobs; and there needs to be some sort of compensation.

Nick Robinson, attorney, was present representing the applicant. Mr. Robinson stated that most of the issues noted tonight were very similar to issues raised during a previous review; that there has been a thorough investigation of all the allegations and a thorough presentation presented to the Board of Commissioners; that issues were resolved at that point; that one other issue is the letter from John Dorney with DWQ that Ms. Weakley referenced above; that the consultants for the developer visited the site and delineated all the streams and wetlands on the property before any land disturbance took place and was confirmed by the Army Corps of Engineers (the Corps); that the Corps submitted a signed map showing the streams and wetlands on the property that was adhered to with the plat design; and that the letter from Mr. Dorney saying that he disagrees with the Corps stream delineations comes long after the utilities, roads, and etc. were been put into place and that the merits of the matter haven not changed. Mr. Robinson noted the following comments in Mr. Dorney's letter.

“Since the stream length is less than 150 linear feet, impacts to this isolated stream are “deemed permitted” and as long as the provisions in 15A NCAC 2H.1305(b) are followed, then this stream can be impacted without further permitting”.

Also,

“Since the Corps has determined that impact to this stream does not require additional permitting, then DWQ will not require permitting for this impact either”.

Buffers

Regarding the stream with a 75 foot buffer shown on the plat map, Chairman Walker noted that the buffer doesn't seem to run with the stream. Mr. Robinson stated that this originates from a condition in the conditional use permit that states a 50 to 100 foot buffer be placed in that area; that the buffer is shown as 75 foot; that it was left up to the developer as to how wide the buffer would be (i.e., more than 50 ft. but less than 100 ft.); and that language could be added to the map to show a minimum of 50 foot buffer from any point within that stream.

Trail system

Mr. Robinson stated that he recalled a meeting with the developer and Superintendent of Schools (Larry Mabe) shortly after approval of the conditional use permit; that the Superintendent of Schools stated that the school system did not want any part of the proposed trail; that the trail would not be safe; that they did not want people to be able to find their way onto school property without regulations; that at preliminary plat submittal there had to be an agreement with the school system about the trail system; that negotiations are currently going very well with the developer and the school system (with some new administration personnel); and that the trail is not shown on the final plat since negotiations are still pending.

Mike Zaccardo, engineer with the CE Group, Inc., was present representing Westfall Subdivision. Mr. Zaccardo stated that the school system needs to determine if they will widen the entrance and tree buffer along the back side of the lot; and that negotiations are currently on-going.

Jerry Radman was present representing the developer.

Re-submit letter to school system

Mr. Robinson stated that he would send another letter tomorrow to the School Board (at the Board's request) using a map to show the proposed trail and request their feed-back before the Commissioners review the final plat request during their November 19, 2007 meeting. Ms. Kost suggested that the letter be sent to the School Superintendent and to the Board of Education Chair.

Motion to approve

Following discussion regarding buffers and memo from Jacquelyn Wallace (dated Oct. 23, 2007), Mr. Ernst made a motion; seconded by Mr. Klarmann to grant subdivision final plat approval of “**Westfall, Phases 1A, 1B, and 1C**” as submitted and as recommended by staff, with the following condition:

1. The Mylar copies of the final plats include the following:

- * Names of each section shall be changed to Westfall, Phase 1A, Westfall Crossing, Phase 1B, and Westfall Village, phase 1C.
- *The Phase 1B Mylar shall accurately label the trail easement from the village area to the school site as required in condition # 8.
- * Open space / common areas shall be labeled on the Mylar map(s).
- * Stream buffers shown on the Phase 1C map located outside the property boundaries shall be removed.
- * Additional information to be added to the Mylar copies includes:
 - sight triangles, control corners / concrete monument, AKPAR number(s), property owner across Lystra Road, flood elevations, channel designation shown within Tract E on Phase 1A (Sheet No. 2 of 2) and required buffer.

Discussion followed. Ms. Kost was concerned that confirmation with the school system was still pending on this final plat; and that tract three does not show the buffer along the stream that runs through this tract. Ms. Richardson stated that she would ask the developer to show this buffer on tract three. Mr. Copeland stated that this subdivision should never have been built; that there are leftovers from earlier reviews; but that the subdivision has already received sketch and preliminary approvals.

The motion passed 6-1-2 with Ernst, Klarmann, Copeland, Walker, Glick, and Sartwell voting in favor of the motion; and Turner voting against; and Kost and Sharman voting abstaining.

B. PRELIMINARY PLAT APPROVAL:

Request by Dan Sullivan on behalf of Contentnea Creek, Co. for subdivision preliminary approval of "Cooper Subdivision, Phase 1", consisting of ten (10) lots, on approximately 23 acres, located off SR-1714, Hatley Road, New Hope Township with revisions to the balance of the existing sketch design plan and approval of a development schedule.

Ms. Richardson reviewed the agenda notes for this subdivision request. She stated that Jennifer Burdette of Burdette Land Consulting, Inc. has conducted a determination and delineation of jurisdictional and isolated wetlands and streams on the proposed property; that these were scored using the NCDWQ guidelines to determination classifications and buffers required; that the developer has worked in, 1.) connection to the property to the west, and 2.) features found in the field on the ground; that the developer has worked with the Army Corp of Engineers and DWQ; that it has taken longer than anticipated to incorporate revisions of the balance of this project; that the balance of this property would be brought back to the Board in two different phases (Phase 2 and Phase 3); that tonight's request is for 1.) approval of ten (10) subdivision lots, 2.) revisions to the balance of the existing sketch design plan, and 3.) approval of a development schedule; and that the developer plans to upgrade the existing private roadway to a public road (all the way through the project) that is not a requirement.

Ms. Kost noted that lot sizes are not shown on the plat map. Ms. Richardson stated that this is an RA-90 zoning and that omission of the lot sizes was an oversight and that she would have the developer include these on the plat map. It was noted that the Board could act on each request separately.

The following adjacent landowners spoke:

- Linda Johnson, 870 Hatley Road

Ms. Johnson distributed a revised letter dated November 1, 2007 to Lynn Richardson, Chatham County Planning Department, from Jonna L. Birtcher, Vice-President of Development, Contentnea Creek Development Co. regarding the agreements between the developer and adjacent property owners that reside on the private portion of Hatley Road and to specify that the Hatley Road upgrade is to paved road standards. (A copy of this letter is filed in the Planning Department.) Ms. Johnson stated that she is speaking on behalf of the adjacent landowners in support of the project; that the developer has worked very hard with the landowners to address all of their concerns and have been very willing to cooperate with the landowners and to address all of their issues; that the proposed development would enhance their neighborhood; that this development would increase their property values; that it is important to provide access to county water for themselves as well as the ability to extend water lines to Mt. Gilead Church Road; that connection and upgrading of Hatley Road improving the traffic flow; and that the developer is willing to incur all infrastructure costs for both water line extension and the Hatley Road improvements during Phase 1.

- Doug Brown, 1525 Hatley Road

Mr. Brown stated that he is in support of this proposal; that the developer has put forth much effort to work with adjacent landowners and neighbors; and that this project fits the characteristics of the existing neighborhood and would be beneficial.

No other landowners spoke at this time.

Jonna L. Birtcher, Vice-President of Development, Contentnea Creek Development Co., was present.

Karen M. Kemerait, attorney with Blanchard, Jenkins, Miller, Lewis, & Styers, P.A., was present representing the applicant. Ms. Kemerait gave a brief background of the procedural unusualness of this request. She stated that this is a different procedural situation that the Planning Board and Commissioners are typically used to; that the project was originally zoned RA-5 to the east and RA-40 immediately to the west; that Contentnea Creek had originally planned to develop the property as RA-5 development and submitted a sketch design plan for 24 lots; that during that time the county was experiencing some water line issues (water pressure) and was looking for a way to extend the water lines along Hatley Road (in that area) without tax payer expense; that the county contacted Contentnea Creek and discussed the option of extending the water line from an existing subdivision to the east through the Cooper Subdivision and then allow another developer to finish the water line; that Contentnea Creek agreed to extend the water line and to also submit for a rezoning (to RA-90); that Contentnea Creek also agreed to pave an unpaved portion of Hatley Road to

NCDOT standards; that along with the RA-90 rezoning request a conditional use permit application was requested (for a 63 lot residential subdivision); that along with the conditions of the rezoning Contentnea Creek agreed to develop the project in a very environmentally conscience manner; that the developer agreed to put 100 foot buffers along Parker's Creek (a perennial stream on the northern portion of the property), 50 foot buffers along an intermittent stream that runs through the property, 75 foot undisturbed buffer along the perimeter of the property, to extend the water line, and to pave and maintain Hatley Road; that the rezoning and conditional use permit application also incorporated a sketch design for a development plan that was approved by the Commissioners (10-16-06); that what is different about this sketch design approval is that it contained certain conditions that had to be met before preliminary plat but did not specify a specific time period for submission for preliminary plat but did contain conditions that must be met before preliminary plat application; that this request is for the first request (Phase 1) for 10 lots; that all requirements of the Ordinance have been met and all required approvals have been received; that this request is also to present a submission schedule for the two other phases that have not yet been submitted; that Phase II would be submitted in July 2008 and Phase III in October 2008; that one of the conditions was that a right-of-way dedication would extend to Parkers Spring Subdivision and there has been much discussion with the owner regarding an appropriate location for the right-of-way dedication; that Contentnea Creek has spent a lot of time talking with Chatham County about the water line issue; that originally Chatham County wanted a 12 inch line to extend along Hatley Road but changed to an 8 inch line (August 1, 2007); that this had to be determined before preliminary plat submittal; that revisions were made to the plans to make it a better project as far as less environmental impact with the reduction of some creek crossings; that a condition (from the conditional use permit application) "to dedicate and establish a connection for easement and utility access to the Philip Corn property"; that this provision would involve crossing Parker's Creek; that Contentnea Creek does not want to make the decision to cross this creek unless absolutely necessary; that negotiations regarding this issue are still on-going; that this is one of the reasons for the later time frame for Phase 3 of the project (so that this condition could be resolved by October, 2008); that two phases are now being suggested; that notes were provided recently stating that the property is included in the Big Woods Wilderness Area; that the "Heritage Area" was designated in 1992 and since this time there has been significant residential development in the area that has caused this area to be dropped from the designated area (2006) due to the housing development that has already occurred; that Chatham County does not have rules or ordinances stating that an area designated as a "wilderness area" cannot be developed; that a rezoning and sketch design approval have already been received; and that the applicant is requesting the following:

- Preliminary plat approval for Phase 1 (10 lots) – be approved
- Phases 2 and 3 - be allowed to proceed in July 2008 and October 2008.

Ms. Kemerait distributed a map showing the Big Woods Wilderness area. A copy is filed in the Planning Department.

Board discussion followed regarding the Big Woods map areas .Ms. Sharman suggested taking away a few lots in the northern section for open / community

space. Ms. Kost voiced concern that this "Heritage Area" was rezoned from RA-5 to RA-90 because Chatham County wanted a 12" water line that is now an 8" line. She stated that she did vote against the rezoning request; but that she does think the developer has done a good job working with the neighbors. For clarification, Mr. Ernst asked if there had indeed been changes since the original zoning.

John Harris, P.E., Consulting Engineer, was present representing the development. Mr. Harris stated that the road layout for the project has changed since the initial zoning approval and could change even more before the project is finished since he is not satisfied with the creek crossings; that he is working with the Corps of Engineers and DWQ; that it was requested that this project be submitted in phases; and that extra buffers are being put in. Mrs. Kost expressed that she would expect that when the balance of this project comes before the Board for preliminary plat approval, that the stream buffers will be increased to be consistent with the new buffer requirements.

Attorney Whiteheart stated that it is always difficult to look at a project that has gone through a conditional use permit; and that not only are Subdivision Regulations considered but also conditions attached to the conditional use permit.

Ms. Richardson noted that there were no time constraints listed on the conditions; that the developer listed an approximate time schedule in the application; but that there were no conditions specifically set out.

Ms. Sharman inquired if an "Environmental Impact Statement" could be requested for submittal before the project comes back for final plat approval. Ms. Richardson stated that a threshold criterion has not been adopted at this point to require an "Environmental Impact Statement" but that the developer could chose to do one. Mr. Harris stated that the developer is in the process of doing an "Environmental Impact Assessment" at this time.

Mr. Ernst made a motion; seconded by Mr. Klarmann to grant approval of the request for a revised sketch design plan, the revised development schedule, the road names *Current Lane, Cool Breeze Lane, Billowing Way, Restless Winds Way, and Windchime Way* and recommends granting preliminary plat approval of Cooper Subdivision, Phase I as submitted and as recommended by staff with the following condition:

1. Upgrade of Hatley Road to NCDOT standards from Cooper subdivision to Windfall Creek shall not commence until staff has received a copy of the Road Plan Approval from NCDOT.

There was no further discussion and the motion passed unanimously.

VII. SKETCH, PRELIMINARY AND FINAL APPROVAL REQUEST:

- A. Request by The John R. McAdams Company, Inc. on behalf of NNP Briar Chapel LLC for subdivision sketch, preliminary and final plat approval of "Briar Chapel Reclamation Facility, Tracts A & B, consisting of two (2) non-residential lots on 29 acres, located off SR-1532, Mann's Chapel Road and Great Ridge Parkway and US 15-501 N, and Briar Chapel Parkway, Baldwin Township. ***Staff has determined this issue is exempt from subdivision review and will not be reviewed by the Board.***

VIII. OLD BUSINESS:

- A. Consideration of revised:
- Planning Board Rules of Procedure
 - Code of Ethics
 - An Ordinance Establishing A Planning Board

Due to the late hour (10:40) it was the consensus of the Board that these issues be delayed for discussion during next month's Planning Board meeting, Ms. Kost encouraged members to review these documents and to contact her if there are questions.

IX. NEW BUSINESS:

- A. Planning Director's Report

1. *2008 Planning Board Calendar – set dates*

It was the consensus of the Board that this item be discussed during next month's meeting; and that the January 2008 meeting is set for January 8th. Mr. Megginson asked that Board members be prepared to address the calendar at next month's meeting, i.e. Labor Day, Election Day, 4th of July, and any others.

- B. Planning Board Member Items

1. *Annual Report for BOC*

Ms. Kost stated that she is assisting Chairman Walker with the writing of the report to the Board of Commissioners from the Planning Board Chair; that this is an annual report reflecting the actions of the Planning Board this past year; that the report would be shared with the Planning Board but that the Board does not have to approve the report; that one section of the report (since the Commissioners have their retreat in January) is looking ahead at some of the things that need to be revisited or changed; that one example was the issue of the zoning of non-conforming uses in the corridor areas discussed tonight; that she would appreciate members forwarding her any ideas, further studies, changes, and etc.; and that she would share the report at the next Board meeting.

2. *Chairman Walker's Resignation*

Chairman Walker stated that the December Planning Board meeting would be his last meeting; that he has served on the Board the past 6-1/2 years; that his work load and family obligations warrant his decision to resign at this time; and that this is a very good Board that will carry on very well.

X. ADJOURNMENT: The meeting adjourned at 10:45 p.m.

Chris Walker, Chair

Date

Attest: _____
Kay Everage, Clerk to the Board

Date