

MINUTES
CHATHAM COUNTY BOARD OF COMMISSIONERS
REGULAR MEETING
NOVEMBER 19, 2007

The Board of Commissioners (“the Board”) of the County of Chatham, North Carolina, met in the Superior Courtroom, 1 Hillsboro Street, located in Pittsboro, North Carolina, at 6:00 PM on November 19, 2007.

Present: Vice Chair, George Lucier; Commissioners Mike Cross and Tom Vanderbeck; County Manager, Charlie Horne; County Attorney, Kevin Whiteheart; and Clerk to the Board, Sandra B. Sublett

Absent: Chairman Carl Thompson

INVOCATION AND PLEDGE OF ALLEGIANCE

Commissioner Barnes delivered the invocation after which Vice Chairman Lucier invited everyone to recite the Pledge of Allegiance.

CALL TO ORDER

The meeting was called to order by the Vice Chairman at 6:09 PM.

APPROVAL OF AGENDA AND CONSENT AGENDA

The Vice Chairman asked if there were additions, deletions, or corrections to the Agenda and Consent Agenda.

Commissioner Vanderbeck moved, seconded by Commissioner Barnes, to approve the Agenda and Consent Agenda as follows:

1. **Minutes:** Consideration of a request for approval of Board Minutes for regular meeting held November 05, 2007, Work Session held November 05, 2007

The motion carried four (4) to zero (0).

2. **Review Officer Appointment:** Consideration of a request to appoint Tina Stone as Review Officer

The motion carried four (4) to zero (0).

3. **Wildlife Commission Letter:** Consideration of a request to approve letter requesting the Wildlife Commission to designate game lands on north side of Big Woods Road from Grace Road to 100 yards past western park boundary as bow hunting only. The letter is attached hereto and by reference made a part hereof.

The motion carried four (4) to zero (0).

4. **Subdivision Final Plat Approval of "Cedar Mountain Subdivision, Phase One":** Consideration of a request by Lewis Metty Development Company, 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

As per the Planning Board and Planning Department recommendation, final plat approval of “Cedar Mountain Subdivision, Phase One” was granted with the following conditions:

1. Prior to recordation of the final plat, the developer shall install all of the supply lines for the off-site sewage treatment systems at one time, have

one contractor complete all of the installation of the supply lines, and install the supply lines at least 30 inches deep.

2. Septic supply line easements shall be a minimum of 15 feet wide.
3. All off-site systems must be gravel less.
4. The Mylar copy of the final plat shall be changed as follows:
 - Misspelling in Note #4 will be corrected on the Mylar copy of the plat
 - Note #7 will be revised to state the maintenance responsibility of Blue Jay Court, public, and Cardinal Crest Court, private
 - A note shall be placed on the final Mylar stating that a public or community water system is not presently available to the subdivision lots.

The motion carried four (4) to zero (0).

5. **Subdivision Final Plat Approval of "The Bluffs, Phase 1A":** Consideration of a 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

As per the Planning Board and Planning Department recommendation (by unanimous vote), final approval of **"The Bluffs, Phase 1A"** was granted with the following conditions:

1. The following additions shall be made to the Mylar copy of the final plat:
 - Addition to Note # to read "The rear yard setback may vary depending upon home site locations as follows: Adjacent to buffer zone/conservation easement: 50 feet".
 - A note shall be added specifying the maintenance responsibility of the private roads.
 - A note shall be added regarding lots meeting the required minimum and average lot sizes.

The motion carried four (4) to zero (0).

6. **Subdivision Final Plat Approval of "Briar Chapel, Phase 4, Section 3":** Consideration of a 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 North and Briar Chapel Parkway, Baldwin Township

As per the Planning Board and Planning Department recommendation (by unanimous vote), final approval of **"Briar Chapel, Phase 4, Section 3"** was granted with the following two (2) conditions:

1. The final plat for "Briar Chapel, Phase 4, Section 3" shall not be recorded until staff has received verification that Great Ridge Parkway is accessible to emergency vehicles, i.e. culverts have been installed and roadway is graveled and plat titled "Briar Chapel – Phase 3 and 4 and Great Ridge Parkway Right-of-Way Dedication" has been recorded.
2. Revisions to the Mylar copy of the plat shall be made as follows:
 - Note #6 shall be revised to state that there is a portion of this section located within the 100 year flood plain.
 - AKPAR parcel number(s) shall be added.
 - Great Ridge parkway, public, shall be designated on sheets 2 & 3.

The motion carried four (4) to zero (0).

7. **Solid Waste Advisory Committee Appointment:** Consideration of a request to appoint Sherry Yarkosky, Pittsboro, NC, to the Solid Waste Advisory Committee by Commissioner Cross

The motion carried four (4) to zero (0).

END OF CONSENT AGENDA

PUBLIC INPUT SESSION

Larry Ballas, 139 Indian Creek Lane, Apex, NC, stated that he voted against the Land Transfer Tax; that the reason for his vote was because he feels that Chatham County wouldn't presently get enough money from it because of the housing "slow down"; that the other reason is that he doesn't think that people are going to be able to sell their houses; that no one likes taxes but the other option is the Impact Fee that is charged for building houses; that if there is to be no revenue stream with the Land Transfer Tax, that there was a lot of money put into voting against the land transfer tax; that the special interests that funneled money are biased; that we must look at the impact fee as an option to continue funding schools and other projects; and that he hopes the Board of Commissioners will consider raising the Impact Fee.

The Vice Chairman informed Mr. Ballas that the Board of Commissioners, at their afternoon work session, had voted to increase the Impact Fee from \$2,900.00 to \$3,500 which is the maximum that can be assessed based on a 1999 study. He stated that the Board also voted to have the study redone under 2007 conditions to see whether the fee can be increased as the Impact Fee is an educational fee and can only be used for new school construction.

Peter Theye, 1065 Boothe Hill Road, Chapel Hill, NC, stated that the fixed income people in the County cannot afford higher property taxes and that he appreciates all the work the Commissioners have done to help the County.

BOARD OF COMMISSIONERS' MATTERS

Resolution Honoring the Service of Reba G. Thomas, Register of Deeds: Consideration of the request to adopt a Resolution Honoring the Service of Reba G. Thomas, Register of Deeds, on the occasion of her retirement

The Vice Chairman read the resolution in its entirety.

Ms. Thomas thanked everyone for their support over the years, including her family, friends, and coworkers.

Commissioner Barnes moved, seconded by Commissioner Cross, to adopt **Resolution #2007-44 Honoring the Service of Reba G. Thomas, Register of Deeds**, attached hereto and by reference made a part hereof. The motion carried four (4) to zero (0).

Resolution Proclaiming November as Nonprofit Awareness Month: Consideration of a request to adopt a Resolution Proclaiming November as Nonprofit Awareness Month, attached hereto and by reference made a part hereof. The motion carried four (4) to zero (0).

Commissioner Vanderbeck moved, seconded by Commissioner Barnes, to adopt **Resolution #2007-45 Proclaiming November as Nonprofit Awareness Month**, attached hereto and by reference made a part hereof. The motion carried four (4) to zero (0).

Public Hearing:

Redistricting Public Hearing: Public hearing to receive public comments on a proposal for redistricting of Chatham County's residency districts

Vice Chairman Lucier stated that in August, 2006, the previous Board of Commissioners held a public hearing on redistricting Commissioner districts. He stated that there were 45-50 people who spoke at the public hearings; that a public hearing was also held on the district-only voting which was defeated in the November election; that the redistricting the previous Board approved still stands; that this was passed by a three to two vote; that the map that was approved contained substantial deviation among the five Commissioner districts that are used for nominating Commissioners for their office; that the current map became effective on November 08, 2006 and has never been used; that based on the fact that the district-only voting was defeated, the current map contains significant and substantial deviation among the districts, the Commissioners felt that it was important to revisit the issue; that the Board has examined approximately fifteen maps which was reviewed by the committee; that Jeremy Poss, Geographic Information System's Manager, to take the pre-November 2006 map and move a few census blocks to arrive at a deviation that is less than the November 2006 map; that this was done using the previous map as a starting point; that the three maps of interest are: 1) the map in effect prior to November 08, 2006, 2) the one adopted by the Commissioners and went into effect on that date, and 3) the one that was generated by the current Board of Commissioners in October 2007; that this is a public hearing to hear comments on the map that was generated by the Commissioners for the purpose of the public hearing in October 2007.

The Vice Chairman opened the floor for comments.

Loyse Hurley, 16 Matchwood, Pittsboro, NC, President of Chatham Citizens for Effective Communities (CCEC), stated that in August, 2006 when the redistricting issue first came up before the previous Board of Commissioners, CCEC voiced serious concerns about that proposal; that they were concerned about the disenfranchisement of one of the sitting Commissioners, the split in the African-American communities, as well as, by the speed and lack of thoroughness of that process; that the token bipartisan committee had spent three hours in meetings to study the issue and come up with a map; that the previous Board chose to ignore their comments, as well as those of other citizens, and enacted the current map that following November; that the new map, based upon the 2000 census figures, does indeed balance the population far better and allows a sitting Commissioner to run for re-election; that a population balance of about 1% is far better than the 3% of the current map; that this new map allows Commissioner Barnes to make his own decisions about re-election and not have to be hampered by any political motivations of the then outgoing Board; that this new map allows the voters to exercise their constitutional right to evaluate the performance of a Commissioner seeking re-election; that the new map meets the goals of redistricting; that this new map acknowledges the citizens' vote against district-only voting and Commissioner Lucier is to be commended for bringing this new map forward; that the CCEC recognizes the time pressures involved with developing this map; that next year's electoral process needs to start before the filing date of next February, and all voters need to know in which district they reside, in order for that process to begin; that this redistricting process should have been started much sooner and in line with the Board's commitment to more open and responsive government, the citizens should have had a complete public process; and that while there is a vast improvement in the district map, the public process and timing of how this map was developed is flawed and they were disappointed.

Larry Ballas, 139 Indian Creek Lane, Apex, NC, stated that the map that is being proposed is way out of date, as most others are; that a broad study should be done; that many of the comments had to do with the process used to redistrict last time; that all that has been done is that the lines have been changed; that we are trying to align the districts so that one person can run again; and that we need to look at whether or not we need district voting with two at-large seats.

Vice Chairman Lucier explained that the Board was required to use the 2000 Census. He stated that they used the map that was in effect prior to 2006; that if the two maps are compared, very few census blocks have been moved; that the deviations are now less than the one that was adopted in November, 2006.

Gretchen Smith, 598 Jones Branch Road, Chapel Hill, NC, stated that as a registered voter residing in District 1, that she supports the proposed revisions to the

district maps; that the changes made to districts by the majority of the previous Board in November 2006 appeared to her to be an obvious ploy to punish Commissioner Barnes and the voters in his District and give those outgoing Commissioners who voted for the changes an unfair advantage for the 2008 elections; that the proposed revisions under consideration appear to her to be more fair, equitable, and based on logic and data; and that she is glad to see the current Board taking action now to correct the inequities of the November 2006 district map. She thanked the Board for the opportunity to speak on this issue.

Bob Murdock, 288 Luna Lane, Chapel Hill, NC, stated that this is about making the wrong right; that he appreciates the effort by the Board to correct this injustice; that this was short notice but the intent is good; and that it makes it fair and gives us back a sense of justice and fairness that we didn't have; and that he thinks this Board has worked very hard to right the injustice that has been done.

Sally Kost, 1101 New Hope Church Road, Apex, NC, stated that she worked very hard to stop district voting; that the map was drawn with assumptions of not splitting municipalities; that the map went along with district only voting; that she would have liked to see this process started early; and that she would like the County to explore the option of adding more commissioner seats.

Jan Nichols, 148 Fairview Road, Moncure, NC, stated that she speaks as chair of the Chatham Coalition; that while there may be merits to the proposed map, especially in light of the failure of the District voting referendum, the Chatham Coalition has strong reservations about the process for approval of the new map; that a core and preeminent principle of the Chatham Coalition is open government that provides for real public input; that that is input that ensures meaningful input from the beginning and throughout the decision-making process; that the proposed map has been developed without a citizen advisory committee, or other public participation with the exception of the hearing; that this hearing had limited publicity and insufficient lead time and did not allow for sufficient public participation; that the presentation of this map has been left to very late in the election cycle; that this process could have been started months before this and involved more input from the people; that as it now stands, it will likely negatively impact the Board of Elections as they must assimilate these changes in preparing for the may primary; that more important is the impact on potential candidates and their supporters within the County who have been moving forward in constructing their campaigns.

Jeffrey Starkweather, 590 Old Goldston Road, Pittsboro, NC, stated that he agreed with what others have said; that this process should have started early; that it was rushed and not deliberative; that two at-large commissioner seats should have accompanied district voting as an option; that democratic accountability is still important at the local level; that the election is critical; that elected officials should be held accountable; that this is a major step toward accountability; that the deliberative process is not in place here; that he asks the Board to weigh their decision from the standpoint of the citizens and voters; that Commissioner Vanderbeck ran on a platform of citizen advisory boards; and that he would like the Board to look at citizen advisory boards as a form of accountability in the future.

Kevin Whiteheart, County Attorney, stated that the two maps that have been produced have been a real help in this process; that Chatham is one of two counties in North Carolina that has special legislation that allows a residency redistricting; that he was asked to look at the 2006 redistricting as it relates to the special legislation; that the legislation was enacted in 1995; that in Chatham's residency districts, the candidate must reside in the district that he represents, however, all the voters in the County can participate in voting for any of the candidates; that that is different from typical electoral districts that are prevalent in most counties; that in looking at the legislation, the County seems to be stuck with it; that the first issue is the hypothesis of whether there is substantial inequality in the districts; that requires the Board to think about what has happened to the County since the year 2000; that ordinarily, when new census comes out, counties redistrict almost immediately; that in this instance, it did not happen this way; that the County is bound by using the most recent census data available; that from the 2006 census estimate, it shows that the County has grown by approximately 21% from

49,000 to over 61,000; that whether there is a substantial inequality in the population, it can be noted that there has been tremendous growth; that the legislation gave the County the means to test it.

Mr. Whiteheart reviewed the proposed newly drawn districts stating that there is now a much better distribution of population by districts with respect to minority voters. He stated, in his opinion, if the Board chooses to adopt the map, that it would be a legal and fair redistricting under the circumstances.

Vice Chairman Lucier stated that the Board had examined the 14-15 previous maps that the previous committee had put together; that the current map had less deviation than the other maps put together by the committee; that the work of the committee was used in the Board's deliberations; that the question is if the Board is required to hold a public hearing to redistrict. The County Attorney replied in the affirmative.

BREAK

The Vice Chairman called for a short break.

PLANNING AND ZONING

Subdivision Final Plat Approval of "Westfall, Phases 1A, 1B, and 1C":
Consideration of a 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

Nick Robinson, attorney, stated that he was happy to be in attendance on behalf of the Westfall developer. He stated that there were a number of things discussed at the Planning Board many of which have been addressed numerous times over the years; that this developer has, in all cases, been as responsive as they could be; that approximately one year prior, the preliminary plat was approved by a unanimous vote; that that gave them the "green light" to proceed and spend a couple of million dollars for work that has been done in constructing the infrastructure; that they have complied with all the regulations of the subdivision and all the conditions placed on the preliminary plat; that they respectfully request that the final plat be approved.

The Vice Chairman asked the issue of the school trail.

Mr. Robinson stated that when the project was approved in 2005, they met with the school superintendent and were told that the schools did not want the trails for security and safety reasons; that a condition said that if they had the trail, it had to be shown on preliminary plat; that the trail location was placed on the preliminary plat which was approved; that their information has recently been that the current superintendent now desires the trail; and that they have shown the map to the schools and they like the location of the trail. He showed the location of the trail to the Board on the map.

The Vice Chairman stated that it was his understanding that the Board of Education was going to talk with the developer and the attorney about an additional right-of-way for the 60' area as part of it is in a sloping area and that it would be difficult to get a roadway that would not be subject to erosion in that area.

Mr. Robinson stated that those negotiations were on-going, but that it is a cluster of issues; that one is the voluntary expansion of the right-of-way; that the other is treatment of the school wastewater; that they plan to meet on Friday, the week after Thanksgiving to discuss these issues; and that there is a willingness with both parties to get both issues resolved.

Vice Chairman Lucier asked if the stormwater structures were going to be shown on the maps.

Mr. Robinson stated that they were not shown on the map; however, he thinks that they are going to be permanent stormwater retention basins.

Vice Chairman Lucier asked about where the stream was measured from, the bank or the center line, also why isn't the intermittent stream on 1C shown on the map. He asked what was the issue of the Herndon Creek buffer.

Mr. Robinson stated that the issue of measuring from the center line instead of the bank; that to his knowledge, this has never been a real issue; that they measured it 100' from where it was shown on their line; that to his knowledge Herndon Creek is no more than five feet in width so one would be speaking of a 2 ½ foot difference on a 100' buffer; and that they would certainly be willing to measure from the bank. He stated that with regard to the alleged stream in Phase C, when the project was originally approved, it went through delineation by the sedimentation and erosion control division as well as the Army Corps of Engineers to determine what were streams and what were not streams on the property; that they were issued a permit to impact certain streams; that they were also issued a map thereafter, signed by the Army Corps of Engineers delineating all the streams on the property; that none of the maps included the item in Phase C; that Mr. Dorney from the Department of Water Quality inspected and wrote a letter confirming that he inspected it and it was a close call; that he determined that it was an intermittent stream on the check list; that at that point, the development in that section was already built; that the permit that was issued by the US Army Corps of Engineers said that the streams and their adjacent wetlands have been delineated and surveyed and are accurately depicted on the map signed by the Corps in August, 2007; that it further stated that unless there is a change in the law or regulations, determination may be relied upon for a period not to exceed five years from the date of the certification.

Mr. Robinson stated that there was no question that the developer relied upon the Army Corps of Engineers determination; that the issue now is that there is 150' channel that the Corps says is not a stream.

Commissioner Barnes stated that he had not approved of the project since its inception. He discussed the issue of the mud across the gravel entrance on Lystra Road after a rain. He stated that after contacting the NCDOT, the road was cleaned because it was considered hazardous. He stated that according to NCDOT, they had received no cooperation from Westfall to clean up their mess; that he would like to see the Board pass some type of resolution that when a developer does this, their permit is pulled for thirty days and stop the project; that he thinks this would get some attention; that he is going to give everyone who calls the attorney's telephone number; that he considers, as long as this project has been on-going, that this type of thing is inexcusable; and that he wonders why whomever is looking after the project allows this to happen.

Mr. Robinson stated that he remembered seeing the mud on the road on the day about which Commissioner Barnes spoke; that he doesn't think that it is a breach of confidence to say that he has talked with the client about it; that they were very concerned about it; that they do not have the right to put cleaning trucks on the highway so he is unsure as to how the issue is resolved; that there has to be better communication between the developer and the NCDOT to resolve the matter more quickly; that he realizes that there hasn't been that much rain until that particular incident; that they can certainly improve and get better; and that he welcomes telephone calls and emails which he will pass along to the developer.

He stated that earlier in the year, an incident occurred where there was a concern about some water crossing Jack Bennett Road; that he was notified of it, he notified the developer, and the matter was corrected immediately within twenty-four hours. He apologized on behalf of his client.

Commissioner Vanderbeck asked about the water flow of the current stream. He stated that on lots 143-146 that he does not see a buffer on the current path of the creek.

Mr. Robinson stated that the 100' buffer was and always has been measured from the historic channel in the creek; that when the project was approved, there was a large beaver impoundment on the pond there; that the buffers measured 100' from where the

historic channel of the creek; that the problem lies where the beavers put in a dam; that the dam runs off the developer's property onto the high school property; that if the creek is to continue to run in its historic channel on the high school property, the dam has to be breached on the high school property; and that that has always been where the 100' buffer was.

Commissioner Vanderbeck stated that currently there is no stream buffer from the lots; that it is common land and not within the property lots of the people yet when one measures from the center line of the existing creek as it now flows, there is not buffer there; that it is shown partially in the flood plain; that may afford some protection, but the way he understands it, the only protection of flood plains show that one cannot build there; that if there was buffer status there on the existing creek, it would be a vegetative buffer and there would be some protection on these lots; and that there should perhaps be some "do not build" lines on those lots which are shown on the plat.

Mr. Robinson stated that there is some space between where the 100' buffer is measured from the historical location and the lots; that in some cases, it may be 50-60'; that he thinks that they could show the entire area as a buffer all the way to the back of the lot even though they are not required to do that; that they committed to a 100' buffer from the historic channel of the creek; that it is not an obligation under any ordinance; that it was just a commitment that came through on a conditional use permit; that they have done that; that part of the discussions with the school board is that the school board may want the creek to return to its historic channel; that ultimately, if that happens, there will be a 200' buffer from the Herndon Creek; and that notwithstanding that, he thinks that the developer will agree to show that as an undisturbed buffer from the rear lot.

Commissioner Vanderbeck stated that he would like to have it shown on the map. He stated that he would like to speak with the Board's environmental person regarding this issue. He asked if the developer agreed that they should have some buffer even though it has been measured by the historic creek. He also asked if they needed buffer protection in this corridor and maybe into the lots.

The Planning Director stated that the Board could have Mr. Royal look at it, but that it meets requirements.

Commissioner Vanderbeck stated that because of the developer's actions, the creek has moved closer to the lot lines; and that he feels that there should be some review from the Environmental Review staff on how it affects the school.

Mr. Robinson stated that this is partly the reason the beaver dam remains in its current position on the school property as they would never presume that they could do something on the school's property; that they would not do that without the consent of the school system; and that they would welcome the input of Fred Royal into this process.

The Planning Director informed the Board that they had sixty days from the day's date in which to take action.

Mr. Whiteheart stated that the Board does have access to the clearinghouse with the Department of Administration; that they can review this as it is a special purpose unit of government; that it is a school board issue where the stream runs through; and that the clearinghouse would have the authority to come out and take a look at it and make sure that it is or is not consistent with their policy.

Mr. Royal stated that they made recommendations on environmental assessments.

Allison Weakley, Environmental Review Board Chair, reiterated that initially when the original application for a Conditional Use Permit was submitted, they (the developer) were measuring the buffer along Herndon Creek from the centerline of the historic channel; that at the time the development was proposed, Herndon Creek had been impounded for at least a decade (based on aerial photographs), and that the County's Watershed Protection Ordinance states that buffers be measured from the normal pool elevation of impoundments, or top of bank from streams or rivers, not measured from the centerline of some historic channel (see definition of Buffer in Section 601 of the

Watershed Protection Ordinance); that she brought this to the attention of the Commissioners during public input in January 2007; that shortly thereafter, the developers blew out at least two of the beaver dams on their property and Herndon Creek and re-established a stream channel that was closer to the development (Westfall); that now they are trying to encourage the Board of Education to allow them to blow out beaver dams on County property so Herndon Creek will follow its historic channel (thereby allowing the developer not to buffer from the current Herndon Creek stream channel, which is closer to their development); that there are also other issues regarding stream determinations and buffers on site that she outlined in her written comments to the Planning Board dated November 5, 2007, that have still not been resolved, and should be prior to any final plat approval.

The Vice Chair asked the will of the Board.

Mr. Robinson stated that he felt that his client could make the 100' buffer issue moot by just following the suggestion of Commissioner Vanderbeck to measure the 100' buffer and show it on the plat as being measured from the bank of the current location.

Commissioner Vanderbeck stated that that would address his concerns.

As per the Planning Board and Planning Department recommendation (by a vote of 6-1-2), Commissioner Cross moved, seconded by Commissioner Vanderbeck, to grant subdivision final plat approval of "Westfall, Phases 1A, 1B, and 1C" with the stipulation that the developer move the 100' southeastern buffer along Herndon Creek and with the following conditions:

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 include:
 - ✓ Sight triangles, control corners/concrete monument, AKPAR number(s), property owner across Lystra Road, flood elevations, channel designation shown within Tract # on Phase 1A (Sheet No. 2 of 2) and required buffer

2. They move the 100 ft. buffer.

Commissioner Lucier asked if they would also indicate on the plat map the location of 1C as there seems to be a stream there. He stated that there is apparently 150' left; that it is apparently not connected to Herndon; that it is still labeled an intermittent stream by DENR; and that it should be placed on the plat maps.

Mr. Robinson asked what it should be shown as.

The Vice Chair stated that it should be shown as what it is, a stream of 150' in length and that it disconnects from Herndon Creek at some point.

Mr. Robinson stated that its current location is in the middle of a place that the Army Corps of Engineers said there was no stream; that the lot was designed around that; that they have a letter from DWQ saying that there is no DWQ requirements that the "stream" be shown on the plat.

The Planning Director presented a letter showing the exact wording, dated August 31st.

The Vice Chairman read from the letter as follows: "This stream should be identified in any future plans for this property. The owner (or future owners) should notify the DWQ (and other relevant agencies) of this decision in any future

correspondences concerning the property. This on-site determination shall expire five (5) years from the date of this letter.”

Mr. Robinson stated that what he was referring to is in the letter dated November 13th from Tom Reeder, John Dorney’s supervisor which states, “As requested by your consultant, (Mr. Kevin Martin) via email dated October 9, 2007, the Division of Water Quality (DWQ) would like to clarify a statement in our letter sent to you on August 31, 2007 concerning the subject project. In the August 31 letter in paragraph three, DDWQ stated that ‘This stream should be identified on any future plans for this property.’ The Division of Water Quality would like to clarify that there is no regulatory requirement that the stream that is the subject of the August 31 letter be shown on any development plan or site plan.”

Mr. Robinson continued by saying that it was an unfortunate and highly irregular situation and the first time that he had ever seen it happen that the US Army Corps of Engineers came out and made a determination and a DWQ agent came out and made something different; that the letter states that they realize it is different; that they realize that it has been permitted, but it is something different; that especially coming as the letter did, very late in the developer process of putting lots on the ground, putting sewer lines and water in the ground, and the roads in, it creates a situation where the marketability of the lots are severely impacted by announcing that there is a stream in a location where the Corps said there is not a stream.

Commissioner Vanderbeck asked Mr. Royal if he had any comments regarding the location of the stream and announcing whether it is or is not there and whether or not it should be shown on the plat or the impact of it.

Mr. Royal stated that he did not know enough about the project to make a comment on it. He stated that a County buffer will help this matter.

The Vice Chair called the question. The motion tied two (2) to two (2) with Commissioners Cross and Vanderbeck voting for and Commissioners Barnes and Lucier voting against. The Vice Chairman stated that the Board would discuss the issue again at their December 3, 2007 Board of Commissioners’ meeting.

Preliminary Plat Approval of "Cooper Subdivision, Phase 1": Consideration of a request by Dan Sullivan on behalf of Contentnea Creek Company 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

Karen Kemerait attorney for the developer, stated that they are requesting approval of the preliminary plat application for ten lots on 23 acres; that they are also requesting that the submission schedule that they requested for Phase 2 and Phase 3 be approved; that they also have approval by the Planning Board and Planning Department; that she thinks that this is an exceptional situation in that it is a subdivision project that has the support of all the neighbors around the subdivision; and that the neighbors supported the rezoning; that two neighbors spoke before the Planning Board in favor of the project.

The Vice Chairman asked the difference between this development schedule and the proposed development schedule on what was previously in place.

Ms. Kemerait stated that there was no previous development schedule in place; that the submission schedule request is different in that this preliminary plat application is coming after a rezoning and conditional permit application was approved; that part of the rezoning and conditional use permit was a master plan; that there was no submission schedule at the time; that what Contentnea Creek has had to do is before they can prepare and provide a preliminary plat application was to meet all the conditions of the rezoning and conditional use permit application; that those conditions were voluntarily agreed to by Contentnea Creek provided conditions that they had voluntarily agreed to do; that they had agreed to put in the waterline from the Windfall development up to the Cooper

project; that that waterline was at the County's request to provide two separate waterlines along Mt. Gilead Road and Big Woods Road; that Contentnea Creek has been working with the County to decide the size of the water line; that Contentnea Creek has agreed to provide right-of-way access to the Harper Springs project; that they are still working on the utility access; that they have worked very hard to cross Harper's Creek as few times as possible; that the plan has changed a few times in order to have as little impact as possible on the creek; that a condition that was not included was to perform an environmental impact assessment; that they have voluntarily agreed to do it; that they are in the process of now going before the Planning Board; and that they have agreed to Contentnea Creek Company has voluntarily agreed to do the environmental impact assessment independent of Harpers Creek.

Ms. Kemerait answered questions from the Board.

As per the Planning Board and Planning Department recommendation (by a vote of 6-1-2), Commissioner Vanderbeck moved, seconded by Commissioner Barnes, approval of the revised sketch design plan, the revised development schedule, the road names *Current Lane*, *Cool Breeze lane*, *Billowing Way*, *Restless Winds Way*, and *Windchime Way* were granted and preliminary plat approval of **Cooper Subdivision, Phase I** was granted as submitted 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.

The motion carried four (4) to zero (0).

Text Amendments to the Chatham County Zoning Ordinance to Regulate Outdoor Lighting: Consideration of a request by the Chatham County Board of Commissioners for text amendments to the Chatham County Zoning Ordinance to include a section to regulate outdoor lighting. The amendments include standards for outdoor lighting, establish lighting design review and enforcement procedures, and establish an amortization schedule for vehicular canopies.

The Planning Director explained the specifics of the text amendments to the Chatham County Zoning Ordinance to regulate outdoor lighting. He stated that the overall issue is whether the Board leaves the ordinance as is; that it has been proposed that the lights would have to be brought into compliance within five years, both the 24 foot candles and the type of fixture itself. He stated that the text amendments can be adopted at the meeting or that they can be revised and adopted at a later time and that he would like for February 1, 2008 to be considered as the effective date to allow time to coordinate plan submittal with Central Permitting and for preparation of letters about amortization for nonconforming vehicular canopies.

Commissioner Vanderbeck stated that he would like to see the request approved at the night's meeting; that he understands that there is an educational point; and that there are a lot of people trying to voluntarily comply. He asked if the effective date could be moved up sooner than February, 2008.

The Planning Director stated that presently there were no new projects requests for December. He stated that the Board has already been making any zoning requests through the conditional use permit process comply with the lighting requirements.

Commissioner Vanderbeck stated that he would like to have it come out January 1st if the Planning Director doesn't see a downside to it.

The Planning Director stated that whatever date the Board sets, that is when they would start; that they would notify people that they had five years to comply; that they just need to address that so they know the date that it starts; that it will then need to be worked out with Central Permitting for plan submittal.

Commissioner Vanderbeck asked if it would be a hardship to do this for January 1st.

The Planning Director stated that it would be acceptable for people to receive their letters after the January 1st date; that they may be notified in February stating that the Board passed this in on January 1st and saying that they have to be in compliance within five years of January 1st; that one month will not make that much difference unless the County Attorney sees a problem in handling amortization letters that way.

As per the Planning Department recommendation, Commissioner Vanderbeck moved to adopt **An Ordinance Amending The Zoning Ordinance of Chatham County** and approve the amendments to the Zoning Ordinance as shown in attachment 1 with the exception that the amortization schedule for vehicular canopies (Section 11A.17(3) be deleted and that they are considered as non-conforming. The Planning Department also recommends the effective date of the amendment start on January 1, 2008 to allow adequate time to coordinate permitting issues with Central Permitting.

Commissioner Barnes stated that the Planning Department recommended approval with the effective date of February 1, 2008; that he feels that everyone should be given two months; that he prefers that the effective date be February 1, 2008 since they have gone that long; and that he doesn't want to start hearing from people that they were only given a month's notice.

Commissioner Vanderbeck conceded to the February 1, 2008 date and amended the motion to read: approval of the amendments to the Zoning Ordinance as shown in attachment 1 with the exception that the amortization schedule for vehicular canopies (Section 11A.17(3) be deleted and that they are considered as non-conforming. The Planning Department also recommends the effective date of the amendment start on February 1, 2008 to allow adequate time to coordinate permitting issues with Central Permitting.

Commissioner Barnes seconded the motion.

The Vice Chairman stated that he had worked on this issue since he was a "young man" and that he feels very good about it. He thanked everyone who had worked on it.

He called the question. The motion carried four (4) to zero (0). The Ordinance is attached hereto and by reference made a part hereof.

BREAK

The Vice Chairman called for a five minute break.

Request to Zone Property: Consideration of 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
- 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

The Planning Director explained the area locations being considered for zoning.

The Vice Chairman stated that at the afternoon Work Session, this issue was extensively discussed; that based on this discussion, there will be several issues addressed; that the proposal and public hearing was held to address the zoning of 1,500 feet on either side of the major corridors as indicated; that this was meant to be a holding pattern while the Major Corridor Task Force completed their work; that they expect to complete their work around Christmas and meet with the Planning Board; that in the not too distant future, a public hearing will be held to address the issue, probably in February

or March, 2008; that the Board discussed in the afternoon Work Session, the possibility of approving the recommendation to zone to RA-40 all the major corridors for 1,500 feet on each side; that at the same time, they had a considerable discussion about existing businesses and trying to do right by them; that the current law would allow them to be non-conforming allowing them to expand their business; that they couldn't change their business but they could expand it; that they also talked about, when they have the public hearing on the Major Corridor Ordinance at the same time of the public hearing on zoning, that whatever current businesses are in existence to whatever category they would belong to, i.e. business, light industry, institutional, industry, etc.; that that would allow considerable flexibility in the type of businesses that can be put in each area; that although they would be nonconforming and it would give them more flexibility; that they would no longer be nonconforming; that if it was approved, it would become business, light industry, institutional; etc.: He stated that the other issue that came up, at which there would be a public hearing at as well, is that the County has businesses that have gone out-of-business; that the current regulations say that if it is out-of-business for more than a year, they have lost their non-conforming status; that given the fact that some people have empty buildings, they need to be identified where they are located and to make that part of the public hearing process; that a special public hearing might be called just to deal with this issue; that once the public hearing is held, it would go to the Planning Board and then return to the Board of Commissioners for approval; that this a major element of what needs to be completed in order to lift the moratorium; that the Board wants to do this as soon as they can; that the year on the moratorium will be up on June 3, 2008; that they expect the changes with the business which they are discussing that would become nonconforming by the Board's action at the night's meeting; that they would have, before next June, a wider range of potential for what their business could become; that that seems to be a good way of addressing the needs of the existing businesses but since it is a change in zoning, it would require a public hearing but they would waive the fees associated with the rezoning that was approved.

Commissioner Cross asked if the Board could take into consideration Mr. Plummer's building on Highway #64 built specifically for a rental business.

Vice Chairman Lucier stated that it was his understanding that some people may have put money into renovating a facility, house, or structure with the idea that it would become some type of business activity; that since they have already put money into it, they deserve to be considered for the rezoning; that that would be a third category that would come up at the public hearing; that their chore would be to try to identify other situations of which the Board is unaware; that there will have to be some proof that those improvement activities have in fact occurred; and that there may be others that are less clear. He stated that the public hearing would also be on the nodes recommended by the Major Corridor Task Force by that time.

Nick Robinson, speaking as a member of the Major Corridor Task Force, stated that they had had a situation arise that a citizen that came to one of their meetings; that he owns a piece of land that he has been trying to sell for commercial purposes; that the area is now unzoned; that the discussion of zoning has "squashed" the deal; that it is his understanding that the Board wants to make certain that undesirable businesses do not come in to unzoned parts of the County; that his land is unquestionably in an area that the Major Corridor Task Force is going to designate as a commercial node.

Vice Chairman Lucier stated that he thought the citizen understood that; that he thinks, if he would show to a perspective buyer, the draft he has in hand from the Major Corridor Task Force, that his property value will go up.

Mr. Robinson asked if the citizen would have to rezone the property.

The Vice Chairman stated no, that that will be done when it is proposed by the Major Corridor Ordinance; that it will be designated as a commercial node; and that he will not have to do anything except wait.

John Graybeal, member of the Major Corridor Task Force, stated that it was his understanding that the RA-40 would come down and then allow folks that suddenly find themselves in an RA-40 zone but are operating a business take the cases that come up on

a case by case basis. He stated that it was his understanding that when someone comes in and a particular node is recommended for a particular location, that does not automatically constitute any kind of rezoning; that if they recommend that a node be there and that is now territory that has been zoned RA-40, then the property owners would have the ability to come in at that point and seek rezoning saying that they are now in an area that is a node.

Vice Chairman Lucier stated that there would be some people who would be perfectly comfortable with their nonconforming use and they feel like they can expand if they want to; that he thinks what the Board will do is ask the County staff to contact them and ask them if they want to be part of this public hearing or ask if they are happy with their nonconforming status; and that he feels they need to be proactive when presenting them with that option.

Sally Kost, member of the Major Corridor Task Force, stated that there was a discussion today regarding County-initiated rezoning parcels; that she would think that the nodes would fall under that same thing, County-initiated rezoning, not left up to the individual property owner.

The Vice Chairman stated that he thought that should be part of the public hearing process where they received recommendations, which would then go to the Planning Board, they would give a recommendation, the Board of Commissioners would have all recommendations and comments from the public hearing, all in which to use to make a decision.

George Farrell asked if there was an existing building permit which had not yet been built in this area, what is the expectation on it.

The Planning Director explained that the question was if someone had a building permit but had not built and is in a similar category of a person who has built but there is no use in the building, he cannot be considered a nonconforming use because there is no building there yet. He stated that he could come to the Board and ask to get it zoned to a business district if he wanted to move on it prior to whatever actions the Board takes when the Major Corridor Task Force does its work, but until that time, they are residential/agricultural.

A discussion ensued among those in attendance.

Bill Harris, representing Southern Wood Piedmont Company, stated that he was unclear as to how they could fit into the scenario.

The Vice Chairman stated that he felt that the Board would exempt that property because it was a contaminated site, could not be residential, and that clean-up operations are now on-going.

Mr. Plummer stated that he had an open permit also where retail space has been identified. He asked if he would be able to occupy the space as far as a tenant and a retail business without a conditional use permit. The Vice Chairman stated that if he had a building permit that stated so, he did not see why he couldn't do so.

After further questions, Commissioner Vanderbeck moved to adopt **An Ordinance Amending The Zoning Ordinance of Chatham County**, accepting the Planning Department recommendation which notes the exception of parcel #9869 and to also except the other parcel #71765 and that the zoning corridor of RA-40 be 1,500 feet from the road right-of-way as stated and also existing businesses zoning fees to be picked up by the County. Commissioner Barnes seconded the motion. The motion carried four (4) to zero (0). The Ordinance is attached hereto and by reference made a part hereof.

Vice Chairman Lucier stated that when the Board has the public hearing on the Major Corridors Ordinance recommendations, the Board will also have a public hearing at that time for businesses who wish to be zoned for particular activities that currently exist.

Amendments to the Watershed Protection Ordinance: Consideration of a request for 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
2. Amend section 501 (C) and (F), Watershed Administrator duties Administrator and Duties Thereof
3. Section 503 (Changes and Amendments to the Watershed Protection Ordinance to correct references to state agencies.)

Fred Royal, Environmental Resources Director, reviewed the process of where they were today and how they had gotten to this point; he stated the purpose and intent of water quality rules was as stated in the recommendations by the Chatham County Environmental Review Board (ERB) in June of 2007, and called the Board's attention to that document in the materials; that Section 304 of the Watershed Protection Ordinance, which described the criteria and procedures required in classifying streams within Chatham County but did not include State rules; and, that great effort had been taken to make sure the document was legally defensible and scientifically based.

See afternoon Work Session Minutes for further review.

Vice Chairman Lucier voiced appreciation to the Environmental Review Board for their substantial efforts including the two public hearings that had been held. He stated that he thought another public hearing should be held; that it not be returned to the Planning Board; and that the Board of Commissioners vote on the matter.

A discussion was held with regard to holding the Board of Commissioners' December 3, 2007 meeting in the morning or in the evening.

The Planning Director informed the Board of the legal advertising requirements regarding the public hearing.

Vice Chairman Lucier asked to get it in the newspaper; if possible, for December 4th or December 10th.

By consensus, the Board decided to hold the public hearing on December 4th or December 10th depending on when the legal requirements can be met.

The Planning Director stated that there were some things the Board discussed during the Work Session that needed clarification. He stated that one is a definition for "home occupation"; that it was pulled from one ordinance but needs to be corrected to conform with the most recent definition within the Zoning Ordinance; that if the Water Supply Watershed Ordinance is to be advertised for a public hearing it requires two weeks notice; the section of the Watershed Ordinance referencing clearing of existing vegetation references diameter at breast height; that it is 54 inches not 48 inches; that the Board talked about requiring bridges if the stream width is greater than ten feet and if they want to be changed the width to a difference distance.

The Vice Chairman stated that he felt it should be left as is. He said that he thought the same was going to hold true for Items #17 and #18 on the Environmental Impact Assessment; and that he thinks that they would want to use the Option #3.

Fred Royal stated that Residential Option #3, sliding scale, if subdivision is less than or equal to 25 lots, exempt from environmental assessment requirement unless other criterion/criteria met; that if other criterion/criteria met, then environmental documentation is required; that it generally follows the State's guidelines.

The Vice Chairman stated that the other issue to be addressed with that is to make it cover all lots in the County; that they need a recommendation from Mr. Royal, the Environmental Review Board, and the Planning Department on how to accomplish that. He asked Mr. Royal to think about it and return to the Board with his recommendation on when to start moving in that direction.

Mr. Royal stated that the Subdivision Regulations and the Zoning Ordinance need to be reviewed and modified accordingly.

The Vice Chairman reiterated that it was the Board's intent to move in this direction.

Dave Klarman stated that he wanted to define how much time developers will have to get a review when they bring their plans forward and they have to have a review by the Environmental Review Board to allow and/or protest or grieve the plan submitted.

The Vice Chairman stated that this would be done in two stages; that it would be placed in the appropriate ordinances assuming it is approved; that the next step, as part of a subdivision modification, the timing might be different; that now an environmental assessment is required as part of the preliminary submission; that it is not required at sketch design; that may change when the Subdivision Ordinance changes; and that the timing will change at that point in time; that when that happens, what the Board can expect is some sort of process list as to what the process will be to make it happen.

By consensus, the Board decided to hold public hearings on Amendments to the Watershed Protection Ordinance, Amendments to the Subdivision Regulations, and Amendments to the Chatham County Zoning Ordinance on December 4th or 10th depending on the advertising requirements.

The Planning Director is to check on advertising requirements and advise the Board accordingly.

Amendments to the Subdivision Regulations: Consideration of amendments to Section 5.2A 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.

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

MANAGER' S REPORTS

The County Manager had no reports.

COMMISSIONERS' REPORTS

Lighting Ordinance:

Commissioner Lucier stated that the Board would need to schedule a public hearing on the Lighting Ordinance becoming Countywide; to include the unzoned areas most likely in January, 2008; to be discussed with the County Attorney.

Carolina Farm Stewardship Association:

Commissioner Vanderbeck informed the Board that Carolina Farm Stewardship Association, which covers North and South Carolina, awarded Chatham County three of its five annual sustainable agriculture champion awards; that the recipients were Debbie Roos as the Extension Agent of the Year Award for Chatham County, Fleming Pfann of Celebrity Dairy receiving Farmer of the Year Award, and Organic Daily Farms, received the Business of the Year Award.

The Board extended congratulations to the recipients.

Western Wake Wastewater Letter:

The Vice Chairman asked if everyone had reviewed the Western Wake Wastewater letter reflecting the Board's opportunity to meet with Apex, Cary, Morrisville, Holly Springs officials regarding the wastewater treatment plant and transmission line running through Chatham County even though they have not received official permission to do so; that the purpose of the letter is to negotiate an agreement with them as to how this can happen. He asked if the Board had read and was comfortable with the letter.

By consensus, the Board agreed. A copy of the letter is attached hereto and by reference made a part hereof. The Board asked that the letter be mailed the next day.

Soil and Water Conservation District:

The County Attorney explained that he had spoken with the Board earlier regarding the Soil and Water Conservation District; that they had a small claims action filed against them to which he had filed an answer; that it appears that the plaintiff may have filed a year or more too late; that the members of the Soil and Water Conservation District Board made a request to him to prepare a letter indicating that the County would indemnify the board in the event they were sued personally; that he told them it would be a topic that he would have to discuss with the Board of Commissioners; that Statute 153A-97 is the same statute used to indemnify the other board; that these are elected members and it is his opinion that the County indemnify them.

Commissioner Vanderbeck moved, seconded by Commissioner Barnes, to indemnify the Soil and Water Conservation District Board. The motion carried four (4) to zero (0).

ADJOURNMENT

Commissioner Barnes moved, seconded by Commissioner Vanderbeck, to adjourn the regular meeting. The motion carried four (4) to zero (0), and the meeting was adjourned at 9:52 PM.

George Lucier, Chairman

ATTEST:

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