

**MINUTES  
CHATHAM COUNTY BOARD OF COMMISSIONERS  
WORK SESSION  
FEBRUARY 20, 2006**

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The Board of Commissioners (“the Board”) of the County of Chatham, North Carolina, met in the Henry H. Dunlap Jr. Building Classroom, located in Pittsboro, North Carolina, at 2:00 PM on February 20, 2006.

Present: Chairman Bunkey Morgan; Vice Chair, Tommy Emerson; Commissioners Patrick Barnes and Mike Cross; County Manager, Charlie Horne; County Attorney, Robert L. Gunn; Assistant County Manager, Renee Dickson; Finance Officer, Vicki McConnell; and Clerk to the Board, Sandra B. Sublett

Absent: Commissioner Carl Outz

The meeting was called to order by the Chairman at 2:03 PM.

*Work Session*

1. Conditional Use Rules
2. Business Park Covenants
3. Board of Education Request
4. House Moving Impact Fee Exemption
5. Boards and Committees Appointment Discussion
6. Bynum Post Office

The County Manager reviewed the Work Session Agenda.

**HOUSE MOVING IMPACT FEE EXEMPTION**

Jenny Williams, Central Permitting Director, explained the specifics of the Affidavit for Exemption from Educational Facilities Impact Fee for House Moving.

Commissioner Emerson moved, seconded by Commissioner Barnes, to approve the Affidavit for Exemption From Educational Facilities Impact Fee for House Moving, attached hereto and by reference made a part hereof. The motion carried four (4) to zero (0).

**CONDITIONAL USE RULES**

Paul Messick, Jr., Attorney, explained that pursuant to the request of the Board of Commissioners, they have examined the current process for Conditional Use District rezoning applications; that they have previously advised the Board about certain infirmities in the current system that might cause future decisions of the Board to be overturned upon appeal; that these issues involve the requirements of procedural due process and a fair hearing; that they have also previously discussed with the Board the fundamental differences between legislative and evidentiary hearings, their respective benefits and limitations, and the types of issues involved in each; that because of the nature of Chatham County’s

conditional use district zoning process, the two types of hearings are inextricably linked together.

He stated that Phil Green, from the Institute of Government, promoted the parallel Conditional Use District rezoning process more than twenty years ago; that the process was intended to ameliorate two problems; that an applicant might propose and accept limitations on the uses otherwise permissible for a specific parcel of property in order to make his proposal more acceptable; that the conditional approval of an applicant's site plan by means of a conditional use permit issued contemporaneously with the zoning map amendment would assure the public health, safety and welfare; and that conditional use district zoning eliminated the problem of contract zoning.

He stated that the legal distinctions between legislative and quasi-judicial proceedings have evolved since this type of zoning was first proposed; that courts are now far more attentive to procedural issues than ever before; that David Owens, Phil Green's successor at the Institute of Government (now the School of Government) has written extensively on this subject; that while decision-makers like the Board of Commissioners are entitled to great latitude for legislative decisions, they are more constrained in the quasi-judicial area; that courts usually defer to the local governing body in general zoning matters, but that they are more apt to overturn local decisions which involve quasi-judicial matters if due process issues are not observed.

He further stated that since development requests in Chatham County often involve the CUP process, it is incumbent for the Board of Commissioners to treat these matters as judges without partiality and basing decisions upon substantial, competent and material evidence received in an open forum with interested parties having notice and a fair opportunity to participate; that while the parameters of due process are not fixed, the Board of Commissioners should balance the private property interest involved in a CUP request, the risk of deprivation of that interest and the probable value of additional procedural safeguards, together with the administrative and fiscal constraints of the County; that in the Chatham County land use context, unless the legislative and quasi-judicial issues are separated in some fashion, it will be difficult to apply different standards; that if there is but one hearing, all testimony will need to be under oath and the more restrictive limits of quasi-judicial proceedings need to apply; and separation of the hearings will allow application of the appropriate standards, but at the cost of some possible confusion.

Mr. Messick stated that the Board of Commissioners is required to submit the rezoning request to the Planning Board for review and recommendation prior to making its decision; that under the current ordinance, review and recommendation occurs after the public hearing which currently included both legislative and evidentiary hearings as one; that a considerable time may elapse before the recommendation is made and there may be modifications proposed to the application in response to the concerns of the Planning Board and interested parties; that most jurisdictions have the Planning Board review prior to the "official" evidentiary hearing; that in those situations, the staff and Planning Board recommendations are presented at the public hearing; that some jurisdictions allow a public hearing before the Planning Board; that receipt of staff and Planning Board information after the hearing without affording interested parties the right to rebut or cross-examine prior to a Board decision may be *ex parte* communication as well or at least not competent evidence; that much of the information typically received from the Planning Board and staff is necessary to review these types of requests; and that they recommend that the zoning ordinance be amended to allow that type of review prior to the public hearing required for either legislative or evidentiary hearings.

He presented two draft procedural rules for the Conditional Use District Public Hearings for the Board's consideration stating that one separates the hearings, provides for opportunities for staff, the applicant, and the general public to speak on the legislative issue of rezoning a particular parcel of property to a conditional use district and for interested parties to speak on the quasi-judicial issue of the conditional use permit. He stated that the other draft assumes one hearing for both issues, but attempts to provide a more formal format than has been addressed in the past; that both allow the Board of Commissioners to accept supplementary material, although that may well require a further evidentiary hearing; that there may be other options for the Board's consideration as well; that some North Carolina

jurisdictions delegate the responsibility for quasi-judicial decisions to planning boards or boards of adjustment; that some other states have hearing examiners deal with quasi-judicial matters; and that less formal procedures may also be more appropriate for less complex CUP cases as well.

He stated that although these rules are not proposed as an ordinance amendment, substantive changes might be required to fully implement them if otherwise acceptable to the Board of Commissioners.

The County Attorney stated that one main advantage of having two separate hearings is that the Board is charged in the quasi-judicial with making a decision based upon competent evidence that is presented; that if a hundred people are appearing and there is one combined hearing, it would be difficult for the Board to keep track of who was presenting evidence that was allowable under the quasi-judicial proceeding and who was getting information to the Commissioners for a legislative decision which could not be used for the quasi-judicial; that when there is an appeal and there is a court record there, it would presumably have to be defended that it would be easier for the Board to keep them separate if they were separate proceedings. He stated that they would work with the Board however it decides.

Commissioner Emerson stated that he would like for the Planning Director to investigate with some of his peers around the State that have a community meeting, planning board hearing and commissioners' hearing and report how such a process is working both administratively and from a public standpoint.

The Planning Director stated that they may find that not many counties do them this way; with the three meeting/hearing process and that Lee County recently changed where they have conditional zoning but does not require a community meeting. Commissioner Emerson requested that the Planning Director find out how our neighbors handle this issue.

Commissioner Cross stated that he would like for the Board to follow the same process that they are now and hold a second short public hearing to receive additional input, that if anyone comes to the Planning Director with additional information, that the first public hearing would be continued or another scheduled if the first were closed. The second hearing would be to receive pertinent information received following the initial hearing and before the Board makes a decision.

The Chairman asked the Planning Director if he could run this by the Planning Board and return at the March 20, 2006 Work Session with the requested information.

## **ECONOMIC DEVELOPMENT PRESENTATION**

Jennifer Andrews, Attorney, reviewed the covenants and restrictions for the Central Carolina Business Campus and explained the rationale on which to base decisions in order to legally facilitate the sale of property.

The Chairman suggested that the County Attorney, staff, and the Economic Development Commission meet to review the hospital's request of the proposed covenants in conjunction with Siler City's covenants and those of Central Carolina Community College.

After considerable discussion, the County Attorney stated that, assuming that all entities could get together, the details could be worked out by the March 06, 2006 Board of Commissioners' meeting.

The Board will review proposals at their March 06, 2006 Board of Commissioners' meeting.

**BREAK**

The Chairman called for a five-minute break.

## **BYNUM POST OFFICE**

The County Manager explained the specifics of the site location for the Bynum Post Office. He stated that post office officials had not given their approval of the site, but it is expected within the next few days.

## **BOARDS AND COMMITTEES**

Commissioner Cross reviewed the Board appointment handouts and recommended that they be approved as the basic rules of procedures.

After considerable discussion, Commissioner Emerson recommended that the handout be distributed to the various County boards and that their feedback be gathered and discussed. The process is to begin with the Planning Board.

The County Attorney stated that some of the boards are very specific as to terms, members, member qualifications, etc.; that in order to make a change on the Planning Board, there would have to be a change made to the ordinance; that some require a public hearing process; and that he would say most of the boards and committees are set up for continuity purposes with staggered terms.

Commissioner Cross explained that he was not talking about making all boards with three-year terms; that some should not be replaced because of the positions they hold; that a newly elected Commissioner should have the option to leave a sitting Board appointee in place or to nominate a replacement of his choice; that the main thing in which he is interested is that if he feel that he has “good cause” he may nominate a replacement appointment for his/her district at any time during a term; that the appointee being considered for replacement will be afforded the opportunity to address the “good cause” with the Board of Commissioners prior to a decision, if he/she desires.

The County Attorney asked if Commissioner Cross had anything built in to deal with it if the “missed meetings rule” was eliminated.

After further discussion and by consensus, the matter is to be revisited by the Board of Commissioners after the Planning Board has an opportunity to review the handout.

## **BOARD OF EDUCATION REQUEST**

The Chairman explained that the Board of Education had previously asked for a forty-three million dollar bond amount for the new high school to be voted on in November; that the School Board, after having talked with their architects, did not feel that this amount was going to be adequate; that they are returning to request that the Board of Commissioners submit a bond referendum to the registered voters of Chatham County in the amount of \$55,000,000 for a new Northeast High School and \$4,500,000 for facility improvements at Northwood High School.

The Finance Officer explained that this would be impossible; that something would have to be forfeited or the financial model would have to be redone and all projects would have to be put on hold until the model could be changed.

The County Attorney explained that the first step in the process is that the School Board has to request that the Board of Commissioners call an election on the question of whether to issue “X” number of bonds for whatever purposes the schools request; that it is his belief that if this is not done and that they desire to do something different, that the School Board would have to come up with a new resolution. He stated that the other question is whether the Board has the discretion to say that they are not going to do that.

Commissioner Emerson stated that the citizens will want to know what the money is specifically going to be used for and how it is going to be paid back.

The County Manager reminded the Board of the joint meeting with the Board of Education to be held at the Horton Middle School Conference Room at 6:00 PM on March 13, 2006.

**Cary Town Council Meeting:**

Commissioner Barnes stated that he was in a Cary Town Council meeting two weeks ago; that Ernie McAllister made the statement that both the Cary Planning Department and the Chatham County Planning Department had met and started the process for a land use plan for east Chatham; that he would like to have an update at each Board meeting in order to know what is going on.

The Planning Director stated that a schedule had been adopted; that there will be another meeting in March; that they looked at getting maps together showing the different regulations for jurisdictions; that he is having a difficult time finding a place at which to hold the Chatham meeting; and that is as far as they have gotten so far.

**Grants:**

Debra Henzey, Grants and Special Projects Director, updated the Board on grant monies received by the County. She stated that there were twenty-two applicants, fourteen of which met the requirements and were selected, for the low-income water hook-up CDBG grant.

Ms. Henzey stated that she and Will Baker, Utilities Director, attended a workshop sponsored by UNC-Chapel Hill on water/sewer funding; that they basically presented information that there will be very little grant monies available for this; and that most monies available would be in the form of loans.

Ms. Henzey also stated that she had worked with Vicky Calise, Health Department Administrative Assistant II, to secure a grant for a Spanish translator for the Health Department and that they had been notified that the grant had been approved.

**Board of Education:**

Dr. Ann Hart, Chatham County Superintendent of Schools, stated that at their last meeting, the Board of Education approved a bond resolution for the new high school of which the original amount was \$43,870,000; that they requested \$55,000,000 based on an estimate from their architects for an increase for construction costs; that they also asked for \$4,500,000 for renovations and additions at Northwood High School which will be needed even with the new high school; that the total package is \$59,500,000; that the high school project is due to come on line 2010-2011; and that if construction costs maintain, as they currently stand, then what would have cost \$38,000,000 a few years ago, would cost \$55,000,000 by the projected date. A copy of the bond resolution is attached hereto and by reference made a part hereof.

Chairman Morgan reiterated that the County had a workable plan for the first request of \$43,000,000 but that \$55,000,000 was impossible to be paid with the revenue stream that the County has; and that he doesn't know what the Board will be able to do.

Dr. Hart stated that Northwood High School is now very crowded; that it is expected to grow by approximately five hundred high school students within the next five to six years; that when the new school opens, there will be two schools with approximately eight hundred students; that the new addition at Jordan Matthews at a cost of \$4,500,000 is for a new cafeteria; that the old cafeteria would be converted to classrooms; that this is a similar idea that they would probably want to do at Northwood; and that Northwood 's core facilities cannot handle the students that they presently have.

Commissioner Barnes stated that he thinks everyone present would agree that the Board has

supported schools; that he has been accused of not minding to spend some money when it's necessary; that the Board is looking at \$133,000,000 that they have just done; that he knows that the Finance Officer got stressed out more than once over that; that to jump from \$43,000,000 to \$59,000,000 leads to serious doubts that it will be passed on a bond issue vote; and that the Finance Officer said that it was impossible to do.

- Dr. Hart asked if it was impossible to pass the bond or impossible to fund if the bond was passed.

- Commissioner Barnes replied, "Both".

- The County Manager stated that the only way it could be paid was to increase taxes.

- Commissioner Emerson stated that the County had a Capital Plan; that the Board hired financial consultants to assist them in analyzing repayments; that they have developed recommendations for the Board; that no one would question the need; that he thinks this returns the Board to "square one" on the old Capital Plan; that the Board may have to rethink their priorities; that it is extremely important that any bond issue that the Board goes into with the schools that the two boards be united behind it; that the people are going to ask two questions: 1) How is it going to be paid for? 2) How is it going to affect the individual tax payer?; that these are legitimate concerns; that under the present debt service plan, it will not "fly"; and that there will have to be a lot of work done on it.

- Dr. Hart reminded the Board of the joint meeting with the Board of Education to be held at the Horton Middle School Conference Room at 6:00 PM on March 13, 2006; that they plan to show the Board the plans and budget for Siler City Elementary School; that they have hired Bogus Management to come in on top of their architects to look at their budget and their plan to tell them what they can take out as it is over budget; that it is over budget due to construction costs; that they are going to do alternate bids; that they want to review it with the Board of Commissioners; that they have had some unexpected things to come up; that they received a letter stating that there would have to be off-site roadway improvements made at an additional cost of one-half million dollars; that those were unexpected costs they will not come in at the current budget; and that the project cannot be built at the current budget.

- Commissioner Emerson voiced concern stating that the Board did not pull the current figures out of the air; that the school board hired consultants to perform studies on needs and requirements over an extended period of time; that they supposedly came up with some recommendations which included escalated inflation costs over time; and that now, these figures are apparently no longer valid.

- Dr. Hart explained that escalation costs were built in; that they were based on current costs; that after the first estimate, and there were drastic cost increases due to Hurricane Katrina.

- The Chairman explained that the Board would probably complete Siler City Elementary, but might have to back up with the other two and start over.

- A discussion ensued and Chairman Morgan asked that Dr. Hart provide up-to-date figures for the new middle school and renovations to the cafeteria at the March 13, 2006 meeting.

## **RECESS**

Commissioner Barnes moved, seconded by Commissioner Cross, to recess the meeting. The motion carried five (5) to zero (0), and the meeting was adjourned at 4:53 PM.

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Bunkey Morgan, Chairman

ATTEST:

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