



Chatham County Planning Board Approved Minutes November 13, 2018

The Chatham County Planning Board met in regular session on the above date in the Agriculture Building Auditorium, Pittsboro, North Carolina. Members present were as follows:

Present:

Carolina Siverson, Chair
George Lucier, Vice-Chair
Jamie Hager
Allison Weakley
Tony Gaeta
Bill Arthur
Gene Galin
Emily Moose
Clyde Frazier

Absent:

Brian Bock
Jon Spoon

Planning Department:

Jason Sullivan, Planning Director
Hunter Glenn, Planner I
Dan Garrett, Clerk to the Planning Board

- I. INVOCATION AND PLEDGE OF ALLEGIANCE:
Mr. Gaeta delivered the invocation and afterwards everyone stood and recited the Pledge of Allegiance.
- II. CALL TO ORDER:
Chair Siverson called the meeting to order at 6:30 p.m.
- III. DETERMINATION OF QUORUM:
Chair Siverson stated there is a quorum (9 members were present and 2 absent). Mr. Bock and Mr. Spoon were absent.
- IV. APPROVAL OF AGENDA:
Approval of the Agenda - Chair Siverson asked the board members if there were any issues with the Agenda. There was not and it was approved.

V. APPROVAL OF THE MINUTES:

Chair Siverson asked for consideration of a request for approval of the September 4, 2018 minutes. There were no objections by Board members and the September 4, 2018 minutes were approved.

Motion was made by Vice-Chair Lucier to approve; seconded by Ms. Hager.

Motion passed unanimously

Chair Siverson asked for consideration of a request for approval of the October 2, 2018 minutes with a couple of minor proposed changes. There were no objections by Board members and the October 2, 2018 minutes were approved.

Motion was made by Ms. Hager to approve; seconded by Mr. Arthur.

Motion passed unanimously

VI. PUBLIC INPUT SESSION:

Mr. James Elza of 110 Christow Ct. spoke and had a couple comments. Mr. Elza stated that he was here to speak on the oil and gas extraction item. He stated he has two points he would like to make. Mr. Elza said that the ordinance as it is proposed, doesn't make a lot of sense. Mr. Elza stated that Oil and Gas Exploration is an industrial use as far as he is concerned and should not be allowed in residential or agricultural areas. Operations should be regulated as an industrial use only. He said it is a generator of gas supply which is later distributed and a mining activity. The proposal to allow Oil and Gas Extraction in all zones is a downzoning, and is inappropriate.

Mr. Elza stated that if you examine the Standard Industrial Classification System, a commercial code book which explains every use you can possible think of for industrial use. Section B of this book is listed as Mining. Under Section B, Mining are four subsections: 10 - Metal Mining, 12 - Coal Mining, 13 - Oil and Gas Extraction, and 14 - Mining and Quarrying - Non-metallic. If asked to find where in the Table of Permitted Uses the activity Oil and Gas Extraction is listed, a Zoning Administrator would likely look at the SIC, as this will lists virtually all uses.

Mr. Elza continued saying that Mining in the Table of Permitted Uses is listed as Conditional Use in the industrial zone. A clarifying note might be added to reduce

the possibility of disputes by adding Metal Mining, Coal Mining, Oil and Gas Extraction, and Mining and Quarrying - Non-metallic to explain what mining means.

Mr. Elza stated that the State by law, has restricted counties from prohibiting Oil and Gas Extraction is not unusual. Basically, a county has to allow places for all uses to include everything from sanitary landfills to XXX dance clubs. The only difference here is the possibility of review by the Oil and Gas Commission. If the use of mining is already regulated in our Ordinance, the Commission would have no jurisdiction for review.

Mr. Elza stated his second point is Lake Jordan and Lake Harris must be protected. Watershed regulations may protect Lake Jordan, but they do allow mining activities in the Use Appendix. Whether the County would zone an area industrial and grant a Conditional Use Permit in the Lake Jordan Watershed Area is unlikely, but not prohibited. Mr. Elza stated that watershed protection applies to Lake Jordan, but mining is one of the things that escapes through.

Mr. Elza stated that Lake Harris may be protected by the Nuclear Regulatory Commission, however, whether those regulations are so, was not known at the public hearing. He stated we needed to know if Lake Harris is protected by the Nuclear Regulatory Commission. If satisfactory answers to these questions cannot be obtained, an overlay zone which does not allow the proposed list of Conditional Use uses, might be considered. Mr. Elza stated that in the past there was discussion of Conservation or Recreation Zones in the Comprehensive Plan, so that may be where we need to go. He stated we need to have absolute control of both of the lakes. Mr. Elza asked if the Board members had any questions.

- Vice-Chair Lucier stated that he understood what Mr. Elza said about the water protection issue for Jordan and Harris Lake, but was not clear on what the Planning Board should do for the ordinance classification. Vice-Chair Lucier asked, are you suggesting we shouldn't do anything, that it is already protected through the Conditional Use Permit process?

Mr. Elza stated that it is an interpretation to what mining means. We just need to clarify what mining is. Vice-Chair Lucier asked Mr. Elza if he thinks we need an ordinance. Mr. Elza stated that he did not think so. In his opinion everything is covered.

- Ms. Weakley stated that she was not able to attend the Public Hearing, but watched the video. She stated that Mr. Elza had recommended at that time that Oil and Gas Exploration should only be used in industrial areas. Mr. Elza stated that she was correct and that is what the ordinance states right now.

Ms. Weakley stated that mining is not only allowed in the industrial zones. Mr. Elza stated mining is only allowed in Conditional Use and Industrial only. He also stated that there is industrial lands around the Lake and Moncure that could be effected. This is why we need the overlay or something else in place. If you look at the Oil and Gas Commission they have to do findings of fact, and if they have to protect the drinking water and nuclear lake, that is a bad deal for them. He stated he doesn't see that in the ordinance.

- Ms. Weakley stated in addition to Jordan Lake, Sanford buys water from Chatham County and that is downstream. Mr. Elza stated he is only talking about Chatham County jurisdiction. He stated that there are pieces of the County that have a shared layer underneath it that would be available for Oil and Gas Extraction. Mr. Elza stated, even if we did an overlay on Jordan Lake and Harris Lake, there is still some Deep River properties that could be effected. They have to be rezoned to industrial and Conditional Use Permit.
- Ms. Weakley asked, how far do you go in the watershed protection, Jordan Lake is a huge watershed? Mr. Elza stated, all the way that you have to go. It is not to be compromised.
- Chair Siverson stated that we will discuss more on the topic when we get to it on the agenda.

VII. SUBDIVISION: No Items

VIII. ZONING:

1. A Quasi-Judicial request by Carolina Meadows Inc., for a Conditional Use Permit revision to construct 40 residence units in four buildings, 3 stories each. In Area C, replace the existing Skilled Nursing Facility with a new four story facility and replace existing one story villas with 3 story unit. Also replace the existing Independent Living apartments with four story Independent Living apartments. This will complete the total number of 750 residential units allowed per the CUP. Parcels 62114, 64734, 20033, and 74450, Williams Township.

Before Mr. Sullivan started to read the staff notes, he showed the Planning Board a layout of the existing Carolina Meadows property and what they have planned for the property and the future of Carolina Meadows.

Mr. Sullivan gave an overview from the staff notes and reported that a quasi-judicial hearing was held October 15, 2018. Planning staff, the applicant's attorney, Nick Robinson, and civil engineer Mark Ashness presented the request.

Planning staff indicated all the requested changes as noted in the application materials that were not reflected completely in the legal notification. The request also includes 40 residential units being located in Area B, which is currently approved for a new health care facility, and the health care facility is proposed to be relocated within Area C. Area C will also include the demolition of the existing villas that will be replaced with three-story units and replacing the existing independent living apartments with four-story units. The maximum buildout for residential units will not exceed the approved 750 units.

Mr. Sullivan also stated that Carolina Meadows was originally approved on February 7, 1983 and there have been several modifications over the years, all of which have been approved with latest approval occurring in 2014. Due to increasing demands, this revision incorporates more housing options for residents and reconstruction of the skilled nursing facility as noted in the statement of purpose.

Mr. Sullivan reported that the request before the Board is for reviewing and considering approval of a revision to a Conditional Use Permit, the Board must find that all of the Findings of Facts shall be supported. Per the Zoning Ordinance "In considering an application for a conditional use permit the Board of Commissioners shall give due regard that the purpose and intent of this Ordinance shall be served, public safety and welfare secured and substantial justice done. If the Board should find, after public hearing, the proposed conditional use permit should not be granted, such proposed permit shall be denied."

Mr. Sullivan continued saying this property is currently zoned R-1 Residential with a Conditional Use Permit for a planned unit development and has remained a valid use to date. The adjoining properties are zoned R-1, R-1 with a conditional use permit for a planned unit development (i.e. Governors Club, and R-5(Corps property associated with Jordan Lake. The northern property boundary adjoin Orange County. The property is located within the WSIV-Protected Area district and the Jordan Lake buffer rule area.

The findings are as follows:

Finding 1 – The use requested is among those listed as an eligible conditional use in the district in which the subject property is located or is to be located. The requested uses are all allowed uses within the conditional use district and, as such, are eligible conditional uses within the district. It is planning staff's opinion this finding is met.

Finding 2 – The requested conditional use permit or revision to the existing permit is either essential or desirable for the public convenience or welfare. Carolina Meadows continues to thrive as a continuing care retirement center. A more modern, up-to-date facility and overall project is needed to incorporate better accessibility and care for the residents of Carolina Meadows.

Mr. Sullivan stated that the plan presented incorporates some new design elements starting with the green space to be developed over underground parking. There will also be parking for residents under the multi-level units. No additional public improvements are needed to redesign this site. The site will continue to be served by the county water system and Aqua will maintain the wastewater treatment plant. **It is planning staff's opinion this finding is met.**

Finding 3 – The requested permit or revision to the existing permit will not impair the integrity or character of the surrounding or adjoining districts, and will not be detrimental to the health, safety or welfare of the community. No additional property is being added to the project, but the applicant may request a watershed density transfer to areas B and C. A density transfer is authorized under the general statutes and local governments must allow them if the application meets the statutory requirements. A density transfer request would have to be submitted to the Watershed Review Board for review and approval. The project is located within the WSIV-Protected Area watershed and the Jordan Lake buffer rules apply.

Mr. Sullivan stated that the Appearance Commission (CCAC) reviewed the proposed site plans July 25, 2018 and unanimously recommended approval for all phases as submitted. The intended vegetative buffers will be installed and protected and the impervious coverage is not being increased. Should the impervious surface need to be increased due to design of the sites, specifically Area B, an offsite allocation (density transfer) will be necessary to compensate for the increase. With no change in the overall density, nor any revision of the vegetative buffers, the proposed revision should have no negative impacts to adjoining properties. **It is planning staff's opinion this finding is met.**

Finding 4 – The requested permit will be or remain consistent with the objectives of the Plan Chatham comprehensive land use plan. On page 43, one of Plan Chatham's objectives is to foster a healthy community. Carolina Meadows offers health care, a health center facility, and other opportunities for its residents to engage in healthy living.

Mr. Sullivan continued stating that Carolina Meadows is located in a Compact Residential designation as shown on the Future Land Use Map that was adopted as part of Plan Chatham. The description of compact residential areas includes single family detached and attached units and some multi-family; community centers, amenities, and recreational uses, buildings that are 1-3 stories; wastewater service, which is approved for this facility; and in close proximity to Employment Centers. Carolina Meadows is also a large employer for the county, as well as supportive of the nearby businesses in Governor's Village and the surrounding area. **It is planning staff's opinion this finding is met.**

Finding 5 – Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary facilities have been or are being provided consistent with the County’s plans, policies, and regulations. The existing project is currently served by the Chatham County Water System and by Aqua NC for sanitary sewer. There will no significant increase in water or sanitary sewer demand beyond what would be needed for the number of currently approved residential units and the currently approved health center. The proposed changes are neutral on built upon, unless as otherwise stated in Finding 3 a density transfer is needed. If a density transfer is needed in areas B or C, the application notes that water quality features will be added that will meet county stormwater requirements. **It is planning staff opinion this finding is met.**

Mr. Sullivan informed the Board that during the public hearing there were no comments received other than those provided by staff and the applicant’s representatives. There were questions from Commissioners regarding building heights, on-site amenities, design elements for new structures, and stormwater controls. Representatives for the applicants addressed those questions and noted that the build-out would likely occur over several decades and they were providing the long-range vision for the future.

Mr. Sullivan concluded in saying the Planning Board has up to three meetings in which to make a recommendation to the Board of Commissioners. The following conditions are provided for consideration if recommended for approval:

Site Specific Conditions

1. The recommendations from the Chatham County Appearance Commission (CCAC) shall be followed as stated in the minutes and as shown on the submitted site plan that reflects the adopted design guidelines. The planning staff and CCAC may conduct routine inspections of the property to ensure compliance with the landscaping requirements.
2. A building permit shall be obtained and remain valid at all times within five (5) years of the date of this approval or the conditional use permit becomes null and void.
3. Before the 60 foot height restriction can be exceeded, the Planning Department must have written authorization from the Chatham County Fire Marshal and the responding Fire Department.
4. All existing conditions shall remain in effect, except as modified by this conditional use permit amendment.

Standard Site Conditions

5. The application, standards and adopted regulations of the applicable ordinances and policies, and the approved recommendations as provided for and/or conditioned, are considered to be the standards as set forth and shall comply as stated. Changes or variations must be approved through the Planning Department or other approving board before any such changes can take place. These include but are not limited to landscaping, lighting, signage, parking, building construction, etc.
6. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Land and Water Resources, Environmental Health Division, Building Inspections, Fire Marshal, etc.) shall be obtained, if required, and copies submitted to the Planning Department to the initiation of the operation/business.

Standard Administrative Conditions:

7. Fees - Applicant and/or landowner shall pay to the County all required fees and charges attributable to the development of its project in a timely manner, including, but not limited to, utility, subdivision, zoning, and building inspections.
8. Continued Validity – The continued validity and effectiveness of this approval was expressly conditioned upon the continued compliance with the plans and conditional listed above.
9. Non-Severability – If any of the above conditions is held to be invalid, this approval in it's entirety shall be void.
10. Non-Waiver – Nothing contained herein shall be deemed to waive any discretion on the part of the County as to further development of the applicant's property and this permit shall not give the applicant any vested right to develop its property in any other manner than as set forth herein.

Mr. Sullivan stated that the site specific condition number two which currently says; A building permit shall be obtained and remain valid at all times within five (5) years of the date of this approval or the conditional use permit becomes null and void. He said this condition might be reworded to say; A building permit shall be obtained within five (5) years of the date of this approval and remain valid at all times or the conditional use permit becomes null and void.

Mr. Sullivan informed the Board that the applicant representatives are present. Their attorney, Nick Robinson, the engineer, Mark Ashness, and the President of Carolina Meadows, Kevin McLeod are available to answer questions.

Board Discussion followed and some items discussed were as follows:

- Mr. Galin, asked about site specific condition number three to regards of the fire department and the height of the building they feel comfortable to serve. He asked, do they need a ladder truck to reach the height of 70 feet? Mr. Sullivan answered, no that 70 feet is a height they feel comfortable with. These building will most likely be sprinkled. Mr. Sullivan stated that Mr. Ashness can give more details about this topic. He also stated that he believes North Chatham Fire Department might be buying a new ladder truck as well, but not sure what the height would be on that truck. The height of the building is not determined by the ladder truck.
- Mr. Robinson came to the podium and spoke. He stated that Mr. Sullivan did an excellent job summarizing their plans. Mr. Robinson wanted to make clear that site specific condition number two be edited slightly to read like this. "A building permit shall be obtained within five (5) years of the date of this approval and remain valid at all times or the conditional use permit becomes null and void."

Mr. Robinson stated that there was a Public Hearing last month and they brought all the required evidence to the hearing. He stated that it went well and all the residents of Carolina Meadows are satisfied with the proposals. He also mentioned that in the plan they are going to move the health fitness center to be more integrated with the central vicinity of the property, which is what the residents prefer. Mr. Robinson also notes that where the existing health fitness center is now will become residential units.

- Vice Chair Lucier stated that there were a couple questions that came up about the Army Corps land on the northeast side of the property. He asked, is there anything being done closer to that land that was ever done before? Mr. Robinson stated, no there is not going to be any activity near the Army Corps property.
- Mr. Arthur asked, what will happen to the residents that are living in the facilities that will be taken down? Mr. Arthur wants to make sure residents are not being forced out. Mr. Robinson stated that there is an organized staging process for that, but Mr. McLeod would be better suited to answer this question. Mr. McLeod stated that they never want to make a resident move unless for a medical or

emergency issue. He stated that in repositioning campuses there is always the resident in mind. He stated that residents come and go all the time and they will shift vacancies as needed. Mr. McLeod stated that this is a long term process and they will not make any resident prematurely move. Mr. Galin stated that this project is going to take decades. It is a projected 40 year project.

- Mr. Galin asked if Mr. Ashness, the project engineer could speak about fire protection. Mr. Ashness stated that there are existing public water lines on Mt Carmel Church Road and Whippoorwill Lane and also water lines inside the campus. He stated what they are anticipating, is probably extending a new line off Whippoorwill into Area B. Mr. Ashness stated that there are three points of access to the campus right now from Whippoorwill Lane and those three lines all converge with each other inside the campus. He stated that the buildings that will be taller will most definitely have fire suppression system and buildings at Carolina Meadows have that today.

Mr. Ashness stated when this was approved in 1983, 60 feet is probably the highest the fire department could do at the time. The fire department has been purchasing new equipment over time and they have also spoken with the Chatham County Fire Marshall and the North Chatham Fire Department and they felt comfortable about the building height of 70 feet. Mr. Ashness stated that their concern was more with the fire truck access to the building and making sure there isn't anything in their way. They felt comfortable with the site condition that they would have to be satisfied with the site plan and that includes the layout of the fire access before they will allow us to exceed the current height for any specific building and Carolina Meadows is fine with that condition.

- Ms. Weakley stated that because they are adding so many additional residential units, going from one story to three story, she asked if they had capacity for waste water. Mr. Ashness stated that they were originally approved for 750 units and Carolina Meadows built the waste water plant many years ago and was expanded in the early 2000's. He stated that this is a discharge plant and is discharged into Morgan Creek, and it was built to accommodate this level of development a long time ago, it just didn't happen until now.

Ms. Weakley asked, if the waste water plant was originally from 1983? Mr. Ashness stated yes, but it was updated substantially in the early 2000's and everything follows pretreatment requirements. He continued saying that they are not changing the scope of how the waste water plant operates, it will actually be getting closer to its full utilization.

- Ms. Weakley stated she is concerned about stormwater management. She stated that her view was, if you are going to open up a Conditional Use Permit then you may want to consider using existing permit regulations for stormwater. She continued saying that in 1983 there were not any requirements and she assumes there is not any stormwater control at all right now at the existing Carolina Meadows campus. Mr. Ashness stated that there are measures on the campus, there are some existing ponds in the core campus area. When they did the modification in 2008, it was approved about two months before the County implemented the stormwater ordinance, but he stated that they voluntarily provided retention structures in Area A and to his knowledge they have been functioning fine.

Mr. Ashness stated that in Area C they will do complete demolition and replacement. In Area B they are anticipating either wet ponds or bioretention areas to accommodate the development. He stated that there is some existing impervious surface that will be grandfathered, but they are putting more impervious surface in Area B that exist today. He stated that they will be treating those areas to the level the County requires today. Mr. Ashness continued by saying that they will need some off site Impervious Surface Area (ISA) because they will slightly be over 36% in that area.

Mr. Ashness continued saying that in Area C where they are doing the demolition, there goal is to try and offset and make it neutral. He stated that they did this with the dining hall already a few years ago. They took out some parking spaces because they added some impervious with the dining hall expansion. He stated that is their objective in Area C, but they realize that there might be some isolated areas where they are adding 5000 to 6000 square feet. In those areas they will get the necessary off-site ISA to accommodate and will also treat those areas with localized water treatment measures. Mr. Ashness gave an example of an expansion of 5000 square feet of patio space, then there would be a bio retention area adjacent to that to treat the expansion.

- Ms. Weakley asked, in Area B, why can't they treat the existing parking lot and stay under the threshold for impervious? Why do you have to pursue a density transfer? Ms. Weakley asked Mr. Sullivan to access the Conservation Map on the website to look at the area in discussion. Mr. Ashness stated that Area B drains to the west into Cub Creek along Mt. Carmel Church Rd. He stated that this area already has approval to be developed they are seeking to change the development use. He also stated that they are going to treat that to the water quality of the current County standards.

Mr. Ashness stated that the only reason they are adding impervious area off-site, is to stay within the threshold that the Jordan Lake Rule require. They are still going to treat those areas with bioretention water quality in that specific area for those uses. He continued saying that the existing parking lot drains back into the campus, so they are not incorporating that into their plan.

Ms. Weakley stated that this is 1983 verses 2018, we have an impaired Jordan Lake, and not getting any less impaired. This development is right on Army Corps land, draining directly to Jordan Lake. She stated she would like to see current stormwater standards and treating existing parking lots. If you are redeveloping in that area she would like to see the redevelopment treat as needed. Mr. Ashness stated that he is not sure where you stop with that. Mr. Ashness said what Ms. Weakley is suggesting is if they want to change a building out, why don't we tear down five more building to put in the necessary wet ponds to accommodate that. That is not economically feasible. This particular project is a jewel to Chatham County along with the retirement care facility.

Mr. Ashness continued to say that this project is competing with projects in other jurisdictions that are local. He stated they are simply meeting the requirements and exceeding them as Mr. Sullivan mentioned regarding stormwater. He stated that they feel like they are making a positive gesture to treat this specific area to the current standards for the net increase that they are adding in that area. Mr. Ashness stated that the other areas are substantially built and would be an economical impairment and would not even justify the improvement if we did what Ms. Weakley has suggested.

Ms. Weakley stated that she was not arguing that Carolina Meadows is an important project to Chatham County. She just wanted to remind them that they are right on the shores of Jordan Lake.

- Ms. Weakley asked, in terms of the density transfer, what property are they looking at to offset the impervious surface? Mr. Ashness stated that action takes place with a specific site plan submission which is the next step beyond this step now. He stated that the client has been looking at property and that this particular project is within the protected area of Jordan Lake so it would have to be additional land that fits that description, something in the protected area of Jordan Lake. Ms. Weakley asked, would it be floodplains that is not buildable anyway, or would it be open space? Mr. Ashness stated that it is too premature to say at this point, but it would be compliant with what the requirements are.

- Ms. Weakley stated that she finds it difficult to vote to approve with the continued concerns about stormwater, especially when there is an opportunities during redevelopment to address past lack of stormwater control. Vice-Chair Lucier stated that he understands what Ms. Weakley was addressing, but he will support this application because Carolina Meadows has been an outstanding member of this community and a very positive contributor. Vice-Chair Lucier also stated that the area closest to the Army Corps land is not being disturbed. They also have to be aware of market conditions and upgrade the facilities and believes they are doing a reasonably good job in terms of the stormwater issues.

Vice-Chair Lucier stated that the bar can't be set so high that it is unachievable. Ms. Weakley stated that she is not asking for the bar to be set so high that it is not achievable, she stated that this is a discussion that takes place all the time with developments approved a long time ago that have no stormwater control and how are they addressing that today. She stated that this is right next to Jordan Lake and not far away for an important water supply.

Ms. Hager asked, if there is any information that shows the stormwater controls they have, are not functioning correctly? Ms. Weakley stated that there were no controls required in 1983, which is why she asked Mr. Ashness what was being done right now to control stormwater. It doesn't sound like there is a lot going on campus currently to control stormwater.

Chair Siverson stated that they mean to address stormwater controls on this buildout as they go along.

- Mr. Robinson stated that it is important to take a step back and ask what the process we are involved in right here is. The process that we are involved in is that we are examining the evidence that was put into the record at the Public Hearing to determine whether or not the findings have been met. The first opinion from the staff, is that the 5 findings have been met. The finding that is the issue of this current conversation right now is whether or not adequate utilities storm drainage is being provided consistent with the County's plans, policies, and regulations. The Planning staff has told you that what the regulations that apply to stormwater is conclusively, without contradiction, and are exceeding the policies and regulations of the County with stormwater.

Vice-Chair Lucier made a motion to approve this item with the one revision to site condition number two to read; A building permit shall be obtained within five (5) years of the date of this approval and remain valid at all times or the conditional use permit becomes null and void; seconded by Mr. Galin.

- Ms. Weakley stated that the site could be developed under existing thresholds, they are choosing not to develop under existing thresholds, exceed them and offset it by purchasing property elsewhere in the Jordan Lake protected watershed. Off campus, out of sight, that is undeveloped. She stated that conservation is good, but this is a big offset on the shores of Jordan Lake. She stated that the developer could choose to develop with the existing threshold that they are given which is 36%, but they are choosing to go above 36% impervious surface during a redevelopment, opening up a Conditional Use Permit from 1983. Ms. Weakley stated her feelings is that they should meet the 36% threshold period. If they are going to exceed it, do additional stormwater treatment as part of this redevelopment process because it is not contributing anything, in fact it might be making things worse because they are exceeding the threshold.
- Mr. Galin stated that Mr. Sullivan and the staff do a fantastic job. The developer have met the 5 findings. Thank you Mr. Sullivan and staff, you are doing a great job.

Motion passed 8-1 Ms. Weakley opposed.

2. A Legislative Public Hearing request by the Chatham County Board of Commissioners to consider amendments to Section 10.13, Table of Permitted Uses; 11.2 Specific requirements; 11.3, Environmental Impact Assessment; and 17.9, Additional Information for Certain Conditional Use Permits (new section) to incorporate standards for high impact land use activities, including oil and gas exploration.

Mr. Sullivan gave an overview from the staff notes and reported that in August 2015, the Board of Commissioners adopted an ordinance instituting a temporary moratorium on oil and gas development activities within Chatham County. Section 7 of the moratorium includes two tasks to be completed during the moratorium. The moratorium was extended twice to July 2018 and January 31, 2019 to provide additional time to complete an oil and gas exploration study and draft amendments to the county's land use regulations.

Mr. Sullivan continued saying the Commissioners adopted the moratorium in response legislative changes to the oil and gas exploration and development rules at the state level. It has also provided time to evaluate potential impacts of these activities on the county and develop supplemental standards to the state rules. The NC Department of Environmental Quality Oil and Gas Program webpage contains background information about the potential for oil and gas exploration in the state, as well background information leading to the development of the state regulatory program.

Mr. Sullivan stated that at the state level, Session Law 2011-276 started the process to evaluate oil and gas exploration and required the NC Department of Environmental Quality to draft a study to provide recommendations to the Legislature. The study was required to address the following items: Oil and gas resources present in the Triassic Basins and in any other areas of the state, methods of exploration and production, potential impacts on infrastructure and water resources, potential environmental, economic and societal impacts, potential oversight and administrative issues associated with a regulatory program, consumer protection and legal issues, and other pertinent issues.

The Legislature received the Oil & Gas Study report in May 2012 followed by passage of Session Law 2012-143 on July 2, 2012. The 2012 session law set in motion the process to update and modernize the oil and gas regulatory program and reconstituted the Mining and Energy Commission. In July 2014 the Mining and Energy Commission produced updated rules that were approved by the Rules Review Commission in December 2014 and January 2015.

Mr. Sullivan continued by saying part of the 2012 statutory changes, restrictions were included to limit the ability of local governments to regulate oil and gas exploration. The following are excerpts from GS 113-415 with several areas highlighted that apply to local governments.

§ 113-415.1. Local ordinances regulating oil and gas exploration, development, and production activities invalid; petition to preempt local ordinance.

(a) It is the intent of the General Assembly to maintain a uniform system for the management of oil and gas exploration, development, and production activities, and the use of horizontal drilling and hydraulic fracturing for that purpose, and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of oil and gas exploration, development, and production activities by means of ordinances, property restrictions, zoning regulations, or otherwise. Notwithstanding any authority granted to counties, municipalities, or other local authorities to adopt local ordinances, including, but not limited to, those imposing taxes, fees, or charges or regulating

health, environment, or land use, all provisions of local ordinances, including those regulating land use, adopted by counties, municipalities, or other local authorities that regulate or have the effect of regulating oil and gas exploration, development, and production activities within the jurisdiction of a local government are invalidated and unenforceable, to the extent necessary to effectuate the purposes of this Part, that do the following:

(1) Place any restriction or condition not placed by this Article upon oil and gas exploration, development, and production activities and use of horizontal drilling or hydraulic fracturing for that purpose within any county, city, or other political subdivision.

(2), (3) Repealed by Session Laws 2015-264, s. 56.2(a), effective retroactively to June 4, 2014.

(4) In any manner are in conflict or inconsistent with the provisions of this Article.

(b), (c) Repealed by Session Laws 2015-264, s. 56.2(a), effective retroactively to June 4, 2014.

(c1) If a local zoning or land-use ordinance imposes requirements, restrictions, or conditions that are generally applicable to development, including, but not limited to, setback, buffer, and stormwater requirements, and oil and gas exploration, development, and production activities would be regulated under the ordinance of general applicability, the operator of the proposed activities may petition the Oil and Gas Commission to review the matter. After receipt of a petition, the Commission shall hold a hearing in accordance with the procedures in subsection (d) of this section and shall determine whether or to what extent to preempt the local ordinance to allow for the regulation of oil and gas exploration, development, and production activities.

(f) A local zoning or land-use ordinance is presumed to be valid and enforceable to the extent the zoning or land-use ordinance imposes requirements, restrictions, or conditions that are generally applicable to development, including, but not limited to, setback, buffer, and stormwater requirements, unless the Oil and Gas Commission makes a finding of fact to the contrary.

Mr. Sullivan continued saying the Commission shall determine whether or to what extent to preempt local ordinances so as to allow for the establishment and operation of the facility no later than 60 days after conclusion of the hearing. The Commission shall preempt a local ordinance only if the Commission makes all of the following findings:

(1) That there is a local ordinance that would regulate oil and gas exploration, development, and production activities, or use of horizontal drilling or hydraulic fracturing for that purpose.

(2) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance.

(3) That local citizens and elected officials have had adequate opportunity to participate in the permitting process.

(4) That the oil and gas exploration, development, and production activities, and use of horizontal drilling or hydraulic fracturing for that purpose, will not pose an unreasonable health or environmental risk to the surrounding locality and that the operator has taken or consented to take reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with applicable local ordinances.

Mr. Sullivan stated that based on direction from the Legislature, the Mining and Energy Commission moved forward with drafting rules to outline the regulatory framework for managing oil and gas exploration. There are a number of topics that are addressed in the rules that include: Financial bond requirements and reclamation, well site construction standards (includes prohibited substances .1604), setback distances, pit and tank construction standards, well site maintenance and security, closure requirements, chemical disclosure, environmental testing, water management plan requirements, waste management plan requirements, well site reclamation, operation and Production requirements for wells.

Mr. Sullivan continued saying it is a thorough list of topics and is intended to apply uniformly throughout the state, but it may not address all issues of concern at the local level or more importantly at the site specific level. It is important to note that the oil and gas rules include the following setbacks: 650' from occupied dwellings, 100' from the edge of a public road, utility or railroad row, or other row, 200' from a perennial stream, river, watercourse, pond, lake, or other natural and artificial bodies of water, including wetlands and trout streams, 100' from an intermittent stream, 650' from a public or private well

intended for human consumption or household purpose. 100' from the center of each oil and gas wellhead and closest edge of a tank, tank battery, or pit to the edge of the mapped 100-year floodplain and floodway. 1500' downgrade from each oil and gas wellhead, tank, tank battery, pit, or production facility to the edge of any surface water impoundment that serves a municipal drinking water supply or to the edge of any river having a drainage area greater than 140 square miles and upstream from a municipal drinking water supply point.

Mr. Sullivan stated that there are two local regulations that will apply to oil and gas exploration: The Flood Damage Prevention and Watershed Protection Ordinances. The county entered into the flood damage prevention program in 1997 and a map of Special Flood Hazard Areas within the county is provided below. The oil and gas rules require a 100' setback from any mapped 100-year floodplain and floodway. Watershed protection regulations were adopted in 1993 and became effective in 1994. The Watershed Protection Ordinance limits non-residential uses (no industrial uses are allowed) in the River Corridor, WS-III Critical Area, WS-IV Critical Area, and WS-II Balance of Watershed. This list of permitted uses is provided in attachments A and B of the Watershed Protection Ordinance.

Mr. Sullivan continued by saying that in August 2015, the Board of Commissioners adopted a moratorium on oil and gas development in the county, which has been extended twice and is set to expire at the end of January 2019. There are two tasks outlined – first, a study of the potential impacts of oil and gas exploration on Chatham County and second, development of regulations to address items that aren't covered under the state rules. The full text of the tasks outlined in the moratorium follows:

- a) Studies: The Board of Commissioners will hire a consultant or consultants with expertise regarding fracking and other oil and gas development activities and their impacts on the natural, man-made, and social environments and its economic benefits and costs. The consultant(s) will be tasked to study Chatham County and to analyze state and federal regulatory programs and to prepare a report for the Board regarding the full range of expected impacts on Chatham County, including financial impacts. The study will include the most current analysis of impacts in localities similar to Chatham County in other states and the effectiveness of local ordinances in managing these impacts. This study and report should be completed within the first year of the moratorium and will include the consultant's conclusions as to whether additional time is needed for thorough study.
- b) Development of Conditional Use Ordinance: Upon completion of the study and report. The Board intends to develop a draft conditional use ordinance and/or other ordinances based on the report and the consultant's advice which will be coordinated with the revisions to the County's comprehensive zoning ordinance.

The draft ordinance will be made for public review and comment and at least one public hearing will be held. Based on public comments the Board will finalize the ordinance and initiate the adoption procedure. Development of the ordinance and final approval is estimated to take one year.

Mr. Sullivan stated to complete the first task, the county contracted with Charles Yuill to prepare a report on the impacts of oil and gas development in Chatham County and the final report was presented in October 2017. The report included a brief history of fracking, Fracking and Chatham County, State Regulations, and Recommendations. The report includes that hydraulic fracturing is unlikely to occur in Chatham County due to the small acreage of the rock formation needed for fracking. Additionally, the formation has relatively shallow depths in Chatham County creating situations where shallow fracking could occur and this is where depths well depths are less than 3,000 feet. This also results in a greater likelihood of vertical fracking wells; therefore horizontal fracking is not likely to occur. Last, there are higher risks for groundwater contamination because of the short distances between the bottom elevations of zones of concerns, such as groundwater aquifers, and the top elevation of the formations to be fracked.

Mr. Sullivan said that the second task in the moratorium is drafting ordinance amendments and Chatham County and Lee County staff have been working in partnership with Poyner and Spruill to develop draft regulations. Discussion initially started with identifying areas that weren't adequately addressed by the state rules and it became apparent that this approach had several flaws. First, it's difficult to identify all potential issues of concern since many of them will be site specific. Second, the likelihood of pre-emption increases because the standards would focus solely on oil and gas exploration. Another issue that was discussed was the legislation for Environmental Impact Assessments (EIA) that was amended by the Legislature. The amendment increased the threshold for requiring an assessment from 2 acres of disturbance to 10. Since some hydraulic fracturing sites could have less than 10 acres of disturbance the EIA requirement would not apply as part of the permitting process.

Mr. Sullivan continued saying the approach that has been developed includes several amendments to the Zoning Ordinance. First, two additional uses are proposed to be added to the Table of Permitted Uses – "Oil & Gas Exploration and Development" and "Natural Gas Compressor Station". These uses are proposed to be allowed in all districts upon issuance of a conditional use permit. There was discussion about limiting the two new uses to industrial areas, but there was concern that this approach would likely result in pre-emption since these operations are dependent on the underlying geology. Second, a new section, 17.9 Additional Information for Certain Conditional Use Permits, is proposed that allows for a special study to determine if a use is consistent with the findings for issuing a conditional use permit. It would be prepared by a consultant mutually acceptable to the applicant and county and the cost of the study would be paid by the applicant. The special study would not apply when an

environmental impact assessment is required. Third, the special study provision is proposed to apply to a wider range of uses that currently require a CUP in the Zoning Ordinance.

Mr. Sullivan stated that the uses include: Asphalt manufacture or refining, cement, lime, plaster manufacture, coal or coke yards, electric light and power generation, flammable liquids – bulk plants and storage, foundries, garbage and waste incinerators, industrial chemical manufacture, mining, natural gas compressor station, oil and Gas Exploration and Development, rodenticide, insecticide and pesticide mixing plants, sanitary landfills, tanneries and tanning operations, tar and waterproofing materials manufacture, textile manufacture. Last, Section 11.3 Environmental Impact Assessment has been amended to clarify the provisions contained within that section.

Mr. Sullivan informed that a public hearing on the amendments was held on October 15, 2018. Staff and Glenn Dunn, attorney with Poyner and Spuill, provided a presentation and comments on the proposed amendments. Mr. Dunn's comments included that regulations cannot be specific to oil and gas exploration but must be generally applicable, flexible, and apply to other high impact uses. Two speakers provided verbal and written comments. Written comments were also provided by the Duke Environmental Law and Policy Clinic (written comments have been provided on the county website).

Mr. Sullivan stated that public comment included that the county should consider requiring a health impact assessment; additional uses need to be added to the table of uses including gas storage, plastics manufacturer, helium processing, and small scale liquid gas plant; oil and gas exploration should be restricted to industrial zoning districts; flaring needs to be addressed; blast zones are needed around hydraulic fracturing pads; delete the last sentence of section 17.9 which states that a special study is not applicable if an environmental impact assessment is required; and seismic testing is needed. Additional comments included that a conditional use permit is not enough because the standards for a quasi-judicial hearing require expert testimony that could limit neighboring property owner's voices; oil and gas exploration is a form of mining and should therefore be restricted to heavy industrial zoning districts; and that areas around Jordan and Harris Lakes should have exclusion zones for hydraulic fracturing operations.

Mr. Sullivan informed the Planning Board has three meetings to make a recommendation to the Board of Commissioners, but need to keep in mind that the moratorium is set to expire on January 31, 2019.

Mr. Sullivan stated that this relates to the Comprehensive Plan by: Conserve Natural Resources, Recommendation 1: Maintain and improve water quality, Natural Resource Policy 1: Ensure the long-term quality of water resources. Strategy 1.8: Update policies and regulations to limit impacts of natural gas exploration and extraction. Complete the Natural Gas Impacts Study, a parallel effort to identify the potential impacts and appropriate strategies to minimize, mitigate, or avoid such impacts. Coordinate with

regional partners, such as Lee County, to establish regulations for site planning, development, and restoration based on best practices.

Mr. Sullivan said in closing, that the staff recommendation is to discuss the proposed amendments and provide a recommendation to the Board of Commissioners on 1) a consistency statement and 2) the text amendments to the Zoning Ordinance.

Mr. Sullivan stated that at the public hearing there was a question whether or not the last sentence in section 17.9 should be deleted. He stated that he has been in discussions with Mr. Dunn about this and he is looking into that matter. Mr. Sullivan said that the special study could provide additional information above and beyond what is included in the requirements for the environmental impact assessment.

Board Discussion followed and some items discussed were as follows:

- Vice-Chair Lucier stated that this item is complicated and bit of a guessing game in terms of what is the best approach. He stated that he appreciated what the staff and Mr. Dunn has done with the comments by the public. Vice-Chair Lucier asked, does Mr. Dunn think if it is limited to industrial zones only, would it substantially increase the pre-emption risk? Mr. Sullivan stated that was correct. Vice-Chair Lucier said that we do that with other kinds of facilities that are potentially risky, so he is not fully understanding why it would be considered pre-emption.

Mr. Sullivan stated because of special legislation that is specific to oil and gas exploration and development. If we are targeting this particular industry, the risk of pre-emption will increase. Vice-Chair Lucier stated that he doesn't feel like it is being targeted, but putting it in the mix with everything else. It is saying that mining activity is an industrial activity and should require a Conditional Use Permit. Mr. Sullivan stated that he believes the concern is with the oil and gas exploration being very specific with underlying geology. We use Plan Chatham as our goal post to identify where we want to see our employment growing, where we want to see industrial activities, those areas may not overlap where fracking operation would have to locate to access the geological formation to extract oil and gas.

Board members stated that they can ask for rezoning. Mr. Sullivan stated that they can ask for rezoning, but there is a higher likelihood of denial because it is not consistent with the Plan. They have special protection from the Legislature that you can't target the industry. The other operations, we do have flexibility with. For example, if a mining operations want to open up and say that this is the

perfect clay to make bricks. That can be denied, they have to go through a CUP process, but it would also have to be consistent with the Comprehensive Plan. The other industries doesn't have the special protection from the Legislator and that is what Mr. Dunn is concerned about.

- A Board member asked if the discussion could back up a little because they were confused as to what the Planning Board was being asked to do. He stated that it seems like we are changing County Ordinance to making it easier for fracking to take place in the County. Mr. Frazier stated, not only easier to do fracking, but also all the other things that are so troubling that require CUP and in a heavy industrial zone. Now they can get a CUP anywhere in the County? Chair Siverson stated no, just the oil and gas. The other heavy industrial uses are not protected by the State statute. Only fracking can be done anywhere as it is currently written.
- Vice-Chair Lucier stated that the BOC imposed the moratorium back in 2015 to investigate what needs to be concerned about Chatham County and that moratorium has been extended to January 2019. If we don't establish an ordinance then we have no protection, so it is not that we are making it easier, the ordinance is trying to make it as hard as we can legally do, to keep fracking out of Chatham County. The risk and the difficulty is how far should we go with restrictions because of the increase risk of pre-emption.
- Chair Siverson stated that we will have this discussion tonight and ask questions that will be best answered by Mr. Dunn and schedule this again for the December meeting and make a vote then. The BOC needs to get this item because the moratorium expires on January 31, 2019.
- There was Board discussion about what constituted pre-emption and how would someone petition pre-emption and provide proof. Mr. Sullivan stated that the legislation spells out what needs to be provided for the request of pre-emption. A Board member asked if there would be a public hearing for public input during that request. Mr. Sullivan stated he would have look at the legislation on that piece and how that process would proceed. Chair Siverson asked, would be Quasi-Judicial or Legislative?
- Board of County Commissioners Chair Hales spoke and stated that the Mining and Energy Commission has re-adoption of rules. She stated that it is not legislative, but not sure what will change in their rules. There was Board discussion about the Mining and Energy Commission Rules. In conclusion to this

discussion it is not a clear answer if there would be a Legislative or Quasi-Judicial public hearing. This would be a question that needs to be answered.

- Mr. Galin asked if they could talk about the public input by Mr. Elza and what he stated about this ordinance, making a change to it would be a “down zoning”. Is he saying, if we leave it the way it is we are better protected? Vice-Chair Lucier stated that is what Mr. Elza is stating. Mr. Galin stated that in the report it states, “Local government should be able to divide zoning and land use authorities to the oil and gas industry. Local governments cannot develop and apply ordinances and regulations exclusively to prohibit oil and gas operations include fracking.” Mr. Galin stated that when Mr. Dunn comes next month that this is something we need to ask him about, if we currently have legislation that is better protected then making changes.
- Vice-Chair Lucier stated that we need to explore the targeting issue. He doesn’t see how it is targeting, if it is requiring the CUP in a heavy industry area and treating it like every other heavy industry. Vice-Chair Lucier would also be interested in the attorney Mr. Dunn’s thought on that.

Mr. Sullivan asked the Planning Board to provide additional questions to him so he can send them to Mr. Dunn and he will be better prepared for the December Planning Board meeting which he will be attending. He also asked for clarity about that this particular question, if the statute says that the rules that are in place are valid, then can we treat mining as a Conditional Use Permit in Heavy Industrial. Mr. Galin stated correct, he referenced Mr. Elza and the link to the Charles Yuill report that states, we have the right to make those regulations, and we just can’t target fracking.

- Chair Siverson stated that would mean we wouldn’t have that section that says natural gas compression station be allowed as a CUP Industrial district. We would just assume that gas and oil exploration was part of mining. Maybe we need to put something in writing about that. A board member stated that wouldn’t there still be a problem for Jordan and Harris lakes?

Ms. Hager stated that if oil and gas extraction is actually a clarified use under the standard industrial classification system under mining, we just have to point out that we are not targeting it, that it is already in there and to make that more clear. She stated that maybe it was missed and why the whole first section was pulled out as a separate bullet. She stated she would also like to know can we confirm

that it is a classification under mining and therefor shouldn't be its own separate bullet and make the argument that it is already covered.

- Mr. Gaeta stated he wanted to be very simplistic and would like to know what position we can take that is the most legal and restrictive on fracking to recommend to the County Commissioners. Chair Siverson stated, if we can limit fracking to only heavy industrial that is a step in the right direction. Vice-Chair Lucier asked, if someone put in an application in the vicinity of Jordan Lake, what is our ability to protect that Lake? There is great risk, as the reports have pointed out. The deposits of fracking are high risk of ground water contamination and Jordan Lake contamination if it is done near the lake. He asked, does the Army Corps have any jurisdiction over preventing that?

Mr. Sullivan answered, on the Army Corps property they would have total control. Outside of the boundaries, he is not sure if they have any authority. Mr. Sullivan said that because the Watershed Protection Ordinance has been approved by the EMC, it is deemed to be valid. Just like the Buffer Rules, they are more restricted what is currently allowed in the State law, but because the EMC approved them, DEQ says they are still valid. So if we are operating under the assumption that the watershed critical area and the limitation on uses, we can safely say that areas outside of the Army Corps property, can prohibit any type of industrial operation because it is imbedded in the watershed protection ordinance. Mr. Sullivan stated that we are comfortable that there is that level of protection around the Lake.

Mr. Sullivan referred to a map provided in the staff notes about watershed protection. He stated that all the areas outlines in blue on the map are the watershed districts where the watershed protection ordinance has limitations upon uses. There are no industrial uses allowed in those areas highlighted blue.

Vice-Chair Lucier asked, what about the towns? They boarder part of the Rocky River and have jurisdiction. He stated Pittsboro has jurisdiction on the south side of the Haw River as well. Can the town also use the argument with their watershed protection ordinance, would the EMC approve? Mr. Sullivan stated that he doesn't think they have the river corridor district that the County has. Mr. Sullivan continued saying if you look at the on-line GIS in the towns you will see district that corresponds with the County's watershed protection districts. The towns follow the minimum State requirements, so there will not be a river corridor in their watershed regulations that can be attached to an allowed list of uses.

Mr. Sullivan said that he wanted to point out on the map that was hard to see, on the Deep River, there are some areas that are in brown. Those are areas that are river corridor special areas. Those areas, they don't limit the uses, they are through zoning, but not watershed and that is why they are not highlighted in blue.

- Vice-Chair Lucier asked if Goldston has a water intake on the Deep River. Mr. Sullivan pointed out that there was a water intake area in blue in Goldston because it is a critical area of watershed due to the intake. The areas that are in brown are outside of that. Chair Siverson asked if there were industrial zones in those areas. Mr. Sullivan stated that there was one small industrial area.

Chair Siverson asked, why are those areas designated like that? Mr. Sullivan stated that he was not sure about the Deep River, it is such a large area that has a designation. There are other areas covering the Haw, Cape Fear, and the Deep River with all the preexisting industrial operations.

- Mr. Sullivan stated he was asking the State geologist for clarification of the areas in brown with the 1500 foot setback if there is a water supply intake that drains more than 140 square miles. If that is the case, we may have 1500 foot setbacks in the areas that are in brown, through the State rules.
- Vice-Chair Lucier asked, if we could also ask Mr. Dunn about why the special study would not apply if an environmental impact is required? It would make sense to require both, because the special study can request things that the environmental impact assessment will not necessarily address. This can also include some of the health impact assessment items we are concerned about in the special study.

Chair Siverson asked, is there were examples of jurisdictions that use special studies? She stated that she was concerned it might challenge us because it looks like an environmental impact assessment with a different name. Mr. Sullivan stated that Mr. Dunn was comfortable with that piece and could withstand a challenge. It is not authorized under the State Environmental Policy Act. It is generally applicable to a wide range of uses.

Mr. Sullivan stated that the staff has come up with some ideas and standards what the special study would look like. There would be some general information

about all the uses, but then we would want to ask specific questions or criteria to be addressed for each of those uses individually. If there was a mining operation such as an asphalt plant, there would be different questions asked if it were an oil and gas exploration.

- A Board member asked about the health impact assessment. Mr. Sullivan stated the health impact assessment is a study that has a criteria through health agencies. This was brought up in discussions with the Comp Plan, if we should have a health impact assessment with any project, like residential subdivision.
- There was some discussion amongst the Board members to continue this item into the December meeting so they can have the questions answered by the attorney Mr. Dunn.
- Ms. Weakley stated she had a couple questions about the comments from the public hearing. There was a question brought up about some additional uses we need to consider. Like helium processing and gas storage, some of these probably already fit into our existing uses. She stated that she is not as familiar enough with all the many uses that might be associated with a big or little operation. Also, because of the threshold of 10 acres verses 2 acres, how the permitting of those projects happen. For example, if there were an oil and gas developer and they found an area that they wanted to frack, would it all be one big project or would they piecemealing it together?

Vice-Chair Lucier stated that we need to take a look at the use permitting. We visited that about a year and a half ago and made some substantial changes, but we need to revisit that again. Chair Siverson stated that is another conversation for a different day with a public hearing. Vice-Chair Lucier stated that the uses can't be addressed here as part of this ordinance.

Ms. Weakley stated that there is also the secondary chain of impacts. If there is a comprehensive project, that is one thing, but if there are piecemealing it there will be secondary impacts. It is not just the drilling operation, but prefabrication and all the different things that go with it.

- Mr. Sullivan stated that there are a lot of unknowns. So if there is a fracking or a gas and oil exploration on one particular piece of property, which is one thing to consider. Then there is the area where they are drilling the wells which will have a small footprint, and the fracking fluid ponds is another impact that will be on the same site. Most of these could be greater than 10 acres just because of what has

to occur for land disturbance just to get up and running. Then the extraction occurs and you have to get it somewhere, there will be transmission lines. All those things have to work together and we really don't know how that industry operates. It seems that it will have to part of a much larger network over a much larger area.

- Mr. Arthur stated that at these fracking sites there will be a constant flow of trucks back and forth. Mr. Sullivan stated that it is just a small period of time when the site is getting ready for production. Then once it is in production it is relatively a quiet site, or at least not a lot of vehicular traffic going back and forth to the site.
- Ms. Moose asked, if there is a situation that is based on a Conditional Use Permit and even if there is a special study. Is there a mechanism for public input? Mr. Sullivan stated that CUP process is going to require a community meeting before they submit their application. Then there is a public hearing process where citizens under oath can speak at those meetings. It will be a Quasi-Judicial hearing and whoever is representing the applicant can object, but the citizen can still speak. Mr. Sullivan stated that the BOC makes the final decision and they have to weigh all the input to make their decision. If it were to go to a court the judge will look at all the evidence and comments in their decision. Vice-Chair Lucier stated that at a Quasi-Judicial hearing the citizens are not limited to 3 minutes either. There is not a time limit like a legislative public hearing.

Mr. Sullivan stated that there was a question about standing, whether or not somebody has standing to provide comments. If there is a site where industrial uses are occurring and it is a CUP, somebody that is living in a neighboring county coming in to speak at the public hearing. There is a question if they are directly impacted or not. He stated that is not a decision the BOC has to make, but it does have to be looked at. Vice-Chair Lucier stated, if you are an expert, you do not have to be a next door neighbor. The oil and gas industry has experts that they can bring in, it only seems fair that the citizens can have an expert as well. Mr. Sullivan stated that will be a good question to ask Mr. Dunn.

- Mr. Galin asked, what happens when the moratorium runs out? Mr. Sullivan stated that it will expire. He stated that they are not in the position to extend the moratorium, because we would have already needed to schedule a public hearing with the BOC. This will expire on January 31, 2018 whether or not we have standards adopted. Vice-Chair Lucier stated that another extension would constitute a delay. Mr. Sullivan stated that there is a concern about using a moratorium as a stalling tactic. The way the statutory language is set up, it is

intended to be a short duration, address what needs to be addressed, and then let the moratorium pass.

- Chair Siverson stated that it looks like the main key point on this item is, can we limit this kind of activity to heavy industrial areas. She stated that the additional requirements are a good request. Chair Siverson stated that adding the language in section 11.2, “No use shall for any period of time, discharge across the boundaries of a lot on which it is located or into the waters of the State of North Carolina, toxic, noxious or hazardous matter in such concentrations as to be detrimental to or endanger the public health, safety, comfort, or general welfare, or cause injury or damage to persons, property or the use of property or land,” is a good idea. Also, the Environmental Impact Assessments in section 11.3, adding that language because of the State statute. She stated that the only change that we need to make is take out the special study requirement if it met the standard for an Environmental Impact Assessment.
- Mr. Hager added that if there are industrial uses near the 1500 foot setback, we need to add language for that protection. Mr. Sullivan stated that we needed to get some clarification on that.

Ms. Weakley stated she has concerns about when State or Federal permits are issued for something that we have the knowledge of and issues with, but they already have permits, so we have to let them proceed. She stated that there have been a couple of situations like that. She also stated that the pre-emptive criteria, “The Commission shall preempt a local ordinance only if the Commission makes all of the following findings: (2) State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance. (3) That local citizens and elected officials have had adequate opportunity to participate in the permitting process.” Ms. Weakley stated that this is different than what we have experienced in the past where State and Federal entities are operating separate from the County processes. She stated that this criteria (3) makes her feel a little bit better. She stated that if State and Federal entities are issuing permits before we can even consider issuing a CUP, it puts us at a disadvantage.

- Mr. Sullivan stated that he will e-mail the Board members the link to the State Rules. He also stated that if there is anything you need from the Planning

Department between now and next meeting to please let us know and we will provide it.

- Ms. Moose asked, is there any way to get information on what kind of chemicals are being used? She stated if there is no disclosure and we can't do ground water testing, our hands are totally tied. Mr. Sullivan stated that there is a concern about this disclosure issue and the chemicals being used. If there is an incident on the site, what happens to the first responders? They need to know what is being used and the products being used so they can be prepared to respond and protect themselves. On other industrial sites they know what is there on those sites, so they now how to respond and what protection they need before they start responding. Vice-Chair Lucier stated that without that knowledge it is impossible to do any kind of environment or health assessment, without full disclosure of what the fracking chemicals are and how they might be transformed in the process.
- Mr. Sullivan stated that he will e-mail the full statutory language and forward a copy of the Rules as well. He asked if there was anything else the Board members would like. Mr. Moose asked to see the overlay idea. Mr. Sullivan stated that he will have that as a Planning Board question to Mr. Dunn about the overlay district as an option particular to Harris Lake. He stated that we could say both lakes, but Harris Lake is not a drinking supply and doesn't have the critical area designation like Jordan Lake. Mr. Sullivan stated that we can't have an overlay so narrowly tailored that it is focusing so much on a particular industry, which is oil and gas exploration or the likelihood of pre-emption goes up. This is also an area where we have a megasite. So if we have an overlay, how broad will the overlay be and what is going to be covered?

He stated that a question has come up to what the potential impact is going to be to Harris Lake with the nuclear plant associated with fracking. This question has been proposed to Duke. He stated he received an e-mail from Duke and it stated that they are not aware of any setbacks or any plant associated with fracking. It continued saying that there are a lot of concerns regarding fracking and seismic activities, so it would be in our best interest with any setback implemented by Chatham County be significant. Mr. Sullivan stated that Duke owns a considerable amount of the property around Harris Lake. He went to the Chatham County GIS so the Board could see all the land that is controlled by Duke around the lake.

- Chair Siverson stated that we will move on from this item and visit it again next Planning Board meeting in December. Mr. Sullivan reminded the Board members to please e-mail him with any questions to forward to the attorney, Mr. Dunn.
- Ms. Weakley asked, if the overlay is something we wanted to explore, would that have to be done before the moratorium expires? Mr. Sullivan stated that there are a couple options. If we think the existing ordinance covers it under mining, then there is no change. If we think what has been proposed is a band-aid and we think more is needed, we can recommend adoption of that with a caveat to explore the overlay after the moratorium. Mr. Sullivan stated that after the moratorium expires we can still look at different options.
- Mr. Frazier stated that he wanted to understand the logic that the lawyer used to decide where the ordinance would be more likely to be pre-emptive if we took certain prejudice views. He stated that he looked at findings of the Oil and Gas Commission and he didn't see any purpose or intent language in there. It is unclear that the purpose or the intent of local ordinances relevant to their decision. It seems that the key thing that they have to find is finding number 4, and they just have to find that it is not going to cause a hazard. Mr. Sullivan stated that they have to make all the following findings.
- Chair Siverson stated that they will be moving onto the approval of the 2019 Planning Board calendar.

IX. APPROVAL OF 2019 PLANNING BOARD CALENDAR:

- There was some Board discussion to stay with the first Tuesday of each month. There was a question about the month of July because of the 4th of July holiday. The Board agreed to have the July meeting on the 9th of July. The Planning Board members approved the 2019 Planning Board calendar.

X. NEW BUSINESS:

XI. BOARD MEMBERS ITEMS:

1. Update from the Planning Board liaisons.

- Chair Siverson stated that tonight was the Siler City Planning Board meeting, she would not be attending.
- Vice-Chair Lucier stated that Pittsboro did not have a Planning Board meeting. He stated that he had received some information on impact fees, if the town pays for them the same way the county pays for them at \$3500 per dwelling. He stated that goes into a fund for the construction of schools. So if there is 22,000 houses at \$3500, which is roughly \$80 million dollars. He states that it is quite a large sum of money. The answer is yes they do, but the County does not collect recreation fees from the towns. Mr. Sullivan stated that in the Eastern part of the County it is \$926 and the Western part is \$548. Vice-Chair Lucier stated that with each house that goes into a fund that the County can use to buy land or parks. He also stated that the town has a recreation fee of \$1035.
- Ms. Weakley asked if the Pittsboro UDO was approved. Vice-Chair Lucier stated that he did not know. Ms. Weakley stated that she is very disappointed. There are minimum standards for a lot of things and not very progressive. They are not keeping with the County and it should be better aligned.
- Ms. Moose spoke about the Agriculture meeting in October. She stated that they are interested in the UDO process and wanted to be engaged in that process. They are also continually interested in water quality and quantity. Chair Siverson stated that she can suggest for the Agriculture Advisory Board to keep notes and ideas written down for the Request for Proposal (RFP) for the UDO as things come up.
- Mr. Sullivan stated that there is a draft of the UDO, but it is not ready to be released yet. Ms. Weakley asked what the timeline might be. Mr. Sullivan stated that probably under contract in spring or summer of 2019. It will be about a 4 year project. A consultant has not been chosen yet. Ms. Moose stated that one of the things they discussed in the Agriculture meeting is to select a consultant that has some experience with agriculture. Mr. Sullivan stated that a consulting firm should have all the special expertise they need.
- Mr. Arthur asked if Chatham County has any relationship between fire control and zoning. Mr. Sullivan stated that is a program called Fire Wise where they have recommendations as

to how you arrange landscaping around your house with minimized vegetation and trees next to your house. He also mentioned that the risk here is different than the risk in other parts of the State, like the mountains. Mr. Sullivan stated that we don't have that kind of regulatory at a State level that we have to incorporate building material regulations that California local government might need to.

PLANNING DIRECTOR'S REPORTS:

Mr. Sullivan reported on the following:

1. *Minor Subdivisions/Exempt Maps* - Information was included in tonight's agenda packet for your review.
2. *Public Hearing packet for next week BOC meeting. There are three items. One is Holmes Oil Company, it is a general rezoning request. There is a text amendment to the zoning ordinance, it is a citizen initiated request. The request is to have a CUP in all residential districts for Churches and places of worship.*
 - *Ms. Weakley asked where this request originated from. Mr. Sullivan stated that there is a place of worship open in a residential area and there is heavy traffic. The neighbors are not happy about it.*

Mr. Sullivan stated that there is 17 business rezoning item as well. This is the second round of business rezoning.
3. *Mr. Sullivan informed the Planning Board that he has spoken with Ms. Thorn, the Watershed Protection Director to give a presentation for watershed protection in early 2019.*

XII.ADJOURNMENT:

There being no further business, the meeting adjourned at 8:35 p.m.

Signed: _____ / _____
Caroline Siverson, Chair Date

Attest:
_____ / _____

Daniel Garrett, Clerk to the Board

Date