



**Chatham County Planning Board  
Approved Minutes  
December 04, 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  
Gene Galin  
Emily Moose  
Clyde Frazier  
Jon Spoon

Absent:

Brian Bock  
Bill Arthur

Planning Department:

Jason Sullivan, Planning Director  
Angela Birchett, Planner II/Zoning Administrator  
Chance Mullis, Planner I  
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. Arthur 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 November 13, 2018 minutes with a few minor proposed changes. There were no objections by Board members and the November 13, 2018 minutes were approved.

Motion was made by Vice-Chair Lucier to approve; second by Mr. Gaeta.

Motion passed 8-0, Mr. Spoon did not vote on the minutes because he was absent during the November 13, 2018 Planning Board meeting.

VI. PUBLIC INPUT SESSION:

- Chair Siverson instructed the public in attendance that wished to speak on an item from the agenda that they will be called up to the podium when the item is being address. She also reminded the public that there is a three minute time limit when speaking. Chair Siverson opened the floor to anyone who wished to speak on an item that was not on the agenda. Clerk Garrett informed the Chair that there was not a citizen signed up to speak on an item that was not on the agenda. Mr. Garrett did inform the Chair that there was a citizen signed up to speak on the first item of the agenda. Chair Siverson asked for that citizen to speak at this time.
- Mr. Bob Hornick representing Mr. Smith of parcel 60279 spoke and had a couple of comments. Mr. Hornick stated that he did not have anything to add at this point, but was here tonight representing the property owner. Chair Siverson stated that if the Board had any questions about that property they will ask Mr. Hornick for clarification.

VII. SUBDIVISION: No Items

VIII. ZONING:

1. A Legislative Public Hearing to consider County-initiated rezonings of 12 selected businesses in the formerly unzoned portion of Chatham County.

Mr. Sullivan stated that this was the second round of business rezoning in the County. He gave a brief history stating that in 2016 the Chatham County Board of Commissioners voted to zone the formerly unzoned portions of the county to R-1 and R-5 residential. The Comprehensive Land Use Plan specifically supports “rezonings for businesses uses or properties made non-conforming by the extension of zoning in 2016.” Consequently, prior to the adoption of county-wide zoning, the Chatham County Planning Department sent a business listing form to every property owner in the unzoned portion of the county. Approximately 300 forms described non-conforming businesses, while the remaining 700 listed either agricultural uses of the land (which were exempted from zoning regulations via the bona fide farm exemption) or otherwise permitted uses, such as a residence. Aerial images of these 300 businesses were captured, as well, in order to further establish non-conforming status.

Mr. Sullivan continued by stated that after the inventory of businesses was completed, the next step was to meet with property owners eligible for a rezoning to determine if they wish to rezone their property, and if so, how much of the property they would like to rezone. Planning staff contacted property owners and scheduled these meetings. Additionally, planning staff coordinated with representatives from the Chatham County Tax Department, as the issue of changes in tax value was likely to arise. For the first round of business rezoning cases that were processed earlier this year, 52 parcels were requested by their owners to be rezoned. Of the 52 properties considered for rezoning 49 were approved and 3 were denied.

Mr. Sullivan stated that Planning staff is now ready to move forward with a County-initiated rezoning of the additional 17 business properties and this request includes 12 parcels that are used for business purposes or have been in the past. Mr. Sullivan stated that 5 of the 17 businesses were all associated with the same mining operation and were abstracted for the 17 businesses. The Public Hearing for the 5 businesses will be held on December 17, 2018.

Mr. Sullivan also stated that the 12 properties under consideration for rezoning include 9 for Neighborhood Business, 1 for Regional Business, 1 for Light Industrial, and 1 for Heavy Industrial. Of the 9 Neighborhood Business properties, 6 are contiguous and located in the Bonlee community at the intersection of Bonlee Bennett Road and Old US 421 S and 2 others are contiguous and located at the intersection of Siler City Snow Camp Road and Silk Hope Liberty Road. The properties proposed for Light and Heavy Industrial zoning are existing businesses that are used for machinery repair and plastics manufacturing. Mr. Sullivan informed the Planning Board that the plastics manufacturing business is a small operation where they take special orders utilizing molds. The plastic is pressed out and any excess material is either recycled or disposed of properly through a trash facility. There is no process water and it was also confirmed that the septic permit for that property is for domestic use only.

Mr. Sullivan informed the Board that a Regional Business is located at 1815 Mays Chapel Road and was previously considered for Light Industrial zoning, but the request was denied by the Board of Commissioners on August 20, 2018. During that meeting the Commissioners directed staff to offer the property owners' the option to request a rezoning to another district which was accepted. Mr. Bob Hornick, attorney representing the owners of 1815 Mays Chapel Road, spoke in favor of the rezoning request to Regional Business and said it was the best fit since Light Industrial zoning was denied. Two written comments from property owners in the neighborhood were provided in support of the rezoning request to Regional Business.

Mr. Sullivan concluded by saying that a recommendation on a consistency statement must also be provided and one has been provide for consideration if the rezoning's are recommended for approval.

Board Discussion followed and some items discussed were as follows:

- Mr. Spoon stated that he remembered during the last round of rezoning, that there were a few people that came up and spoke about opposing any kind of construction type business on that property. Mr. Spoon asked, if that was something that can be done in a Regional Business? Mr. Sullivan stated no, that would have to be light or heavy industrial use.
- Vice-Chair Lucier asked, what is going on in the light industrial Bonlee property now? Mr. Sullivan stated that it is heavy equipment repair facility that has been there for many years.

- Vice-Chair Lucier was asking about the Mays Chapel property as to why they want Regional Business and not Neighborhood Business? Mr. Sullivan referred that question to Mr. Hornick to answer. Mr. Hornick stated that Mr. Smith selected that particular designation because that will give him the most possibilities for a purchaser of the property who might want to use it for something automotive related. Ms. Weakley said that she thought that this property was used for the water bottling company. Mr. Sullivan stated that it is the same property owner, but this property was used for a storage building. Mr. Sullivan stated that the Commissioners offered the property owner to rezone to a different district because the light industrial rezoning was denied. The other property owned by Mr. Smith is zoned as an R-1.
- Mr. Spoon asked if there was an administrative due process to make sure that waste water systems are within regulations for an automotive repair facility. Mr. Sullivan stated that they would have to meet building code, fire, and environmental health requirements. He stated that automobile accessory, sale, and service would be allowed in Regional Business, but not in Neighborhood Business. Mr. Sullivan stated that the square footage allowance in Regional Business is much larger than other Business districts. He stated that the only significant difference between Regional and Neighborhood Business is the Regional allows outside storage.

Vice-Chair Lucier as if there are setback requirements in residential areas. Ms. Birchett stated that there is setbacks for any new structures. 50 feet on the front and 20 feet on the sides and rear. Chair Siverson asked, what was there before? Ms. Birchett stated a distribution center and computer parts facility.

- Ms. Weakley stated that if it becomes an automotive repair facility, any changes to the structure would have to go through current regulations. Ms. Birchett stated that she was correct. Any land disturbance or any new development outside of what the building is now, would have to meet all regulations. Ms. Weakley wanted to confirm that stormwater and erosion control would have to meet current regulations if there are changes to the existing structure as well. Ms. Birchett stated yes.

- Chair Siverson asked if there was any other questions or comments about any of the other rezoning properties.
- Ms. Weakley had a question about the plastic manufacturing property. She stated that she saw on the GIS business zoning application that it is metal manufacturing or welding. She stated that she did not see plastic manufacturing. Mr. Sullivan stated that there is an error in the database for that particular property. The data for that property has not been updated yet. Mr. Sullivan stated that plastic manufacturing is what is occurring on the property. Ms. Weakley stated that it is showing an SLM Construction, light manufacturing and welding and the property adjacent is showing metal manufacturing. Mr. Sullivan stated that the staff has not heard from the metal manufacturing property owner if they wanted to rezone. He stated that heavy industrial is the use for both properties. Plastic manufacturing on the property for the item tonight, and a metal shop on the other property. Chair Siverson stated that she spoke to a neighbor on White Smith Rd. and they stated that the plastic manufacturing facility is a very small, one man operation, doing custom work.
- Mr. Sullivan asked the Board members to keep in mind as the third and final round of business rezoning for next year, the interactive viewer has all the properties that are eligible for rezoning. He stated as we move forward and properties are rezoned, we will have situations like this property where the property owner hasn't contacted us, which is ok, and can continue to operate as non-conforming. As you look at the data viewer it can be confusing, even for the staff as well. Some properties can be sitting there idle as in a zoning stand point. Ms. Weakley thanked the staff for the GIS and data viewer as an easy and helpful tool to use.
- Ms. Weakley asked about the future land use plan overlay. She stated that it was not on the map, just current zoning. Mr. Sullivan stated that the consistency statement is based on the texted and not the map. He stated that most of these properties will not be in a designated business area. There is text imbedded in the Comprehensive Plan to cover all of these situations. From the text stand point they are consistent with the Plan.

Motion made by Mr. Spoon to approve the request of the consistency statement; second by Vice-Chair Lucier.

Motion passed unanimously, 9-0

Motion made by Vice-Chair Lucier to approve the request of the rezoning of the 12 businesses; second by Mr. Spoon.

Motion passed unanimously, 9-0

2. A Legislative Public Hearing request from Holmes Oil Co. to rezone Parcel No. 70153 being approximately 5.783 acres, located off US 64 E, from R-1 Residential to General Use Neighborhood Business, New Hope Township.

Ms. Birchett gave an overview of the staff notes and she reported that the request from Holmes Oil Co. to rezone Parcel No. 70153 being approximately 5.783 acres, located off US 64 E, from R-1 Residential to General Use Neighborhood Business. A legislative public hearing was held on November 19, 2018. Presenting the request was planning staff and Mark Ashness, PE with CE Group. No one signed up to speak on the matter. This parcel is part of the future expansion area for the existing property to the east that is zoned for business use and has been held by the landowner since 2006 per the recorded deed. The property is currently zoned R1, Residential, and the adjoining properties are zoned B1, General Business, to the east and R5, Residential on the north and west. The properties on the north and west are owned by the US Army Corps of Engineers for Jordan Lake. The properties on the south side of US 64 are zoned R1, Residential; B1, General Business; and Conditional Use B1 with a conditional use permit. The uses in the area include two convenience stores, a restaurant, and fire station. US 64 is a four lane divided median highway and the annual average daily traffic (AADT) county was 18,000 vehicles per day in 2017 at this location and 22,000 vehicles per day on the east side of intersection of NC 751.

Ms. Birchett continued saying that the parcel is located within the WS-IV Critical Area watershed and also within the Jordan Lake drainage and the built upon area is limited to 24%. There are limitations on non-residential uses within this watershed district; however there is an exception at the intersection of US 64 and NC 751. Non-residential uses within the WS-IV CA are limited to those listed in attachment A of the Watershed Protection Ordinance, except within 1,000 feet from the intersection where the uses listed in attachment B are also allowed. There are no water features identified on the USGS or NRCS maps and no floodplain.

Ms. Birchett informed the Board about the different standards that need to be met. She stated that **Standard No 1** – The alleged error in this Ordinance, if any, which would be remedied by the proposed amendment is: No error in the ordinance is being alleged. However, Plan Chatham was adopted by the Board of Commissioners in 2017 and the future land use map identifies this intersection as an appropriate location for non-residential uses. **It is the opinion of planning staff that this standard is met.**

**Standard No 2** – The changed or changing conditions, if any, in the area or in the County generally, which make the proposed amendment reasonably necessary to the promotion of the public health, safety, and general welfare are: the county's population is growing and there is an increasing need for additional services dealing in direct consumer retail and personal services. The parcel is also located within close proximity to Jordan Lake and potential tenants could provide services for visitors to the lake. There are several uses listed in Section 10.13 Table of Permitted Uses within the Zoning Ordinance and attachments A & B in the Watershed Protection Ordinance that could potentially locate on the site. A detailed site plan will be drafted when the owner has secured a tenant and received approval for the expansion area. To mitigate traffic concerns, Mr. Ashness stated there will be a right-in, right-out only driveway access for the property per NCDOT requirements.

Ms. Birchett asked the site engineer Mr. Ashness if there will be interconnectivity between the two parcels? Mr. Ashness stated that they anticipate that there will be interconnectivity between the two parcels. The parcel adjoins property owned by US Corps of Engineers on two sides and there are a mix of non-residential uses in the area with no residential uses. **It is the opinion of planning staff that this standard is met.**

**Standard No 3** – The manner in which the proposed amendment will carry out the intent and purpose of the adopted land use plan, or part thereof is: The comprehensive plan, Plan Chatham, was adopted in November 2017 and the area where this parcel is located is designated as a Crossroads Community with a small portion of the western part of the property identified as Rural. The description of Crossroads Communities includes that they are located within rural areas and typically have a minimal amount of retail and institutional uses. A particular occupant has not been identified at this time, but future uses must be listed as a permitted use within the zoning and watershed ordinances. **It is the opinion of planning staff that this standard is met.**

**Standard No. 4** – All other circumstances, factors, and reasons which the applicant offers in support of the proposed amendment are: This property is located within the WSIV-Critical Area watershed within the Jordan Lake Buffer rules. All required built upon area limits (24% maximum), stormwater, erosion control measures, and environmental health standards will meet the current county and state standards. To accommodate other regulatory requirements will likely utilize a significant portion of the property. There are no floodable areas in close proximity to this tract. This area is limited to uses from Attachments A & B of the Watershed Protection Ordinance because it is within 1000 feet of the intersection of US 64 and SR 1008 (Farrington Rd) which further limits the specific



uses that can locate on the site. Jordan Lake is a regional attraction that draws visitors year-round. US 64 has an AADT of approximately 18,000 VPD. The existing traffic volumes on US 64 and the lack of existing property that is zoned for retail or institutional uses around Jordan Lake make this property an ideal location for “Neighborhood Business” uses. **It is the opinion of planning staff that this standard is met.**

Ms. Birchett stated in closing that the Planning Board must also recommend a consistency statement and one has been provided in the recommendation if the rezoning is recommended for approval. The planning staff recommends approval of the general use rezoning request.

A proposed consistency statement has been provided in support of the rezoning request: It is the opinion of the Planning Board that the general use rezoning of Parcel No. 70153, being approximately 5.783 acres, is consistent with the goals and objectives of the Comprehensive Plan because it is located within a node identified as Crossroads Community and there are existing businesses adjoining and adjacent to the tract.

Ms. Birchett reminded the Planning Board that Mr. Ashness the project engineer is present if they have any questions.

Board Discussion followed and some items discussed were as follows:

- Vice-Chair Lucier stated that the shape of this lot seems very limited by the setbacks and the other requirements. There doesn't seem like there is room to do a whole lot because of how narrow it is. Vice-Chair Lucier asked, is it wide enough to accommodate something? Ms. Birchett stated yes the property is wide enough and there had been some preliminary sketches completed to see what can be placed on the parcel.
- Ms. Weakley stated that the parcel is the way it is because the US Army Corps of Engineers owns the adjacent property that drains directly into Jordan Lake.
- Chair Siverson asked if there was anyone from the public to speak on this item. Mr. Garrett stated that there was not anyone to speak on this item.
- Ms. Weakley asked for a recap of the Watershed Protection Ordinance attachments A and B and where the restrictions on this property lie. She asked to provide examples from attachment A and B uses? Mr. Sullivan stated that this particular intersection is unique. The WS-IV Critical Area watershed that covers Jordan Lake is pretty significant. Mr. Sullivan pulled up a map on the projector and explained that any properties within 1000

feet of this intersection are actually allowed expanded uses for non-residential use. Mr. Sullivan showed the Board attachment A of the watershed ordinance and explained the different low impact uses that are allowed. He also showed the Board attachment B of the ordinance and explained the different uses allowed in that area. Ms. Weakley thanked Mr. Sullivan for explaining the different uses and restrictions for this parcel.

Motion made by Mr. Spoon to approve the request of the consistency statement; second by Mr. Gaeta.

Motion passed unanimously, 9-0

Motion made by Vice-Chair Lucier to approve the request of the rezoning of the Holmes Oil property; second by Ms. Hager.

Motion passed unanimously, 9-0

3. A Legislative Public Hearing for a text amendment request for the Chatham County Zoning Ordinance, specifically Section 10.13 Table of Permitted Uses, Churches and other places of worship to be changed from P+ Permitted to be required to obtain an approved Conditional Use Permit in order to locate in R-1, R-2, and R-5 Residential zoning districts.

Ms. Birchett gave an overview of the staff notes and she reported that a legislative public hearing was held November 19, 2018 to consider a citizen initiated text amendment to the Zoning Ordinance. The proposed amendment is to the table of permitted uses, specifically for churches and places of worship to require a conditional use permit in the three residential zoning districts instead of allowing them as a permitted use. The applicant presented the request and other neighbors who live on or near Hogan Farm Road were also present and spoke including Roland Cargill, Anne Fuller, and Scott Wilson. There were also several speakers who referred to their representative, Attorney Paul Messick, to provide comments on their behalf.

Ms. Birchett stated that section 19 of the Zoning Ordinance outlines the procedure for amending the ordinance and Section 19.1, Statement of Intent, reads: "For the purpose of establishing and maintaining sound, stable and desirable development within Chatham County. She stated that the Table of Permitted Uses in the Zoning Ordinance includes "Churches and other places of worship" as a use which is permitted by right in all of the residential, business, and office & institutional districts. There are also additional requirements that apply to this use in residential districts that include a three acre minimum lot size, 50' side and rear setbacks from property lines, and a 65' front setback. If the text amendment is approved it would apply uniformly throughout the zoned areas

of the county where the county has land use authority, which covers approximately 598 square miles. Ms. Birchett reminded the Planning Board members that when you amend the ordinance it is effected County wide.

Ms. Birchett stated that during the public hearing the applicant stated the request was not about a “religion or religious organization”, but of concerns about safety with increased traffic in a residential area, noise, trash, lack of sidewalks to keep pedestrians safe, and special events that have the potential to bring up to 300 to 400 people into a small residential area. He commented that he understood the request would not help the residents on Hogan Farm Road and nearby areas of their current concerns with the place of worship that has recently opened in a converted single-family dwelling. Ms. Birchett stated that the people on Hogan Farm Road understands that this amendment will not help their situation, because this place of worship will be grandfathered in if it is approved. They want to help other citizens of Chatham County so they won't have the same issues as they are having.

Ms. Birchett continued saying additional concerns noted by other speakers were that a residential home was partially converted into a commercial space for a place of worship and the lot was created for residential use, not commercial. Comments also included that churches should be treated like any other commercial business so that neighbors in an area where someone wants start one would be given an opportunity to voice concerns and have some say in the process; zoning regulations are intended to protect public health, safety, and welfare; places of worship should be treated like any other public facility; and emergency vehicle access should be evaluated.

Ms. Birchett also stated that Attorney Paul Messick commented that the Religious Land Use and Institutional Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc provides federal protections for religious uses and that no land use regulation can impose a substantial burden or discriminate against churches. He commented that the proposed amendment violates the law and that the burden of a conditional use permitting process with no standards leaves it open to discrimination. He also stated that churches are a private facility, not public, and that other uses such as schools are currently permitted in residential districts.

Ms. Birchett concluded her statements saying that the Board asked staff if there were existing regulations regarding site plan approvals. Planning staff stated even though churches and places of worship are permitted in all zoning districts other than light and heavy industrial, site plan approval is required and must follow all the development ordinances and regulations such as minimum lot size, setbacks, parking, lighting, signage, etc. This would include all county departments involved in site development. The Planning Board has up to three meetings in which to make a recommendation of approval or denial on the text amendment application and a consistency statement to the Board of Commissioners.

Board Discussion followed and some items discussed were as follows:

- Mr. Spoon brought up the attachment the Planning Board members received in the packet from the UNC School of Government about regulating religious institutions. He stated that from what he read from the handout and the comments from the author, is that what we are proposing is illegal, but there are several other counties in the surrounding areas that seem to have the same policies that is being proposed. Ms. Birchett stated that it is not illegal, but we need to make sure we have everything covered and we are not violating this Religious Land Use and Institutional Persons Act of 2000.

Ms. Weakley asked when this document was published. Mr. Sullivan stated he received permission from Dave Owens of UNC, to reprint this chapter and it was not indicated the date of publication, but he did state that there were no significant changes to this chapter 27.

- Mr. Frazier asked for clarity, he stated that you can regulate churches if you want to, but you can't regulate them without regulating a number of other uses. Ms. Birchett stated that he was correct.
- Vice-Chair Lucier asked if we had any requirements or restrictions on ingress/egress, because one of the legitimate issues from the land owners is the inadequacy of the road to handle large amounts of traffic. Ms. Birchett stated that the staff has been talking and thinking about the possibilities of things that could change. A requirement to have these types of uses on a public road might be an example of what we want to put into the ordinance.

Vice-Chair Lucier stated that this would be a requirement for public schools. They would have to be required to be on a public road. Ms. Birchett stated, yes. Mr. Sullivan stated that schools are allowed by right in residential, but we don't have any supplemental standards that would apply to a school, only acreage and setbacks.

- There was some Board discussion about the road access in question. The road is a private road and Vice-Chair Lucier stated he drove down the road and that it is a single lane road. He had to back up when someone else was coming from the other direction to allow that person to get by and he was going into the drainage ditch.

- Ms. Birchett stated that with the standards we have currently, the staff had no recourse but to approve the request. They got an engineer and went through the process, received a permit to have the basement of that home converted into a commercial occupancy for those regulations. There was nothing that we had legally in our ordinance, to say that we could not approve that zoning compliance.

Chair Siverson stated that with better and more thoughtful standards we could avoid the Conditional Use Permit request. Ms. Birchett stated, yes.

- Ms. Weakley asked if this was a single family residence that was converted. Ms. Birchett stated that she was correct, but just part of the residence was converted. She also stated that this is a text amendment to the ordinance that will affect the whole County not just this property.

Chair Siverson stated that this is an extreme situation, but we don't want that sort of thing to happen ever again. Ms. Birchett stated that there are three other churches right now trying to get their site plans approved, preliminary waste water approved so they can have their substantial expenditures in place, so if this does pass that they are grandfathered.

- Chair Siverson stated that she would like to hear from the public that signed up for comments. She also stated that the Planning Board is going to take their time with this item. They will discuss after the public comments and also ask the County Attorney some questions. Then on the January meeting they will pick this item back up for discussion.

#### PUBLIC INPUT:

- Mr. Philip Foote of 117 Hogan Farm Rd. spoke and had a couple of comments. Mr. Foote stated that he lives right across from the Temple. They moved from the North to retire where the pace is slower. He stated that they did over a year's worth of research, considering things like quality of life, proximity to great hospitals and the slower and quieter pace they so desired. Mr. Foote stated a major consideration of their decision was that his wife and he are Guardians and Caregivers of his adult sister with a birth/mental disability, Down syndrome. He stated that loud noises and bright lights can disrupt her and upset her simple life. He stated that he purposely picked a private, single lane, gravel road to eliminate traffic because it stresses out his sister.

Mr. Foote stated that he purposely picked Chatham County over Wake County because of the nature, farmland, and reduction of traffic in Chatham. He stated that with one zoning change, brought back the traffic and noise. He made a

statement to the Board asking, would anyone ever put a school down a single lane, private road. No, he doesn't think so. Yet, it is like that with this house of worship. Mr. Foote stated that a gravel road creates dust and increased traffic from the 100 car event creates so much dust, he can't go to his front yard. He stated that he has to have his sister put her headphones on to listen to music all day because of the car doors slamming, horns blowing, chanting, children screaming, and the noise, all down a private, gravel road. He stated that this can be changed and this can help other citizens to avoid this type of issue in the future. He stated that they are not being discriminatory, they just don't want the traffic. He never envisioned that 100 cars would come down a gravel road or that it would ever be approved to do so. He stated that his family may have to move from Chatham County and find another county that is peaceful and quiet. He stated that he doesn't want to do that and please help.

- Ms. Anne Fuller of 204 Hogan Farm Rd. spoke and had a couple of comments. She attended and spoke at the public hearing on November 19, 2018. She stated that she is in favor of her neighbor Jim Cassese's request to amend our Chatham county zoning ordinance to require all public places, including churches and places of worship to obtain a permit allowing surrounding residents to not only know what is being proposed, but to have a voice in how they could be affected. This is a public and private issue. This should be treated as any other public facility zoning. She stated this is a safety issue for residents and people attending public events at the public facility.

Ms. Fuller stated that they have lived on Hogan Farm Road for 27 years, and they have owned the land since 1985. It is a beautiful private rural neighborhood and that's why they and their neighbors live here. She was surprised that a public place was suddenly in her private neighborhood without knowing or having a voice in it. She stated that the two events to date at the public place, that just appeared in her neighborhood included anywhere from 200 to 400 people. She stated that people would be coming up to her front door asking where the Temple was located. She stated that the surprise of this public place knocks you to your knees. She stated that she did not have a voice and did not even know about it.

Ms. Fuller stated that allowing this residential property to be zoned as a business, allowing hundreds of vehicles and people to frequent this property has created the safety issues. Pedestrian and vehicle traffic, Holland's Chapel Road has no sidewalks or street side parking. The entrance to Hogan Farm private road is in a blind curve on a 55 mph road. EMS or emergency vehicles have no access and property owners had to wait 10 to 20 minutes in traffic on a private road to get to their house during those events. She stated that overburdening a private gravel road that is maintained by the residents, who must agree and approve any changes to the road, plus pay fees for maintenance, is now being torn up by all

this traffic. She stated she does not know how that many people can be in that area and all the cars parked on the road be okay with fire code restrictions.

Ms. Fuller continued stating that there is privacy issues, congestion at the entrance to the private road, not allowing residents to access their road or mailbox. She stated that there is disturbances in a peaceful private neighborhood, encouragement of crime, and strangers trespassing looking for the place of worship. She stated that there is environmental issues as well, such as noise and light pollution, trash and garbage at the entrance of their private road. She also stated environmental hazard with overburdening well and septic and overburdening private gravel road with public traffic. She also stated that there is zoning issues as well, failure to follow zoning restrictions by using a private road as a public access.

Ms. Fuller concluded by saying thank you to the Board for their continuous and careful thought about allowing a second phase of this public facility to be approved in this private neighborhood. She stated that this will cause all the safety, privacy, and environmental issues/hazards mentioned to be magnified 1000 fold. This is in the best interest of all Chatham County residents so they don't move to a different county.

- Reverend Cecil Wilson of 489 Holland Chapel Rd. spoke and had a couple of comments. He stated that he lives on the other end of the road from the uses. He stated that he was here to speak because when the churches see a text amendment change for places of worship and churches, especially when they see that it is going to be County wide, they want to be involved. There is a lot of churches wondering what is getting ready to happen. Rev. Wilson stated that some of the Bishops got together to discuss this topic and are prepared to see what will happen tonight. This is a major concern about changing the use of where churches can be located. There are churches that are not off of public roads that have been there for years and there is donated property that can be a mile or two in the woods.

Rev. Wilson stated that on the other hand, with this particular neighborhood, he stated he used to live down the gravel road many years ago. He stated that he grew up down that gravel road and he doesn't think it was meant to be used for traffic and that only so many houses can use a private road. He stated that listening instead of a Conditional Use Permit, maybe set some more standards. He stated that if we change to the CUP they will have to include all the schools. Rev. Wilson stated he was not for or opposed the item, but there is a major concern from the churches. He stated that he sees their concern and that they certainly need some relief because of the close proximity it is to the neighbors. He stated that maybe if a place of worship is going to be in a house there are standards for that because

not all assemblies are going to have access on a public road. Rev. Wilson thanked the Board members.

Mr. James Cassese of 279 Hogan Farm Rd. spoke and had a couple of comments. He stated that he filed the petition for the zoning to be changed. He stated was the only way he could get his voice heard. He appreciated everything Rev. Wilson had to say about this item. Mr. Cassese stated he had a question about the CUP. If the wording changed, would the existing churches have to conform to that, or would they be grandfathered? Ms. Birchett stated that they would be grandfathered with the exception to new or any expansion. Chair Siverson stated that they can expand on their property, but if they were to expand onto the adjacent property they would have to meet the new requirements with a CUP. Mr. Cassese stated that he sent an e-mail to Mr. Sullivan which included pictures of the road with the traffic, people, and trash during the events. Mr. Sullivan opened the e-mail and showed the photos to the Planning Board. He stated that with the Land Use law that is being quoted, with every lawyer that makes a statement that the change is illegal, he can find just as many lawyers that say it is legal.

Mr. Cassese stated how both Durham and Wake County have implemented a CUP process for places of worship. It is legal and it specifically says, "Prohibits zoning and land marking laws that substantially burden the religious exercise of churches and other religious assemblies or institutions." He stated that substantially burden is the word there, how is being sure the road is wide enough for two way traffic a substantial burden? How is making sure there is enough parking a substantial burden? How is making sure there is proper walkways for pedestrians a substantial burden? He stated that these are all public safety issues. These are not burdens that are put on churches to make it harder for them to exist, it is the same rules that apply for every other building that holds 300 to 400 people.

Mr. Cassese stated that he is not sure why everybody is afraid of a CUP. With certain standards and the approval of the neighbor, you can have a church in a neighborhood. He doesn't feel that there is anything wrong asking people that have owned property for 30 years if they are okay having a huge 300 person building right next to their house. Mr. Cassese pointed out the different photos on the screen to the members. He stated that there was people walking down Holland Chapel Rd. without sidewalks. He also stated that there was a traffic officer directing traffic, but he was so overwhelmed with the amount of traffic, that he could not keep up with it. He stated that there are cars lined up Holland Chapel Rd. for 10 to 15 minutes just waiting to turn down this gravel road causing major safety issues for not only other cars, but also bicyclists.



In closing Mr. Cassese stated that they are not saying that a place of worship can't exist anywhere else, they just want standards in place to ensure that people aren't parking on the road for their safety and ours. He stated that Holland Chapel is a cut through to 751 and up to Chapel Hill. He said that there is so much traffic on that road and nobody follows the speed limit, with cars parked on the road with the curve, it is really dangerous. Mr. Cassese stated that whatever happens here will not change their situation and they understand that. There are a lot of other little one lane gravel roads in Chatham County and as Chatham grows, there is going to be a need for some kind of infrastructure that controls how much traffic that can travel down those little gravel roads and the size of the building to protect the people that have lived there their whole lives. What we are asking for is a way for the people that live there to have a say in the matter. He stated that he had to pay \$250 and that was the only way he could say something. Mr. Cassese thanked the Board for their time.

Board Discussion followed and some items discussed were as follows:

- Mr. Galin asked the public in attendance, if they and the people from the place of worship have talked to each other? A neighbor stated that they had a meeting at their house and to be frank, asked how they can get them to go away. She stated that the place of worship property owners would think about it. She stated that there has been another event since that meeting, so it doesn't look like they have any intent on going anywhere. Mr. Cassese stated that she offered to buy other properties down the road if anyone wants to sell.
- Ms. Weakley asked the neighbors if these are regular occurring events. They stated that they have had two big events, but they have smaller monthly events as well. There are people that don't know where the house of worship is and they come up the driveway and knock on their doors and ask where the house of worship is. There is no bigger interruption in your day than that.

Ms. Weakley stated that the reason she is asking, is because in the current zoning ordinance, "Churches and other places of worship that are permitted by right in residential areas, then there is a separate zoning district for religious, carnival, and circus events that are limited to a period that are not more than 5 days longer than the duration of the event and not more than 30 days in any 12 month period." Ms. Weakley asked, are they in violation of their zoning because of these events? Ms. Birchett stated that it is an accessory to the permitted use of the Temple. Mr. Sullivan stated that the staff has discussed that early on and that use is designated like a fair ground. That is why it is only allowed in Regional Business and Light/Heavy Industrial districts.

Mr. Sullivan stated that the primary use of the property is the place of worship. Any church or place of worship in Chatham County that has a homecoming or a tent revival, we would never designate them under that, such as circuses, carnivals, or sideshows. Ms. Weakley stated that she was trying to understand because they are having regular big events, and just with farms there is a bona fide exemption with farms. How are you going to designate a church? Mr. Sullivan stated that they go through all the permitting that is involved to become a place of worship through all the departments in the County. He stated that Ms. Weakley brought up the bona fide farm exemption. Under that umbrella is agritourism and we can't designate agritourism under that use. It is a bona fide farm use which is the primary use of the property.

- Mr. Galin stated that based on the information provided in a handout about churches as a CUP from surrounding counties and city jurisdiction's ordinances, it doesn't seem like we have enough information and he is not going to make a decision tonight. He stated that this sounds like a neighbor issue and they need to be good neighbors.
- Mr. Gaeta stated that this is a public nuisance in a quiet neighborhood. If the elected officials can't do anything to help these people then maybe they need to take this to court for public nuisance, religion or not religion. You are entitled to the peaceful enjoyment of your land and to have these cars coming in and out and people on your property is not peaceful. Mr. Gaeta stated that he hates to see people in this beautiful County interrupted. It is not right and it is not fair.
- Ms. Hager stated that we need more information and why is the CUP scary? If staff could elaborate on that process and the fees involved this could help as to why we are debating this. Ms. Birchett stated that if you were to apply for a CUP the steps would be; hold a community meeting, pay to have a professional site plan developed, to include buildings, parking, landscaping, and lighting. They would get preliminary approvals from environmental health for whatever waste water system they would be using. Also talk to DOT and get preliminary information on commercial driveway permits. She stated that all of this would have to be set up because it would all go into the packet. A public hearing would be scheduled before the BOC, then to the Planning Board, and back to the BOC. The process is about 4 to 6 months and the application fee is \$500 plus \$25 an acre.

Vice-Chair Lucier stated that generally the largest expense will be the engineer for the site plan development, maybe in the range of \$30,000. Mr. Sullivan stated that this would be Quasi-Judicial hearing and they might want an attorney to represent them and that would be additional costs. Chair Siverson stated that this would be County wide and there is a very rural western part of the County. Ms. Birchett stated it would apply to all churches, small and large.

- Mr. Frazier stated that he liked the idea of adopting standards rather than a CUP. He stated that a CUP might come across as bias or prejudice and standards would eliminate that. He stated that for the standards we need to look at access, parking, well and septic, and the like. If we were to regulate churches, then we need to look at schools, marinas, non-profit clubs, and maybe daycare centers. Which he stated is by right allowed in residential areas.
- Mr. Spoon stated that if we make a CUP and apply it to schools, can we set an attendance threshold, below a certain number it is permitted by right, but more than the threshold that have to get the CUP? Ms. Birchett stated that it would be very complicated and how would you be able to stay on top of that to regulate it, with 200 churches in the County it would be an enforcement nightmare.

Ms. Hager stated that it would be a fire code issue because you can only have so much legal occupancy before getting into fire code problems. Ms. Birchett stated that as far as the Act goes, you are rubbing against discrimination and we would have to very careful not to cross that threshold. Mr. Sullivan pointed out the other counties thresholds such as Wake County. They have thresholds of place of worship 0-200 is a certain way, and 200-500 is another way, but that is for the occupancy of the building. This will not help the issue that is on Hogan Farm Rd. The occupancy of that building is 50 people, special events is what seems to be causing the problems and that is something you will not be able to regulate the number of participants.

- Mr. Spoon asked if occupancy standards can't be enforced for special events, what if there are 400 people at an event for a 50 person building. Mr. Sullivan stated that there are fire code regulations that come in to play for that situation, it would not be the building code or the occupancy of the building, but it would be the access for emergency vehicles to housing.

Mr. Weakley stated that a religious event is a separate category. If there is going to be 200 to 400 people on private property that has a single family residential structure, they should be applying for a permit to have an event. Ms. Birchett stated that they do apply for a special event permit. Mr. Sullivan stated that in this particular situation the building is no longer a single family dwelling. From a building code standpoint it has been converted and the environmental health permit has been changed and can no longer be occupied as a dwelling. It would be illegal to use it as a house now.

Ms. Weakley stated that even as a church they are having religious events on a regular bases that draw hundreds of people. She asked, are they applying for a permit at every one of those events? Ms. Birchett stated yes, they are applying for

a special event permit. Mr. Sullivan stated that it is not a permit like it was issued, it is more like a notification to the departments that might be involved in regulating the event. Depending on the size of the event, each department will react accordingly. Such as if there is an event, the fire marshal will make sure there is staff and emergency vehicle access or a plan in place to deal with how they are going to handle the traffic.

Ms. Weakley asked if they can do this on a regular basis. Mr. Sullivan stated that yes. If you wanted to have a tent revival at your church every week in the summer for two months, absolutely you can do that because your principal use is the place of worship. Ms. Hager stated that it sounds like those permits are not very substantial. Mr. Sullivan restated that it is a notification, not a permit. Ms. Weakley stated that it is a notification, but do they have to have a traffic plan? Mr. Sullivan stated that the Fire Marshal is talking to the people at the Temple about developing a plan to follow the fire code requirements for mass gathering events.

- Ms. Weakley asked what about waste water and a single family dwelling capacity. Mr. Sullivan stated that environmental health would require port-a-johns for the special event to accommodate. If this was a vacant piece of property, with no church or building established, then yes, this would not be zoned for any kind of events on it. Ms. Weakley stated that because this was a residence converted to a church they can have the special events. Ms. Birchett stated that the church is the primary use and the events are secondary.
- A Board member stated that the standards approach seems to be more direct. She asked if any of the standards of the notification can be changed for public safety. Mr. Sullivan stated that environmental health is going to be State rules and the local level they cannot change those. It is local departments enforcing State rules. He stated the only thing they can waiver is the zoning ordinance. Ms. Hager asked if there were any other issues like this in Chatham County. Ms. Birchett stated that she has been in Chatham County for 22 years and she does not know of any other issues like this.
- Mr. Galin stated how often is this going to be a problem. He referred to Rev. Wilson and his comments about the western part of the County that has a lot of these kind of churches on private roads where they don't have this situation. If we make some changes it is going to apply to everyone. This will not help these folks here and their situation. He stated that his concern is, we have one issue and whatever we do is going to affect the entire County. Chair Siverson stated that we are not going to be able to fix that issue. Mr. Sullivan stated that Chatham is a growing County with more influx of population, we are seeing more and more impact beyond the footprint of an area. There are different organizations that want to take advantage of the growing population and are looking at surrounding properties.

- Vice-Chair Lucier stated that maybe a CUP is not what we should be doing. It puts the burden on people that don't need that burden. He asked, what kind of standards can we adopt to prevent at least some of the problems that have occurred on Hogan Farm Rd. issue? Can we talk about the public and private roads, number of parking spots, road access width, and even buffers? Vice-Chair Lucier stated that we have to be careful to not just ask this of the churches, but also the schools and all facilities that would fall into that use. Ms. Birchett stated that those examples are all acceptable. There is a whole range of requirements and standards can looked at. Chair Siverson asked, if that was something we would have to wait to accomplish until the UDO? Ms. Birchett stated that no, we can do that now. Vice-Chair Lucier stated that it would be something we would incorporate into the Unified Development Ordinance when that time comes. Vice-Chair Lucier explained what the UDO is to the public in attendance.
- Ms. Weakley asked, how big is this parcel and how big is the dwelling unit that they are having these big events? She stated that she wants to have an understanding of what is possible when developing standards. For example a 5 acre parcel with 2000 square foot building. Ms. Birchett stated that is about the size that describes this property. It is 5 acre lot with a dwelling and basement a little over 2000 square feet. They are only utilizing the basement and they are not supposed to be using the top floor at all. Ms. Weakley asked, what are they doing upstairs? Ms. Birchett stated that this is a temporary facility. Ms. Weakley stated she just wanted to get an idea of the size of property and square footage when putting together standards. Chair Siverson stated that right now the limit is 3 acres.
- Mr. Spoon stated that he needed more time with this item and asked if they can have questions for the County Attorney. Mr. Sullivan asked the Planning Board members to e-mail any questions by noon on Monday so he can forward them to the County Attorney.
- Ms. Weakley stated that she wanted to acknowledge the staff for providing example standards from surrounding jurisdictions. She stated that the Cary standards are helpful to see what kind of standards Chatham County can apply to various situations.
- Chair Siverson stated that this item is tabled for tonight and to have their questions in by noon on Monday the 10<sup>th</sup> of December and the Planning Board will pick this item up again in January. Chair Siverson thanked the public for their comments.

4. 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.

PUBLIC INPUT:

- Mr. Charles Ritter of 285 Beckingham Loop spoke and had a couple of comments. He stated that he is a retired aerospace engineer and has been researching fracking for about 6 to 7 years. Mr. Ritter stated that fracking has caused thousands of serious issues worldwide such as; earthquake incidents, polluted drinking water with carcinogens such as wells & reservoirs, brain damaged children, infrastructure such as roads, bridges, etc. damaged beyond repair due to very heavy equipment and trucks, etc. He also stated that horizontal fracking can extend 2-3 miles horizontally and that there are no restrictions preventing fracking near or under Jordan Lake Reservoir. He stated that Shearon Harris Nuclear Power Plant is situated near or under the Jonesboro fault line. There are no restrictions preventing fracking near or under Shearon Harris Power Plant by the NRC or NC. Mr. Ritter stated that Harris Lake provides the cooling for the nuclear power plant. There are no restrictions preventing fracking under Harris Lake by the NRC or NC.

Mr. Ritter continued stating that shallow, vertical fracking near Jordan Lake Reservoir has a high probability of contaminating the water table and therefore our reservoir and wells. Do we really want to risk our drinking water? Earthquakes near any power plant pose potential risks and Shearon Harris is not any nuclear power plant. It would be the only place in the U.S. with the juxtaposition of a Nuclear Power Plant, a fault line and fracking. Mr. Ritter gave some recommendations such as put in place a 3 mile no fracking zone setback around Jordan Lake Reservoir, Shearon Harris Nuclear Power Plant, and Harris Lake. Mr. Ritter stated that addressing fracking properly in Chatham can potentially cause issues with the state of NC. Not addressing fracking could cause serious and long lasting environmental and health issues for the residents of Chatham County. He closed in saying do the right thing and please protect us, it is your responsibility. You have our support.

- Mr. Galin asked Mr. Ritter what he meant by an earthquake incident. Mr. Ritter gave an example about an area in Oklahoma which had three earthquakes per year. After they started fracking in that area it now has 1100 earthquakes per year from part of the fracking process. He stated when you frack, there is chemicals

under high pressure and when it comes back out it has to be disposed of, which is millions and millions of gallons of waste water. Mr. Galin stated that in 2016 Stanford University department of Earth Science reported that fracking had nothing to do with the Oklahoma earthquakes. Mr. Ritter stated that he would be glad to provide other information if that was appropriate. He stated that this is not a coincidence. Chair Siverson stated he can provide his documentation to Mr. Sullivan via e-mail and Mr. Sullivan will distribute it to the Planning Board. Mr. Ritter thanked the Board for their time and service.

- Ms. Martha Girolami of northeast Chatham County spoke and had a couple of comments. Ms. Girolami stated that she thinks the zoning ordinance as it stands today needs to add two new uses to 10.13 which are, Oil and Gas Exploration and Development and Compressor Stations. These uses must be allowed only in heavy industrial zoning districts with a CUP. Also the addition of section 17.9, deleting the last line is beneficial. No other changes are necessary. Ms. Girolami stated that her proposal of the two new uses, oil and gas exploration and development, and natural gas compressor stations to be allowed as a CUP in all zoning districts is a mistake and unfair. Most of Chatham County does not know very much about fracking and associated gas infrastructure. She stated that no County resident was ever expecting that this polluting heavy industry would be allowed in residential zoning districts with a CUP.
- Ms. Girolami continued saying that the recent all County zoning expansion ordinance was very disruptive to our County. Many Citizens were upset by being zoned R1. The inclusion of these uses into the zoning ordinance could perpetuate and inflame more discord. Citizens must believe that zoning districts are meaningful and protected. Zoning districts will not be meaningful and protected if oil and gas exploration and development are added to all zoning districts in Chatham County as a CUP. The two new uses that will require a CUP, is no guarantee of protection that the Oil and Gas Commission will not move to pre-empt our ordinance. The character, politics, and money will determine the outcome-factors we cannot control.

Ms. Girolami asked, how will the Chatham/Cary land use plan be affected? Cary citizens in Chatham will be surprised to learn that with a CUP, compressor stations and oil and gas exploration & development would be included in areas zoned Low and Very Low Density Residential. Chatham County would be giving preferential treatment to these two uses by allowing them in all zoning districts with CUP. All heavy industries to date in the Chatham zoning ordinance are required to exist in a heavy industrial zone with a CUP. Ms. Girolami continued stating that the NC statute GS113-415.1 (f) requires that oil and gas exploration and development must be regulated under conditions that are "generally applicable to development" -i.e. all development projects are to be treated the same. Ms. Girolami stated that

oil and gas exploration & development and compressor stations uses under this proposal are given privileged status. The two new uses, oil and gas development and natural gas compressor stations must require rezoning to heavy industrial with CUP as described in Section 19 of the Chatham County Zoning Ordinance. Rezoning to heavy industrial with a CUP will require a public hearing. Citizen participation in this legislative process is very important since it does not limit standing to experts as does a quasi-judicial hearing which is part of a CUP process. She stated that non expert opinion and evidence would be able to be submitted for consideration. Chatham citizens and the applicant would be contesting the rezoning on a more equal footing.

Ms. Girolami stated in closing that these are her opinions and to be really strict with the applicant if they try an expansion. The Ten Year Master Build Out Plan also forces and reveals what the applicant are going to do and the connection to other properties down the road. She thanked the Planning Board for their time.

- Ms. Jeannie Ambrose spoke and had a couple of comments. She stated that the Chatham County Comprehensive Plan was adopted Nov. 20th, 2018. The number one goal that was discovered from broad community input is to preserve the rural character and lifestyle of Chatham County. This response is a reflection of the unique character of our diverse local communities. The proposed ordinance amendment, Section 10.13, to allow Conditional Use Permits in all zoning districts for oil and gas exploration & development and natural gas compressor stations, does not align with the vision of its citizenry. If adopted, the oil and gas industry appears to have been given a competitive advantage over other types of permitted uses. This likely sets a precedent for other new and existing industries to seek similar treatment in the future.

Ms. Ambrose stated that over a year ago, the Chatham County Board of Commissioners received the Chatham County North Carolina Hydraulic Fracturing Background Assessment, submitted by environmental consultant Charles Yuill. In his report, he stated, "Hydraulic fracturing is unlikely to occur in Chatham County." If the prospect for drilling for natural gas in Chatham County is minimal, is it reasonable to open up the entire county for this particular use? Local government ordinances should not treat the oil and gas industry any differently from other uses that are allowed. The Table of Permitted Uses in the current zoning ordinance lists mining as a permitted use in the industrial heavy zones of Chatham County. If an operator wants an oil and gas operation in any zone that is not already designated IH, they could file a petition for the proposed district area to be rezoned to IH. After public meetings and hearings for citizen input on rezoning, a decision is made. If approved, the operator submits a CUP for final determination.



Ms. Ambrose also stated that the CUP may be subject to additional requirements. In certain cases, the specialty services of a consultant may also be needed. This stepwise procedure with required conditions is appropriate for oil and gas activities. It allows a determination based on local site-specific characterization. This is especially important since Chatham County does not have long-term experience with this particular type of mining and its potential for harming the natural resources, human health, and economy in our community. There is no doubt that if fracking comes to Chatham County or Lee County, it will have an impact on the character of the local communities. It is so unfair for local government zoning ordinances to give preferential treatment to the oil and gas industry. Chatham County should not favor the oil and gas industry and its ancillary facilities over any other businesses approved only in IL and IH zoning districts.

In closing Ms. Ambrose stated that the end result of amending the zoning ordinances should be to create a viable framework that supports the development of all types of industry. However, someone living in a residential district should not be forced to accept high impact industry that does not meet the established countywide zoning criteria. With long-term planning that is consistent with the guidelines provided in the Comprehensive Plan, we should be able to retain some of the unique rural character our communities want to preserve. She thanked the Planning Board for their time.

- Mr. Sullivan stated to the Planning Board that he would not go over the notes from the November meeting, but that the Board members did have the PowerPoint presentation and staff notes covering this item. Mr. Sullivan stated that a public hearing on the amendments was held on October 15, 2018. Staff and Mr. 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 Mr. Dunn, attorney with Poyner and Spuill is present to answer any questions for the Board tonight. Mr. Dunn has been working with Chatham and Lee County in developing the ordinance amendments. Mr. Sullivan gave a quick recap of the moratorium. He stated that the first half has been completed and the second half is drafting ordinance regulations and ordinance standards to include the zoning ordinance to set out standards for the oil and gas exploration for the County. The moratorium has been extended twice and set to expire at the end of January 2019. Mr. Sullivan stated that hopefully the Planning Board will be able to make a recommendation tonight on the consistency statement

as well as the text amendment, so this item can be before the commissioners in their January meeting.

- Mr. Spoon asked, why can't the moratorium be extended? Mr. Dunn stated that we can extend the moratorium, but based on his research, this has gone on longer than other cases. He stated the best way to say it is, we are pushing our luck legally. He also stated that on the other hand, nobody has asked to start fracking activities at this point. He stated that he had just spoke with Dr. Taylor the State geologist about a meeting they had and he said that they are basically spinning their wheels at this point. Mr. Dunn stated that they are planning a trip to Pennsylvania to see what is going on up there in fracking. He stated that there are some letters about starting the pre-emption process, but nobody knows who wrote those letters and nothing is being pressed about starting the formal pre-emption process.

Mr. Dunn stated in answering Mr. Spoons question, legally it would be a long moratorium and acceptable for challenging just on that basis. However, you can extend it and take your chances. Mr. Dunn stated that if we were to extend the moratorium and someone would challenge the moratorium itself, you would have time to adopt the ordinance before there is a decision on the challenge. He is trying to stay neutral and give the Board options on both sides.

- Mr. Spoon asked if it was the State Attorney General's office responsible for the pre-emption process. Mr. Dunn stated that the Oil and Gas Commission is the decision maker. Mr. Sullivan stated that we would not have time to schedule and hold a hearing before the moratorium expires.
- Mr. Dunn stated that what is being proposed or what is passed tonight is not the last word. He wanted the Board to keep in mind that this isn't going to be the ultimate answer. It would be good to have something in place and then add to it if needed. If moratorium were to expire, there might be a month or two without any regulation.
- Vice-Chair Lucier stated that one of the questions that has been brought up is, why we can't require fracking in heavy industry district that has to be rezoned under a CUP. Vice-Chair Lucier stated that he understands that Mr. Dunn might find that to be targeting the oil and gas industry and the fracking industry. He stated that in a sense it is not targeting, because we would be treating fracking just like any other activity that requires a CUP in heavy industrial only zone, such as plastics manufacture or other types of mining activity.

Mr. Dunn stated that there is no legal answer to what is more likely to be pre-emptive or not. He stated what is definite, is that the General Assembly set up the oil and gas statutes to tell local governments that they can only regulate oil and gas activities through ordinances that are generally applicable to development. Mr. Dunn stated that the General Assembly wouldn't have passed such a strong bill, pre-emptive of the ordinances, if they thought it was okay to tell people they can look for oil and gas only in various small parts of the County. Heavy industry would be only a very small percent of this County. He stated that would exclude about 99% of the County. Ms. Weakley stated that then they can ask for rezoning. Mr. Dunn stated that every time someone wants to look for oil and gas that is not in heavy industrial they have to ask for rezoning.

Mr. Dunn stated that the question is, what's the difference between that and asking for a CUP? As a lawyer, you have a better chance of your process holding up against a pre-emption claim if someone has to go through a Quasi-Judicial process and meets standards. There are five standards for a CUP that are always applied to every CUP application. So it is a standard process for a whole bunch of uses in the County and in that sense, meets the definition of generally applicable to the development than making someone go through a rezoning.

Ms. Weakley stated that when people are prospecting for mining they must have some idea that there are resources and they go through a rezoning process. She stated that it is ridiculous to be allowed in a residential zone. She stated that it puts the burden on the County. Mr. Dunn stated that he doesn't think it puts a burden on the County. Ms. Weakley stated a company that wants to develop a mine can hire all the experts they need to flood the public records for a CUP that is purposed in a residential area. It is up to the citizens to try to provide their own expert to refute the facts that are provided by the mining industry. She stated that the comments we heard tonight are spot on, that especially in established residential areas this is not an acceptable use.

- Chair Siverson stated that this is really about trying to avoid pre-emption. By requesting a CUP we may be risking a pre-emption. Chair Siverson stated why not go ahead and decide what we want and see what happens. What is the pre-emption process like? Does it cost the County a lot? We have read the findings that the oil and gas commission have to make. It seems they have to make a finding of fact, why would they want to position themselves in a residential community. That gives Chatham County a little more of a chance protecting primarily Jordan Lake, Shearon Harris Plant, and agriculture districts groundwater that is very vital to our agricultural community. These are large economic generators in this County and we have a responsibility to protect those.

Mr. Dunn stated that speaking as a lawyer in view of the pre-emption, as mining is concerned there isn't a pre-emption statute. So however you regulate mining they can't reach out to a mining commission to be pre-emptive. That is part of the reasoning, because a CUP process requires a Quasi-Judicial hearing and in regulatory terms that will demand more respect regarding the outcome. It will also make the County come up with reasons within the standards that are in the CUP process. He stated that court cases will cite the protection of Quasi-Judicial process and set standards as being a reason to affirm what local government does in regulation. The County does not have that protection when you rezone, that is a legislative decision and opens the door to a claim, yielding to public pressure. He stated that we know what the public pressure will be generally. Mr. Dunn continued saying that a CUP decision with some good rationale, such as too close to a neighborhood, roads can't handle it, will hold up for denial of a CUP. He said this is his main reasoning for the CUP process.

Mr. Dunn stated that they added a provision in the ordinance that if it is over 10 acres they have to do an Environmental Impact Assessment (EIA) or if it is under 10 acres, you can ask them at their expense to do a special study regarding any other concerns you may have. That will hold up legally and both parties would have to agree on the consultant that is used. Chair Siverson asked why we can't require both, rezoning and a CUP. Mr. Dunn stated that you could, but it is two steps to get to the same end point.

- Vice-Chair Lucier asked, could we require an overlay district of Jordan Lake and Harris Lake for a certain distance away from the lakes to protect those bodies of water? Mr. Dunn stated that they talked to Duke Energy and have received a lot of information from them concerning the lakes.
- Mr. Frazier asked, before there was a pre-emption, there would have to be an application that was turned down? Mr. Dunn stated that was correct. Mr. Frazier stated he was trying to understand the difference between the rezoning process and the CUP process. He stated that there doesn't seem to be a lot of difference between a CUP in all zones and requesting rezoning. He stated that the standards are really about the same, the main difference is the Quasi-Judicial or legislative hearings. Mr. Dunn stated that he was correct and that the Quasi-Judicial has greater consideration in the courts. That is the main reasoning for the recommendation of the CUP.
- Mr. Frazier stated that a number of comments from citizens have been to include the special study as well as the EIA. He asked, is the EIA not adequate, do we need to do a special study as well? Mr. Dunn stated that if oil and gas exploration proposal site is under 10 acres, then by State law you cannot require EIA. So for

that situation, you would require a special study and it should be targeted to whatever you think is important in the location being proposed.

Ms. Weakley asked if we could set standards for a special study that mirror what is required for an EIA. Mr. Dunn stated that he wasn't sure if we needed to, because that is the flexibility of a CUP. If someone is applying for oil and gas exploration, it will tell you what you should be concerned about and then target the study to that concern.

- Mr. Spoon stated that it sounds like a good way to get pre-empted if you put in extra hurdles. Ms. Hager stated that it is covering any gaps, if EIA doesn't cover everything then a special study will cover the rest. Mr. Dunn stated that he hears the concern, an EIA should be flexible with its standards. He stated that it can be set up that way to ask for whatever needs to be studied in the EIA.

Mr. Sullivan stated the question is, should the last sentence in section 17.9 be removed. Mr. Dunn stated that it could say that a special study will be included within an EIA. Mr. Dunn stated that Mr. Spoon's comment was a good comment, because there is no reason to run the risk of a court order by the Oil and Gas Commission because we put something extra than the EIA.

- Mr. Spoon asked, is the Oil and Gas Commission controlled by the Legislative or Executive Branch? Mr. Dunn stated it is the Executive Branch. There was some discussion about the Oil and Gas Commission between the Board and Mr. Dunn.
- Mr. Dunn stated that there are there are a lot of rules for oil and gas exploration, but it does not cover every situation. That is why you need to back it up with your own ordinance. However, if you come up with an ordinance that is prohibiting, it is going to get pre-empted.
- Ms. Weakley asked if we were to treat this as mining or as other heavy industrial uses. Such as compressor station, gas storage, oil and gas development, if we were to treat it as a heavy industrial use, if it is not already zoned that way, it would have to be rezoned and the process would be subject to a CUP process. What if we choose to go down that road and under some circumstance someone petitions and states that Chatham County is targeting this industry and it goes to the Oil and Gas Commission. Ms. Weakley asked what would happen if mining or heavy industrial use has to go through this process.

Mr. Dunn stated that Mr. Sullivan was talking about the moratorium expiring and having a gap in time of roughly 3 months, where we went through the procedures to extend it. Ms. Weakley asked, what is the worst case if we did that? Chair Siverson stated that it would be pre-emptive. Ms. Weakley stated that they would

have to meet the findings. She stated that she is opposed to include residential areas in the mix of heavy industrial development. Ms. Weakley stated that as they have received comments tonight from the informed public that we are giving special attention to an industry that should be illegal. Chair Siverson stated that it is the State mandating this and that is the whole discussion.

- Vice-Chair Lucier asked Mr. Dunn, what if someone filed a petition and challenged the denial of a CUP for fracking, what would be the process they would go through for the pre-emption process and do we have time to reconsider the decision if we thought it was going to cost us legal problems? What would be our options at that point? Mr. Dunn responded saying that a petition cannot be filed until the industry has asked for all the permits. Then, if they are going to go into the pre-emption process it is because the County denied the permit or conditioned it in a way that they think is unreasonable. At that point it will be ripe for a petition. Mr. Dunn stated that the criteria for a pre-emption is favorable to the local government, because if the County has been reasonable in what they have been asking the developer to do, then it should stand up in summery. That is the reason for the CUP because there is a Quasi-Judicial hearing and the decision will hold up as long as the County is reasonable. He also stated that Chatham County already has a lot of ordinances in place that will regulate oil and gas activities compared to other counties.

Mr. Dunn continued stated that on the idea of the rezoning and then a CUP, if the County doesn't rezone then the procedure protections were never reached and it will go to the Commission on a pre-emption claim without having to go through the Quasi-Judicial process. The Board stated that Mr. Dunn had a very good point.

- Mr. Dunn stated that this is a big County and it is mostly residential and in some cases it is very sparsely residential. If fracking is ever going to happen and if it is going to be pressured by the State, then very sparsely populated residential areas away from people, will be the best place for this to happen. Ms. Weakley stated that there have been issues with mining in the County and this is a mining operation. Mr. Dunn stated that the General Assembly came up with oil and gas statute and they already have a mining statute so the local government can't treat it as mining.
- Mr. Frazier stated that Oil and Gas Commission must make findings of fact. He stated, "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. Frazier stated that it

sounds like they are asking, does this pose a risk. It says health or environment specifically.

Mr. Dunn responded saying that it is written very general. If the County asks them to do something that is reasonable or deny the permit for a good reason it will stand up. He stated that if it is contrary to the State regulations then it will be invalid. However, if the County regulates under an ordinance that is generally applicable to development, which it is not clear what that means, but a CUP supplies the same standards every time, will fit better in the description. Mr. Dunn stated that if the County comes up with any good reasons to deny a CUP it will be in the County's favor at that point, but it has to be reasonable. He said it is a lot of protection for a poorly chosen location and that should hold up under a pre-emption claim.

Vice-Chair Lucier asked if that would likely work with the area around Jordan Lake because it is a regional water source and around Harris Lake because of its proximity to the nuclear power plant. Mr. Dunn stated, yes that there is watershed setbacks for Jordan Lake, but Harris Lake is not a water supply watershed and it is complicated. There is a State law that's says local government cannot have their own independent setbacks that are different or bigger than what the State allows. Mr. Dunn stated that near Jordan Lake, 200 or 300 feet, would not be allowed, but if it is around 1000 feet, the County can ask the applicant to do a geological study.

Vice-Chair Lucier asked about horizontal fracking and how far can they go horizontally. Mr. Dunn stated that would be the distance from the lake. Ms. Weakley stated that the US Army Corps would shout that down. There was some discussion between Mr. Sullivan and Mr. Dunn about property rights and owning the property above the fracking activity and forced pooling.

- Ms. Hager stated with the heavy industrial uses, would this be a reason why we might ask for rezoning to protect those areas? Ms. Weakley stated, that is why we rezone places. Vice-Chair Lucier stated that can be a reason to deny the CUP, if there was a heavy industry area around the lake, which there are some heavy industry areas around Moncure, not too far away from the lake. So there are some areas like that and could give the County a reason to deny a rezoning of a residential area to heavy industry that allows fracking. That can be a bases for denial of the rezoning.

- Ms. Weakley stated the legislative by itself isn't enough, but have a CUP within areas that are light or heavy industry. She stated what if an area is R1 and there is interest in fracking in that area, we would look at a map and tell them no. We are not going to rezone that to heavy industrial because nothing else in that area is that way and there are all these residences. She stated that in that situation we would be on thin ground if we don't also have a CUP process.

Chair Siverson stated that the question is do we have a CUP everywhere or only a CUP in light and heavy industry. Ms. Weakley stated she is leaning with the CUP in light and heavy industry more than all areas, but she was exploring the options. Ms. Moose stated in playing out the pre-emption scenarios, she asked, if we have a CUP in all areas, the County gets to make a determination on the merits of those activities, where if there is not CUP, then is the Commission the only one that gets to make the determination after pre-emption situation?

Mr. Dunn stated that if the CUP is only in heavy industry and if fracking is not allowed anywhere else without rezoning, then the Oil and Gas Commission doesn't really get to make the decision yet, the County had to decide if they are going to rezone or not. If the County does not rezone, then they can challenge that the denial of the rezoning could be pre-emptive. Ms. Moose stated that Mr. Dunn had said that it doesn't hold up as well because it is not Quasi-Judicial. Mr. Dunn stated she was correct.

- Mr. Dunn stating going back to Jordan Lake, the State rules have a 1500 foot setback and it should include the horizontal component of any drilling. Ms. Weakley stated she thought that is the 1500 foot setback if there is a water supply intake that drains more than 140 square miles. Mr. Sullivan stated that he has not heard back yet about that question. There was some Board discussion about the water supply intake and the 1500 foot setback, including Lee County water intake and the 140 square mile area.
- Mr. Frazier stated he wanted to clarify that if we only allow fracking in the heavy industrial zone, then they would have to get it rezoned, plus the CUP process, seems excessive. Ms. Weakley stated that we already have this process for other uses such as plastic manufacturing.



- Vice-Chair Lucier stated that all mining activities are Conditional Use in heavy industry zones. The only one that would be different if we don't do something about it will be the fracking. Why should we give fracking a special break when we don't give other mining activities that same break? Ms. Hager stated that we already have a precedent for it, so it feels like we could keep it without sounding like we created something. Board members stated she was correct.

Mr. Frazier stated that maybe because the nature of the resource makes a difference of the other mining uses. Ms. Weakley stated that they will need to do geotechnical research to see if they have a viable mine and that is not different from any other mine. Chair Siverson stated that what is different, is what the State is imposing.

- Mr. Sullivan stated that if it is heavy industrial with a CUP, the first task will be for the rezoning which is general use. If the County is looking at a piece of property for rezoning, at that point the County is not considering just oil and gas development, but considering all of the uses that are allowed in heavy industrial. Which would make it more difficult to rezone. Then the fracking operator would petition to the Oil and Gas Commission for pre-emption. They would say that the County denied our heavy industrial rezoning. The County would have very little documentation compared to a CUP process or the special study criteria, because the decision on the local level would have been for heavy industrial uses and all of the uses that would come from heavy industrial.

Ms. Moose stated that basically the County would approve the heavy industrial rezoning and then deny the CUP. Mr. Spoon stated that a two-step process would be more likely for pre-emption. Mr. Dunn stated that is his fear, if we were to do it that way, by denying the rezoning it would have a very good chance for pre-emption without having the Quasi-Judicial hearing. Chair Siverson asked if the pre-emption hearing was Quasi-Judicial. Mr. Dunn stated that yes it is Quasi-Judicial.

Ms. Weakley stated that if the County denied a rezoning, and there was a petition that says Oil and Gas Commission consider these four findings relative to the request. She stated from finding number four, "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.” Ms. Weakley stated that the Commission is now serving in a Quasi-Judicial capacity to make this decision. Ms. Weakley read from finding number three, “Local citizens and elected officials have had adequate opportunity to participate in the permitting process.” She stated that even if an applicant says you have denied this rezoning and you are being pre-emptive, it is the Commission to make Quasi-Judicial decision. She asked, what voice does the County then have to weigh in on those four findings? Is there a public hearing and can the County make their case? It is a Conditional Use Permit on their level.

Vice-Chair Lucier asked if we can be pre-emptive on the zoning case, but pre-emptive a second time because we were to require a CUP once it was rezoned. We would be pre-empted twice. Ms. Weakley stated that the case would be petitioned to the Oil and Gas Commission, then they have to make those four findings which is very similar to what we would have to do for the CUP situation.

Ms. Weakley stated that it is a Quasi-Judicial hearing where they have to say there is no threat to health or environment and these permits are required. The local citizens and the elected officials have had an opportunity to participate in the permitting process. There are still CUP findings of fact that have to be made, but not by us, but by the Oil and Gas Commission. What role does the local government then play? Is there a public hearing?

Mr. Dunn stated that there is not a public hearing. The Oil and Gas Commission will basically be working on the record as to what has the County put together and the rationale for their decision. However, the way that it is worded, you might have a point. The question is, wouldn't you want to do that during the CUP process and have a major case.

- Mr. Frazier stated that it seems like in a two-step process you are endangering of being pre-emptive before you have a chance to consider the issues specific to fracking. Mr. Dunn stated he believes that is a real possibility if you do it through a legislative rezoning process.
- Mr. Dunn stated that Chatham County is a big county and if there are some areas you want to take fracking out, for good reasons, but to only allow it in heavy industrial areas it will be very vulnerable.

- Chair Siverson asked if Mr. Dunn would address the Harris Lake issues. Mr. Dunn stated that only a small amount of land is in Chatham, but a lot of the lake is in Chatham. He stated that there is a 200 foot buffer under the State Oil and Gas Rules, and 200 feet is not very much. Mr. Sullivan pulled up a map of Harris Lake showing the property owned by Duke Energy. Mr. Dunn stated that Duke Energy owns most of the property around the lake. Duke Energy is restricted from selling or exchanging this land without permission from the NC Utilities Commission. Mr. Dunn stated that doesn't stop someone from leasing the land and fracking on it, but maybe leasing would also require the Utilities Commission permission.

Mr. Dunn stated that according to Duke Energy the NRC license will not allow any drilling on the property because it did not seek permission to do so during the application for a license. Duke Energy would have to go through the NRC relicensing process if they wanted to drill. Mr. Dunn stated that the Duke Energy representative said they will not allow fracking on their property because of the potential seismic effect. He stated that it is still questionable on how binding that statement is. Mr. Dunn stated that the CUP process would apply to the county land anywhere, and that would give the County the ability to give special consideration to impacts on the lake at whatever distance from the lake the County thinks is reasonable.

Mr. Dunn continued saying that would allow the County to regulate the impacts on Harris Lake. He stated the State law prohibits a buffer or a watershed setback. He doesn't see that Duke Energy would want that kind of risk, but they are not going to say they are against fracking either. Mr. Dunn reminded the Board that making an amendment to the ordinance is not the end of the opportunities to get some more restrictions in place.

- Mr. Dunn stated that the Oil and Gas Commission is getting more organized and that they are considering to adopt more regulations. He stated that there are two categories that he would encourage lobbying the Oil and Gas Commission, one is Harris Lake to increase regulations and the other is road impacts. He stated that a few years ago when the oil and gas industry was a hot topic the DOT had discussed having Road Use and Maintenance Agreements (RUMA). Mr. Dunn stated that he had talked to DOT and that the oil and gas was willing for that agreement, but the conversations had stopped because the oil and gas industry has cooled down. Mr. Dunn stated

that the RUMA require financial assurances and set up certain rules for handling maintenance and deterioration of the roads. Intense use of the roads with the heavy trucks during the fracking process in a short period of time can take a secondary road down to the gravel.

- Chair Siverson stated to the Board that they need to make a decision. Vice-Chair Lucier stated that there are a couple of choices. One being the draft ordinance that is prepared and that they had made some suggestions, taking out the last sentence on the EIA. The other approach is to require the CUP in the heavy industry district and also the issue related to that is if it will have some pre-emption risk to it. Rezone the residential land to heavy industry for the use of fracking is one of the other options we have talked about. We need to decide which way we want to go and then fine tune it.

Chair Siverson stated that she started out thinking about the heavy industrial with the CUP, but now she has changed her mind because if the rezoning is denied it is pre-empted and the County is in a weaker position then if we had the CUP throughout the County.

Ms. Weakley stated that her opinion is that the Oil and Gas Commission still have to make the four findings and she is not inclined to allow oil and gas in all zoning districts just with a CUP. She stated that is not appropriate and putting the health, safety, and welfare of citizens at risk. Chair Siverson stated that it puts the County in a weaker position. Ms. Weakley stated that a CUP can be challenged.

- Motion made by Mr. Frazier to adopt the changes to the ordinance as presented, realizing that the procedure to make changes we need to have a motion on the floor first. He stated that we should work from this and make any changes that are necessary.

The motion was second by Mr. Galin.

- Chair Siverson opened to discussion. She asked, if that motion would include removing of the last sentence in the paragraph of 17.9? Mr. Frazier stated that he did not want to remove the sentence right now and wanted to discuss that.

- There was Board discussion about the CUP process in just heavy industrial or county wide. The discussion stated that they didn't want oil and gas development all over the County, but this gave them the ability to deny in the CUP process. Ms. Weakley stated that we have seen that go bad in lots of situations. She stated that we are telling the citizens that anywhere in the County this could be possible, depending on how good your experts are during testimony. Mr. Galin stated that is unlike to happen because there is not much fracking territory available within Chatham County.
- The Planning Board members discussed about the amount of people that would actually ask for fracking development in Chatham County. They also discussed if Lee County had more profitable opportunities for fracking than Chatham County.
- Vice-Chair Lucier stated before he was going to vote on this item, he asked Mr. Frazier the process in which someone would go through who wanted to frack in Chatham County. Mr. Frazier stated that the process would be that they apply for a CUP and if they want to frack in the middle of Briar Chapel, we would say no. However, if they want to frack in a residential zoned area that is very sparsely settled it would have a special study or an EIA. Vice-Chair stated that the motion would include both a special study and an EIA.
- Chair Siverson asked Vice-Chair Lucier if he was making an amendment to Mr. Frazier's motion. Vice-Chair Lucier stated that he would like to make an amendment to the motion and to take out the last sentence in section 17.9 and add both the EIA and the special study to be completed under the CUP.

Mr. Dunn stated that it might be a good idea for it to say that a special study is required in addition to an EIA. He stated that he will find the best way to word the sentence in section 17.9.

- Mr. Gaeta stated that he wanted to go through the process. If they were to consider Ms. Weakley's approach, fracking can only be in a heavy industrial area, but if someone wants to frack somewhere else, there is pre-emption. Chair Siverson explained about the rezoning and denial of the rezoning as well as the CUP process. He stated then they can petition for pre-emption and let them do that. If they win the pre-emption, what would be the next step? Ms. Weakley

stated that the Oil and Gas Commission would have to find the four findings.

A Board member asked if that happens, are the developers approved for the heavy industrial use able to frack at that point or do they still have to file for a CUP? Vice-Chair Lucier stated that you can only lose to pre-emption once, and if you lose they can frack. Mr. Dunn stated that if the County refuses to rezone and they go through the pre-emption process, Oil and Gas Commission overrides that decision, the developer can move ahead in fracking.

Ms. Hager stated, but they only succeeded in rezoning to heavy industrial at that point. Mr. Sullivan stated that the pre-emption doesn't overturn the decision if whether the zoning is approved, they are overriding the local government and there is no rezoning. They would be saying that on that particular location the developer would be authorized for the fracking operation to begin.

- Mr. Frazier stated that there is nothing in the record about fracking at that point, because it is all heavy industrial. Ms. Weakley stated that there is when the Oil and Gas Commission processes that. It has to have federal and state permits, plus local citizens and the County has to be involved in the permitting. There was Board discussion about how it would take the power away from the County and make their stance weaker.

Ms. Hager stated that we are all in agreement that we want to provide as much protection as we can for the people, but what we are faced with is a really vague oil and gas pre-emptive process that tends to favor the oil and gas fracking. Even though it sounds like we are allowing fracking in all the zones, what we really are trying to do is create a more robust reviews. Vice-Chair Lucier stated that the Oil and Gas Commission will have the four finding, but we don't know how thorough they will be. The County would have the EIA and the special study that will be required for the CUP and the County can request a lot more than what the Oil and Gas Commission would require.

- Ms. Weakley stated that it will put the burden on the property owners. She gave an example of being a property owner with the opportunity to frack next to her property. If her neighbor wants to frack on the property, they will have to go through a CUP process. They will have

industry experts presenting everything they can, whereas myself the neighbor, do not have the resources to hire experts, the only thing that can be done is stand up and say, I don't agree with this. Chair Siverson stated that we are dealing with pre-emption, not normal circumstances. Vice-Chair Lucier stated that we will have the special study and the EIA as part of the process and the County gets to select experts that is paid for by the applicant. He stated that it is not up to the landowner to make that decision, the County is basically hiring a lot of experts for that landowner.

Mr. Dunn stated that the landowner might want to get involved and use the information that was gathered and maybe a lot of neighbors will want to do that. That is why the component is in the ordinance because the County will have the authority to require the special study with a reasonable extent, tell them what needs to be in the study.

- Chair Siverson asked, can the special study be challenged? Mr. Dunn stated that anyone can challenge the special study or even challenge the oil and gas industry. Mr. Sullivan stated that he has something that might help with the question about rezoning verses CUP. There is a section for religious institutions that states, "Applications with a high degree of discretion as is with the case for a petition for rezoning have a greater potential for making religious discrimination (if we switch out religious with fracking) land use, special, or CUP will clearly bound the discretion and the requirements for evidence in findings to support the decision these situations that have incumbent upon the jurisdiction denying the approval to clearly establish a legitimate denial discriminatory land use basis for its decision."

Mr. Dunn stated that this reiterates what he said earlier, the County will gather enough evidence at the applicants' expense that will stand up. He stated that is procedural safeguards as lawyers call it, and you get more respect on the next level of appeals if you follow procedural safeguards.

- Chair Siverson asked, if there were any other amendments that anyone would like to make to the motion on the floor?
- A Board member asked, is there any risk in inviting more opportunities by not having rezoning ordinance in place? Mr. Dunn stated that if someone thinks the resources are there, a rezoning or

a CUP requirement, they are going to do what they need to do so if they think they can make money fracking.

- Ms. Moose asked, why do we have to agree on the consultant for the special study, why can't the County choose the consultant and the applicant pays for it? Mr. Dunn stated that is the right and fair thing to do.
- Ms. Weakley asked what happened with Briar Chapel because that was a peer review process with the EIA. She stated that she does not believe that Briar Chapel agreed to the consultant, the County chose the consultant. Vice-Chair Lucier stated that the County chose the consultant, and Briar Chapel paid. Mr. Sullivan stated that right now for the EIA provisions, if there is over 50 lots you have to provide an EIA in a residential subdivision. The developer will hire their own consultant to prepare their EIA. It is a little different than what we are talking about with fracking. The County then selects a peer review consultant and the developer will reimburse the expense for that peer review. What this is saying, we mutually agree on the consultant that is going to perform the study. Ms. Weakley stated that she does not like that.

Vice-Chair Lucier gave the Board some examples of peer reviews, how they are performed, and all the different kind of questions that are asked. He stated that a peer review is very rigorous from a scientific perspective. Ms. Weakley stated that we should have a peer review, not agreeing on a consultant. Chair Siverson stated that then we would require the special study, EIA, and then require them to pay for our peer review. Vice-Chair Lucier stated that there would be the EIA, then the County would oversee and select a peer reviewer to make sure it was done properly.

Ms. Dunn stated that there is no argument that this process is going to cost the County some extra money, if there is going to be any proposals. Mr. Sullivan stated if we did switch to a process to change 17.9 to mirror the process we have for the EIA setup, in that scenario, the applicant hires their own consultant to prepare the special study. Then the County would have to hire a peer review consultant. The County would have to issue a RFP to hire a consultant to do the peer reviews for the EIA's. There are a lot of consulting firms that can prepare an EIA and there are a lot of consulting firms that can prepare peer reviews. Again, in this scenario, were going to do a



special study for a wide range of uses. Mr. Sullivan stated that he is thinking beyond oil and gas because it can take a lot of time to find a consultant that is specialized in those uses. Mr. Sullivan stated that he was just trying to think through the logistics of that process. Mr. Spoon asked if we could make a list of approved consultants and have the applicant pick. Mr. Dunn stated that he didn't think we would have a problem with consultants working on a case by case basis, because if the idea is to do fair, objective work, they would like to get more of the same work.

- There was Board discussion about the risk involved with hiring a consultant that is specialized in the industry and that they might be bias because of who is paying them to perform the review.
- Chair Siverson asked Ms. Moose about her proposed amendment. Ms. Moose stated to strike out the "That is mutually acceptable to the County and the applicant" and the County chooses the consultant. Chair Siverson asked what the Board thought about that. Mr. Spoon stated that if he were a judge on the Oil and Gas Commission he would be leery of that. It shouldn't be that hard to find a consultant that people can agree on. Mr. Dunn stated that both sides have to agree otherwise you will not move ahead.
- Ms. Weakley stated that she had a question about the special study and the way that it is worded. "Upon making a determination that an additional study is needed, notice shall be given to the applicant, and the applicant shall meet with the County staff to determine the scope of the study and to select a consultant. The applicant shall pay a fee as part of the conditional use permit application for the reasonable costs of the consulting services incurred by the County. The report of the study results shall be approved by the County staff." She stated that this puts the burden on the County staff to come up with the scope of the special study and also approve the report.

Mr. Sullivan stated that the staff has been discussing, if this is adopted, they would be talking to the County Commissioners and the Environmental Review Advisory Committee to come up with a special study criteria, not only for oil and gas, but for all the uses. There would need to be a set of generic criteria for everything and then more specific criteria each individualized use, because expertise will not be available from staff. Mr. Sullivan stated that the final review of approval is something we will probably be sending to

the Environmental Review Advisory Committee to give feedback. He said ultimately, if the County says it is acceptable then it becomes part of the CUP process. The Quasi-Judicial hearing, Planning Board, and then the Board of Commissioners. It is not just staff review.

Ms. Moose asked for clarification on the CUP Quasi-Judicial hearing. Does a member of the public have standing to comment? Mr. Sullivan stated that the Quasi-Judicial hearing is open to anyone to speak and they are sworn in. He has never seen the Commissioners not allow someone to speak, even on objection. Everything goes into the record and Commissioners make their decision. If it is appealed to Superior Court then the attorneys will figure out if the information that an attorney objected to, was that critical into the Commissioners decision. Ms. Weakley stated that standing has been a problem in the past with CUP process. There was some Board discussion on what qualifies as standing.

- Chair Siverson stated that there is one amendment and that has been accepted.
- Mr. Frazier stated that he has not done much with Environmental Impact Assessments and would like to know what is in a special study and an EIA. Mr. Sullivan stated that there is geological information that we may want to have evaluated that may not be covered in a lot of detail in the EIA, but in the special study there are geological surveyed maps being prepared for the County with more detail. We may also ask for more information about the relationship of the proposed fracking operation and the impacts. Mr. Sullivan stated that the Environmental Review Advisory Committee experts will help with the list of items to request.
- Vice-Chair Lucier stated that we might want the wording to be, a special study including an EIA, so it can be as broad as it needs to be. If there is a standard EIA the County might want to go further than the standard research. He stated, have a special study including an EIA regardless whether it is 10 acres or less. Mr. Dunn stated that it has to be over 10 acres for the EIA, it can't be required under 10 acres.

Mr. Dunn stated that we could word it that way as, a special study to include an EIA over 10 acres. He stated that some of the special study requirements can be folded into an EIA. Vice-Chair Lucier stated that a special study can be broader than an EIA.

- Chair Siverson stated that the Planning Board needed to vote on the Consistency Statement. She stated that she was ready to vote on Mr. Frazier's motion with Vice-Chair's amendment.
- Vice-Chair Lucier made the motion for the amendment; Ms. Hager second the motion.
- Ms. Hager asked, is there any kind of statement that we would provide for the records because this process is so counter intuitive? The meeting minutes will be recorded and Mr. Sullivan stated that you can fold that into the Consistency Statement.
- Ms. Moose stated what if we keep the moratorium and not adopt any text amendments. Just wait to see if we are challenged on the moratorium itself, and if we are, then enact the text amendment. Mr. Dunn stated that his concern is, if there is an application during the time the moratorium is expired there will be no protection in place.

Mr. Sullivan stated that it would put the County in limbo and if someone came in and said they wanted to apply for oil and gas exploration permit, the County would have to say there is no use in the table of uses. He stated that it is illegal if it is not listed in the table of uses and is prohibited. Mr. Sullivan stated that it would be a big issue and a lot of problems for the staff and County.

- Ms. Weakley state that she cannot vote to approve this item because with can open up oil and gas exploration to the whole County including residential areas.
- Chair Siverson called the Planning Board to vote in favor on the text amendments of the zoning ordinance on the oil and gas exploration as they are written with one amendment as purposed by Vice-Chair Lucier.

Motion passes 7-2, Ms. Weakley and Ms. Moose opposed.

- Mr. Sullivan stated that the Consistency Statement could read as such, “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.”

Motion was made by Vice-Chair Lucier for the Consistency Statement; second by Mr. Gaeta.

Motion passed 7-2 Ms. Weakley and Ms. Moose opposed.

- The Planning Board thanked Mr. Dunn for his time and input.

IX. NEW BUSINESS:

X. BOARD MEMBERS ITEMS:

1. Update from the Planning Board liaisons.

- Vice-Chair Lucier stated that the Pittsboro Planning Board met and the only item on the agenda was a preliminary plat for Chatham Park. It is 180 houses with a mix of townhomes, condominiums, and single family homes on 40 acres. The average lot size would be .10 of an acre. He stated that they talked a lot about sewer and the three different ways it will exist. They are building a sewage treatment plant just east of town near Eubanks Road and it will treat 500,000 gallons. He stated that they are building a line up from Sanford wastewater treatment plant to handle a lot of future development. They are also going to send 100,000 gallons to the Pittsboro water treatment plant and have reuse water going back to the residential areas.

Vice-Chair Lucier stated that there will be a major electrical upgrade that will be required in about 6 or 7 years. He stated that it is still not clear where they will get their water source from. He ended by stating that they have a UDO meeting this Thursday.

- Chair Siverson stated that the Siler City meeting is next week.
- Ms. Moose stated that the Agriculture Advisory Board has not met.
- Ms. Weakley stated that the Chatham Conservation Partnership will have a meeting on January 17<sup>th</sup>. The preliminary topic is Habitat Fragmentation and what current local governments and their land use plans and ordinances have to protect the habitat.
- Ms. Moose stated that the Agriculture Board hadn't met since the last Planning Board meeting because it was scheduled on the same evening.

#### XI. 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. *Mr. Sullivan introduced Chatham County Planning Department's newest Planner Hunter Glenn.*
- This was Mr. Gaeta's last Planning Board meeting. Mr. Gaeta thanked the Planning Board for their dedication and expertise. He thanked Mr. Sullivan and the Planning staff. He gave a special thank you to Chair Siverson and Vice-Chair Lucier for their leadership and patience.
  - Chair Siverson thanked Mr. Gaeta for his service and contribution to the Planning Board.

#### XII. ADJOURNMENT:

There being no further business, the meeting adjourned at 10:08 p.m.

Signed: \_\_\_\_\_ / \_\_\_\_\_  
Caroline Siverson, Chair                      Date

Attest:  
\_\_\_\_\_ / \_\_\_\_\_  
Daniel Garrett, Clerk to the Board                      Date