

MINUTES
CHATHAM COUNTY BOARD OF COMMISSIONERS
SPECIAL MEETING
DECEMBER 10, 2007

The Board of Commissioners (“the Board”) of the County of Chatham, North Carolina, met in the District Courtroom, 12 East Street, located in Pittsboro, North Carolina, at 7:00 PM on December 10, 2007.

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

Absent: Commissioner Carl Thompson, Sr.

INVOCATION AND PLEDGE OF ALLEGIANCE

As an invocation, Chairman Lucier read from the program of the Pittsboro United Methodist Church which he stated was particularly important to Chatham County; the statement included reference to peace and harmony and the avoidance of conflict. Chairman Lucier then invited those present to recite the Pledge of Allegiance.

CALL TO ORDER

The meeting was called to order by the Chairman at 7:02 PM.

Commissioner Barnes wished everyone a Merry Christmas and shared a recorded musical selection with those present.

Chairman Lucier stated the first public hearing was on amendments to the Watershed Ordinance. Clerk to the Board Sandra Sublett noted there were six citizens signed up to speak. Chairman Lucier stated there were several clarifications to be made regarding the document posted on the website, and Fred Royal would explain those revisions.

Fred Royal, Environmental Resources Director, described the revisions made by staff last week in regards to Section 304 of the Watershed Protection Ordinance. Regarding Item C, Exemptions to Riparian Buffer Requirements, Mr. Royal stated the following:

- In Item 1, they had compared that to other pieces of this ordinance as well as the Subdivision Ordinance and the Zoning Ordinance; they had concluded that they needed to include the language “including tract or parcels that were considered exempt from the definition of subdivision” because of its integral relationship to the Subdivision and Zoning Ordinances; and
- They had also inserted a new Item 2 which described the tracts and parcels that are exempt from the definition of subdivision, which are: the combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal or exceed the standards of this ordinance; the public acquisition by purchase of strips of land for the widening or opening of street; and the division of a tract into plots or lots used as a cemetery.

Mr. Royal stated with that change, they also had modified the definition of subdivision in Section 109 by deleting the phrase “nor be subject to the regulations authorized by this ordinance”; that staff notes had been included to explain the intent and purpose of the changes; that Item F had been included entitled “Allowed Structures and Uses in Riparian Buffer”; Item F.5. were utility crossings allowed and noted as water, sanitary sewer, electric, communication lines, easements, manholes and appurtenances buffer; language was added to that section that stated “Sewage treatment crossings of ephemeral streams may be trenched in accordance with the applicable laws and rules for sewage treatment disposal systems only for on-site (on parcel) sewage treatment systems” to be consistent with State law; in Section 9 the word “permitted” was substituted for the word “required,” and the following sentence was added: “However, any buffer areas disturbed or impacted by these components must meet the erosion and sedimentation

control design practices described in the...”; and, in that same section, the phrase “where no practicable alternative exists” was removed.

Mr. Royal stated the final item had to do with stream crossings; that for private road crossings the Environmental Review Board had recommended a 10 foot minimum be required for bridge crossings, but staff believed that 15 feet was more prudent and reasonable based on the size of streams in the County and that many perennial streams were 5 to 10 feet wide; and, as a result Items b. and d. were cited at 15 feet for crossings. Mr. Royal stated the only other item discussed were the PA percentages necessary to trigger the ordinance.

1. Public hearing to receive public input on a request to consider amendments to the Watershed Protection Ordinance including the following:

1. Amend Section 304:
 - a. Buffer Areas Required, to increase stream buffer widths along perennial streams, intermittent streams, ephemeral streams, wetlands, and seeps/springs countywide
 - b. Prohibit additional uses within these buffers.
2. Amend section 501 (C) and (F), Watershed Administrator duties Administrator and Duties Thereof
3. Section 503 (Changes and Amendments to the Watershed Protection Ordinance to correct references to state agencies.)
4. Delete Section 601. Definitions, and replace with Section 109. (New definitions will be added to Section 109.)

Loyse Hurley, 16 Matchwood, Pittsboro, NC, stated that the Board of Directors of Chatham Citizens for Effective Communities (CCEC) is totally supportive of the proposed amendments to Sections 304; 501 C and F; and 503 and 601 of the Watershed Protection Ordinance.

Dave Klarmann, 380 Hatley Road, Pittsboro, NC, stated that he worked for a company involved in land development and also served on the Chatham County Planning Board; that he had had the opportunity to witness the evolution of Section 304 of the Watershed Protection Ordinance; and, that he did not believe it was yet ready to stand on its own.

Mr. Klarmann called attention to the purpose and intent statement issued by the ERB, which stated that “septic tanks serve as the primary sewage disposal method, and spray irrigation fields are employed in many instances. Many citizens depend on ground water wells for water supply, which can be impacted by surface waters.” Mr. Klarmann stated that comment is at best hyperbole, at the worst, a lie; that there had never been a case of well contamination from surface water runoffs in Chatham County; and, that in fact it was the County landfill west of Pittsboro off Highway #54 that had been the main culprit in this tragedy, along with some wells dug too close to chicken houses where the nitrate concentrations were too high.

Mr. Klarmann stated they should not resort to innuendo or any scare tactics to make an argument in our policy statement; as a matter for public record, the Chatham County citizens should know that there had been only one joint meeting of the ERB and the Planning Board; that many questions arose at that October 3 meeting some of which had been answered with revisions to the ordinance; however, many other contentious areas exist that may create problems for the County in the future; more importantly, there appeared to be no regard to the property owners who would be impacted by these buffers; and, that one man’s conservation was another man’s confiscation.

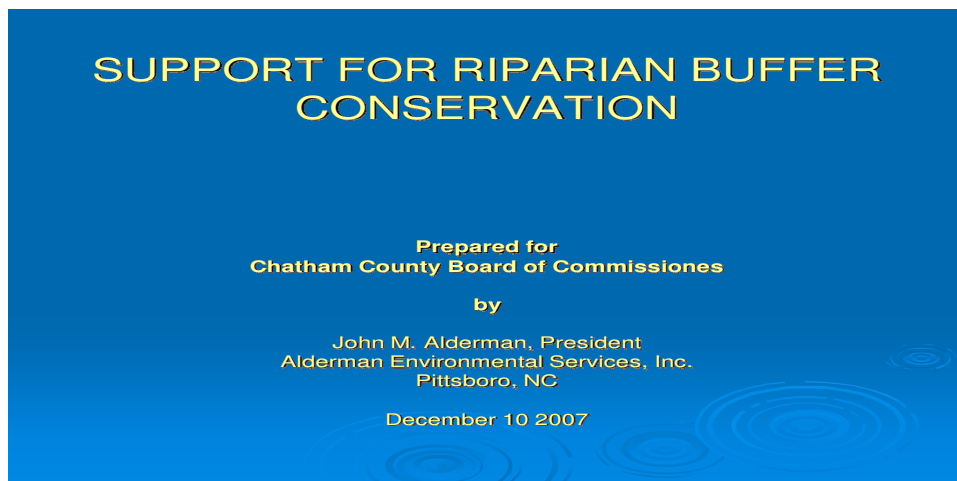
Mr. Klarmann stated there must be compensation and considerations for those whose private use would possibly succumb to public control; there should not be a rush to make decisions on an ordinance that would increase the up-front costs of developing someone’s land while decreasing its value and use; and, these measures would adversely impact individuals while benefiting larger entities that have deeper pockets.

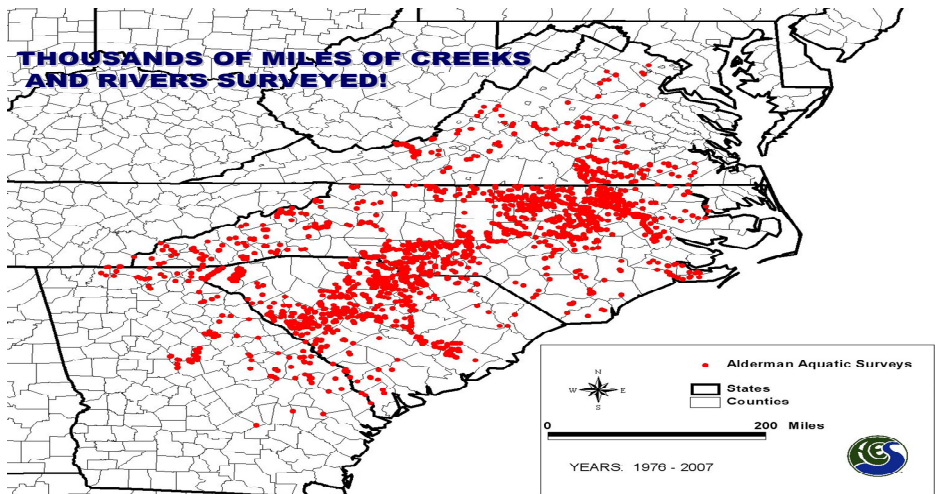
Mr. Klarmann stated the ERB also made mention as to how riparian buffers should be maintained; that the NC Forestry Division had standards and rules for the harvesting of timber wood; that as a County we do not need to be in conflict with existing State agency policies; that Mr. Royal had stated the County would be breaking new ground with these buffers with regard to ephemeral streams, wetlands, seeps and springs; that he interpreted some of these revisions as overwhelming in their concepts and implementation; and, that alternative ways exist to protect these sensitive areas.

Mr. Klarmann urged the Board to allow more time for closer inspection of this new ordinance, noting the ERB had worked nine months on this enterprise; that citizens should be afforded the proper consideration and due diligence by the Board before we enact such restrictive measures; that they should be patient and thorough before they acted; and, there was no doubt that the former regime had facilitated the bulldozing of the environment, and they should not reciprocate by bulldozing our citizens.

Chairman Lucier stated this was not something that had been done in the last nine months; rather, amendments to the watershed ordinance had begun while he was Chair of the Planning Board in 2003. He stated there was also considerable effort while the Compact Communities Ordinance was being developed and many of the amendments here were actually contained and approved through the Compact Communities process. Chairman Lucier stated this was the third public hearing on this topic, noting one had been held in January and one in June, so he did take exception to the comment that this was a rushed process.

John Alderman, President of Alderman Environmental Services, 244 Red Gate Road, Pittsboro, NC, provided the following PowerPoint presentation:





*Some of Chatham's losses
during past 30 years*

Cape Fear shiner

Atlantic pigtoe

Brook Floater

Yellow lampmussel

CULVERTS

- > 1. Have worked on billion dollar projects w/ some of the best hydrologists and engineers in USA (NCDOT)
- > 2. Often as not, culverts have major impacts:
 - Hanging culverts
 - Blow out downstream banks and bed
 - Major fill along streams = barriers to animal movements and migrations
- > 3. As streams increase in size, culvert impacts increase.

Judith Ferster, 228 Carolina Meadows Villa, Chapel Hill, NC, stated that she was speaking for the Orange-Chatham Sierra Club; that in 2005 they had supported a proposal to have a 150 foot buffer for perennial streams, 100 for intermittent streams, and 50 for ephemeral streams but were not successful; they were now pleased to support the ERB's proposal, particularly d. and e.; and, the buffers were small but it was a start.

Elaine Chiosso, 1076 Rock Rest, Pittsboro, NC, stated that she was speaking on behalf of the Haw River Assembly; that they supported the recommendations of the ERB; that regarding riparian buffers, they were taking a bold step to buffer ephemerals, but it should be done everywhere since such streams could be huge conduits to pollution; that massive sediment flows could be seen coming down such small streams during times of development when storms occur; that during the previous administration she had seen where seeps and streams were actually bulldozed because they were not protected under current law, and it was terrible to see that happen particularly to historic streams; that you could not bulldoze water away, so this would actually be doing a favor to future homeowners by making sure that water could travel where it needed to travel; and, that everyone benefits from these riparian buffers, not just the person immediately downstream. Ms. Chiosso stated that the Haw River Assembly supported the revisions to the ordinance as proposed.

Jennie DeLoach, 484 Boothe Hill Road, Chapel Hill, NC, stated that she had approached the Board in the past regarding issues pertaining to development around her, and hoped that the revisions proposed this evening would speak to some of those. She exhibited several pictures, one of a stream that showed 100 feet on either side, which she said made sense to her; that where she lived near a mountain that there was no flatland with just small dips that allowed for a mellow stream; that if you went out 100 feet of the stream you would be going up the hill; and, that if you did that there was still water coming down the hill, and she did not know if that would be covered. She requested that those who lived in such steep conditions be considered by the ordinance.

Chairman Lucier stated the Board would now have its discussions and questions, and consider the possibility of a vote this evening.

Commissioner Cross stated he wanted to have some discussion on the creek crossings, particularly bridges and culverts; that they had put in some reportedly zero-impact bridges at the Business Park, and now the Department of Transportation (NCDOT) had refused to accept those streets as public roads; that the suggested 15 feet may not be enough or it could be too much; that any crossing of a creek should trigger at least that part of the assessment; and, that they needed to use the expertise of staff and determine what size and type of crossing is appropriate at the time of application.

Commissioner Barnes stated his only question was if it was 15 feet, or private roads that would require a bridge the bridge may be best, but putting a bridge over a 15 foot bank-to-bank he considered to be excessive. He stated when a development was done, whether small or large, that would be the time to determine whether to put in culverts or whatever else was needed; that building bridges was expensive and may be unreasonable for small developments; he did not believe they as a Board should put the distance required in this section of the ordinance; he would personally like to see it left out, to be determined by an engineer; and, that it would still be reviewed by the ERB, and at that time it could be determined.

Commissioner Vanderbeck stated he believed they had a lot of people with a lot of expertise working on this, and they had heard from Mr. Royal tonight who had a great history in this who had said they were being too conservative at 15 feet; that he did not believe they would be perfect in what they were doing but that they needed to get a handle on things to keep from getting into severe degradation; and, that some of their choices may be somewhat painful but a more conservative 15 feet was a step in the right direction.

Chairman Lucier thanked the ERB, the Planning Board, and everyone who had worked on this, noting a lot of work had gone into it and they were all to be congratulated. He stated it was an incredibly important issue for the County, and once their water quality was gone it was lost for good; that a lot of development was coming their way, and the implementation of these stream buffer requirements would go a long way in protecting their water quality; that this was not just an environmental issue but also a drinking water issue; the more organic material you have and the more sediment you have in the water, then the greater the chance that our water at some point in the future would be impacted; and, that drinking water quality and safety and environmental issues were linked together, and he was very much in support of the recommendations put forth.

Chairman Lucier stated he understood the concerns Commissioners Cross and Barnes had raised regarding the bridges, noting there was a statement in the recommendations which said: "Stream crossings that were perpendicular to stream flow. Stream crossings shall be designed to minimize the amount of stream channel bed and bank disturbance and shall comply with all applicable Best Management Practices and permits requirements. Stream crossing design alternatives that are preferred include: arches, span bridges and submerged culverts." He stated that one option to be considered was the paragraph regarding the 15 foot requirement. Chairman Lucier stated he understood the need for them, and it may be something that could be looked at in the future regarding bridge requirements.

Commissioner Cross stated he believed it should be considered on an individual basis to make sure we do have the proper crossing.

Commissioner Barnes stated Best Management Practices were required, so that should improve what was done.

Commissioner Vanderbeck stated he would like the County to be leaders in this, and move forward with the more stringent requirements which, as they had heard this evening, were conservative.

Commissioner Vanderbeck moved to accept the revisions with the notes.

Keith Megginson, Planning Director, pointed out that Commissioner Barnes in his comments had referenced crossing a 15-foot dry spring with a culvert, but a culvert would only be required for a perennial stream. He stated that the intermittent and ephemeral streams would not be included; that it would affect only the continuously flowing streams.

Chairman Lucier asked if there was a second to Commissioner Vanderbeck's motion. Hearing none, the motion died for lack of a second.

Commissioner Barnes moved to approve the amendments provided by Fred Royal on Friday, December 7, 2007 with the removal of Item 1.b. under Stream Crossings, concerning bridge requirements for private road crossings.

Commissioner Cross seconded the motion.

The motion carried three (3) to one (1) with Commissioner Vanderbeck opposing.

Mr. Megginson stated that the effective date would need to be addressed.

Commissioner Vanderbeck stated he had earlier recommended it be effective no sooner than January 23, 2008.

Chairman Lucier stated he believed that was reasonable, noting he had talked with Fred Royal and he had agreed.

Commissioner Vanderbeck moved, seconded by Commissioner Barnes, to make January 23, 2008 the effective date. The motion carried four (4) to zero (0).

2. Public hearing to receive public input on a request to consider amendments to the Chatham County Subdivision Regulations, Section 5.2 to specify threshold criteria of when environmental assessments or environmental documentation are required. The proposal provides options for when assessments or documentation are required for residential and non-residential development.

Chairman Lucier invited speakers to come forward on this item. Ms. Sublett indicated that two citizens had signed up to speak.

Loyse Hurley, 16 Matchwood, Pittsboro, NC, President of Chatham Citizens for Effective Communities (CCEC), stated that CCEC was fully supportive of these modifications to Section 5.2 of the Subdivision regulations and Section 11.3 of the Zoning Ordinance; that once damage was done to the environment it was impossible to correct that damage, that it was necessary to prevent that damage in the first place; and, these criteria will allow us to review development proposals and attempt to prevent such damage.

Elaine Chiosso, 1076 Rock Rest, Pittsboro, NC, stated that she was again speaking on behalf of the Haw River Assembly; that they supported the recommended language for environmental assessments; that it would go a long way to really assess what the natural resources are on any piece of land up for development; and, that it would also give them a chance to protect some of Chandler's Ridge's cultural heritage. Ms. Chiosso stated that the Haw River Assembly supported the revisions to the ordinance as proposed.

Commissioner Vanderbeck moved, seconded by Commissioner Barnes, to approve the amendments to the Chatham County Subdivision Regulations, Section 5.2, to specify threshold criteria of when environmental assessments or environmental documentation are required, to be effective January 23, 2008.

Chairman Lucier stated that this had gone through a number of revisions and worked on by a number of people, and believed it was now at a point that it was on target. He stated it was right for Chatham County, including the sliding scale recently included for smaller developments.

The Chairman called the question. The motion carried four (4) to zero (0).

3. Public hearing to receive public input on a request to consider amendments to the Chatham County Zoning Ordinance, Section 11.3 to specify threshold criteria of when environmental assessments or environmental documentation are required. The proposal provides options for when assessments or documentation are required for residential and non-residential development.

Chairman Lucier stated this was related to the public hearing just held, and confirmed with Ms. Sublett that no one had signed up to speak. He stated it was a very short amendment regarding Section 11.3 which stated "an environmental assessment should be required for any proposed non-residential project with 10 continuous acres or more in extent," and refers to the subdivision ordinance with the sliding scale he had just mentioned.

Commissioner Barnes moved, seconded by Commissioner Vanderbeck, to approve the amendments to the Chatham County Zoning Ordinance, Section 11.3, to specify threshold criteria of when environmental assessments or environmental documentation are required, to be effective January 23, 2008.

Commissioner Cross asked if January 23 would give Mr. Megginson time to do everything that would be required. Mr. Megginson replied it would.

The County Manager commented that was a short timeframe.

Chairman Lucier called the question. The motion carried four (4) to zero (0).

Commissioner Barnes asked the County Manager to comment on the January 23 date. County Manager responded they would have a staff meeting on January 17 to walk everyone through the new amendments.

Chairman Lucier stated that clearly they would need to look at the process; that it would become clearer once the new Subdivision Ordinance was in fact amended in the next several months, and this environmental assessment material would have to be integrated into the Subdivision Ordinance; that right now they needed to think about a process by which developments greater than 25 houses or lots are subject to the moratorium until June, but those smaller subdivisions still may come in; that the way the Subdivision Ordinance now read was that the environmental assessment material was submitted with a preliminary plat design, and that may change when the subdivision regulations changed and that would require another public hearing; and, that could potentially require that the environmental assessment materials be submitted with sketch design.

Chairman Lucier said in the meantime, they should identify a process and perhaps staff could briefly present some ideas to the Board at the December 17 meeting about how that could be done. He stated he knew that Mr. Royal had been working on a checklist that would be used to determine what areas needed to be addressed as part of the submission for preliminary plat approval.

Commissioner Cross thanked everyone who had worked on these issues, noting they had turned in good work for the Board's consideration.

Allison Weakley responded it was their pleasure.

John Alderman stated he had waited thirty years to see the leadership he had seen tonight, and thanked the Board for its action.

ADJOURNMENT

Commissioner Vanderbeck moved, seconded by Commissioner Barnes, to adjourn the special meeting. The motion carried four (4) to zero (0), and the meeting was adjourned at 7:54 PM.

George Lucier, Chairman

ATTEST:

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