

**MINUTES OF MEETING  
OF THE BOARD OF COMMISSIONERS OF  
CHATHAM COUNTY  
SITTING AS THE  
ZONING BOARD OF ADJUSTMENT  
OCTOBER 02, 2006**

---

The Board of Commissioners of Chatham County, North Carolina sitting as the Governing Board of the Zoning Board of Adjustment (“the Board”) met in the Agricultural Building Auditorium, 45 South Street, located in Pittsboro, North Carolina, at 9:45 AM on October 02, 2006.

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

Commissioner Emerson moved, seconded by Commissioner Cross, to convene as the Zoning Board of Adjustment. The motion carried five (5) to zero (0).

**BOARD OF ADJUSTMENT MATTERS**

**Appeal Requiring Sworn Testimony:**

**Appeal to the Zoning Board of Adjustment by Hal Winters of 6 Eagles Drive, Chapel Hill, NC, on an interpretation by the Chatham County Planning Department of the Chatham County Zoning Ordinance, Section 10, Item 10.3 Residential Agricultural District, Item A Permitted Uses, for the operation and activities of a public utility facility for Governors’ Club Properties through Aqua North Carolina**

The Chairman administered the oath to those in attendance, Mr. Hal Winters and Ms. Angela Birchett, who wished to give testimony. Mr. Patrick Bradshaw declined to be sworn-in stating that he would not give testimony, but would serve as counsel for the Aqua North Carolina.

Mr. Hal Winters, 6 Eagle Drive, Chapel Hill, NC, stated that he feels that the staff of the Chatham County Planning Department are a highly-dedicated and hard-working group of people; that with all that is going on in the County, he feels that they are over worked; that he has a great deal of respect for the Planning Director and his staff; that he admires their ability to deal with all that is before them; but that he believes in his situation, that they haven’t made the correct decision.

He stated that it is his position, as well as that of the majority of residents of Whippoorwill Lane and residents of Governor’s Forest Subdivision, that the activity being conducted by Aqua North Carolina, Inc., adjacent to Whippoorwill Lane, violates the Chatham County Zoning Ordinance, specifically, Section 10, paragraph 10.3 RA 40 Residential-Agricultural District, subparagraph A, “Permitted Uses”; that the Chatham County Zoning Ordinance clearly states under “permitted Uses” for the subject district, that public utility facilities are permitted “which are designed for and required to serve the neighborhood and the uses in the district and nearby areas...”; that the North Carolina Utilities Commission issued a “Certificate of Public convenience and Necessity: dated October 10, 2005 to Aqua North Carolina, Inc. to provide sewer utility service “in” Governors Club Subdivision as stated on the

certificate.

He stated that Governor's Club is an exclusive and private neighborhood, isolated from other neighborhoods by a twenty-four hour system of gates and guards that limit entry to its residents and invited guests; that the property east of Whippoorwill Lane is in a totally different neighborhood, not in sight of, distanced from, and separated from Governor's Club by at least two state roads; that any claim by Aqua North Carolina that a spray irrigation facility on this property is in the same neighborhood as Governor's Club is false; that the claimed spray irrigation facility to be located on this property would not serve the neighborhood in which it is located as required by the zoning ordinance and would exceed the limits of the Certificate of Public Convenience and Necessity issued by the Utilities Commission; that it also appears that Governor's Club and the Whippoorwill Lane area are different zoning districts based on the Chatham County Zoning Ordinance district definitions and zoning maps; and that at a minimum, this requires interpretation.

Mr. Winters stated that it should be further noted that Aqua North Carolina has no wastewater reuse permit nor has it applied to the NC Division of Water Quality (DWQ) for a wastewater permit for the property east of Whippoorwill Lane; that its manipulation of the soil on the property prior to applying for such a permit is not consistent with proper application procedure according to sources at DWQ; that it is also his position that Aqua has operated a "borrow pit" at the location as it has removed large amounts of fill dirt and commercially hauled it to another company's building site to accommodate another project; and that this activity is not listed as a permitted use and therefore violates paragraph 10.3 of the Chatham County Zoning Ordinance.

He stated that given these facts, Aqua North Carolina has not completed the necessary processes to legally conduct its current activity on this property; that for the property to be utilized as a remote spray irrigation facility in a neighborhood that it does not serve clearly violates the Chatham County Zoning Ordinance. Mr. Winters referenced County tax records and stated that the Aqua property of concern is not in the same neighborhood as Governors Club development which is alleged to serve. He also stated that the properties are not in the same zoning district and that such is a requirement under the County Zoning Ordinance. Mr. Winters presented a letter from NCDENR that discussed the permitting of the site. He further stated that the determination by the Chatham County Planning Department, in its letter dated July 28, 2006, is not in accordance with the Chatham County Zoning Ordinance and Aqua's activity on the property should cease immediately.

Keith Megginson, Chatham County Planning Director, asked Mr. Winters his address and if his property was adjacent to the property in question. He also asked the approximate distance and closest point to the edge of the property. He asked if Mr. Winters knew the status of the property at this time and if the activity had stopped.

Mr. Winters responded that his address was 6 Eagles Drive, Chapel Hill, NC and pointed out on the map his property in relation to the property in question. He stated that his property was not adjacent to the Aqua North Carolina property, and that it was approximately ¼ mile from the property where he lived to the nearest point of Aqua North Carolina. He stated that there appears to have been dirt hauled back into the property but none hauled out.

The Planning Director reiterated that Mr. Winters said that the activity was stopped for a long period of time and asked how long had it been since it had been going on.

Mr. Winters replied that it had been a month to six weeks, possibly two months since activity had ceased and that when he filed the appeal, the activity had ceased altogether.

Patrick Bradshaw, attorney representing the property owner Aqua North Carolina, Inc., objected to comments made by Mr. Winters with regard to what he had been told by others who were not present and unable to testify. He presented a written document to the Board entitled, *Aqua North Carolina, Inc., References for Zoning Board of Adjustment Hearing on Appeal of Hal Winters, October 2, 2006* and

requested that it be entered into the record for this proceeding as evidence. Mr. Bradshaw reviewed the separate tabbed sections of the document and showed how the property of concern is related to the Aqua North Carolina wastewater permit.

Glenn Lassiter, attorney, asked to raise legal arguments before the Board. He was asked to wait until a later time when he could be sworn in.

Commissioner Barnes asked for clarification of what had gone on from the beginning.

The Planning Director stated that Mr. Lassiter had had the opportunity to appeal and to become a co-applicant with Mr. Winters and chose not to do so; and that the County Attorney is the one who should provide advice to the Board about what they can and can not do.

The Planning Director asked Angela Birchett, Chatham County Zoning Administrator, how long she had worked for Chatham County, what her current position was, and what her duties entailed.

Ms. Birchett stated that she was the Zoning Administrator for Chatham County, that she had been with the County since 1996 and Land Use Administrator since 1999; that she obtained certified zoning official with the State approximately five years ago; that she is certified with the State to perform zoning enforcement and zoning interpretation as it is laid out in the Chatham County Zoning Ordinance; that she attends many classes and continues to further her education through the Institute of Government and the North Carolina Association of Zoning Officials.

The Planning Director asked Ms. Birchett if she had visited the property recently and if she had taken pictures.

Ms. Birchett stated that she had visited the property on Friday and showed the Board pictures of the site that she had taken.

Ms. Birchett showed the Board an on-line version of the County Zoning Map and stated that the Aqua property of concern and the Governors Club property have the same zoning designation of RA-40 (Residential-Agricultural with minimum lot sizes of 40,000 square feet). She stated that Governor's Club has a conditional use permit for the planned unit development (PUD) but the underlying zoning district remains RA-40.

Ms. Birchett stated that it is the Planning Department's position that the activity in question does not violate the Chatham County Zoning Ordinance; that the North Carolina Utilities Commission has issued a certificate of public convenience and necessity to Aqua North Carolina dated October 10, 2005; that the North Carolina Erosion and Sedimentation Control Office issued an erosion control permit September 2005 and an inspection was performed on May 15, 2006; that the Chatham County Zoning Ordinance has a list of permitted uses allowed in each residential/agricultural district which can be found under Section 10; that public utility facilities are among those permitted uses under specified circumstances defined therein; that as per a letter from the Division of Water Quality (DWQ) dated July 13, 2006, they are aware that the subject property is being prepared for the potential use of a wastewater spray irrigation field; that the actual permit has not been issued because it has not been needed; that the current wastewater facility for the Governor's Club properties is not at capacity and continues to be operational per attorney Patrick Bradshaw, representing the Governors club properties; that any state road damage occurring from this activity may be reported to the NC Department of Transportation offices; that the NC State Highway Patrol could also be notified if a safety or hazardous situation exists on the road; that the Chatham County Noise Ordinance is enforced by the Chatham County Sheriff's Office; that it is the Planning Department's position that the present activities on the site of concern do not constitute a zoning violation; and that no enforcement action is warranted at this time.

Mr. Winters asked questions of Ms. Birchett.

Ms. Birchett commented, that as per statements that Mr. Winters had made, that she felt that Mr. Winters was asking the Planning Department to enforce something that had not happened.

Mr. Bradshaw asked Mr. Winters questions.

The Chairman administered the oath to Mr. Lassiter.

Mr. Bradshaw objected to Mr. Lassiter's participation in the hearing as an attorney unless he represented an interested party in the proceedings and also to his testimony unless he was testifying on behalf of an interested party.

Mr. Lassiter stated that he was concerned and objected to any ruling that the Board might make that could be later used to preclude he and his wife. He stated that he had no legal notice from which he could appeal; and that he feels that the Board runs the risk of losing control under its own ordinance if this type of preparatory work is to be done without a real plan in place.

The Chairman reiterated that Mr. Lassiter was concerned as a property owner.

Mr. Bradshaw stated that he objected to Mr. Winters standing to bring the appeal that he brought. He stated that it is the law of North Carolina that in order to appeal from a zoning decision, the appellant either has to have an interest in the subject property or he has to show that he has been damaged and that the value of his property has been reduced by the activity of which he is complaining. He asked that Mr. Winters' appeal be dismissed because he lacks standing to bring the appeal.

Mr. Bradshaw explained the reason that Aqua felt that the request it made to the Planning Department was supported by the County ordinance and the reason that they believe the Planning Department agreed and granted the zoning compliance certificate.

Mr. Bradshaw made final comments regarding the request for Certificate of Zoning Compliance for Aqua North Carolina, Inc. He urged the Board to conclude that the decision made by the staff was correct.

Mr. Winters asked questions of Ms. Birchett and Mr. Bradshaw.

After further discussion, the County Attorney explained that the only question before the Board is, "Did the Zoning Administrator correctly interpret the zoning as it applies to this particular situation."

Commissioner Emerson moved, seconded by Commissioner Outz, to uphold the decision made by the Planning Department staff and that the County Attorney prepare a legal order explaining and documenting the decision. The motion carried five (5) to zero (0).

## **ADJOURNMENT**

Commissioner Emerson moved, seconded by Commissioner Barnes, to adjourn as the Zoning Board of Adjustment. The motion carried five (5) to zero (0), and the meeting adjourned at 11:17 AM.

---

Bunkey Morgan, Chairman

ATTEST:

---

Sandra B. Sublett, CMC, Clerk  
Chatham County Zoning Board of Adjustment