

**MINUTES OF MEETING
OF THE BOARD OF COMMISSIONERS OF
CHATHAM COUNTY
SITTING AS THE
ZONING BOARD OF ADJUSTMENT
NOVEMBER 06, 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 10:34 AM on November 06, 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 Outz, to convene as the Zoning Board of Adjustment. The motion carried five (5) to zero (0).

The Chairman administered the oath to those in attendance who wished to make public comments.

BOARD OF ADJUSTMENT MATTERS

Appeal Requiring Sworn Testimony:

An Appeal to the Zoning Board of Adjustment by Robert & Beverly Murdock on a determination made by the Planning Director of the Chatham County Planning Department regarding a 63 acre parcel of land currently owned by Lee-Moore Oil Company stating there currently exists 30 acres that are zoned B-1 Business rather than 19.66 acres as has consistently been represented by the County for the past 32 years

Nathaniel Smith, Attorney for Robert and Beverly Murdock, stated that they did not find that there was any credible evidence supporting the Planning Department’s determination that the Lee-Moore Oil tract contains thirty acres zoned B1 as opposed to the approximately twenty acres that the County consistently represented for over thirty years prior to the hearing on September 19, 2006.

Bob Murdock, 288 Luna Lane, Chapel Hill, NC, adjacent property owner, stated that they learned through a presentation by Keith Megginson, Planning Director, the night of the public hearing that he had drawn from the metes and bounds from an announcement of a public hearing in 1974 that instead of it being twenty commercial acres, it was 30.51 acres; that on September 21, 2006, he sent him a copy of the metes and bounds; that drawing from those metes and bounds, there was no way to complete it; that Mr. Megginson admitted that night that if one drew the commercial zone property from the metes and bounds, going from the top of the public announcement to the bottom, there was no way to complete the drawing; that if the drawing is completed, one ends up crossing half of the property across Highway #15-501 into property on the west side of Highway #15-501; that there is no way to complete the drawing going in the direction that they wrote it; that if one goes in the reverse, one finds that coming up the eastern boundary of that commercial zone, one is left with a point with no connection; that Mr. Megginson took it upon himself to draw or complete that boundary going east to west, drawing from the point that he determined

from that metes and bounds straight across to Highway 15-501 avoiding the fact that part of the metes and bounds show that the boundary of the property actually went into Orange County; that the metes and bounds was obviously written up by someone who didn't bother to check the math, angles, etc.; that some level of incompetence is apparent; that it is also apparent that the Planning Board, at that time, didn't bother to draw it out; that the request for the public hearing said they gave the metes and bounds which is undrawable and at the end said, roughly approximately twenty acres, more or less; that according to the minutes of the Board of Commissioners' meeting, what was presented was a request for twenty acres more or less; that Truby Proctor's attorney stated that they were only interested in twenty acres more or less; that the Board did not rule on it at the July 28, 1974 meeting, but instead met later to determine, agree, and approve the twenty acres commercial property; that two years later in April, 1976, Truby Proctor had a surveyor draw a commercial zone on his acreage at that time, forty-two acres, not sixty-three acres as previously stated by the Planning Board; that Truby Proctor did not own all sixty-three acres at that time; that he only owned roughly forty-five acres; that he had a surveyor plat out twenty acres along Highway #15-501; that was registered in April, 1976; that property owners since that time have purchased their property based on the fact that it was a forty-five acre plot with land owned to the east by the Edwards Family which was eventually purchased by Truby Proctor; that with his plans, according to the newspaper accounts and everything that was presented at that time, Truby Proctor had plans for a shopping mall on the twenty acres with either residential or apartment developments behind it completing his forty-five acres at that time; that as they bought their property, they knew that there was commercial property there; that they were not in protest to that; that they accepted the fact that commercial would develop in that twenty acres and they accepted it; that if one looks at any boundary of that twenty acres, one could well see that the commercial zone was well-buffered from any adjacent land owner by 400-500 feet of trees or potential residences; that they all bought with the notion that it was twenty acres and their assumption at the time was that good commercial development could be had on twenty acres; that when Mr. Megginson presented 30.51 acres on the night of the public hearing, it caught them by surprise; that they were prepared to address their protest of changing or their contest to the rezoning from twenty to thirty acres; that suddenly they were presented with thirty acres which left them all wondering how to address that particular discussion; that he thinks many of them were befuddled and did not do a very good job of it; that it amounted to, with the new drawing, is that the commercial property actually comes up and abuts many of the adjacent land owners; that it is much more invasive or intrusive into their community and into their lives; that this is why they are in attendance; that they think that the public record stands, as it has stood for thirty-two years, and approval by the Board of twenty acres as it has been advertised and been on the County districting map to show that it has been twenty acres should stand; that they bought their land based on that, made their determinations on that, invested their savings into that, and that was the whole point of the appeal.

He asked the Board to look at the history, look at the long-standing declaration of twenty acres of commercial, and overrule the most recent presentation of the Planning Director.

Beverly Murdock, 288 Luna Lane, Chapel Hill, NC, stated that they bought their property knowing that it was twenty acres; that they submitted proof in the appeal that it was twenty acres; that it has been considered to be twenty acres by many people for many years; that they purchased their property knowing that there would be twenty acres of business on that property and that they didn't argue with that; that the change that the Planning Director introduced at the public hearing held September 19, 2006 confused all of them; that she didn't do a very good job of presenting her argument because was looking through, trying to understand how she might address the change from thirty acres to thirty acres; that it was confusing to a lot of people who wanted to speak about their rezoning; that they are very concerned that they did not get the hearing that they were looking for; and that their property has always been twenty acres as long as they have known anything about it.

David Keese, 360 Luna Lane, Chapel Hill, NC, stated that he agrees with everything that has been presented; that in buying the property and building the house where they have, that he was very aware of its close proximity to Chapel Hill and very aware that the area was going to develop; that in 1998 when he was looking at purchasing the property, he searched the records and spent quite a bit of time trying to understand the surrounding properties to determine what was expected and planned to

happen; that the understanding in the public record was that the commercial part of the property was the piece located on Highway #15-501 and that the size was twenty acres; that this was a significant part of the decision to purchase the property there; that in knowing what they now know that would have probably changed their decision; that they invested a portion of their assets and now lots of liability in the configuration and the planned development of the property that was in the public record; and that they disagree with the decision that has been made to change it.

Susan Keese, 360 Luna Lane, Chapel Hill, NC, stated that they invested quite a bit of their energy before they purchased the property to find out what would be around them; that they had lived in Wake County adjacent to some property that was undeveloped; that they had learned the hard way, that doing that type of research was essential; that the question is the shape of the property; that they knew when they came to do the research that the shape was approximately twenty acres; that in seeing the residential part, she spent time calling the County and asking, before they made the purchase, and found out that it was zoned RA-40; that it was in a water IV district which meant that no more than 36% of the property would be impervious surface; that was very important to them considering that they are also downstream; that she was really concerned because not only were they researchers, she is sure that all other adjacent land owners were as well; that that is why the appeal is not just Bob and Beverly Murdock, it is et al.; that when something is advertised as a County legal record to be twenty acres, it should stand twenty acres; that if it was not twenty acres, they would be told so sometime earlier than before a public hearing which they were to prepare for; that she contends that this is the reason for which they are present and she appreciates the Board listening to their argument.

Nathaniel Smith reviewed matters in the written appeal. He stated that Bob and Beverly Murdock went back to the 1974 Board of Commissioners' minutes and Notice of Public Hearing; that the striking thing is that everywhere the tract is mentioned and everywhere the rezoning request is mentioned, it specifically states twenty acres; that no where does it say thirty acres; that there was not a shred of evidence anywhere to support a determination that this should have thirty acres of B-1 land; that the plat to which Mr. Murdock referred to in Exhibit A states that there are 20.00 acres zoned business to T. G. Proctor; that this has been a record for over thirty years; that Exhibit B is the Notice of Public Hearing that was published in the *Chatham Record* on July 11th and 18th, 1974; that it gives a metes and bounds description that ends with the phrase, "contains approximately twenty acres, more or less"; that Exhibit C are the notes from the Board of Commissioners' meeting in July, 1974 showing a request to rezone approximately twenty acres owned by T. G. Proctor and located near the Orange-Chatham County line on Highway #15-501; that Mr. Seagroves explained that the land was located on the east side of US Highway #15-501 and that Mr. T. G. Proctor was requesting that twenty acres be rezoned from Residential-Agricultural to Business; that Exhibit D are notes from the Board of Commissioners' meeting in September, 1974 stating Commissioner Dark made a motion that a twenty acre tract of land belonging to T. G. Proctor in Williams Township be rezoned from Residential- Agricultural to Business; that a public hearing was held on this July 29, 1974; that they have not seen any evidence to support a determination that the tract contains thirty acres zoned B-1; that every set of minutes refers to twenty acres, the metes and bounds refers to twenty acres, and the plat that has been on record for thirty years says twenty acres; and that this is the basis for their appeal.

Keith Megginson, Planning Director, stated that his office provided Mr. Murdock with copies of the 1974 minutes out of archives; that that was all they could find with regard to the actions by the Board of Commissioners; that at that time, as is now, when the zoning request is made, there is supposed to be a metes and bounds description so that the property can be located; that Section 8.5 of the Chatham County Zoning Ordinance talks about when there is a discrepancy or some question about where the property is located the following is what happens; that this is what they went through to determine the property location; that they would not have done this at all if, when Mr. Bradshaw submitted the request for Lee-Moore Oil Company on August 21, 2006, they were requesting some land to be commercial and some land to be residential; that when that request was submitted and he received the deed description and took it to the County Mapping Officer, Mary Phillips, a senior mapping officer, he asked her if she would map it out; that prior to that time, there were a couple of different zoning maps; that one was in place in 1979

when he arrived; that map is a 1955 aerial photo (1:800) that shows the property to which they are referring; that in their opinion, it is not much help as there are no property lines on it; that it has labeled, "twenty acres, Proctor"; that that is what they inherited in 1979; that from that time the County did receive zoning maps, they started using property maps; that they then used 1988 property maps; that this was a vast improvement; that this presented an inconvenience for Mr. Bradshaw presenting their request as their application was made out one way, changing it from twenty acres from that configuration into their zoning request, part residential and part commercial; that they are to go back and redo their application once it was discovered; that if Section 8.5 of the Zoning Ordinance is used, it says "that where the district boundaries are indicated at approximately following street lines, railroad lines, lot lines, creeks, rivers, and other features shown on the map, such lines shall be construed to be the boundaries"; that the Assistant Planning Director has the current map which shows that some things have not significantly changed since the original description was submitted by Attorney Holmes on behalf of Truby Proctor in 1974; that Highway #15-501 is basically still the same as it was; that the County line has been surveyed since 1974 and is established at this point; and that Mrs. Hutchins property boundaries are referenced in the deed.

Mr. Megginson referenced several points on the map that have not changed. He stated that the question was where was the line for the 719 feet north to the County line and where does it go. He stated that he did not do the mapping; that he asked Mary Phillips if she would draw it in reverse and take a bearing in distance and proceed north; that when she did that, she did not get to the County line; that there is a gap in there; that if she took the bearing from the 719 foot point and went north and all the way to the County line and back to 15-501, it ends up being approximately thirty acres; that the County does not care about the acreage; that in her mapping of it that Mr. Smith has provided in the record to 1974, that the best thing they could do was to take the known boundaries and go in reverse; that at least two sides are known, the third is somewhat known, and that is where they are; that he doesn't believe that anyone on the appeal list is adjacent to the property that is zoned commercial; and that the parties to the appeal are adjacent to what is still, in their configuration, residentially zoned land.

Bob Murdock stated that this appears to be another way to exclude adjacent land owners from having any input into the decision that are made; that regardless of how this is looked upon, if the entire piece of property is looked at, it affects all of them as adjacent land owners to the Lee-Moore Oil Company property and the sixty-three acres; that if the plan for that is looked at, they are planning to use the entire sixty-three acres for this business; that whether it is called RA-40 or Business or whatever, the intent is to use the entire property for business; that it affects every single property around the border; that the Pittmans were of the unfortunate position of being in New Hampshire where they are closing on their property where they could move to their lovely new home site; that, adjacent to this property are those who could not be a part of the appeal, as much as they wanted to be; that they have been excluded because of the process; that these folks are stuck trying to make their move to North Carolina, investing a large part of their money into a nice home site, not knowing that they were going to be bordered by 30.51 acres of business; that he thinks it is unfair to say that they are here and are not affected; that when one looks at what they have planned for the entire sixty-three acres, it will have a very serious impact on them; that the other property owners have been signed by a number of people including adjacent land owners; that because the morning's public hearing was scheduled at a time that was inconvenient to most everyone, certain people could not come because of their work schedule so they are unable to be present to defend this; that they do know that adjacent property owners have been incensed by this; that they are all affected by it, and that he feels it is really an insult to suggest that they are not affected.

The Planning Director stated that his comment was not that they were not impacted. He stated that he didn't think that they were adjacent land owners to the commercial property that is of question in that particular site. He stated that what Lee-Moore Oil has on the table at this time is a completely separate matter and is not part of this request. He stated that appeals are typically brought by adjacent land owners; that if the commercial property is viewed, the records show Pittman and Shackelford who have corners that do not look like they are adjacent to it; that an issue that they found when they began looking at the deed/boundary description (provided by Mr. Holmes) is if it is not as they have shown it, as in thirty acres, then where is it; that if it is twenty acres, where is it; that if the verbatim legal description is used, if

that's not it, then what is changed and what does one have; that it is noted that it is up to the Board of Adjustment to make that interpretation as to whether the Planning Board was correct; and that the map that is on record in the Register of Deeds is not the zoning map of the County.

Chairman Morgan asked about the timing of the Board of Adjustment before the Commissioners had had a public hearing when they had not ruled on that occasion. He asked about the increase in zoning.

The Planning Director explained that they are changing the configuration of whether it is twenty or thirty acres. He stated that this was something that he had taken to Mr. Bradshaw when it was discovered that the legal description did not match what was on the map. He stated that he asked Mr. Bradshaw if someone had thirty acres, would they proceed with the zoning request. He stated that Mr. Bradshaw's answer was, "Yes, they were going to proceed regardless of whether it was twenty or thirty acres because the configuration was not what they wanted in their request."

Nathaniel Smith stated that what is clear today is that Mr. Megginson has no idea how many acres were zoned B-1; that the Board of Commissioners do not have any idea how many acres were zoned B-1; that he wonders how anyone can make an informed decision without a rezoning when they have no idea what the current zoning is.

Chairman Morgan stated that he thought that the applicant, on his first application, exceeded whatever it was.

Mr. Smith stated that the original application was filed in August for a change from 19.66 acres B-1 to 29.4; that the amended application that was heard at the hearing was to change from 30.51 acres to 29.4 acres; that instead of a net increase of about 60% it is a decrease of about 3%.

Chairman Morgan stated that when it got to them, they were looking at 29.4 net.

Mr. Smith restated that until the County makes a determination about how many acres are B-1 today, how can the Board decide to rezone.

Mr. Megginson stated that it is immaterial as to whether it is twenty or thirty acres, the description is what is used to go by; that there is a description; that he has previously referred to the things that do not change; that it is the connecting line from the 719 feet along Oldham back up to the County line; that the County Property Mapper mapped it on the varying distance and extended it to meet the County line, then the County line 280 feet which does not change, there is still a gap; and that the boundary is what is gone by. He stated that they made an interpretation as to where the property is located; that they have appealed the acreage of the property; and that the County is saying the boundaries, as best they can tell, is what is now shown on their maps.

Paul Messick, Attorney for the County, explained that the map to which Mr. Megginson referred is the paper copy before the Board. He stated that the configuration of the boundary of the property is shown on the map which is consistent with what the ordinance says, as far as how one locates the boundaries of the property that has been rezoned; and that it is also consistent with the law. He stated that the law is clear; that these types of legal descriptions are not uncommon; that sometimes there are ambiguities; that sometimes there are inconsistencies, and sometimes there are typographical errors; that the law provides a set of criteria and rules of construction by which one can reconstruct where the property that was intended to be rezoned by all the parties, by Mr. Proctor and the County in 1974; that the rules are pretty clear; that it will call for a natural monument which outweighs everything else; that a call for an artificial monument outweighs everything else other than the natural monument; that US Highway #15-501 is an artificial monument; that the County line is a monument; that the lines of Hutchins and Oldham are monuments; that those control the courses and distances that are listed in the 1974 property descriptions; that the course, which is the barrier of so many degrees, controls over the distance; that the distance controls over nothing except the acreage which is the least reliable piece of

information that there is; that all can plot the area of a square or a rectangle, however, when one gets to an odd-figured configuration, it is difficult; that Chairman Morgan has indicated, technology has improved to the extent that acreage can now be calculated to three decimal points; that this, however, is the best that we have to go by; that as the Planning Director has indicated, the twenty acres is irrelevant to the issue of where the actual property is on the ground; that the property is on the ground as shown on the map based upon the 1974 information and rules of construction both in the ordinance and the general law that he had to go by; that whether it is twenty acres or as the Mapper says, thirty acres, is the least of the Board's problems and the least issue before the County at this point. He stated that it would require four-fifths of the Board to overrule the Planning Director's determination in this manner.

Commissioner Barnes stated that if everyone wasn't confused before, he feels that they are now; that the appeal application has a couple of things that he feels should be considered; that he doesn't dispute what the Planning Director has done and understands why he has come to this conclusion, but in Exhibit C, it states a request to rezone approximately twenty acres owned by T. G. Proctor located near the Chatham County line; that if one looks on the next page, he considers the first page to be a clincher; that Mr. Seagroves explains that the land was located on the east side of US Highway #15-501 and T. G. Proctor was requesting that the twenty acres be rezoned from Residential to Business; that Mr. Seagroves called upon Ed Holmes, Attorney for T. G. Proctor, to explain Mr. Proctor's request that "only" twenty acres be rezoned at this time; that if someone wasn't bright enough at that time to go out and take all the coordinates that are laid out as far as the metes and bounds are going and determine what they had actually marked, then somebody goofed; that if what they actually gave metes and bounds was for thirty acres, it should have been noted; that since they only asked for twenty acres, he would be inclined to say that it stay as twenty acres; and that if the original intent is considered, there are only twenty acres.

The Planning Director stated that further down in the minutes, Mr. Holmes states that it is 750 feet along Highway #15-501 where the description that he wrote up and provided says that it is 1,158 feet along Highway #15-501; that there is a 400 foot error; that the attorney in the legal description says containing approximately twenty acres more or less; and that he would think the Board would want to go by the legal description and then follow what is presently known i.e. County line, Highway #15-501, Hutchins and Oldham lines.

Commissioner Cross stated that he felt it was important for the County to apply its policies to all citizens; that he would like to relate a story that happened eight or nine years prior; that a lady had her land surveyed at her husband's death; that the written description of her property indicated "X" amount of acres; that she and her husband had paid taxes on that acreage all their life; that when it was actually surveyed, it turned out that they had been paying taxes for thirty-eight acres on land that they did not have as the description did not match the angles and footage recorded; that the decision by the Tax Department was that they would correct it as of today so that in the coming year she would not be assessed taxes on that thirty-eight acres, however, she would not receive a refund for the years that she had been paying taxes on it; that one department of the County is using the written description of it as their basis of policy and one department is using another description; that he agrees with Commissioner Barnes that if the write-up says twenty acres, even if it is drawn out and the numbers and angles work from both directions, it still says twenty acres. He asked what automatically increased the request from twenty acres to thirty acres and is it fair and congruent with the policies used for other citizens on taxes.

The Planning Director replied that it was not a request for a change; that it wasn't until they presented their zoning request and they had to see exactly what part of the property was going to residential and what part was going to business that they pulled the description that was advertised; that when they went to the Mapper and asked that it be mapped out, she did as Mr. Smith's paralegal did and said that something was missing; and that this ends up on the other side of the road, it won't close, that there is something wrong about it.

Commissioner Cross stated that there were three angles and an acreage number that were not incorrect. He stated that one could take Highway #15-501 and the north/south boundary and put a north/south line on the back of the property to make it twenty acres.

The Planning Director stated that the known elements are Highway #15-501, Proctor, and the County line; that if the 719 feet are taken into consideration along Oldham's line and they take bearings, that the bearings take precedence over distance; and that the area within it is thirty acres.

Commissioner Cross asked if bearings take precedence over the written description of what is being approved.

Mr. Messick explained that bearings take precedence over the area of twenty acres stating that that was the least reliable.

Commissioner Emerson stated that the question before the Board was if the Planning Director had followed policy and rule of law in establishing the boundaries of this particular tract based upon information available. He stated that if he was appraising a tract and ran into a problem with the description that he had, the same rules that follows on emphasizing the legal aspect of the deed, would apply to the appraisal process; that one would go back and try to construct the boundaries of the property based upon the knowns; that the unknown, which is what he has done, is taking the knowns and eliminating the unknowns by making the property close; that is exactly the way he would have done it in an appraisal; that when he would have carried the loan to an attorney, when he placed the description on his desk, he would have said that there is a problem with the description; that this is how my appraisal looks and this is how I came up with the boundaries; that it is up to the attorney to certify to it or not; that the process that must be gone through is the same; that if the question becomes, has a County employee done due diligence in following proper procedure and practice; and that he believes that he has.

Chairman Morgan asked that when a ruling is made by the Zoning Board of Adjustment on an issue, if someone else could come back to the County on that same issue again.

Mr. Messick replied that someone could apply, but the Board does not have to hear a request on the same issue again.

Chairman Morgan stated that he was still reluctant on making a ruling.

Commissioner Cross stated that he follows what is being said; that what the Board has discovered is that they have roughly ten acres of land more than thought. He asked if that automatically meant that all of it is B-1 or if the Board stays with the request for twenty acres of B-1 and the remainder RA-40.

The Planning Director stated that since there was a description of property and the request was for Business of that description, it would be his interpretation that it is Business; that whatever that configuration is that was requested to be Business is what it ends up; that if it ends up at some later point by a decision by the Board of Commissioners in their capacity to change it to something else, then that would be what it is in the future.

Chairman Morgan asked what implication the Zoning Board of Adjustment has at the night's Planning Board meeting.

The Planning Director stated that there was no implication.

Chairman Morgan asked if he was correct that once Mr. Bradshaw had prepared an application, he had to go back and change it because of the Planning Director's thoughts.

The Planning Director replied that when they received it and reviewed it, they informed Mr. Bradshaw that they did not think that the acreage that he was originally showing zoned for Business was correct and that he would need to change it to show what they thought was the correct location of the Business property.

Commissioner Barnes asked Patrick Bradshaw if he had initially applied for twenty acres.

Patrick Bradshaw replied that they had applied to rezone the property to create a new twenty-nine plus acres B-1 conditional use district and the balance of the property be left as Residential-Agricultural; that he had not gone back and looked at the 1974 notice of the rezoning which is what the Planning Director found when he started looking; that he had not seen the description at that time; that they acted in their application based on the information that was available from the County; that what they applied for was to create newly configured zoning districts, a B-1 conditional use district that is a little over twenty-nine acres and the balance of the property would be left in the RA-40 zone; that regardless of whether the existing business zoning is twenty or thirty acres, they still have a pending request for the new district that they have requested; that what the Board is being asked to decide by construing the legal description of property is what was zoned business in 1974; that that is interesting and informative and it would help the Board and the public understand the context of the existing conditions from which they are changing; that the Board is being asked to interpret the description; that it has to be interpreted one way or the other; that he feels Mr. Messick has correctly defined the legal principals that are well-settled by the courts in interpreting that; that a statement of acreage is the least reliable description of a piece of property; that monuments control over courses, courses control over distances, distances control over statements of acreage; that what is clear is that they started at a point in the center line of US Highway #15-501 and the County line; that there is then a call that is clearly in error which makes no sense; that if one follows it, they go off into Orange County and if the next line is taken, one ends up on the west side of #15-501 where Mr. Proctor did not own anything; that he has a question for the landowner's attorney, "If it is twenty acres, what twenty acres is it?"; and that there is not a call in the description that matches a twenty acre description.

Commissioner Barnes stated that if everyone admits to the boundaries, something is flawed there; that someone figured twenty acres to begin with; that twenty acres is what he would have to go with because everyone has already admitted that the original boundary lines were screwed up so it seems to him that it is out of kilter.

Patrick Bradshaw stated that it was not uncommon, as Mr. Messick said, for there to be errors in metes and bounds descriptions of property; that it happens all the time; that it happens for a myriad reasons; that that is why the courts have come up with rules for interpreting these things; that the description starts at Highway #15-501 and the County line; that it then goes a distance or course that cannot be worked out; that it does some other things; that it goes from the County line to the Oldham line, from the Oldham line to the Hutchins corner, from one Hutchins corner to another Hutchins corner, then follows the Hutchins corner to #15-501, then follows #15-501 back to the beginning; that what this description clearly describes is a piece of property that lies between #15-501, the County line, the Oldham property, and the Hutchins property; that those are monuments that control over the other errors in the description; that this is his contingency; that he thinks Mr. Messick has correctly stated what the law is that controls construction of the description.

The Planning Director stated that when the Board of Commissioners changes zoning to something else then that established what the zone is.

Chairman Morgan asked that if the Board does not rule in favor of the Planning Director, then the question of how much they have remains.

Bob Murdock stated that he would like to have a decision at the day's meeting. He stated that they filed the appeal expecting that the Zoning Board of Adjustment would make a decision on it.

Nathaniel Smith stated that if the metes and bounds description added up to thirty acres, they would not be present; that no one has contended that the metes and bounds description has up to thirty acres; that the Board is stuck with a description that adds up to nothing unless they apply some rules that were not in contemplation when the metes and bounds description was written or they have twenty acres that shows up five times in the Board's own deeds.

Paul Messick explained that the appeal is to overrule the Planning Director's determination of the location of the property.

Chairman Morgan called for a motion.

Commissioner Barnes asked if the Planning Director's ruling was overturned, what would then happen.

Mr. Messick stated that he did not know the answer to that question. He stated that the issue of how many acres it is...is what it is, stating that the question is that of where is the line; that is one knows three of the four lines, the question is where is the fourth line; that between the commercially zoned property and the Residential-Agricultural property; that the fact that someone can say that there are twenty acres does not solve the problem from where it is on the ground; that the Planning Director has determined that it is on the ground; that the configuration is shown on the map; that the Mapper, who has access to the information to determine the acreage, the area of that parcel is now thirty acres as opposed to what was thought to be twenty acres; and that the issue is, based upon what was done in 1974, has the Planning Director made an appropriate determination of where it is on the ground regardless of the acreage.

Commissioner Emerson stated that he believed the Planning Director followed the rule of law and came up with the only decision he could under the circumstances.

Commissioner Emerson moved, seconded by Commissioner Outz, to deny the appeal.

Commissioner Cross stated that based on what Mr. Messick said and everyone seems to agree on the rule of law about what takes precedence over what; that if one ends up with one boundary line that is headed in the right direction; that he feels it would be reasonable to extend the line until it did meet.

Chairman Morgan stated that he was uncomfortable with the issue until the other went through due process as he didn't think it would make that much difference until then; that is why he asked if Mr. Murdock wanted a decision; and that is why he will have to go with the staff's and attorney's recommendation.

The Chairman called the question. The motion carried four (4) to one (1) with Commissioner Barnes opposing.

ADJOURNMENT

Commissioner Emerson moved, seconded by Commissioner Outz, to adjourn as the Zoning Board of Adjustment. The motion carried five (5) to zero (0), and the meeting adjourned at 11:52 AM.

Bunkey Morgan, Chairman

ATTEST:

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