

**MINUTES**  
**CHATHAM COUNTY BOARD OF COMMISSIONERS**  
**REGULAR MEETING**  
**APRIL 21, 2008**

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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 6:00 PM on April 21, 2008.

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

**INVOCATION AND PLEDGE OF ALLEGIANCE**

Commissioner Thompson delivered the invocation after which Chairman Lucier invited everyone present to stand and recite the Pledge of Allegiance.

**CALL TO ORDER**

The meeting was called to order by the Chairman at 6:02 PM.

**AGENDA AND CONSENT AGENDA**

The Chairman asked if there were additions, deletions, or corrections to the Agenda and Consent Agenda.

Chairman Lucier stated that there had been a request to remove Item #3, Consideration of a request to amend the Water System Availability Fee Ordinance, from the Consent Agenda and place it on the Regular Agenda for discussion.

Commissioner Vanderbeck moved, seconded by Commissioner Thompson, to approve the Agenda and Consent Agenda with the noted request as follows:

1. **Minutes:** Consideration of a request for approval of Board Minutes for regular meeting held April 07, 2008, work session held April 07, 2008, work session held March 17, 2008, and summit meetings held January 16, 2008 and January 17, 2008

The motion carried five (5) to zero (0).

2. **Contract for Camp Maranatha Project:** Consideration of a request to award a contract to RJG&A Environmental Associates for the Camp Maranatha project to perform the following two (2) services:

- 1) Environmental Planning Guide (\$7,714.00)
- 2) Environmental Assessment (\$13,224.00)

The other award request is to Entrix for an Environmental Assessment for the Big Woods Road project, cost not to exceed \$43,000.00

The motion carried five (5) to zero (0).

3. ~~**Water System Availability Fee Ordinance Amendment:** Consideration of a request to amend the Water System Availability Fee Ordinance~~

This item was removed from the Consent Agenda and placed on the Regular Agenda for discussion.

4. **Engineering Design Contract for Law Enforcement Center Improvements:** Consideration of a request to approve the award of the Engineering Design contract

for the Law Enforcement Center improvements, attached hereto and by reference made a part hereof.

The motion carried five (5) to zero (0).

5. **Budget Public Hearing:** Consideration of a request to set May 19, 2008 at 6:00 PM as the date on which to hold a public hearing on the FY 2008-2009 budget in the District Courtroom

The motion carried five (5) to zero (0).

#### **END OF CONSENT AGENDA**

#### **PUBLIC INPUT SESSION**

There was no one present who wished to make public comments.

#### **WATER SYSTEM AVAILABILITY FEE ORDINANCE AMENDMENT**

**Water System Availability Fee Ordinance Amendment:** Consideration of a request to amend the Water System Availability Fee Ordinance

The County Manager explained that the amendment was a modification to the ordinance based on the continuing increase in the County's cost to provide availability of water in the County; that staff wants to change it so that if the prevailing fee at the time of the roll-over request is increased, the developer will pay the balance of the difference; that likewise, if there is a reduction, there will be no cash refund but the refund would be in unit credits.

Commissioner Vanderbeck moved, seconded by Commissioner Barnes, to amend the Water System Availability Fee Ordinance which stipulates the conditions under which availability fees will be rolled over. The motion carried five (5) to zero (0). The amendment is attached hereto and by reference made a part hereof.

#### **PLANNING AND ZONING**

**Revision to Existing Conditional Use Permit for Galloway Ridge, Inc.:** Consideration of a request by Sears Design Group, P.A. on behalf of Galloway Ridge, Inc. located off US #15-501 North, Williams Township, for a revision to the existing conditional use permit (CU-PUD for Fearrington Village) for an expansion of services and renovations to existing buildings

The Planning Director stated that at the quasi-judicial public hearing held on March 17, 2008 on the request, there was no spoken opposition to the expansion. He reviewed the Planning Board's main discussion of impervious surface, storm water runoff and retention, and sidewalk viability.

Commissioner Vanderbeck asked if the sidewalks would be concrete or natural paths that connect Galloway Ridge Road with Speyside Circle or a combination of the two.

The Planning Director stated that it would be done, where applicable and appropriate, of those two choices.

Chairman Lucier asked about the landscaping and vegetative buffers between Galloway Ridge and Highway #15-501 and whether they would be cut.

The Planning Director stated that those would all remain as existing stands.

Commissioner Vanderbeck moved, seconded by Commissioner Cross, to adopt **Resolution #2008-15 Approving An Application for a Revision to an Existing Conditional Use Permit Requested by Sears Design Group, P.A. on Behalf of Galloway Ridge, Inc.**, attached hereto and by reference made a part hereof. The motion carried five (5) to zero (0).

**Request to Rezone Acreage off Holland's Chapel Road:** Consideration of a request by Winter Custom Yachts, Inc. on behalf of Apex Nurseries, Inc., located off Holland's Chapel Road, New Hope Township, to rezone approximately 11.54 acres from an RA-40 (residential/agricultural) district to a CU-Ind-L (conditional use light industrial) district

The Planning Director reviewed the request stating that the Planning Department and Planning Board are required to make a recommendation on the requested change of the zoning district from RA-40 (Residential/Agricultural) to CU-B1 (Conditional Use Business District). He stated that such a recommendation is partially based on adopted land use plans and policies as well as changing conditions as noted in the Chatham County Zoning Ordinance under Section 17 and noted that the applicant addressed this issue in their application. He stated that it was the Planning Department recommendation to deny the rezoning request based on the information provided stating that it is inconsistent with provisions of the Land Conservation and Development Plan; that the Planning Board made a motion to approve the rezoning request resulting in a tie vote of five to five; and that no other motions were made. He reviewed the agenda notes and stated that the Board of Commissioners may consider the last paragraph of the agenda notes if they are inclined to think the district change request is in conformity with the County's plans.

Commissioner Barnes referred to the last paragraph stating that if you can hide a typically non-agricultural use on the farm and it will help the farmer survive economically and there is little off-site impact, then it may be allowed. He stated that this is a business that is owned by the two businesses located there and it will definitely help the nursery and the farmer survive; that if they hide it, which is no problem, no one will know that it is there; that to him, it will fit in as it is certainly needed; that this is excellent industry coming in and will provide jobs and will be tax based; that it is an excellent use of which there are few in the eastern part of the County; and that he is all for it.

The Planning Director stated that what Commissioner Barnes referred to was not language in the Land Development Plan; that it was his subjective interpretation of how someone may interpret it; that the Board may need to consider other requests that may come before them with a similar type of argument; and that he feels that is one way that the request might be interpreted.

Nick Robinson, Attorney on behalf of the applicant, stated that there was a very productive conversation at the Planning Board meeting regarding this issue; that he appreciates Mr. Megginson's comments showing the Land Use Plan without a map that tells you exactly where light industrial and economic development centers should go; that there is some subjectivity to it; that the two main points that he would like to call to the attention of the Board are: 1) The Board has a great deal of discretion in determining whether this request complies with the Land Use Plan, especially in a situation where there is no map; that an important feature of the Land Conservation and Development Plan explains where economic development centers can be located and how much land in the County has to be preserved for economic development centers; that it talks about eight square miles; that this translates into 5,120 acres of economic development centers that have to be reserved some where in the County under the Land Use Plan for uses such as this one; that there is a separate category for towns; that the chart says that the eight square miles is completely separate from what is supposed to be in the towns; that it is hard to point to 5,120 acres in the County that have to be preserved for something as light industrial use and economic development centers; that someone may ask what benchmarks and guidelines there are to go by; that the Land Use Plan does help illuminate where they should be; that it talks about choosing areas that are suited for particular businesses and light industry; that one would want areas that are tied to transportation infrastructure; that this is located within a quarter of a mile of Highway #751; that the Land Use Plan also states that the County would want areas minimizing the impact of businesses on other areas of the County; that the good thing is that this business is near the lake and will not generate a lot of traffic and will not cause any type of ruckus with this use; that also in the Land Use Plan is that commercial development would be encouraged that pays for itself; that this request is not generating any students or no schooling; that it is generating jobs and increases tax revenue; that in considering those factors, this is a good location for an economic center; and that the Land Use Plan is clear that light industrial operations ought to be in locations that could be designated as an economic development center.

He stated that if the Board of Commissioners agrees with half of their Planning Board, that this is an adequate and appropriate location for an economic development center; that all of the surrounding property owners have been notified; that no one has objected; that they would request and submit to the Board, with the additional support that Mr. Megginson offered tonight, that this an appropriate place for rezoning.

Chairman Lucier asked what properties bordered the rezoning request.

Mr. Robinson reviewed the properties on the map.

Will Copeland, 2551 Holland's Chapel Road, Apex, NC, applicant, stated that the location was approximately five to six miles from the intersection.

Commissioner Thompson stated that five members voted for the request and five voted against the proposal. He asked the findings with which they had problems.

Mr. Megginson explained that Finding #4 also applies to zoning and would be consistent with the objectives of the Land Use Plan and Land Conservation and Development Plan.

Commissioner Barnes moved, seconded by Commissioner Cross, to adopt **An Ordinance Amending the Zoning Ordinance of Chatham County.**

Commissioner Vanderbeck stated that he did not agree with the request; that he is in agreement with the staff that the request is inconsistent with their interpretation of the Land Use Plan; that he is for it from an economic development standpoint, but that he doesn't believe that it belongs where it is being proposed; that he doesn't think that the intent was to get into industrial; and that he doesn't think that just by putting a buffer around it, makes it go away.

He stated that he was concerned that it was also in the planning area with Cary; that even though the Board didn't make a hard decision to go to five acres, that they are well into the plan; that he would love to see this business locate in an industrial site or one of the towns; that he is also concerned with regard to the long-term impacts about setting precedents regarding the interpretation of the Land Use Plan; that he feels that if they repeatedly do ad hoc calls on this, that it will be construed to be that they are actually changing the Land Use Plan through all the individual decisions; that he would feel more comfortable in having policy to rely on for consistent future decisions; that he feels that Mr. Robinson has interpreted this in a more flexible pattern and make his case for it; and that he agrees with the staff and the other members of the Planning Board.

Commissioner Thompson stated that he has some problems with the request; that on one hand, he sees this as a good economic development project; that he has the problem because he knows how many jobs have been lost in Chatham County; that they want to take every route possible to endorse any venture that would create jobs; that from that perspective, he is in favor of the request; that on the other hand, he thinks that Commissioner Vanderbeck has raised some valid concerns; that if the Board is going to develop economic nodes along the 751 corridor, he would be in favor of that; that he has a concern that this request is sort of a haphazard way of developing along the road; that they do owe a certain extent to Cary, as they are partners in the planning venture, to let them know the development plans for the area; that he would like to make sure there is some consistency in that the public knows that the Board is going to be consistent in how they are going to develop the area; that as Commissioner Vanderbeck stated he would rather not set a precedent; and that he would not vote in favor of the request.

Chairman Lucier stated that he had thought a great deal about this request and had struggled with it; that the County has a Major Corridor Task Force that is now working with the Planning Board to establish Major Corridor Ordinance guidelines; that Highway #751 is among them including five other highways in the County; that as part of that ordinance process, the current recommendation is you can have commercial activities outside of designated nodes; that there have to be special considerations given to buffering and view shed buffers, etc. in those areas; that if that part of the Major Corridor Ordinance passes, then business activities will be permitted along the major corridors that aren't part of the

designated nodes; that it would be up to the Board of Commissioners to decide, on a case-by-case basis, which ones are a benefit to the County and which ones are not; that there are nine miles that run up Highway #751 that runs through Chatham County north of Highway #64 before the Durham County line; that one crosses over the Army Corps of Engineers' land or the flood plain in two places; that if he was going to choose an area for commercial development along #751, he would probably choose this one; that there are two or three roads in close proximity to this property; that this, at one point, was an area for economic development that was recommended by Cary to the Board; that it hasn't been adopted, but was Cary's recommendation; that he thinks it is a relative good location; that he doesn't think that those nine to ten miles of roads up #751 should be devoid of commercial activity; that this a reasonable place for it; that he is concerned that they need to place additional buffering either for the surrounding properties or the view shed from Holland's Chapel Road; and that he feels that would be consistent with the Major Corridor Ordinance when businesses are approved outside the designated commercial nodes.

Commissioner Vanderbeck stated that his recollection was that the blue area in the center of the joint planning was for business commercial not for an industrial application.

Chairman Lucier called the question The motion carried three (3) to two (2) with Commissioners Vanderbeck and Thompson opposing. The Ordinance is attached hereto and by reference made a part hereof.

**Request for Conditional Use Permit for Light Manufacturing:** Consideration of a request by Winter Customer Yachts, Inc. on behalf of Apex Nurseries, Inc., located off Holland's Chapel Road, New Hope Township, for a Conditional Use Permit for light manufacturing or processing with associated retail sales for boat assembly and boating and fishing supplies.

The Planning Director explained that a quasi-judicial public hearing was held on this request on March 17, 2008; that there were concerns voiced by a non-adjacent property owner who is typically not considered an "interested party" (such as an adjacent property owner) under quasi-judicial hearing procedures; that the concerns were lighting and rural atmosphere; that these concerns are addressed in the agenda notes. He reviewed the five findings as set forth in the requirements for a conditional use permit which must be supported for the request to be implemented. He stated that Finding #1 may be made provided the conditional use light industrial zoning district was approved as per the Planning staff; that Finding #2 was not supported by the Planning staff; that it is the Planning staff opinion that Finding #3 has been supported; that it is the Planning staff opinion that Finding #4 in being consistent with the objectives of the Land Conservation and Development Plan has not been supported; and that it is the Planning staff opinion that Finding #5 may be supported.

Mr. Megginson stated that the Planning Board voted 10-0 to approve the conditional use permit; that the Planning Board stated that they could make four of the five findings; that it is their position that if the Board of Commissioners approves the rezoning request, then they have determined that the request is in conformity with the County's land use plans; that by a 5-5 vote, the Planning Board did not have a majority of support to make Finding #4; that it is the recommendation of the Planning staff that this application be denied; and that if the Board of Commissioners vote is to be a favorable one, it is requested that the Board consider the conditions and also provide supportive information for Finding #4.

Chairman Lucier asked about the MSDS sheets provided to each Board member prior to the meeting and what they represent.

Mr. Robinson stated that the first one has to do with resin and the second has to do with a carbon agent.

Will Copeland stated that they are using two raw products to produce an epoxy resin, that when it hardens, is no different than plastic. He stated that one is a resin and one is a hardener; that the MSDS sheets identify the safety and other things involved; that they wear respirators and have infiltration for the building; and that they dispose of their product through a commercial waste company; that they take safety measures and wear gloves, etc. to ensure that they do not have any health problems.

Chairman Lucier stated that he agrees that the chemicals used are safer than are customarily used in the boat building industry; that he urged Mr. Copeland to take extra caution to make sure there were no releases outside of the building; and that it is not so much of getting into the air than getting into the soil and water base.

Mr. Copeland replied that was why they wanted to get into a building in order to utilize the most safe procedures.

Chairman Lucier asked what else could be done to increase the buffering along Holland's Chapel Road. A lengthy discussion ensued with regard to the Appearance Commission's recommendation of screening along the outside perimeter and in front of the pond.

Chairman Lucier stated that he would prefer additional screening in the area toward the lake. Mr. Copeland stated that they could provide additional enhanced plantings of a combination of plants if requested. Chairman Lucier stated that he was trying to make this request consistent with the current recommendations of the Major Corridor Ordinance.

Dave Klarmann asked if the NCDOT required a 90 ft. line-of-sight buffer. Mr. Copeland replied that the NCDOT made them move the entrance so that there would be a clear view along that line; that they ended up with the driveway at the top of the hill with well over the minimum amount required.

Commissioner Vanderbeck stated that he had an issue with the statement, "Should an extension request that is reasonable and necessary be desired, a timely filed application for such an extension must be approved by the County." He suggested the word "must" be changed to "may".

Chairman Lucier stated that his preference was to just remove the statement and that if an extension was needed, the request should come before the Board.

Commissioner Vanderbeck stated that there seems to be a two-year limit on these things; that there now seems to be a string of extensions and that he wonders why there should be a limit if they were going to go for constant extensions.

Mr. Robinson stated that he felt replacing the word "must" with "may" would alleviate the problem and he had no problem with the word change; that he feels that it is reasonable, because of circumstances that can change, to offer the citizens the opportunity to return before the Board to request something more reasonable even if it is not approved.

Jep Rose, County Attorney, stated that he felt it was appropriate language.

The Planning Director stated that the issue they were trying to address for an extension was if an applicant had to go back before the Board for a full-blown hearing for an extension which generally would not involve any site plan consideration; that the neighbors have already seen everything; that if the Board has already made the decision to find the five findings, the issue was more of a "they can ask" process to go through but not the full-blown, advertised, public hearing.

Chairman Lucier asked with the current the language, if an extension could be granted without holding another public hearing. The Planning Director stated that having the language shows an anticipation that this may happen and that this is the process that the Board wants it to go through; that it doesn't have to go to public hearing; that if it is not in there, he feels it could be argued from anyone, other than the applicant, that it is a change in the conditional use permit and they have to go through the entire process.

Commissioner Thompson stated that the Board of Commissioners, at their discretion, could call for a public hearing even with this language. The Planning Director stated that this was correct.

Chairman Lucier called the question.

Commissioner Barnes moved, seconded by Commissioner Cross, to adopt **Resolution #2008-16 Approving an Application for a Conditional Use Permit Requested by Winter Custom Yachts on Behalf of Apex Nurseries, Inc.**, to include the wording change of “must” to “may” and in addition to the plantings shown on the approved landscaping plan, there is to be additional under story vegetation planted along the front of the property from the southeast corner of the parcel extending to the existing wooded area (that is to remain) to screen the pond view and provide a better “view shed” buffer. The additional under story plantings will be consistent with the other under story plantings shown on the plan. A change to condition #3 to read “the house on this property may no longer be used as a single family dwelling unit but may be used as living quarters for a “care-takers/security” facility. The motion carried three (3) to two (2) with Commissioners Vanderbeck and Thompson opposing. The Resolution is attached hereto and by reference made a part hereof.

### **MANAGER’ S REPORTS**

The County Manager had no reports.

### **COMMISSIONERS’ REPORTS**

#### **Piedmont Regional Shared Use Value Added Proven Agricultural Processing Center:**

Commissioner Vanderbeck asked for support from the Board in supporting the Piedmont Regional Shared Use Value Added Proven Agricultural Processing Center. He stated that they are projecting a total of \$150,000 in fees raised in the first 2-3 years in user-fees; that they anticipated generated income between \$800,000 and \$1.2 million per year; that they have the support of the Chatham County Ag Advisory Committee, the Chatham County Economic Development Corporation Board and Director, the Carolina Farm Stewardship Association; that if the Board of Commissioners agrees, the County Manager could take the language and draft a letter relaying the Board’s support; that the Board would be a partner and subject to some equitable fiscal support; that he is unsure as to how much this will be although he feels that they can come to an amicable agreement for all concerned in that Chatham County would share in the compensation at a later date; that in general, he would ask for support of their resolution and that he would like to report Chatham’s support to them; that he feels it is a boost for Chatham County’s agricultural economy; that the County has a lot of restaurants and other institutions that might benefit from this in the future; that a lot of people are currently traveling to Asheville to their processing facility; and that he would like a consensus on this matter.

Chairman Lucier asked if there was agreement among the Board members that the County Manager should draft a letter/resolution being Chatham County specific in its support for the value-added processing center for agricultural products.

By consensus, the Board agreed.

#### **American Tobacco Trail:**

Chairman Lucier stated at the last meeting, the Board talked about the American Tobacco Trail and ways to get funding to complete it; that he was pleasantly surprised to learn that during the course of the last couple of weeks, that there are funds to complete it; that they have been raised; that Cary was instrumental in helping to find the funds to complete the American Tobacco Trail in Chatham County; that as he understands it, there would be two different types of surfaces encompassing an eleven-mile stretch through Chatham County; that he believes it will cost the County only \$60,000 in total; that he believes that a letter should be sent to Cary thanking them for working with the County on this; that it is his understanding that the contracts will be let within the next couple of weeks; and that things will have to begin happening real soon.

### **ADJOURNMENT**

Commissioner Barnes moved, seconded by Commissioner Thompson, to adjourn the meeting. The motion carried five (5) to zero (0), and the meeting adjourned at 7:12 PM.

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George Lucier, Chairman

ATTEST:

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