



Chatham County Planning Board Minutes January 5, 2021

The Chatham County Planning Board met in regular session on the above date as a remote meeting due to the current health restrictions for the COVID-19 virus. Members present via GoTo Webinar meeting were as follows:

Present

George Lucier, Chair	Caroline Siverson, Vice-Chair
Jon Spoon	Jamie Hager
Clyde Frazier	Emily Moose
Allison Weakley	Dustin Mauldin

Absent

Bill Arthur
Cecil Wilson

Planning Department

Jason Sullivan, Planning Director, Kimberly Tyson, Subdivision Administrator, Angela Plummer, Zoning Administrator, Janie Phelps, Zoning Official, Hunter Glenn, Planner I, Chance Mullis, Planner I, and Daniel Garrett, Clerk to the Planning Board.

I. CALL TO ORDER:

Chair Lucier called the meeting to order at 6:30 p.m.

II. VIRTUAL MEETING GUIDELINES:

Mr. Sullivan gave an overview of the virtual meeting guidelines provided by PowerPoint.

III. DETERMINATION OF QUORUM:

Chair Lucier stated there is a quorum, 8 members present., Mr. Spoon entered meeting at 7:20, and Mr. Arthur and Mr. Wilson were absent.

IV. APPROVAL OF AGENDA:

Approval of the Agenda - Chair Lucier asked the board members if there were any issues with the Agenda. There were no objections, and the agenda was approved.

V. APPROVAL OF THE MINUTES:

Consideration of the October 6, 2020 Planning Board minutes. Motion made by Vice-Chair Siverson to approve the minutes, second by Ms. Hager and the October 6, 2020 minutes were approved 7-0, unanimously. Consideration of the December 1, 2020 Planning Board minutes. Motion made by Vice-Chair Siverson to approve the minutes with minor corrections, second by Ms. Moose and the December 1, 2020 minutes were approved 6-0, Ms. Weakley did not vote because she was absent for the December meeting.

VI. PUBLIC INPUT SESSION:

Chair Lucier asked that each citizen who wished to speak to raise their hand after the staff notes at each item. There were no citizens to speak on a topic not related to the agenda.

VII. SUBDIVISION:

1. A request by Mark Ashness, P.E., on behalf of Laurel Ridge Development, Inc. for subdivision Final Plat review and approval of Laurel Ridge Phase 1B, consisting of 12 lots on 68 acres, located off Old NC 87, SR-1520, Hadley Township, parcel #82018.

Ms. Tyson stated the request is for Final Plat approval of Laurel Ridge, Phase 1B consisting of 12 lots on 68 acres with a financial guarantee for the completion of required infrastructure. Phase 1B received preliminary plat review and approval by the Board of County Commissioners on November 20, 2006 for 30 lots under "Creekside". The submittal includes a request for a financial guarantee for completion of the required infrastructure. Under the pre-2008 Subdivision Regulations, a project must have a minimum of 40% of the infrastructure completed prior to submission of a final plat and the roads must be accessible to emergency vehicles. A cost estimate letter, June 30, 2020, has been provided by Mark Ashness, P.E., CE Group stating that the required infrastructure is 82% complete. The cost letter may be updated prior to plat recordation if additional work has been completed. Staff recommends granting the request for a financial guarantee. Staff also recommends that the final plat not be recorded until the engineer has certified that the roadway providing access to the parcels are accessible to emergency vehicles and recommends that the final plat not be recorded until the county attorney has reviewed and approved the form of the contract and financial guarantee. Per the approved preliminary plat, roadways are proposed to be public and state-maintained roads. Phase 1B is located off Old Graham Road. The subdivision approvals for all or the remainder of The Glens, The Bluffs, Shively Tract, and Harris Tract have been relinquished per email correspondence with the developer.

Riparian buffer widths of 50 feet per side (100' total) measured from top of bank landward have been shown on the plat, as well as the 100-year and 500-year floodplain. The Technical Review Committee met November 10, 2020 to review the request. Hadley Swain Kirkland, developer, was present. Staff discussion included, if previous issues with Watershed Protection Dept. were complete, location of a cemetery, and water line size to the fire hydrants. Rachael Thorn, Watershed Protection Director stated the issues were resolved. The cemetery is located on parcel 86403 not in the proposed area. Chief Strowd had concerns that a 4-inch water line to the fire hydrants would not suffice, Mr. Ashness stated the lines to the fire hydrants was not 4 inches.

Ms. Tyson summarized the December 1st Planning board meeting stating, several residents spoke of their concerns during public input of the Planning Board meeting. Elaine Chiosso had concerns with pollution and sediment issues in Dry Creek, violation of sediment and erosion control requirements, and does not want pollution in the creek. She believes the pre-'08 regulations are old rules when it comes to stormwater treatment and buffers. She would like the lots reconfigured to be larger with less lots and would like a 100' wide buffer on Dry Creek. Cari Filer also requested a 100' wide buffer on Dry Creek and expressed concerns with private drainage on Lots 13 and 14. She also questioned what steps were taken to mitigate the stormwater runoff and slow it down as it proceeds to the protected wetland areas and if there was any tree protection.

Mr. Mark Ashness, P.E. spoke on behalf of the developer. Mr. Ashness explained that the lots were 5 acres average with shoulder and ditch sections, no curb and gutter, no extensive piping on the property, and no plans for mass grading. Due to the size of the lots, there are no issues with concentrated runoff or any high velocity issues.

Board members discussed the 50' wide buffers on Dry Creek and two tributaries running into Dry Creek, whether there was any history of drainage problems with the culvert over the road and asked the developer to consider increasing the 50' wide buffer to 100' wide buffer along Dry Creek. Mr. Ashness confirmed there are

two tributaries that flow into Dry Creek and there are 50' wide buffers shown on both sides of the water features. He commented that the drainage area to the culvert is a well-defined channel and the drainage area is not very substantial and has not had any problems. NCDOT has reviewed the public drainage area and it will be turned over to NCDOT for maintenance in the future. The board asked if the developer would be willing to increase the buffer from 50' wide to 100' wide along Dry Creek, Mr. Ashness stated he would need to talk with his client. The board decided to postpone a vote to January 5, 2021 meeting to give Mr. Ashness time to communicate with the developer.

Since the December 1, 2020 Planning Board meeting, the developer has agreed to place an additional 50' voluntary buffer and a copy of the revised survey can be found on the following website - <https://www.chathamnc.org/government/departments-programs/planning/rezonings-subdivision-cases/2020-items/laurel-ridge-phase-1b-final-plat-4804> .

Ms. Tyson said in closing the Planning Department recommends granting final plat approval of "Major Subdivision Laurel Ridge – Phase 1B Property of Laurel Ridge Development, Inc." with the following conditions:

1. Prior to final plat recordation the county attorney shall approve the form of the contract and financial guarantee.
 2. Prior to final plat recordation the engineer shall certify to the county that there is all weather access for emergency vehicles and the certification must be approved by the Fire Marshal
 3. Final plat title shall include "The Estates at Laurel Ridge".
- Ms. Weakley stated there are big differences to the pre-2008 and post-2008 regulations and what would be required for this development now to what would be required then, especially given the wetlands on the eastern side of the project. Ms. Weakley stated she had looked at the conservation planning online plat viewer and noticed the streams that are called water hazard on this plat are actually USGS or soil streams and are subject to Jordan Buffer Rules. When was the last stream determination for this project, it is the understanding that they expire after 5 years? Also, Jordan Buffers should be shown on this plat explicitly, stating they are a Jordan Buffer and not just a water hazard because there are regulatory requirements that go along with those buffers.

Mr. Sullivan stated because this is a pre-2008 subdivision approval there are no on-site stream calls required, so there would not be a 5-year expiration, but anything post-2008 does require the stream call every 5 years. This situation is all based on the USGS and NRCS mapping. Ms. Weakley stated these streams are shown on soil survey and USGS, the conservation planning online plat viewer has these streams shown. Regardless of whether they need a field visit by staff, she still would like this to be considered in the updates of the ordinances. Just because this received preliminary plat approval pre-2008 does not mean they should not be required to have a current stream determination as they go through the process many years later.

Mr. Sullivan stated the pre-2008 subdivisions are also coming to an end, as of right now the only pre-2008 subdivisions are Legacy at Jordan Lake and Fearington. Also, any building permit application that comes through the department within the Jordan Lake Buffer regardless of when the lot was platted, we will look at the NRCS and USGS and if anything shows up, we automatically require the 50' buffer. The property owner has the option if they do not think that water feature exists to have

Watershed Protection staff go to the property and conduct a stream call. This process is already set up and staff looks at thousands of permits per year and these checks are ongoing.

Ms. Weakley stated that is great, but the Final Plat is not only for assurances for developers, but also potential property owners. As you can see these streams are on the USGS and on the soil survey map, it would be prudent of us to require the final plat to reflect the Jordan Buffers on those streams. Chair Lucier asked Ms. Weakley to point out the streams she is referring to. The Planning Board looked at the viewer and discussed the different streams. Mr. Ashness stated they have no problem making the change on the plat from water hazard to Jordan Lake Buffer.

- Ms. Weakley asked Mr. Ashness when the last stream determination was conducted on the project. Mr. Ashness stated this phase had the road and utilities built back in 2007/2008 and the only thing that has been done recently is laying gravel down on the road and we are waiting for pavement. The last time this was jurisdictionally checked was probably back when all the work was conducted back in 2008. Ms. Weakley stated that is why one of the reasons the 5-year time frame for stream determination is required and recommended because hydrology can change over time. In 2007 we had been in a long drought and have seen a lot of changes in stream classifications since then, especially with land use changes and climate changes. We may not be able to apply it to this project because of the pre-2008 rules, but this is something we need to address in the future. Mr. Ashness restated they will be happy to change the label on the final plat from water hazards to Jordan Lake Buffers. Chair Lucier also thanked Mr. Ashness and the developer for increasing the buffer on Dry Creek to 100’.
- Ms. Elaine Chiosso a citizen stated she had already sent the Board members comments on this item after reviewing all the sedimentation erosion inspection reports. There is a persistent pattern of rules not being followed, even if there was not a notice of violation almost every inspection had corrective actions that needed to be taken in Phase 1B. As of January 31, 2020, this site was considered not in compliance and had considerable problems at that time. There seems to be neglect with brush and debris in the sediment basin and the riser. Ms. Chiosso still believes the lots 12, 13, 14, and 15 with the number of streams and wetlands within those lots should be recombined into less lots to protect water quality and it is ironic when one of the road names is called Clear Springs when the main spring in this property was bulldozed and is now a pond. Ms. Chiosso believes this pattern of disregard for the rules for sedimentation and erosion control will be seen again.

Mr. Ashness stated the road was built, the culvert was installed, and the sediment basin was installed back in 2008 and all of that was above the delineated wetlands and was provided on a JD map. The only thing that occurred since that time was they channelized the road so they could put the stone down and built the shoulders and seeded. There has not been any significant dirt moving that occurred in the past 18 months. Ms. Hager stated even though there has not been any significant dirt movement that does not excuse the 6 different violations from the inspection reports that Ms. Chiosso provided and that was all in the last year. Mr. Ashness stated those are in Phase 2B, the next item for discussion and there is no notice of violations in Phase 1B.

Ms. Weakley stated there may not have been notice of violations, but there were corrective actions required and if that was just for putting gravel on the road, seeding, and stabilizing it and there were issues with that process then what is to happen with future development on the site. Mr. Ashness stated further development on the site will be individual home builders building custom homes on the site, the site is now stable and the only thing lacking on this site is to put pavement down on the road.

- Ms. Weakley asked where the wastewater will be treated. Mr. Ashness stated the wastewater is processed with Aqua NC and there are not well or septic systems on the project. Ms. Hager confirmed there is not anymore development to be done on the site except sell the lots. Mr. Ashness stated that is correct.
- Mr. John Wagner a citizen stated he has been reviewing the inspection reports and the notices of violations for this development and there is a clear pattern for disregard for the environment and wetlands. Final Plat approval should include some qualifications about being more diligent and show that they are going to follow the regulations. Mr. Wagner thanked the Planning Board.
- Mr. Nick Robinson stated he is representing the applicant and wanted to place a legal aspect about the decision being made tonight. Ms. Chiosso and Ms. Hager's comments were well placed and articulated, but they are not issues that are tied to recommend approval or denial of a final plat and the basic general rule under the North Carolina general statutes in North Carolina case law is whether or not the final plat meets the requirements of the subdivision ordinance and the Planning staff has said unequivocally that this final plat does meet those requirements and the decision tonight is to be based on that. If there are issues about erosion control those are address under a different ordinance and by a different body in the County. It is certainly legitimate to bring up those points at a meeting like this, but in the bases in which the decision is made it must be tied directly to the subdivision ordinance.
- Mr. Daniel Amero asked to direct a question to Mr. Robinson the attorney for the applicant. Chair Lucier stated questions need to go through the Board. Mr. Amero stated he understands and would like to speak on the next item.
- Ms. Moose stated Ms. Chiosso recommendation to combine lots 12, 13, 14, and 15 into less lots, is that something the applicant would consider. Mr. Ashness stated no, all those lots meet the criteria for the 5-acreage average and the fact that there are not individual wells or septic fields means there is plenty of room on those lots for a homesite with a shoulder and ditch road. Our clint provided the additional buffering along the Dry Creek which was an excellent recommendation from the Board last month, but we have already eliminated 30 or 40 lots from the original sketch plan approval for this general lot area and is fully compliant with the County's regulations for 5-acre lot average. With having off-site treatment of wastewater makes these significantly beneficial because there will be less disturbance on these lots.
- Ms. Hager thanked Mr. Robinson for his comments and is glad to see these pre-2008 subdivision projects coming to an end because it has been frustrating as a Board member not to enforce current regulations on these older projects when they should be enforced. Chair Lucier stated that is why in 2007/2008 we changed the regulations to strengthen stream buffer requirements, developed sediment erosion and sedimentation ordinance, and stormwater ordinance. None of those were in place prior to 2008 and fortunately we are coming to an end of these groups of subdivisions, but there were quite a few of them and a lot of acreage. Mr. Robinson is correct; this is a final plat and the question we must ask ourselves is have they fulfilled what they said they would do at the preliminary plat approval which was one back in 2007/2008. It is a good thing the developer agreed to increase the buffer to 100' on Dry Creek which drains into the Haw River that is not too far from this development. For all those

reasons Chair Lucier stated he will vote to approve this final plat Phase 1B. Ms. Hager stated these approvals would go much smoother if the developer would meet the post 2008 regulations.

- Ms. Weakley stated this has come up before with additional voluntary buffers, what teeth are there in the restrictions for the outer 50'. It is shown on the plat as a voluntary buffer and that would alert a property owner that there is something there, but what are the actual restrictions with the outer 50'. Mr. Ashness stated when this was submitted it was shown as a Jordan Lake Buffer 100', we didn't show it as a voluntary, but we were told it couldn't be labeled that way, we would be fine with that on the plat. Mr. Sullivan stated staff cannot enforce voluntary buffers. When the site plans come in for these lots staff will make sure the house is not placed in the voluntary buffer. If there is encroachment in that buffer, staff has no regulatory teeth for enforcement. Staff has enforcement within the inner 50', but because it is an additional 50' voluntary buffer we cannot enforce. The plat can't show this as a 100' Jordan Lake buffer because it is not legal to show it that way.
- Ms. Weakley stated it appears on paper, but it looks like nobody can do anything about it unless there is an HOA or put into a conservation easement. Ms. Weakley asked Mr. Ashness or Mr. Robinson for any suggestions for enforcement. Mr. Ashness stated the restrictive covenants could state that the 50' voluntary buffer carries the same requirements as the inner 50' buffer. Chair Lucier stated he agrees with the restrictive covenants and that is what is in place in his neighborhood from the 1980's and it works. Mr. Ashness stated this will be in the restrictive covenants, the outer 50' will be the same restrictions as the inner 50'.

Motion made by Vice-Chair Siverson to approve this item with the conditions of identifying the Jordan buffers on the final plat, second by Mr. Spoon. Chair Lucier completed a roll call vote and the item passed 5-3, opposed by Ms. Weakley, Ms. Hager, and Ms. Moose.

2. A request by Mark Ashness, P.E., on behalf of Laurel Ridge Development, Inc. for subdivision Final Plat review and approval of Laurel Ridge Phase 2B, consisting of 14 lots on 67 acres, located off Old NC 87, SR-1547, Hadley Township, parcel #86169.

Ms. Tyson stated the request is for Final Plat approval of Laurel Ridge, Phase 2B consisting of 14 lots on 67 acres with a financial guarantee for the completion of required infrastructure. Phase 2B received preliminary plat review and approval by the Board of County Commissioners on November 20, 2006 for 36 lots under "The Bluffs". In early 2020, planning staff administratively approved a request from the developer to eliminate a cul-de-sac (Hamilton Cove) and reduce the number of lots for this phase. Due to the cyber incident staff cannot access the emails to confirm the date of the administrative approval, but it was deemed to be an overall reduction of impacts and therefore approved. A copy of the preliminary plat approved in 2006 has been posted online with the application materials for reference.

The submittal includes a request for a financial guarantee for completion of the required infrastructure. Under the pre-2008 Subdivision Regulations, a project must have a minimum of 40% of the infrastructure completed prior to submission of a final plat and the roads must be accessible to emergency vehicles. A cost estimate letter, June 30, 2020, has been provided by Mark Ashness, P.E., CE Group stating that the required

infrastructure is 95% complete. The cost letter may be updated prior to plat recordation if additional work has been completed. Staff recommends granting the request for a financial guarantee. Staff also recommends that the final plat not be recorded until the engineer has certified that the roadway providing access to the parcels are accessible to emergency vehicles and recommends that the final plat not be recorded until the county attorney has reviewed and approved the form of the contract and financial guarantee. Per the approved preliminary plat, roadways are proposed to be public and state-maintained roads. Phase 2B is located off Old Graham Road. The remaining projects The Glens, The Bluffs, Shively Tract, and Harris Tract have been relinquished per email correspondence with the developer.

Riparian buffer widths of 50 feet per side (100' total) measured from top of bank landward have been shown on the plat. The 100-year and 500-year flood plain are shown on plat. The Technical Review Committee met November 10, 2020 to review the request. Hadley Swain Kirkland, Developer was present. Staff had no concerns.

Ms. Tyson summarized the December 1st Planning Board meeting by stating several residents spoke during public input about their concerns with this phase of the development. Daniel Amero commented that larger buffers are needed since the area floods, the developer has bulldozed a pathway alongside his property that was not on the plan and has encroached onto his property in area 250' long and 8' in width. He was concerned with the project because he believes the developer is reckless.

Elaine Chiosso had concerns with trespassing with a bulldozer and the notice of violations for sedimentation and erosion control issues. She also questioned what type of guarantee the developer can provide that the erosion control problems will not continue and whether the developer will be respectful of property lines.

Mark Ashness, P.E. spoke on behalf of the developer. He stated they have eliminated roads and lots from the preliminary plat and reduced the impervious surface. There was a substantial communication breakdown with the contractor that was doing the under brushing and it was a problem that they breached the property line of Mr. Amero. Mr. Ashness commented that about 700 square feet was breached on Mr. Amero's property and there is no excuse for those impacts. He also noted that the erosion control violations have been addressed with the County.

Mr. Ashness explained none of the lots will be accessed by Rock Rest Road. There were concerns from the Board about potential flooding on Lot 35 and the lot being inaccessible at times. Mr. Ashness stated the ridgeline is on the other side of Rock Rest Road and it is not a large drainage area, it is flat and low and there's relief on Lot 35R and should not be an issue from an elevation point.

Board members asked if the developer would increase the buffer on Dry Creek from 50' wide to 100' wide and Mr. Ashness responded that he would need to discuss that with his client. The Board postponed voting on the final plat until the January 5, 2021 meeting to give him time to communicate with the developer. Since the December 1, 2020 meeting the developer agreed to place an additional 50' voluntary buffer and the revised plat can be viewed on the following website - <https://www.chathamnc.org/government/departments-programs/planning/rezonings-subdivision-cases/2020-items/laurel-ridge-phase-2b-final-plat-4805> .

Ms. Tyson stated in closing the Planning Department recommends granting final plat approval of "Major Subdivision Laurel Ridge – Phase 2B Property of Laurel Ridge Development, Inc." with the following conditions:

1. Prior to final plat recordation the county attorney shall approve the form of the contract and financial guarantee.
 2. Prior to final plat recordation the engineer shall certify to the county that there is all weather access for emergency vehicles and the certification must be approved by the Fire Marshal
 3. Final plat title shall include "The Estates at Laurel Ridge".
- Ms. Weakley asked Mr. Sullivan to open the soil survey and USGS topography maps for this phase. The stream running north to south has an upper part with a 20' drainage easement and the lowered part is buffered, when was the last stream determination and is that stream perennial or intermittent. There is also another stream that appears on the soil survey that does not appear at all on the plat as a drainage easement or a buffered stream. Mr. Sullivan stated there was a stream call in this area in 2020. Mr. Ashness stated that is correct, in the last phase, 1B the road was already built, the culvert was in, and the sediment basin was installed. In this phase 2B the road had not been extended and there had not been any grading of that road going up to Rock Rest, so we did have jurisdictional calls for this phase. Mr. Sullivan stated those were all identified by Watershed Protection staff. Ms. Weakley stated that is good to know and she is glad a more recent stream call was completed.
 - Ms. Weakley asked why is there a 20' drainage easement shown in the same location as the headwater of that main tributary. Mr. Ashness stated it was not jurisdictional, the jurisdictional area ended at the buffer that we show on the plat. The top of the watershed area is just north of Rock Rest road and there is a well-defined channel, not sure if it was done during timber management or agricultural, but we are showing that channel to ensure people do not block that channel. Ms. Weakley stated if this just had a stream call then the stream must be deemed an ephemeral stream, otherwise if it were an intermittent or perennial it would have at least a 50' Jordan buffer on it. Mr. Ashness stated that is correct and at the end of the buffer on the plat is the end of the intermittent channel.
 - Ms. Weakley stated as a reminder post-2008 regulations would have a 30' buffer on each side of that channel rather than a 20' easement. There is also an additional drainage easement to the west of Blufftonwood Drive that does not show up on soil survey or USGS maps, but obviously if you are putting it into a drainage easement there must be something there. Mr. Ashness stated that is correct, these are large lots and some of the lots you are referring to right now are some of the larger lots on the project and we do not someone placing a house in an area where water generally flows and create issues even if it has no jurisdictional value. Ms. Weakley stated if that were deemed an ephemeral stream post 2008 it would have a 30' buffer on each side.
 - Mr. Daniel Amero stated he appreciates everything everyone does on the Planning Board and all the research that is conducted. It is sad when a developer can get away with stuff like this and these developers are going to be there for a lot longer. They will be replanting stuff they damaged and down in the riparian areas again with who knows what. I have worked hard for my property and this encroachment has happened within a year and they have made no effort at all to contact me. All the contact has been through me, calling and emailing them. They have taken no responsibility whatsoever. I was out there today putting out seed and straw and saw the attorney and no response to me at all and to bring an attorney to the meeting tonight shows their character. Mr. Amero sent pictures and asked Mr. Sullivan to pull them up for the Board to see. The picture is a bulldozed path in the center of my property line, and I will be spending my own money to fix what they bulldozed that I should be spending on my children or on my house that I am trying to build. I think the developer should be required to block off this fire access road, everybody is using this road, County officials are even using this road. It is sad that all this stuff is happening, and I think a lawsuit would keep this from getting final plat approval. Also, a month before the incident on my property they were getting violations of

unauthorized clearing and stream crossings, how are they still able to do this to me. Nobody is going to help me; I am here by myself and these people are going to continue with more development to come. Mr. Amero thanked the Planning Board.

- Chair Lucier stated he visited the site and it looked like an old logging road about 150' to 200' long and between 1 and 8 feet wide on your property. Mr. Amero stated it is 250' and it is all flagged on the property line because I had just purchased the property and left the flags up on purpose so everyone would see the property line and they didn't care about that when they were bulldozing. A paper company owned the property, and it was not a logging road, but a fire access road. Whatever it was, there were trees in it that are gone now, and it is a big clearing. The County said they had to put 4000 pounds of seed and straw down and they were out there spreading it with their hands, not with equipment to make it look better. Why can't this developer who is getting the financial guarantee and money help me where they damaged my property, it is disgusting.
- Ms. Elain Chiosso stated before this final plat is approved even if this is the second meeting where you as a Board are supposed to vote on it, I do not see how it can get final plat approval without this situation being remedied on the Amero property. As a neighbor we all want to see this old fire road be closed off and not be used as an access road. It is an illegal road and without it being physically closed it will continue to be used as a road they do not have permission to use. In this phase is where the notice of violations occurred, and they were serious to include driving heavy equipment into a small stream. They had their permit revoked because they did not fix the issues in time and I do not believe the County fined them as they had the right to do which would have been up to \$5000 per day for a month. Regardless of what Mr. Robinson says about these issues not being relevant to your decision tonight, it obviously is relevant. The developer is not following all the erosion sediment control rules repeatedly, plus the issue with trespassing by bulldozer on Mr. Amero's property. Some reconfiguring of some lots in this 2B phase would be a huge improvement where there is so much stream crossing to reach some of these sites. I believe this final plat for Phase 2B should be denied and these problems should be addressed before they come back to the Planning Board.
- Chair Lucier asked how many lots were reduced from the original 2007 preliminary plat and the current final plat. Mr. Ashness stated there was a total of 36 lots and now there is a total of 21 lots on this phase. The original plan had 9 lots with direct access to Rock Rest Road and now none of those lots have access to Rock Rest Road, everything is internal to the project.
- Chair Lucier asked if the fire access road could be blocked off. Mr. Ashness stated he does not see any reason why they could not block off that old fire access road. The lot owners of lots 45 and 46 are going to share the same concerns as Mr. Amero and not want people on the access road. There was some Board discussion about planting vegetation and closing off the access to the fire access road. Ms. Weakley asked if they would plant vegetation on Mr. Amero's property as well. Mr. Ashness stated if it were up to him, he would, but there have been some discussions between Mr. Amero and the client, and it sounds like there needs to be some more discussions to come to an agreement.
- Mr. Robinson stated there has been conversations between Mr. Amero and the applicant and including Mr. Amero obtained an estimate from Bartlett Tree Experts Company to replant 50 trees in the small section of the fire road that was cleared on his property and with a visit in the spring and summer of 2021 to ensure survival of the new trees. That is a 1500' fire road and 96% of it is on the applicant's property and about 4% is on Mr. Amero's property. When the applicant was clearing the fire road and believed for it to be on their property, they did go over to the 4% that is on Mr. Amero's property. The applicant has provided the repair estimate and willing to make those plantings and has asked Mr. Amero for a standard settlement and release agreement and they have not been able to come to terms with that yet. Mr. Robinson stated he is telling the Board that not because it should influence whether

this final plat is compliant with your regulations, but just to say that story has not ended yet and hopefully will be resolved in a way that they can shake hands and it will be over.

- Mr. Robinson stated Ms. Chiosso did a great job summarizing the erosion control violations and was very fair and noted that in each case all the sites have been brought back into compliance in terms of the erosion control staff acknowledging that. Again, that is a regulatory system that is doing its job, of course you do not want violations, but if they happen you want them corrected which they have done. The question for the Planning Board tonight is does this final plat meet the regulations of the subdivision ordinance and your Planning staff agrees that it does. It is good that the subdivision plat has been reconfigured administratively to take the lots down from 18 to 9 total lots in this phase and as Mr. Lucier pointed out there were 5 lots along Mr. Amero's property and now there are only 3 very large lots. Mr. Robinson stated he understands why Mr. Amero is upset and I would be too if there were trees taken off my property without my permission and we are hopeful to get all of that straightened out.
- Chair Lucier asked Mr. Robinson to respond to the question about blocking off the fire road. Mr. Robinson stated the 4% portion of the fire road on Mr. Amero's property should and will be blocked off. With regards to the portion on the applicant's property I do not have any authorization from the applicant that says they will block it off, but I will speak to them about it. Chair Lucier stated there is no use for that fire road once the development is done. Mr. Robinson agrees and will get it resolved between now and the BOC meeting. Mr. Spoon stated there is still 96% of this road that people will have access to and use it, that sounds like a problem for the whole community and nobody really wants that road there. Mr. Robinson stated the suggestion to block off the road is a reasonable request but would like to check with the applicant to see if they would commit to that. Mr. Spoon stated once somebody buys the lots with the road on it and they like the road then it is theirs and there is nothing that can be done about it then. If there is no use for it and it is an issue, then why not fix it now.

There was some discussion about blocking off the road and lot access between Board members and Mr. Robinson. Mr. Ashness stated all lots will have access to Blufftonwood Drive and agrees with Chair Lucier, there is no use for the fire road, and they can put some landscaping at the drive access is not unreasonable. Mr. Robinson stated he has been communicating with the applicant and we can put landscaping in at the access of the fire road to block it off. There was discussion if this should be a condition. Mr. Robinson stated this could be part of the restrictive covenants to require landscaping in that area. Mr. Ashness stated we can get this done before the BOC meeting. Mr. Sullivan stated we can put a condition on the motion that way in case something happens between now and the BOC meeting.

Ms. Cathy Markatos a citizen stated the fire road was the width of a bulldozer, now it is doubled or tripled in size. It is wonderful that you are thinking of planting at the access, but I want to see the whole strip of land that was made bare be covered. They seeded and strawed, but there are big brush piles and instead of burning the piles, they could just distribute that around the trees that they plant to help stop erosion on that large bare strip of land. Chair Lucier stated they have the agreement to block off the road. Ms. Markatos stated the rain will take all that red clay right down to Dry Creek, the width that was created by the bulldozer is exposed soil. Chair Lucier stated he walked the fire road and there will be some brush that will grow naturally if it is left undisturbed. Ms. Markatos stated it was compressed down by the bulldozer and it will be slow to grow and they should plant there as well.

- Mr. Jerry Markatos a citizen stated our community has been very careful about safeguarding Dry Creek. After the incident on the Amero land more of us are now aware of the violations that took place. There was an astonishing amount of recklessness even the history of these developers going back to the land just north of Rock Rest Road. They had bulldozers working and people cutting trees and a bulldozer crushed a communication pedestal, so telephone and internet service was out for some time.

There have been other times where trees were dropped on powerlines while projects were going on unsupervised. The incident in Mr. Amero's property was in June of last year and understands why Mr. Amero is upset. Mr. Markatos has a home business and there was a day when there were power interruptions and he went out and spoke to the power company employee who was pulling a tree off the power line and he said he has been out here for 6 different calls of power outages because of trees falling on the power line, that is reckless. We appreciate the details the Planning Board is going into on this topic and believes this whole thing should stop until some neighborly action is completed and not just some addition to the restrictive covenants.

- Ms. Weakley wanted to address the concern about the multiple stream crossings for this phase and would like to see the number of stream crossings reduced by shared driveways or whatever needs to be proposed. Ms. Weakley stated she sees at least 5 stream crossings if not more. Mr. Ashness stated by his account in the buffer crossings there are two lots that will need to cross the buffer on lot 35R and 34R. Ms. Weakley stated there are the lots 44,45, 46, and 47 with stream crossings. Mr. Ashness stated those are just small channels and not jurisdictional crossings, we have deliberately taken the drive access off Rock Rest Road and those are all by right crossings. The drainage area is very small in that area and with the two buffer crossings, I do not think the client is willing to commit to shared a driveway crossing for those two lots in this location. Someone may come in and buy both of those lots, who knows when it all gets sold.

Ms. Weakley recognizes that public drainage easement is not currently considered jurisdictional, but it is all part of a hydrological network leading directly to Dry Creek and it is best practice to reduce stream crossings if possible. By today's standards if it were deemed an ephemeral stream it would have 30' buffers on each side. Mr. Ashness understands, but these are large lots, and everything here is permitted by right. It is very unfortunate that there was disturbance on the Amero property and when this project was reconfigured, we believed this was going to be very well received because we dropped 10 or 11 lots and eliminated all the drive access to Rock Rest Road and the project as a pre-2008 is in full compliance with the zoning requirements of having a 5-acre average. Everything we did here was to make it right, unfortunately there were some actions done that created a lot of pain and suffering, to the Amero's and impacts to buffers. The reality is we are providing a plan that is fully compliant with the regulations and we reduced the lots to ensure we had more than a 5-acre average through this area. The area on the Amero's property will be planted and the applicant and Mr. Amero will need to come to an agreement, or it will end up in a legal matter, but hopefully that can be accomplished.

- Mr. Daniel Amero stated it does not matter what percent of property has been encroached upon or bulldozed, it happened and why does it take all this, wasting everybody's time, when they could have just fixed it. I just want them to block it off in a respectable and responsible way and make it right.
- Ms. Weakley stated if there is a vote approve this item, she recommends the same thing as the other phase with the Jordan buffers being identified on the plat and that there be a recommendation by the Planning Board about the voluntary buffer on Dry Creek. Chair Lucier stated we will do that the same way we did Phase 1B and the vegetation planting to block the fire road entrance on the east side of the property. Ms. Weakley also stated stabilization if there is any erosion of the property they disturbed. Chair Lucier stated he did not see any when he was out there it was relatively level.
- There was some Board discussion to how to make a motion for approval and what conditions can be added to the motion. There was also discussion about the agreement that needs to be made between Mr. Amero and the developer about the estimate from Bartlett Tree Experts and the question of erosion control issues. Mr. Sullivan stated the applicant has been working with Watershed Protection

department on the sediment and erosion control issues as well as some Jordan Buffer Rule issues and has been ongoing since August of last year. Mr. Ashness stated they are fully compliant with erosion control as of today and there is a buffer remediation plan that the County has already approved, and we are at the right time of year to complete that buffer improvement plan. We made sure all the issues have been taken care of and in compliance with Watershed Protection before we resubmitted this plan.

- Vice-Chair Siverson stated all violations have been addressed by the County and are compliant, but how can we be assured that future violations will be quickly addressed, is there an inspection process in place to make sure these things will be dealt with. Mr. Sullivan stated yes there is a system in place and the replanting's that are required on the Jordan Buffer Rules has an inspection every year for five years. Even during the home building there is a process, but if there are issues and complaints staff will go out and inspect the property.
- Ms. Weakley asked where the buffer encroachment was located. Mr. Ashness stated there were some existing timber trails out there that crossed the buffer and there was not any grading, but rather ruts and tracks by vehicle crossing through those areas which should not have happened.
- Ms. Moose stated she appreciates the improvements that were made to the plan and on paper it is an improvement what came through nearly 15 years ago especially the lower density and the voluntary buffers. These conversations always make it so clear the deficiencies of those regulations and how far we have come since then. It is difficult to recommend approval on good conscience with the realities on the ground and hopes the measures that have been agreed to tonight will help make this an easier decision for the Commissioners because the impacts to the community are quite real.

Motion made by Vice-Chair Siverson to approve this item with the conditions of identifying streams as Jordan buffers, to plant vegetation to block the fire access road off Rock Rest Road, and the restrictive covenants will state the outer 50' voluntary buffer will have the same restrictions as the inner 50' Jordan buffer, and a recommendation to encourage the developer to come to an agreement with Mr. Amero to restore his property, second by Mr. Spoon. Chair Lucier completed a roll call vote and the item passed 6-2, opposed by Ms. Weakley, and Ms. Moose.

VIII. ZONING:

1. A quasi-judicial public hearing for a request by Matthew Malone, for a Conditional Use Permit Revision for a site plan change and request additional uses, Parcel 2759 being approximately 2.29 acres, located at 9553 US 15-501 N., Baldwin Township.

In reviewing and considering approval of a Conditional Use Permit, the Board must find that all of the findings of facts shall be supported. Per the Zoning Ordinance, "In considering an application for a conditional use permit or revision to a CUP, the Board of Commissioners shall give due regard that the purpose and intent of this Ordinance shall be served, public safety and welfare secured, and substantial justice done. If the Board should find, after public hearing, the purpose conditional use permit or revision thereof should not be granted, such proposed permit shall be denied."

A community meeting is not required for revisions to a CUP per the Zoning Ordinance. The applicant provided a site plan for the Chatham County Appearance Commission on August 26, 2020. He was not present, but the site plan showed supplemental vegetation along the western border of the most recent development (gravel parking lot). The members suggested specific species and how many of each should be planted, with spacing

requirements. Staff gave this information to Matt Malone, and he returned a site plan showing the suggestions. The CCAC then approved this site plan.

Finding 1 - The use requested is among those listed as an eligible conditional use in the district in which the subject property is located or is to be located. The applicant answered N/A, as this use is allowed as a CUP within R1 zoning. It is the planning staff's opinion this finding is met.

Finding 2 - The requested conditional use permit or revision to the existing permit is either essential or desirable for the public convenience or welfare. The applicant will leave existing vegetation, and supplement along the western border of the new area of the gravel parking lot. Previously, the rear of the property had limited access for emergency services, but with the expansion, this has been made more accessible and increased safety. The applicant is also requesting additional uses for the property. The current Conditional Use Permit was approved in 2010 and has not been revised since. The area has increased in development, both commercial and residential since, and it is the desire of the property owner and applicant to improve potential marketability of the property, while also keeping the site in compliance with all other regulations. It is the planning staff's opinion this finding is met.

Finding 3 - The requested permit will not impair the integrity or character of the surrounding or adjoining districts, and will not be detrimental to the health, safety, or welfare of the community. The property has been in non-residential use since 2010. The request was initiated by a complaint about development occurring on site. After planning staff further reviewed the original approval, it was determined that a revision is required for any change to the site plan. It was suggested to review the current table of uses in the Zoning Ordinance to add/remove any uses as the applicant saw fit. Uses were added in order to improve future marketability for the site. As a result, if approved, the applicant is projected to add 3 full-time jobs. It is the planning staff's opinion this finding is met.

Finding 4 - The manner in which the proposed amendment will carry out the intent and purpose of any adopted plans or part thereof (i.e., Comprehensive Plan, Chatham/Cary Joint Land Use Plan, etc.) You must note specifics from the plan/s giving reference to page number and section. The applicant's business, Nature Trails, LLC, will support the preservation and protection of the rural character and natural beauty of the lands, conserve natural resources, and provide recreational opportunities and access to open space (Comprehensive Plan page 40). The applicant references multiple strategies and policies that support the request. Economic Development Strategy 6.3 is supported by increasing tourism and recreation opportunities and amenities. Natural Resources Primary Goal of conserving natural resources is supported because the trail development is constructed with minimal equipment, with much of the development being done by hand. All goals of Parks and Recreation (provide recreational opportunities and access to open space, foster a healthy community, and conserve natural resources) will be met with the approval of the revision request.

Additionally, the applicant references Economic Development Policy 6 on page 57 which encourages "support entrepreneurship and new businesses that diversify the local economy and capitalize on the unique assets of Chatham County". It is the planning staff's opinion this finding is met.

Finding 5 - Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary facilities have been or are being provided consistent with the County's plans, policies, and regulations. All utilities are existing, the access to the rear of the property is improved with the new development, this site still meets watershed protection requirements, and the applicant's business will be providing recreational opportunities for Chatham County, the surrounding area, and internationally. It is the planning staff's opinion this finding is met.

Based on all five findings being met, planning staff supports the conditional use permit revision request.

Page 57 Economic Development Policy 6 states, "Support entrepreneurship and new businesses that diversify the local economy and capitalize on the unique assets of Chatham County". This project diversifies the local economy and capitalizes on the unique assets of Chatham County as there is no similar use currently, as well as including additional uses to support future marketability of the property. Page 58 Economic Development Strategy 6.3 states, "Support increased tourism and recreation opportunities and amenities, particularly promoting sustainable tourism and authentic experiences". This applicant's business is to provide recreation opportunities, and the additional uses requested are in sync with the development of the surrounding area.

Ms. Phelps stated in closing the Planning Board has up to three meetings in which to make a recommendation to the Board of Commissioners. The following conditions are provided for consideration if recommended for approval:

Site Specific Conditions:

- The recommendations from the Chatham County Appearance Commission (CCAC) shall be followed as stated in the minutes. The planning staff and CCAC may conduct routine inspections of the property to ensure compliance with the landscaping requirements.
- A building permit shall be obtained and remain valid at all times within two (2) years of the date of this approval or the conditional use permit revision becomes null and void.
- All existing conditions shall remain in effect, except as modified by this conditional use permit amendment.

Standard Site Conditions:

- The application, standards and adopted regulations of the applicable ordinances and policies, and the approved recommendations as provided for and/or conditioned, are considered to be the standards as set forth and shall comply as stated. Changes or variations must be approved through the Planning Department or other approving board before any such changes can take place. These include, but are not limited to, landscaping, lighting, signage, parking, building construction, etc.
- All required local, state, or federal permits (i.e., NCDOT commercial driveway permits, NCDWQ, Chatham County Land and Water Resources, Environmental Health Division, Building Inspections, Fire Marshal, etc.) shall be obtained, if required, and copies submitted to the Planning Department to the initiation of the operation/business.

Standard Administrative Conditions:

- Fees - Applicant and/or landowner shall pay to the County all required fees and charges attributable to the development of its project in a timely manner, including, but not limited to, utility, subdivision, zoning, and building inspections.
- Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued compliance with the plans and conditions listed above.
- Non-Severability - If any of the above conditions is held to be invalid, this approval in its entirety shall be void.

- Non-Waiver - Nothing contained herein shall be deemed to waive any discretion on the part of the County as to further development of the applicant's property and this permit shall not give the applicant any vested right to develop its property in any other manner than as set forth herein.
- Chair Lucier stated the site plan cannot be changed if this item is approved, is that correct. Ms. Phelps stated it can be changed, but it would have to go through a CUP revision. Chair Lucier stated the only change is the parking lot. Ms. Phelps stated yes, the parking lot is all that has changed and all they intend to do. Any other changes would require them to go through the process again, but they do not have much space to work with to meet the requirements. There was some discussion about the site plan that was being displayed and the location of the current parking lot. Ms. Weakley stated they built a parking lot without approval. Ms. Phelps stated correct.
- Ms. Weakley asked Mr. Sullivan to pull up the streams on the GIS and the soil survey map because there is a pond and a stream on the property. Has there been a stream determination on the site because if you look at the conservation map viewer and the NRCS soils streams layer will show that stream beginning at the intersection of 15/501 and Briar Chapel Parkway then drains down to the pond then drains from the pond. Ms. Phelps stated there has not been a stream determination on the site, but there has been correspondence with Watershed Protection because anytime there is a water feature on a property there is discussion, but that conversation was when we lost our emails from the cyber-attack. Ms. Weakley stated the stream leaving that pond is deemed intermittent or perennial, not only the stream, but also the pond would be subject to Jordan Buffer Rules with a 50' buffer around the pond and as well as around the stream leaving the pond. At the very least a stream determination needs to be conducted before this moves on any further.

Chair Lucier stated you are requesting a stream buffer determination on the property especially related to what comes out of the pond. Ms. Weakley stated correct if it is hydrologically connected then the pond also gets a buffer. She cannot decide on this item until she knows the status of the buffer determination.

- Ms. Weakley stated the property owner owns a company that is recreational based, but the purpose of the parking lot is not associated with any recreation. Ms. Phelps stated the parking lot is associated with his business, they develop trails, and they have some equipment that needs space to be stored. Chair Lucier stated that is why they want the other uses added to the CUP as an addition. Ms. Phelps stated that is correct.
- Mr. Matt Malone the applicant stated the company is a licensed general contractor and specialize in nature service trail systems with native soils and gravel throughout the County and neighboring jurisdictions. This parking lot area is strictly used for mobilizing our business to go to project sites. To his knowledge the pond is a manmade pond and had a manmade dam put on it, but at some point in the history of the property, someone cut a hole in the dam and it is not retaining water much anymore.
- Ms. Weakley stated this needs to be evaluated before moving forward. Ms. Phelps did some measurements on the viewer and stated the building is 80' from the stream line and the parking lot is further away than the building. Mr. Sullivan stated the pond is much smaller now than what it used to be. Ms. Weakley stated the dotted line that represents the stream is an approximation and would feel better with a site visit for a buffer call.
- Chair Lucier stated is it the Boards thoughts to table this item and have a field visit for a stream buffer determination. Ms. Hager asked about a voluntary buffer be a condition added rather than hold this up.

Ms. Weakley stated this is more of a code enforcement issue because work had been done on the site without permission and feels this determination will need to be completed anyway. Mr. Sullivan confirmed what Ms. Weakley is requesting is Watershed Protection go out and conduct a site visit and do a stream call. Ms. Weakley stated yes, look at the pond and the stream. Apparently, Mr. Drew Blake has been taking the GPS and more accurately map property so that will be helpful.

- Chair Lucier asked the Board if we are going to table this item. Nobody on the Planning Board had an issue tabling this item until next month. Ms. Hager asked what are the results of having the stream determination conducted, will that keep us from approving this item? Ms. Weakley stated it is due diligence and to remedy work being done without approval. Chair Lucier stated to make sure the parking lot is not in a stream buffer; it is an appropriate request.

Motion made by Ms. Weakley to table this item until a stream buffer determination is completed, second by Vice-Chair Siverson. Chair Lucier completed a roll call vote and to table this item passed 8-0, unanimously.

- Ms. Weakley asked what implications will there be on traffic for the additional uses added? Mr. Sullivan stated there is not traffic analysis submitted and there is going to be limitations based on the parking and the current configuration will limit the activity by default.

2. A legislative public hearing for a request by the Planning Department to consider amendments to the Chatham County Zoning, Subdivision, Watershed Protection, and Flood Damage Prevention Ordinances required by the Chapter 160D Statutory update.

Chapter 160D consolidates, reorganizes, and modernizes the state's planning and development statutes and repeals the existing statutes that have been collected and merged into the new 160D.

In early 2019 when 160D was being considered there were several bills relating to repeals and replacements of existing statutes. The Senate Judiciary committee merged Chapter 160D (S.422) with a set of statutory amendments proposed by the Homebuilders Association (S.355). The merger was based on the idea that neither bill should be enacted without the other. The Combined bill known as S.L. 2019-111 was signed by the governor in July Ordinance 2019. That combined bill was the basis for all the materials used by the School of Government to educate local governments on the changes that would need to be made to local land use regulations. The bill had two parts. Part one was S.355 the Home Builders Association bill and part 2 was 160D. Part 1 contained much of the new vested rights and permit choice changes. It was understood that part 1 would need to be merged into part 2 prior to Local Government land use regulations being repealed or amended. The General Statutes Commission was tasked with integrating both bills with the General Assembly passing a new bill in early to mid-2020. The effective date of the law was January 1st, 2021.

Planning staff attended a comprehensive workshop in late 2019 to learn about the many statutory updates. At that time, the School of Government had created a book and lots of materials based on 2019-111, with the understanding that the materials they were supplying to local governments could and most likely would change in 2020.

S.L 2020-25 was signed by the Governor on June 19th, 2020. The law was effective on that day. This law consolidated all the previous bills into one law containing the 160D statutory amendments. Although the new 160D law was effective immediately local governments were given until July 1st, 2021 to make required amendments and updates. The extension was based on the changes to the consolidated bill and the COVID 19 Pandemic response.

Planning Staff requested a public hearing at the October 2020 Board of Commissioners Meeting. The Public Hearing was held on November 16th, 2020. Planning Staff gave a slideshow presentation presenting the changes to the Zoning, Subdivision, Watershed Protection, and Flood Damage Prevention Ordinances.

Section 5 of the Zoning Ordinance, Conditional Zoning Districts, had language added to require that conditions must be consented to in writing by petitioner, and property may be placed in a conditional zoning district only in response to a petition by the owners of all property included. There is also new language related to community meetings and mailed notice, as well as a reconfirmation that any district modifications that do not change the use or density of the overall development can be approved administratively. These changes are good examples of procedural rather than major policy changes. The planning department already did these things, the language has just been updated to conform with state statutes.

Section 6 Official Maps Adopted-Districts Boundaries Established, has a new section: 6.2 Incorporation by reference. This added language gives the county the ability to incorporate flood insurance rate maps, watershed boundary maps, or maps officially adopted or promulgated by state and federal agencies to be incorporated by reference. Section 7, Definitions, has many more added and amended definitions. Planning staff discussed three important new definitions at the public hearing. The Map Repository definition is directly related to the new section on incorporating maps by reference. The definition for Quasi-Judicial Decision is important because the ordinance did not have a definition for this before and this new definition conforms to the statutory updates; there is also a new section specifically focusing on Quasi-Judicial procedures. The definition for Special Use Permit is replacing the definition for Conditional Use Permits. That Section is now called Special Use Permits.

Section 8 has new language added for Conflicts of Interest standards for administrative staff. Section 10.13, the Table of Uses, has a significant number of edits that change CUP to SUP. The permitted uses are not changing, just the term.

Section 17 is now called Special Use Permits. It has some new language regarding administrative approval for minor modifications, but the most significant change is the addition of 17.10 Quasi-Judicial Procedure. The Zoning Ordinance had a process for Quasi-Judicial procedure before, but this new section conforms with the statutory changes and puts all the process and procedure into one section. Section 18 Board of Adjustment just has some new language added regarding mailed notice in the subsection on Appeal Procedure.

Section 19 Amendment to the Zoning Ordinance has new language restricting third party down zoning, as well as updates related to consistency statements. For instance, if the Board makes a decision that is not consistent with the comprehensive plan the zoning amendment shall have the effect of also amending the comp plan. Additionally, a plan amendment and zoning amendment can be considered concurrently. Also, the new language clarifies what happens if the Board of Commissioners fails to adopt a consistency statement. The requirement for a plan consistency statement may also be met by a clear indication in the minutes that at the time of action on the amendment the board was aware and considered the planning board recommendation. Section 19 also has a new section and expanded language regarding vested rights and permit choice.

The expanded Vested Rights section has more information about duration of vesting, multi-phased developments, and the process for claiming a vested right. There is also a new section devoted to Site Specific Vesting Plans. This separate section comes from the updated 160D bill that the governor signed in June. In previous iterations, all vested rights language had been in one lengthy and cumbersome section. Now, most of the information is the same, but split into two sections. Planning staff thought it best that the Zoning Ordinance should follow the format of the state statutes. Site Specific Vesting Plans have to be used for a specific parcel or parcels. The plan can be a planned unit development plan, a subdivision plat, a preliminary or general

development plan, special use permit, conditional district zoning plan, or any other land use approval that may be used by the county. The vested rights are not personal rights and run with the properties.

- Ms. Weakley stated given that we keep running into pre-2008 developments and as we update our ordinances, we may run into vested rights again. Are there any good examples as to how that has changed? Mr. Glenn stated the vested rights language that are in Chapter 160D come from the Homebuilders Association, it does not change that much, but it does give developers more flexibility as to what they can claim as vested rights and how long they can claim it. There are site specific vesting plans that can go up to 5 years of vested rights.
- Ms. Weakley stated she had read if an application was submitted and the regulations changed before approval then they are vested under the old rules. Mr. Glenn stated yes, if they submit a building permit or a riparian buffer before changes then they are vested to my knowledge. Mr. Sullivan stated if a permit is submitted and it ultimately is approved and if there is also a regulatory change at the local level. Vested rights are covered at the local level and State level, so if NCDOT issues a driveway permit as one of the documents that were included, it could be deemed as establishing vested rights for a project at the local level, if there is a regulatory change related to the site plan that had been submitted to and approved by NCDOT. Fortunately, Chatham County has an agreement with NCDOT, and a lot of local governments do, Chatham staff must sign off on the driveway permit before NCDOT will issue it. There could be some other circumstances potentially where a permit submitted to the State that is approved and at the local level there is a regulatory change, the developer could claim vested rights of the local rules based on the permit that was approved at the State level.

Ms. Weakley stated she can see stream crossing being an issue like Briar Chapel getting approval through Army Corps and Division of Water Resources for all these stream crossings that were never reflected in their master plan. Mr. Sullivan stated it would have to be tied to a regulatory change at the local level. Even if they detained DEQ or Army Corps for approval for a stream crossing if there is no regulatory change at the local level it would not override our local regulations. Mr. Sullivan stated he believes this is targeted more for much larger jurisdictions and here in Chatham County we should not see many issues with this change. Ms. Weakley stated if it is proposed by the homebuilders Association it has a root somewhere.

- Mr. Spoon stated these changes are passed down from the State and these must be passed no matter what. Chair Lucier stated that is correct, we are just trying to get our local regulations in line with the State regulations.

Mr. Glenn stated sections 20 and 21 have new language in various subsections relating to the administration of enforcement and violations. The Subdivision ordinances had less but still meaningful changes related to 160D and some updates and housekeeping changes added as well.

The definition for Lot Area(usable) had some language added that you can see in the redline attachments. Most of the 160D changes came in Section 3 relating to performance guarantees. The duration of the performance guarantee shall initially be one year, unless the developer determines that the scope of work for the required improvements necessitates a longer duration. In the case of a bonded obligation, the completion date shall be set one year from the date the bond is issued unless the developer determines that the scope of work necessitates a longer duration. This language is a change to procedure but does not necessarily affect how we issue performance guarantees. There is also some new language regarding the release of guarantees and legal responsibilities.

- There was some Board and staff discussion about Expedited Subdivision reviews and what makes it qualify.

Mr. Glenn stated there are also some changes to the flood damage prevention ordinance that come from 160D Statutory Updates. There is new language regarding incorporating maps by reference and automatically updating Flood Insurance Rate Maps.

Recommendation: The Planning Board has up to three meetings to make a recommendation to the Board of Commissioners. A consistency statement is required for the Amendments to the Zoning Ordinance. A sample consistency statement is below.

The request to amend the Zoning Ordinance is consistent with the Comprehensive Plan of Chatham County, Plan Chatham, by supporting Goal 1: Preserve the rural character and lifestyle of Chatham County, and Goal 3: Promote a compact growth pattern by developing in a near existing towns, communities, and in designated, well planned, walkable, mixed-use centers.

- There was Board discussion to remove Goal 1 in the consistency statement.

Motion made by Mr. Spoon to approve the consistency statement and to just include Goal 3 of the Comprehensive Plan **“The request to amend the Zoning Ordinance is consistent with the Comprehensive Plan of Chatham County, Plan Chatham, by supporting Goal 3: Promote a compact growth pattern by developing in a near existing towns, communities, and in designated, well planned, walkable, mixed-use centers.”** Second by Ms. Hager. Chair Lucier completed a roll call vote and to table this item passed 8-0, unanimously.

Motion made by Mr. Spoon to approve the zoning ordinance text amendments under Chapter 160D, second by Ms. Hager. Chair Lucier completed a roll call vote and to table this item passed 8-0, unanimously.

Motion made by Mr. Spoon to approve the subdivision and flood damage prevention ordinance text amendments under Chapter 160D, second by Vice-Chair Siverson. Chair Lucier completed a roll call vote and to table this item passed 8-0, unanimously.

IX. NEW BUSINESS:

X. BOARD MEMBERS ITEMS:

Update from the Planning Board liaisons.

- Chair Lucier stated he did not attend the Pittsboro Planning Board meeting for January. The ERAC meeting for December was cancelled because Vickers Bennett withdrew their text amendments application.
- Vice-Chair Siverson stated the Siler City Planning Board meeting was not held in December. The Well subcommittee will meet January 6th and will have the Environment Health director speaking.
- Ms. Moose stated the Agriculture Advisory Board did not have a meeting for December and should have their January meeting next Tuesday.
- Ms. Weakley stated the Chatham Conservation Partnership will have a virtual meeting on January 21st at 9am – 11:15am the topic is Water Resource Planning. Updates on the Cape Fear River Basin Plan and the Jordan Lake Rules readoption process.

XI. PLANNING DIRECTOR'S REPORTS:

Mr. Sullivan reported on the following:

1. UDO Update
2. County network update

XII. ADJOURNMENT:

There being no further business, the meeting adjourned at 10:03 p.m.

Signed: _____ / _____

George Lucier, Chair

Date

Attest: _____ / _____

Daniel Garrett, Clerk to the Board

Date