

**MINUTES**  
**CHATHAM COUNTY BOARD OF COMMISSIONERS**  
**WORK SESSION**  
**OCTOBER 06, 2008**

---

The Board of Commissioners (“the Board”) of the County of Chatham, North Carolina, met in the Agricultural Building Auditorium, 45 South Street, located in Pittsboro, North Carolina, at 11:30 AM on October 06, 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; Assistant County Manager, Renee Paschal; Finance Officer, Vicki McConnell; Public Works Director, David Hughes; and Clerk to the Board, Sandra B. Sublett

The Work Session was called to order by the Chairman at 11:39 AM.

*Work Session Agenda*

1. **Denial of Proposed Time Warner Cable Franchise Transfer**
2. **Discuss Developing List of Projects for Inclusion in 2011-2017 Transportation Improvement Program for Triangle Rural Planning Organization**
3. **Set Date for Public Hearing for Subdivision Zoning and Watershed Revisions (10-20-08)**
4. **Habitat Update at Chatham Oak Subdivision**
5. **Contract Change Order for Chatham County Business Park Contract: Consideration of a request to approve the Contract Change Order No. 5 as requested by Sanford Contractors for the Chatham County Business Park Contract in the amount of \$646,503.90**
6. **Business Incubator Viability Study**
7. **Elvin Strowd Contract**
8. **Closed Session to discuss property acquisition**

Chairman Lucier stated that before the lunch break, they would try to dispose of Item #1 and Item #4.

**TIME WARNER CABLE FRANCHISE TRANSFER**

The County Manager stated that Time Warner, Inc. had requested approval of a transfer of the local franchise agreement to Time Warner Cable. He said it was their recommendation that the Board deny that transfer because there were issues that had not been clarified to their satisfaction.

Debra Henzey stated that late on Friday they had received a letter with some information from Time Warner that addressed some of their concerns, but there were still several points of clarification that needed to be followed up on. She asked Bob Sepe to explain.

Bob Sepe, Attorney with Action Audits, stated that the County had made substantial progress with Time Warner, but a few items still needed to be resolved: providing Chatham County with service area maps as required by the Franchise Agreement so that they could determine if Time Warner was serving qualified areas; providing additional information on the County’s request for its own Government Access Channel; and, providing more detailed information not only on how they calculated “cable miles” in determining which roads or neighborhoods qualified for service, but also how they calculated the additional costs that customers must pay should their neighborhood or road not meet Time Warner’s density definition.

Mr. Sepe stated the most important thing was that the agreement to approve needed to be in resolution form, and they had not yet had time to draft that for perusal by the County Attorney. He suggested that the action for the Board at this time would be to deny the transfer and allow them to work out the details of the acceptance and draft a resolution of approval for action by the Board.

Chairman Lucier stated then because of the time constraints, they needed to take some action now, and their only opportunity was to deny the transfer and then come back and revisit it once the formal agreement was put in place and a substantive resolution was brought forward for action. Mr. Sepe stated that was correct.

Brad Phillips, representing Time Warner Cable, stated the letter Ms. Henzey had referred to outlined the four issues brought to Time Warner, of which Mr. Sepe had touched on three; the other was the 21 cent pass-through to cable customers in support of pay channel access, which they had agreed to do for the next billing cycle; that they had also agreed to the build out for Vickers Road at a cost of \$30,000 to Time Warner Cable, even though it did not meet their business model nor did it meet the thirty homes per mile in the contract with the County; and, that they had agreed as well to do the fiber optic connection to the Government Center within a certain timeframe.

Mr. Phillips stated from a denial versus an approval situation and whether or not the "clock stopped," it was their position that the clock did not stop with a denial. However, he stated, what they were asking today was that the Board take no action as described in their letter; that with no action they were still bound by the letter, but with a denial they were not bound. Mr. Phillips said with a denial today, he would not longer be authorized to offer those things which Time Warner had agreed to do, and the 120-day clock would expire on October 10<sup>th</sup> but that would not prevent the Board from coming back at a later date and adopting a resolution of approval. Mr. Phillips offered a commitment that the items noted in the letter would be honored whether it was in the form of a resolution or not, if the Board took no action today.

Jep Rose, County Attorney, stated it was his determination that if the Board took no action, then the time would expire because federal law required cable franchising authorities to complete action on franchise transfer requests within 120 days of their submission. Mr. Sepe agreed, noting that if the County allowed the clock to run out, then in effect that was an approval of the transfer. Mr. Rose said with the denial action in place, the Board could come back in the near future to consider approval after the issues had been resolved; and, should therefore take action to deny.

Ms. Henzey stated what they were looking for was time to work out an agreement with Time Warner so that when the resolution for approval was brought forward, they would be clear on exactly what Time Warner would do and that the motion would reflect that.

The County Manager stated their perspective was to approve a motion to deny allowing time to specify what they needed from the agreement. He stated he agreed that if they did nothing it would be an approval by default.

Chairman Lucier stated they appreciated Mr. Phillips' offer to make good on the items noted in his letter, and expected that in the future that they would have a negotiated agreement that would work for all parties.

Commissioner Barnes stated he believed they should take the advice of the County Manager.

Commissioner Thompson asked if he heard that there would be ongoing negotiations which should result in a resolution of approval being brought before the Board in the near future. Ms. Henzey stated that was certainly their intent, and to do it as quickly as possible.

Chairman Lucier asked if that could potentially be done by the next meeting. Ms. Henzey stated she believed it could.

Commissioner Thompson asked if they would have time to act on that at the next meeting and still be on time.

Chairman Lucier replied no, that the timeframe ended on October 10<sup>th</sup>.

Mr. Phillips stated that from Time Warner's perspective, a denial was a complication and could very well remove the local representatives from the table. He stated the items listed in his letter were contingent upon either no action or approval of the resolution, so denial would send them back to the drawing board.

Commissioner Barnes asked why this had been brought to the Board at the last moment.

Commissioner Vanderbeck stated they had supposedly been working together on a common goal, and his concern was that they were now held hostage with this to their heads, that unless they approved it then Time Warner would pull out. He asked what did it mean that they took the County up to the eleventh hour and then stated they had to take action, adding that he did not like the posturing of that; and, that coupled with the Manager's, staff, and Attorney's recommendation that the Board deny the transfer, he could only vote for the resolution of denial.

Mr. Phillips stated that Time Warner believed they were the ones being held hostage; that the Franchise Agreement had been in effect since 2001; that the things being asked for in the franchise were in that contractual agreement and could have been requested any time in the last six years; that the "leverage" Mr. Sepe had referenced was that there was an approval pending for a transfer which had brought forth these other issues; and, that with all due respect those issues had not been brought forward at the eleventh hour and had only been brought to them in the last few months.

Mr. Sepe stated that when you came to a juncture like this, the idea was to look at the contract and clean up any outstanding issues. He stated just as important, those issues and the agreements regarding those needed to be in writing.

Commissioner Thompson moved, seconded by Commissioner Vanderbeck, to adopt **Resolution #2008-54 Denying Consent, Without Prejudice, to the Proposed Change in Control of Ownership of the Cable Television Franchise for the County of Chatham**, on the advice of attorney and staff, with anticipation of an agreement to be forged in the near future. The motion carried five (5) to zero (0).

Chairman Lucier stated that he fully trusted that Mr. Phillips would continue to work with the County in good faith and negotiate a new agreement, and the Board hoped that would happen in the very near future and they could enjoy a good relationship with Mr. Phillips and Time Warner.

### **HABITAT UPDATE AT CHATHAM OAK SUBDIVISION**

Amy Powell, Habitat Director, distributed a draft Declaration of Affordable Housing Covenants, Conditions and Restrictions for Chatham Oaks Subdivision, and provided the Commissioners with an update on Habitat's work at Chatham Oaks Subdivision:

- The 5-acre property was donated to Habitat by the County, and the Town of Pittsboro had approved a 15-unit subdivision on that parcel. Infrastructure had been contracted out and installation had begun.
- Their vision was to build 8 Habitat homes, and to facilitate the construction by Parker Builders of 7 homes for low and moderate income buyers.
- They were currently marketing the subdivision to non-Habitat homebuyers, and were getting ready to sell their first two Habitat homes.
- That it was important that they were all in agreement with the restrictive covenants proposed by Habitat that required that homes in Chatham Oaks be resold to eligible buyers of affordable housing, as required by the contract with the County when the land was donated. The Declaration would be referenced in the Deeds as an Exhibit.
- All along they had been talking about the eligible non-Habitat buyers earning 80% of the median income or less. In conversations with Pat Gibson at USDA Rural Development regarding making available some of the financing funds for the non-Habitat homebuyers, it was suggested that they expand their non-Habitat homebuyer compilation to 120%.

She said the contract allowed for moderate income buyers, so they would like to go ahead and make that a criteria for resale; that is that the homes must be sold to a buyer earning 120% of median or less as long as the home was their primary residence.

Chairman Lucier stated that would allow homes to be sold to either a moderate income or low income individual or family. Ms. Powell stated that was correct. She added that made sense for this particular neighborhood, since it was a low-income neighborhood and they were not really achieving their mix income goal by capping it at 80% of median.

Commissioner Cross stated he believed that would give them a better mix of housing.

Chairman Lucier asked if Ms. Powell was asking the Board to approve that concept. Ms. Powell stated that was correct, noting that for a family of four that income would be \$74,000.

Commissioner Vanderbeck asked the Attorney if he had any concerns with the Declaration. Mr. Rose stated he had not had an opportunity to review it. Commissioner Vanderbeck stated he would feel more confident if Mr. Rose were given the opportunity to look over it and provide some feedback. He stated he had read on the Habitat Web site that "you and your family must be considered if your total income is not over 50% of Chatham County". Commissioner Vanderbeck said his concern was that one way to achieve a mix was by design of a community; that the Declaration stated that those units could then be sold to moderate income families; and, he was afraid that the units would eventually all go to moderate income families. He stated he did not want to lose the range of affordable housing.

Ms. Powell stated they only served 50% of median or less income earners, and what they were trying to achieve was to build for that target population. But, she said, they were trying to develop a mixed-income community by having eight Habitat homes, then seven non-Habitat homes but targeted to those earning 80% of less of median income, up to perhaps 120% of median income. Ms. Powell noted that the eight Habitat homes would continue to be available only to those earning 50% or less of median income, but to strengthen the community by having a mix of buyers.

Commissioner Vanderbeck stated he understood that, but did not want to lose housing from the low-income roles. He stated he would prefer that the County Attorney review the Declaration and that the Board not act on it today. Ms. Powell stated they were within the limits of the contract the way it was written now, but they were suggesting increasing the limit for the seven non-Habitat homes to up to 120% of median income. Commissioner Vanderbeck stated his concern was about the terms of the resale, and he wanted the Attorney to review that.

Commissioner Thompson stated if the eight Habitat homes were resold, would they be sold only to low income persons or to moderate income persons as well. Ms. Powell responded at the present time, they could all be sold to moderate income earners, but Habitat had first right of refusal. She stated that if Habitat had the funds to buy back a home and it made sense, then they would do that. Commissioner Thompson stated then Habitat would try to maintain that ratio. Ms. Powell responded that was correct, because they would want to keep those homes available to Habitat partner families.

Chairman Lucier stated he understood what Ms. Powell was saying, but agreed with Commissioner Vanderbeck that the Attorney should take a look at the Declaration and provide some feedback to the Board. He asked Mr. Rose to have that information available for the Board's meeting on October 20.

### **LUNCH BREAK**

The Chairman called for a lunch break with the meeting to reconvene at 1:00 PM.

### **BUSINESS INCUBATOR VIABILITY STUDY**

Chairman Lucier stated Item #6 would be discussed first, and then Item #5.

Dianne Reid, Chatham County Economic Development Director, stated the Board had recently heard a presentation regarding the potential for a small business incubator for Chatham

County. She stated the EDC had received commitments for \$5,500 for a viability study, but that study would require an additional \$2,000 in funding. Ms. Reid stated her purpose for appearing today was to request that the Board of Commissioners provide the additional funds necessary to finance the viability study. She stated that the viability study would answer the questions did they need an incubator, and if so, what exactly did they need.

Chairman Lucier asked had the \$5,000 been in the EDC's original budget. Ms. Reid replied that was correct, in that they had a line item in their budget for that purpose, adding that the other \$500 came from a commitment by the graduates of the Chatham County Chamber of Commerce Leadership Chatham program. Chairman Lucier asked if that \$5,000 was the maximum amount in that line item. Ms. Reid replied no, but the remainder was earmarked for other projects.

Commissioner Thompson asked what timeframe they would be looking at to complete the study. Ms. Reid stated the work would begin in January and be completed by the end of March. Commissioner Thompson asked was it possible that if the study showed the project would be viable for the County, could they then proceed and avoid the cost of a feasibility study at that point. Ms. Reid stated she did not believe a full feasibility study would be necessary, noting the difference between the two was financial modeling, and she believed they had the capacity to do that.

Chairman Lucier stated the financial data available from other counties was good data and because it was similar it might be helpful. Ms. Reid stated that was correct, but it may be that other counties had opted for a virtual rather than a physical building. She said one of the things they were looking for out of the study was exactly what did they need to offer.

Commissioner Vanderbeck stated when the Board had heard the original presentation, they had been very supportive of this and the need for it. He stated they were looking at ways to cut their budget, but on the other hand they were keeping their planning in place to build what was planned. He stated he believed they needed to move forward with the viability study in order to help the economic development of the County.

Commissioner Vanderbeck moved, seconded by Commissioner Barnes, to support the Small Business Incubator Viability Study with a financial contribution of \$2,000. The motion carried five (5) to zero (0).

### **CHATHAM COUNTY BUSINESS PARK CONTRACT**

David Hughes, Chatham County Public Works Director, stated this was a close-out change order received at the end of the project; that there was a little work left to be done on Alston Bridge Road at its connection to US Highway #64; and, that the biggest issue was the pavement costs which had increased significantly over the original design because of a NCDOT requirement.

Commissioner Vanderbeck asked had the NCDOT specifications changed since the time of the original design. Mr. Hughes stated that was somewhat complicated, in that they had not received final input from NCDOT on the pavement design until extremely late in the process, basically when they were getting ready to pave. Commissioner Vanderbeck stated the specifications for NCDOT had likely not changed, but those specifications had not come to them until after the fact, so to speak. Mr. Hughes stated NCDOT had come up with a recommendation on the pavement, but had not picked it off the standard specification list, and that NCDOT had required the additional thickness on the roadway based on the traffic impact analysis.

Chairman Lucier stated some of the expense was for the base as well. Mr. Hughes stated that was correct, noting that additional stone base was required.

Chairman Lucier asked what the differences were in what was originally in the design and what NCDOT had required. Jarrod Hilliard responded that the base was designed at 8 inches, but NCDOT had required 12 inches. Chairman Lucier asked about the asphalt. Mr. Hilliard stated the original surface core was 1½ inches, that Geo Tech had stated it should be 2 ½ inches, but 3 inches were required by NCDOT.

Fred Hobbs stated that they had designed the pavement originally to NCDOT standards for a commercial street serving what they considered to be a non-tractor trailer-type business park; when NCDOT came back and did the pavement design, it was heavy-duty asphalt intended to be for tractor trailer traffic; and, that they had not designed the park that way because they had not thought it was appropriate. Mr. Hobbs said in effect, NCDOT had viewed the business park as an industrial park with tractor trailer quality traffic.

Mr. Hughes agreed that was correct.

Commissioner Barnes stated that NCDOT denied that. Mr. Hobbs stated with all due respect, NCDOT denied lots of things with regard to this project. Commissioner Barnes stated that NCDOT denied that they had required the increased stone base and pavement, and from what he understood that had come from the Geo Tech people. He stated he believed it was a stretch to blame all of that on NCDOT, noting he had talked with them and they had made it very plain that they had not required the increased stone base or asphalt. Commissioner Barnes stated it galled him that he had supported increasing the asphalt from 8 inches to 12 inches because he had been told that it was a NCDOT requirement, and it was not. Mr. Hobbs stated when that information was presented to the Board he had believed that to be the truth, and it was absolutely news to him now that NCDOT denied it was a requirement. He stated that NCDOT had asked that they get Geo Tech and redesign the pavement to heavy duty asphalt, and that recommendation had been sent to NCDOT and accepted by them and set as the standard. So, he said, NCDOT had set it as a standard.

Commissioner Barnes stated he had attended a meeting after the fact with four representatives of NCDOT, including a Division 8 Engineer, and he had asked point blank who had requested and required the additional stone and asphalt, and the response was that the facts had been misrepresented. Mr. Hobbs stated that was simply not true; that it was requested and required out of Raleigh, and not out of the Division. He stated he believed that Mr. Hughes had the same recollection that he had, and he knew of no reason why they would arbitrarily and capriciously increase to those thicknesses when they had not thought it was necessary to begin with.

Commissioner Barnes stated he had not been happy about this project from the beginning, but it had been built before NCDOT ever saw the plans. Mr. Hobbs stated NCDOT may have told him that, but that was not true. Commissioner Barnes stated he did not believe that those people would sit with him in a meeting and tell "bald face lies to his face," and the business park was three quarters built before NCDOT ever saw a finished set of plans. Mr. Hobbs again said that simply was not true; that they had bid the project off of a complete set of plans; that NCDOT had those sets of plans before the contractors had them; and, whether or not NCDOT acknowledged that was a point they would have to disagree on.

Commissioner Barnes stated he had that declaration in writing from NCDOT with the appropriate signatures. Mr. Hobbs stated ultimately someone besides them would have to decide the veracity of that, but he knew that was not the fact. Commissioner Barnes said then perhaps that was where it was going and was the way it should be handled. Mr. Hobbs replied he did not believe it needed to there; that they had spent the last seven to eight months trying to get NCDOT to tell them what they had said; and, that the last set of revisions was sent to NCDOT two months ago and they had heard nothing from them.

Chairman Lucier asked were those revisions regarding the road pavement. Mr. Hobbs responded they regarded the entire project. Chairman Lucier stated he had received letters from NCDOT regarding the road paving and the culverts, but it was clear that NCDOT had not yet accepted them. Mr. Hobbs stated that was correct. Chairman Lucier stated the main issue in the letters was the culverts, but there was nothing in any of those letters about the thickness of the base.

Mr. Hobbs asked had Jarrod Hilliard located the letter they had received. Mr. Hilliard replied no, but he had found a reference to it in a comment letter from Tim Johnson, the Division Engineer. Mr. Hobbs read a portion of that letter: "Engineers shall address all concerns and comments contained in Mr. Tim Johnson, Division Engineer's letter to Hobbs & Upchurch dated January 7, 2008 concerning culverts, drainage, utilities, and pavement design." He stated there was a letter from Tim Johnson dated January 7<sup>th</sup> asking for pavement design information, and they would locate that and produce to the Board; that he assumed that was the impetus for them

getting the Geo Tech and sending it in. Mr. Hobbs stated he believed it was "incredible" that NCDOT had made such statements to Commissioner Barnes, because they had not increased the base and asphalt of their own volition but had done it because they were told to by NCDOT.

Mr. Hobbs stated that NCDOT would also likely say they had not approved the bottomless culverts, but they were accepting five of the seven as they were, and that came from the Chief Design Engineer at NCDOT.

Chairman Lucier asked if Mr. Hobbs had that in writing. Mr. Hobbs responded he did not know. Mr. Hilliard stated they had received design comments on the extensions where NCDOT was allowing them to leave the culverts in place.

Chairman Lucier asked if that was a yes or no, that they had it in writing. Mr. Hobbs stated they had approval of design extensions to those existing culverts, which would obviously imply that the existing culverts would have to stay in place in order to put extensions on them. Chairman Lucier asked was that in writing. Mr. Hobbs replied yes. He stated his frustration was as high as Commissioner Barnes' with regards to NCDOT's assertions; that one of the issues with the pavement was not just the pavement through the park, but the turning lanes off of US Highway #64; that as part of the driveway permit process NCDOT had issued approval of 10" of black base and 3" of surface on the turning lane; that they had not been told about that until NCDOT had approved the driveway permit; and, that they had not had that information at the time that Mr. Hughes had brought this Board the first pavement proposal.

Chairman Lucier stated at the time Commissioner Barnes had made the motion about the additional cost of the paving, they were told it would cost roughly \$200,000. Mr. Hughes stated it was \$250,000, with half of that being for the stone but they could not go back and put the stone in after the fact and they were still in negotiations with NCDOT. Chairman Lucier stated but now the cost had increased to \$454,000. Mr. Hobbs stated that had been new with this change order. He stated it was a combination of two things: one was the turning lanes which were not a part of the original presentation; and two, NCDOT had required what was called super paved surface cores. He stated the design indicated 2½ inches of surface cores; you could not be super paved down any thinner than 1½ sections; so, the surface cores had to go to 3" as opposed to 2 ½ inches, because the aggregate size was such that you could not place it any smaller than in 1½ inch lifts.

Chairman Lucier asked when they had become aware of that, and why they were only being told about it now if they knew there would be increased costs. Mr. Hobbs replied they had gone forward to finish the job, and in retrospect they should have come forward sooner; that everything about the project should have been done differently; that at the same time they were trying to get the hospital opened and trying to meet the Juvenile Justice requirements; and, those had caused considerable and significant pressures to get the project finished to make the area accessible.

Speaking to the representative from Sanford Contractors, Commissioner Barnes stated if there was one thing he had learned being a general contractor for 44 years was that you did not do a change order unless it was in writing; that they may have gotten a change order in writing from Mr. Hobbs, but it had not come from this Board or with this Board's knowledge; that now all of this work had been done, and he did not know where the change orders had come from, but the Board did know about it and they were the ones that were supposed to approve them; that doing that without the Commissioners' knowledge or consent was twofold: the Board got hit with a bill they were unaware of, and that they were cutting a water project that really should not have been cut, and now they were being asked to expend \$650,000. Commissioner Barnes stated you did not do water without the owners knowledge and consent, and this project had been done like that from day one.

Donnie Oldham, with Sanford Contractors, stated this was a unit price contract, and it was based on units and major quantities; that if you went through the line items one by one you would find items that were under and items that were over; that there was no contract change because there were no items changed; that the change was the additional quantities required; and, therefore there was never any real need for a written change order.

Chairman Lucier stated the Board's issue was that back in the spring they had approved about \$250,000 to cover the additional expense, and now they were hearing after the fact that the

cost was much more than that. Mr. Oldham stated he had only wanted to address Commissioner Barnes' concern regarding the lack of a change order, and that one was not required because the contract was a unit price contract.

Commissioner Barnes stated as far as the Board was concerned, they had approved a certain price, and now it was almost three times that amount; that it may not have been Sanford Contractors' responsibility but it was someone's to either tell them, ask them, or inform them before the costs got that high; and, that he could not imagine anyone being told it would cost \$250,000 and it costing \$650,000 and not questioning that. Mr. Hobbs said he wanted to differentiate between the \$250,000 and the \$650,000; that the original pavement submitted without the turning lane was \$250,000; and, that he had believed that the context of the meeting where this was voted on was not only the amount but whether they should proceed with the original design which made it a non-NCDOT road or did they proceed to the NCDOT standards.

Mr. Hughes stated the basis of that meeting was that they needed to do the work to bring the road up to NCDOT standard, and that was exactly what he believed was presented. He stated he had to believe that NCDOT had some input because there was no motivation to do it otherwise.

Commissioner Barnes stated he would like to have the NCDOT representatives he had talked with in this room and then have the discussion. Mr. Hobbs stated he would like that as well and would be happy to come back at any time and talk with any NCDOT representatives of the Board's choice. Commissioner Barnes said he believed this had been a disaster. Mr. Hobbs stated he had been in this business for a long time and he had never lied to a client, and he was not lying to the Board now. He said what he had told the Board had happened and the way it had happened was indeed what had taken place. Mr. Hobbs stated he was sorry that certain people at NCDOT had chosen to respond in this way, but he and others in this room had been sitting in other rooms with twenty NCDOT employees when he had called them to task on this; that they had seen the Chief Engineer and the Chief Design Engineer leave the room and then come back and agree with them; that they would not have done that had they believed he was not telling them the truth; that what Commissioner Barnes and the County was being told by these NCDOT engineers was not the truth; that he did not know what their motivation might be but it was doing a great job of discrediting him; that common sense would lead you to ask why they would change the pavement design when they already had concerns; and, that to make that up independent of any direction did not make any logical sense

Commissioner Barnes stated there was much about this that did not make sense, and he was not trying to discredit Mr. Hobbs or anyone else; that the fact that they had a road design that had dry stacked block walls that was not made of poured concrete was of concern, because he did not know that he had ever seen one that was not concrete; that hanging water and sewer lines beside a bridge, with as much trouble as they had encountered trying to get NCDOT approval, was a concern because in the past they had been required to bore under creeks; and, in that business park they had water lines suspended in mid-air from the side of a bridge, leaving them open to vandalism. He asked why they had wing walls of dry stacked blocks there were not made of poured concrete. Commissioner Barnes stated these plans had been bid and the work done without NCDOT approval, and in his opinion that was the "dumbest thing he had seen lately." Mr. Hobbs stated he agreed wholeheartedly with that, and he had designed it. Commissioner Barnes asked how could you design something that you knew wasn't going to meet NCDOT standards, then bid it and do the work before it was ever approved.

Chairman Lucier stated he would like to go back and look at the minutes of that meeting held in the spring where this was discussed, noting he had no doubt the Board had approved something in the \$200,000+ range for the change in the road. He stated he also wanted to review the letters he had received from Mr. Johnson at NCDOT in which he had made it quite clear that Mr. Hobbs had in fact not received NCDOT approval for some of the things that he had done. Chairman Lucier stated he did not believe they should let Sanford Contractors hang out forever on this because they were simply acting on the instructions they had received. He said there was no doubt the Board had approved something, but it was not \$450,000.

Chairman Lucier stated after those minutes and letters had been reviewed and any additional information had been received, then the Board could come back and revisit this issue.



Commissioner Thompson stated it would also be helpful if they could produce the letter they received from NCDOT regarding the pavement. Mr. Hobbs stated they would research their records and provide Mr. Hughes with any corroborating information so that he could then share it with the Board.

Chairman Lucier asked would it also be possible to invite Mr. Johnson of NCDOT to appear before the Board.

Commissioner Barnes stated he would like to invite everyone that was in the group he had met with.

Mr. Rose stated he saw no issue with taking that approach.

Chairman Lucier stated he believed that was the appropriate course of action for the Board to take, noting he understood that Sanford Contractors was waiting to be paid. Mr. Oldham stated they had already waited a good while. Chairman Lucier stated he understood and apologized for the delay, but said this was the first time it had come up on the Board's agenda, and they were talking about a lot of money. He stated the Board had discussed earlier today the financial impacts of the current economy, and they could not automatically approve a payment of that size without good reason and with good documentation, and believed if Mr. Oldham was sitting in the Board's place he would do the same thing.

Chairman Lucier asked if this issue could be placed on the agenda for the next work session. The County Manager stated he would do so.

Mr. Hobbs asked that the Board look at one other issue, in that there were extra services provided with this project that he had quit billing for, and at the time he had quit billing it was over \$200,000. He stated that total was likely over \$300,000 now, and believed that Mr. Hughes would support his position that had they not continued to provide inspection in accordance with NCDOT criteria that they would have a much larger problem. Mr. Hobbs asked that when the Board looked at the financial issues, that they consider the investment that Hobbs and Upchurch had already made to the project. He stated that Mike Mabe and Bill Cockman were the inspectors on the project, and Mr. Cockman was formerly with NCDOT, and he believed that by NCDOT's own admission they had said it was very important to have that level of recordkeeping to be able to have them even consider what they had considered.

Chairman Lucier asked Mr. Hobbs when the letters were compiled to send them to Mr. Hughes as quickly as possible. Mr. Hobbs stated his intent was to do that tomorrow.

### **2011-2017 TRANSPORTATION IMPROVEMENT PROGRAM**

Chairman Lucier stated the Board had looked at this before, and he had looked through the plan the staff had put together including the recommendation, and it was consistent with what the Board had discussed. He asked the Board if they were in agreement.

Commissioner Cross stated he could not remember if Rosser Road had been put on the list last time, but it needed to be on there.

Chairman Lucier stated it had not been on the list last time. Commissioner Vanderbeck agreed.

Commissioner Cross stated it needed to be on the list because of the speed and truck traffic caused by the mill on that road. He stated someone needed to visit that road and determine how much of it they were talking about, noting it may just be a short section. Keith Megginson, Planning Director, asked what the Board would want done with that road. Commissioner Cross stated he had been told that the dump trucks were tearing up the surface of the road between Highway #15-501 and where that mill/plant was located.

Chairman Lucier stated it did need to be checked out, but he had no problem adding it to the list and having the details added later. Mr. Megginson stated that NCDOT may have a bond on the road in the specific place where trucks were causing damage.

Commissioner Cross stated then perhaps they needed to alert NCDOT that repairs were needed and the County was receiving complaints.

Chairman Lucier asked if they needed to formally approve the list now. Mr. Megginson stated other jurisdictions would be late with their resolutions.

Commissioner Barnes said since there was not a rush they could consider the list at their next meeting.

Chairman Lucier asked if that was acceptable. Mr. Megginson replied yes, or the Board could say that if NCDOT would handle it then they would leave it off the list and if not it would be added to the list. Chairman Lucier stated that would work as well.

Commissioner Thompson stated at the last meeting he had mentioned adding Rives Chapel Road, which would be important in the future since it was the only connector between Siler City and Goldston.

Chairman Lucier stated that road ran right into Bonlee. Commissioner Thompson stated that was correct, and that it connected that whole area.

Commissioner Vanderbeck agreed, noting it ran right to US Highway #64. Commissioner Thompson stated it needed resurfacing and shoulder widening, and now was a good time to get it on the list.

Commissioner Vanderbeck stated in fact, NCDOT had replied to him directly at his request that given the 685 daily trips on that road and given NCDOT's budget, that they would keep it in their sights but funds were limited at the present time. He stated he had no problem putting it on the list, but he believed NCDOT was aware of the situation and would address it as funds allowed.

Commissioner Vanderbeck moved, seconded by Commissioner Barnes, to adopt **Resolution #2008-55 in Support of Projects to be Included in the Transportation Improvement Program (TIP) 2011-2017 for Projects in Chatham County in the Triangle Area Rural Planning Organization (to include Rosser Road and resurfacing and shoulder-widening of Rives Chapel Road)**. The motion carried five (5) to zero (0).

#### **PUBLIC HEARING FOR SUBDIVISION, ZONING AND WATERSHED REVISIONS**

Mr. Megginson stated the public hearing would include two new issues: the stormwater ordinance which was new, and the total rewrite of the Sedimentation and Erosion Control ordinance, so the public hearing would contain five topics. He stated it appeared that they would also have a workable draft ready for the public hearing, and suggested that the hearing be set for October 20 which would allow the appropriate time for advertising the hearings.

Chairman Lucier asked if that would be five separate public hearings. Mr. Megginson stated that was correct, noting they were all stand-alone ordinances and were County-wide, except for the Zoning Ordinance which covered only a portion of the County.

Commissioner Vanderbeck asked if the plan was to have any kind of forum on any of those issues, such as they had done in the past with the Subdivision and Zoning Ordinances because of their complexity.

Chairman Lucier stated they had held three public hearings on the Watershed Ordinance before it was finally adopted. He stated what Mr. Megginson was doing here was making sure all of the zoning was integrated with the changes that had been made to the Watershed Ordinance. Mr. Megginson stated that was correct.

Chairman Lucier stated they had not held a forum on the Sedimentation and Erosion Control public hearing nor the stormwater public hearing. Mr. Hughes stated it had been in front of the Environmental Review Board (ERB) at least twice.

Chairman Lucier stated then there had been some public discussion.

Sally Kost, Planning Board Chair, asked about the stormwater control ordinance.

Chairman Lucier stated Jim Willis had put that together and gone over it with the ERB. Ms. Kost stated there had been quite a bit of discussion regarding where provisions regarding slopes would be housed, and understood that would be in the Sedimentation and Erosion Control Ordinance. Chairman Lucier asked if that was acceptable. Ms. Kost replied yes.

Chairman Lucier thanked Ms. Kost and the Planning Board for all of their work on the subcommittees, noting they had put forth a tremendous effort. Ms. Kost stated she would pass that on to the Planning Board. Chairman Lucier thanked Mr. Megginson for his great efforts, as well.

Commissioner Vanderbeck moved, seconded by Commissioner Thompson, to hold a public hearing on the five items, Subdivisions, Zoning, Watershed Revisions, Stormwater, and Sedimentation and Erosion Control, at the October 20, 2008 Board of Commissioners' meeting. The motion carried five (5) to zero (0).

### **ELVIN STROWD CONTRACT**

The County Manager stated that they had structured the contract and believed the Board had now had a chance to see it, and they were ready for the Board to consider approval and to move forward.

Chairman Lucier stated he had looked at the contract and had spoken to Mr. Strowd who had expressed a couple of issues with the contract. He stated the issues were minor in nature, one of which was the timing with the 60-day examination period, in that if it got too late in the year it may cause him some tax issues. Mr. Rose stated the 60-day period would run from the contract date, and they could date it today. He stated the contract did provide that it would close by December 31, so Mr. Strowd should not experience any tax issues.

Commissioner Vanderbeck stated if there was a possible gain it would take place in this calendar year. Mr. Rose stated that was correct, noting per the contract they would pay him half this year and half the first business day of next year, which would be January 2, 2009.

Chairman Lucier stated the contract said January 9<sup>th</sup>. Mr. Rose replied that was the date the interest clicked in, and Mr. Strowd was concerned that the County not be late. He stated there was no interest if they paid him before January 9.

Chairman Lucier stated the other issue Mr. Strowd had been concerned about was having his wife's name on some part of the contract, whose name was Anne. Mr. Rose stated unless there had been a conveyance, the property was titled in her name. Chairman Lucier stated he had told Mr. Strowd that Mr. Rose would contact him. Mr. Rose agreed to do so.

Chairman Lucier stated the issues were minor, and there was one other issue related to recognizing his grandparents if the County did anything with the property. He stated he had told Mr. Strowd he did not believe that would be a problem and it would not need to be in the contract. Mr. Rose stated he had already spoken to Mr. Strowd about that, noting the Board had already approved the price and the contract was set to go.

Chairman Lucier asked was the purchase price something that could be discussed in public. Mr. Rose stated it was no longer under negotiation so it could be discussed.

Chairman Lucier stated Mr. Strowd had indicated it would be two payments of \$355,000+. Mr. Rose replied more or less, noting it was \$8,000 per acre or portion thereof. Chairman Lucier stated Mr. Strowd was concerned that the way the price was figured it was somewhat short, and asked that Mr. Rose double-check the figures. Mr. Rose stated he believed the escrow deposit made up the difference. Chairman Lucier agreed that was the difference Mr. Strowd was concerned about, and asked Mr. Rose to relate that information to Mr. Strowd when he spoke to him.

Chairman Lucier stated as everyone knew, the funds were coming from the Recreation Exaction funds, which could only be used to purchase property, and had no impact on the Fund Balance or property taxes.

### **CLOSED SESSION**

Commissioner Vanderbeck moved, seconded by Commissioner Thompson, to go out of Work Session and convene in Closed Session for the purpose of discussing property acquisition and matters within the attorney/client privilege. The motion carried five (5) to zero (0).

### **RECONVENE WORK SESSION**

Commissioner Cross moved, seconded by Commissioner Barnes, to adjourn the Closed Session and reconvene in the Work Session. The motion carried five (5) to zero (0).

### **BOARD OF COMMISSIONERS' MATTERS**

#### **Performance Building Purchase:**

Commissioner Barnes moved, seconded by Commissioner Cross, to proceed with the purchase of the Performance Building and approve the **Chatham County, North Carolina Declaration #2008-56 of Official Intent to Reimburse**, attached hereto and by reference made a part hereof. The motion carried five (5) to zero (0).

#### **Jordan Lake Clean-Up:**

Commissioner Vanderbeck stated they needed to briefly discuss language for asking for participation from the municipality stakeholders around Jordan Lake regarding the October 18<sup>th</sup> clean-up; that he had provided some language to staff to address that; and, that there had been question about some other issue. The County Manager stated that question was regarding the waiver of liability. Commissioner Vanderbeck replied that the question of the waiver of liability had come up in the event that someone got hurt. He stated that anyone in and around that area and anyone in the watershed should be involved in that clean-up.

Jep Rose stated he had talked to someone about the liability issue, and he had said the only thing the County was doing was supplying a dumpster. He said he had then gone to the Web site and the County was identified as a partner, so there may be some potential liability but there may also be some immunity from that since this was a clean-up. Mr. Rose stated if the Board wanted to be ultra-safe they could ask for a release from the people working that day, but that would require a little bit of work to coordinate.

Commissioner Vanderbeck stated he believed the organizers would do that if not doing so would result in removing the dumpsters for the day. He said given that the Haw River was the main vector to the lake in that watershed, that they needed to get people involved and the County needed to be a part of that. He recommended that they work the issue out and get the staff together with the organizers that the County's participation was contingent on the volunteers signing a waiver of liability. Mr. Rose stated he could prepare a release, but was not sure they would need one because he did not believe the chance of liability was very high.

Commissioner Vanderbeck stated then they could go ahead and put out the verbiage without the waiver of liability. Mr. Rose stated he believed any liability was very remote. Commissioner Vanderbeck stated there still was no harm in asking people to sign a waiver of liability. Mr. Rose stated that was correct but they may be challenged, and there were a lot of partners involved. He stated he believed it would only complicate things.

Commissioner Vanderbeck stated could they ask the staff to move forward with this contingent upon the Manager's approval of the final language. He stated the language he had sent to the staff was some brief language inviting the stakeholders to be a part of the clean-up. The County Manager stated they would put a notice together for Chairman Lucier's signature.

By consensus, the Board agreed.

#### **Economic Joint Meeting:**

The County Manager reminded the Board that tomorrow, October 7<sup>th</sup>, was the economic joint meeting, but there may be some problem with the notice. He stated he would confirm by email whether or not that meeting would take place.

Chairman Lucier stated the issue was that some of the towns may not have given notice that they were assembling.

**ADJOURNMENT**

Commissioner Cross moved, seconded by Commissioner Barnes, to adjourn the Work Session. The motion carried five (5) to zero (0), and the meeting was adjourned at 2:44 PM.

---

George Lucier, Chairman

ATTEST:

---

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