

CHATHAM COUNTY PLANNING BOARD

Minutes

December 2, 2008

The Chatham County Planning Board met in regular session on the above date in the auditorium of the Agriculture Extension Building in Pittsboro, North Carolina. A quorum was present to begin the meeting. The members present were as follows:

Present:

Warren Glick, Vice-Chair
B. J. Copeland
Karl Ernst
Barbara Ford
Judy Harrelson
Jim Hinkley
David Klarmann
Susan Levy
Peter Theye

Absent

Delcenia Turner

Planning Department:

Keith Megginson, Planning Director
Jason Sullivan, Assistant Planning Director
Benjamin Howell, Planner
Lynn Richardson, Subdivision Administrator
Angela Birchett, Zoning Administrator
Kay Everage, Clerk to the Board

- I. CALL TO ORDER: Warren Glick, Vice-Chair called the meeting to order at 6:30 p.m.
- II. APPROVAL OF AGENDA: Mr. Klarmann made a motion; seconded by Mr. Hinkley to approve the agenda as submitted. There was no discussion and the motion passed unanimously. [9 Board members]
- III. CONSENT AGENDA: Mr. Copeland made a motion; seconded by Mr. Hinkley to approve the consent agenda as submitted (items A. and B. below). There was no discussion and the motion passed unanimously.
 - A. Minutes: Consideration of a request for approval of the November 3, 2008 Planning Board minutes.
 - B. Final Plat Approval: Request by Fitch Creations, Inc. for subdivision final plat approval of "Millcroft Cluster Homes – Close V", consisting of 6 lots on 5.138 acres, located off S. R. 1817, Millcroft, Williams Township.

End Consent Agenda

- IV.
 - A. Public Input Session: Fifteen-minute time of public input for issues **not on agenda**. Speakers limited to three minutes each.

There were no requests to speak at this time.

B. Commissioner Sally Kost:

Appreciation extended - Commissioner Kost stated that last night the Commissioners passed the Subdivision Regulations and the Zoning Ordinance; that this was the end of a long hard process that the Planning Board, Planning staff and the Environmental Review Board participated in; and that the Commissioners showed the Planning Board their appreciation through speech and through certificates. Commissioner Kost presented certificates to those Planning Board members who did not attend last night's meeting. Wearing her old hat as Planning Board Chair, she stated that not having attended the November Planning Board meeting she wanted to take this opportunity to extend her appreciation for all the hard work that the Planning Board put in to this endeavor and to the spirit of cooperation shown to her and to each other; and that if there were disagreements they were done in a way that helped the community and development.

Liaison to Planning Board - Commissioner Kost stated that she would be the liaison between the Planning Board and Board of Commissioners; that she plans to attend as many Planning Board meetings possible; and that three (3) specifics noted as the Commissioners reviewed the Planning Board work were:

- **Agriculture Districts** - The Commissioners took this section out of the Zoning Ordinance but referred it to the Agriculture Advisory Board for a recommendation in 2009.
- **Connectivity / Road Length** - Block Lengths were taken out of the Zoning Ordinance and the Commissioners asked that the Planning Board relook at this issue.
- **Conservation Subdivision** – Commissioners asked that the Planning Staff look at this issue in 2009.

Public Hearing / Watershed Review Board – Commissioner Kost stated that in early 2009 the Commissioners plan to hold a public hearing proposing to take the Watershed Review Board duties from the Planning Board and give these duties to the Environmental Review Board.

Special Thanks – Commissioner Kost expressed her gratitude to members of the Planning Board and extended a special thank to Warren Glick, Vice-Chair; and Karl Ernst, Parliamentarian.

C. Warren Glick, Vice-Chair

Thanks extended Commissioner Kost - Mr. Glick stated that, speaking for the entire Planning Board, Commissioner Kost would be missed by all; that the Board would miss her knowledge, judgment, intelligence, thoughtfulness, drive, energy, and certainly her good cheer and big smile; and that her extraordinary efforts on behalf of Chatham County are acknowledged as well as for what her leadership has meant to the Planning Board.

D. Jim Hinkley

Chatham County Board of Commissioners - Mr. Hinkley stated that last night the Board of Commissioners was very gracious in thanking the Planning Board for the hard work done over the last 18 - 20 months on revisions to the various ordinances; that the Commissioners did not take any credit for themselves; that the Commissioners are a very inspirational Board; and that we are very fortunate

to have them, particularly Chair Lucier in his drive to get this work done. Commissioner Kost stated that she would relay these respects to the Commissioners.

V. SKETCH and PRELIMINARY PLAT APPROVAL:

A. Request by David Klarmann on behalf of Wade A. Davis for sketch and preliminary approval of 2 lots creating the fourth (4th) lot on a perpetual easement, consisting of 10.038 acres, located off S. R. 1716, Big Woods Road, Williams Township.

Mr. Klarmann stated that Cindy Perry, attorney, was present tonight to represent Mr. Wade A. Davis. Mr. Klarmann recused himself from this issue.

Mr. Howell reviewed the agenda notes for this request. He stated that the request is before the Board in order for the applicant to create a fourth (4th) lot on a perpetual easement; that existing streams are properly buffered; and that staff recommends approval of the request with four (4) conditions noted in tonight's agenda notes.

Board discussion followed.

Labeling streams on plat map

Mr. Klarmann, applicant stated that Fred Royal, Director, Chatham County Environmental Resources did the work on this project; that Mr. Royal labeled the stream at the bottom of the site intermittent and labeled the stream at the top ephemeral; and that Mr. Royal marked the entire length of the middle stream as ephemeral on the map provided staff (see staff condition #1).

Cindy Perry, attorney stated that this is a simple request and that the attachments and application should serve as explanation.

Chatham County Historical Association

Ms. Harrelson asked if a date had been set for a representative from the Historical Association to visit the site. Mr. Klarmann stated that there is nothing on the site for the Historical Association to review; that a cemetery shown on the county's GIS was never on this site but was located on the east side of Big Woods Road on Corps land; and that the visit could be done any time that is convenient for Ms. Wiggins (a representative of the Historical Association).

Motion to approve - passed

Mr. Copeland made a motion; seconded by Ms. Harrelson to grant Sketch Design and Preliminary Plat approval for the creation of two lots, Lot 8A and Lot 8B, on Osprey Ridge, a perpetual private road easement, with the following four (4) conditions:

1. The stream running along the proposed property line between Lots 8A and 8B should be labeled as an ephemeral stream on the final plat with a 30-foot buffer as shown.

2. The easement, Osprey Ridge, shall be improved from The Glades roadway to the northern property line of Lot 8B to a 16 foot-wide travel way with four (4) inches of crush and run stone.
3. The developer shall contact the Chatham County Historical Association about any possible historical structures that may be present on the site. The developer shall provide documentation from the Historical Association, including any possible recommendations, prior to final plat approval.
4. The Chatham County Subdivision Administrator is allowed to review and approve the final plat once the road improvements have been completed and certified per the Subdivision Regulations.

There was no discussion and the motion passed 8-0-1 with all Board members voting in favor of the motion, except Mr. Klarmann who abstained.

Mr. Klarmann returned to the Board at this time.

VI. PRELIMINARY PLAT APPROVAL:

- A. Request by Lee Moore Capital Company for subdivision preliminary plat approval of "County Line Site", consisting of 3 commercial subdivision lots and one exempt, over 10 acre tract, located off U. S. 15-501 N., Williams Township.

Mr. Howell reviewed the agenda notes for this request. He stated that staff condition #4 has been changed since the private roads are to be paved and constructed to State standards; and that our Subdivision Regulations do not require private roads to be paved. Revised wording is as follows:

Condition #4

"Three private roads that will access this property - the travel way shall be constructed within the 60 foot wide private road easements to State standards; the applicant shall provide certification prior to final plat that the travel way is constructed to State standards and the private roads are otherwise in compliance with the Chatham County Subdivision Regulations in effect at the time of submittal of preliminary plat; and the applicant shall also submit a road instrument for the private roads pursuant to Section 6.2 (D) (2) of the Subdivision Regulations in effect at the time of preliminary plat submittal prior to final plat approval".

Board discussion followed. Some specifics noted were:

- three (3) road names proposed along one roadbed - confusing
- storm water management plan
- land clearing
- impervious surface – current proposed 6%
- any permits required from Orange County
- 3 lots fronting US 15-501 / Procter Lane, i.e. front set-back
- any Issues with neighbors
- area on property completely, i.e. runoff
- drainage easements – possible overlapping

- private Rights-of-way – only if maintained by the State of North Carolina [private roads open to the public]
- S&EC – identified streams and submitted buffer packet
- notice of violation [NOV's]
- Runoff – no vegetation

Patrick Bradshaw, attorney, was present representing the applicant.

Mr. Bradshaw stated that because this property is B-1 zoning there is no requirement under Chatham County ordinances that there can only be one (1) building per lot; that all three (3) buildings could be constructed on this property without any subdivision; that the subdivision is just a matter of convenience for the owner so that parcels could potentially be leased or conveyed to third parties individually; that no permits are required from Orange County since the public road right-of-way extends a significant distance into Chatham County; that if a storm water management plan is done the impervious surface could go from 6% to 24% or 36% impervious surface on a 62 acre tract of land. It was noted that the three lots fronting US 15-501 would not have access to US 15-501. Mr. Bradshaw stated that from the County's perspective of protecting the existing public rights-of-way the 50 foot set-back on US 15-501 (instead of a 20 foot set-back allowed) seems a more practical approach; that the three (3) names proposed along the road preserves the possibility of potential future development and extension of the road.

Mark Ashness, Civil Engineer, CE Group, Inc. was present representing the applicant. Mr. Ashness concurred with Mr. Bradshaw's comments regarding impervious surface and the three (3) proposed road names. He addressed buffers, runoff, drainage easements, roads, and traffic signal concerns. Mr. Ashness stated that he was not aware of any NOV's; and that approximately one-half of the site has been cleared with appropriate erosion control permit.

Motion to approve - withdrawn

Mr. Copeland made a motion; seconded by Mr. Klarmann, to grant approval of the request as submitted and as recommended by staff. Discussion followed. Some Board members expressed concern that landowners had not been given an opportunity to speak. Mr. Copeland withdrew his motion with unanimous consent from the Board.

Adjacent Landowners

Some concerns of landowners are noted and addressed as follows:

Susan Keese, 360 Luna Lane (off Old Lystra Road)

- storm water runoff in the clearing
- paved roads – original easement for 2006 approved plan
- 60 foot wide road – more pavement than required
- impervious surface calculations - not contained on the 20 acres

Mr. Bradshaw stated that buffering along streams and all water features meets Chatham County current requirements; that an erosion control plan was approved before those requirements were effective; and that buffering is more extensive than required.

Bob Murdock, Luna Lane

- impervious surface percentage – should be calculated based on building zone rather than entire 63 acres– calculations very critical
- runoff – downstream

Mr. Ernst asked when the 6% impervious surface verification would occur.

Mr. Megginson stated that as the developer obtains building permits the developer may decide not to develop one of the lots until later; and that if a building permit is applied for later and existing impervious surface is shown to be over 6% the application would then be forwarded to Fred Royal, Environmental Resources Director.

Mr. Theye inquired about liability to Chatham County when the Board approves something that changes the hydrology such that it affects landowners downstream in a negative way. Mr. Megginson stated that liability is up to the developer and could end up being a civil matter.

David Keesee, 360 Luna Lane

- creek flows through his property
- surface area calculations - 3 lots 100% built upon - how will County keep tract
- “room for future expansion” - language in staff notes

Ms. Harrelson commended the developer for commercial development that is greatly needed in Chatham County. She asked if the runoff problem could be managed to prevent water flowing to the bottom impacting area residents, i.e. storm water basin, retention pond.

Mr. Bradshaw stated that this is a great proposal of 62 acres with 6% impervious surface area; that the owner could choose to have 36% impervious surface on this tract without subdividing in a B-1 District; and that the proposal is well beneath current ordinance requirements. Mr. Ashness reiterated Mr. Bradshaw’s comments.

Mr. Megginson explained that this land has been tied up in a lawsuit for some time now; that it is possible (depending on the Supreme Court ruling) the applicant could abandon this entire project; and that if the Court approves the original Conditional Use Permit the land could be developed according to this permit.

Mr. Bradshaw reiterated that this is not a rezoning request; that staff comments were relative to language in the Subdivision Regulations regarding providing room for expansion of commercial districts. He noted that language on the plat states that, “only uses allowed by the zoning of the property will be made on the property”.

Beverly Murdock, 288 Luna Lane

- mud from flooding over road – sacrificing the quality of Wilson Creek
- date of application – omitted on document

Mr. Hinkley inquired if the turbidity and/or siltation that occurred on the property had been measured. He suggested a statement be provided on behalf of the developers about how this situation would be mitigated.

Motion to approve – passed

Mr. Copeland made a motion; seconded by Mr. Klarmann to grant sketch design and preliminary plat approval for the creation of three lots, Lots 1, 2, and 3, on three new private roads, Hutchins Lane, Proctor Lane and County Line Village Drive, with the following six (6) conditions:

1. The applicant shall provide a revised NCDOT Commercial Driveway Permit showing the new lot configuration, or documentation from NCDOT that no new permit is needed prior to final plat approval.
2. The applicant shall submit documentation from the County Environmental Resources Director showing approval of the Buffer Evaluation performed by Soil & Environmental Consultants prior to final plat.
3. The applicant shall contact the Chatham County Historical Association about a possible historical cemetery that may be present on the site. The developer shall provide documentation from the Historical Association, including any possible recommendations, prior to final plat approval.
4. Three private roads that will access this property - the travel way shall be constructed within the 60 foot wide private road easements to State standards. The applicant shall provide certification prior to final plat and that the travel way is constructed to State standards. The private roads are otherwise in compliance with the Chatham County Subdivision Regulations in effect at the time of submittal of the preliminary plat. The applicant shall also submit an instrument for the private roads pursuant to Section 6.2 (D) (2) of the Subdivision Regulations in effect at the time of preliminary plat submittal prior to final plat approval.
5. The applicant shall submit a site plan of the commercial areas prior to final plat approval demonstrating an integrated parking area.
6. A plan demonstrating the first ½ inch of storm water runoff will be managed on-site if the overall impervious surface coverage exceeds 6% shall be submitted to the County Environmental Resources Director for review prior to final plat approval.

There was no further discussion and the motion passed 5-4 with Copeland, Klarmann, Glick, Ernst, and Levy voting in favor of the motion; and Ford, Harrelson, Hinkley, and Theye voting against.

Minority Report

Mr. Hinkley stated that he would like to reserve the right to submit a minority report.

Mr. Megginson stated that the Board of Commissioners do not have a second regular meeting scheduled in December; that the Commissioners' would not review this issue until January 20, 2009; and that the minority report should be submitted the first week of January in order to meet the packet deadline for the Commissioners. It was noted that a minority meeting does not need to be announced and that all involved should sign the minority report.

VII. EXTENSION OF PRELIMINARY PLAT EXPIRATION:

A. Request by Nicolas P. Robinson, Attorney-at-Law on behalf of Polk-Sullivan, LLC, for a three year (3) extension of the development schedule for "The Glens" (f/k/a McBane Property Subdivision) to extend the final plat deadlines for Phase 2 to August 2012, for Phase 3 to August 2013 and for Phase 4 to August 2014.

Mr. Howell reviewed the agenda notes for this request. He stated that the developers are requesting a three (3) year extension of the final plat deadlines for Phases 2, 3, and 4; that Page one (1) of tonight's agenda notes (last paragraph) incorrectly refer to a one (1) year extension; and that staff recommends approval of the three (3) year extension request with the following condition:

"The developer shall contact the Chatham County Historical Association about any possible historical structures that may be present on the site. The developer shall provide documentation from the Historical Association including any possible recommendations, prior to final plat approval".

Mr. Howell stated that earlier today staff noted a letter in the original file from the Chatham County Historical Association dated 2007 referencing a site visit that had been done; and that staff would let the Board decide if this is enough information to satisfy the proposed condition.

Board discussion followed regarding clarification of staff recommendation and letter from Nick Robinson.

Nicolas P. Robinson, attorney, was present representing the developer. Mr. Robinson stated that there is a development schedule in place that requires a certain amount of speed to move through the project to continue; that a huge amount of money has already been invested in this project; that the developer is before the Board to either continue with the plan and schedule as proposed or to be granted an extension of the plan; that one benefit of the extension would be that if the County were to approve revision to the Subdivision Regulations that allows for a conservation or cluster subdivision it would give the developer more time to consider that as a possibility; that if the developer is convinced that a conservation subdivision is a good idea for this project under the new ordinance then a new application would be submitted; that if the extension is not granted a clustered subdivision would probably never occur; that the developer is not responsible for the various delays, i.e. wastewater; that there was much discussion with the original application, site visitation, and DWQ involvement regarding streams and buffering; that there were many buffers well beyond the requirements at the time; that the developer exceeded to all buffers except one (Mr. Robinson pointed out this ephemeral channel on the large map.); that since that time the developer has hired

an engineer (CE Group, Inc.) to look at the channel in terms of buffering; (Mr. Robinson showed this redesign plan on the large map.); that the cul-de-sac would have to be moved out and two lots (2) would be lost as a result of the buffering; that the developer has agreed to buffer 50 feet on either side (30 feet required for ephemeral channel); and that this is another benefit with approval of the request.

Board discussion continued.

Mr. Ernst asked clarification of wording on page 2 of staff notes, last sentence that states, "There may be legal implications for which the Board would want advice".

Mr. Megginson stated that in situations where there are multiple phases of development and part of a development is completed it is already a question of whether vested rights apply (if required to be allowed to continue legally).

Regarding Phase 1, Mr. Klarmann stated that since this Phase cannot go forward until the waste treatment is hooked up to Meadowview to Chapel Ridge it would seem that the developer might want to consider the entire project; that the developer considers installing local septic; and that it might be less expensive to regroup and use new regulations.

Reasons for extension - Mr. Robinson summarized reasons for the extension request:

- Wastewater generated by these lots to be treated at Chapel Ridge wastewater treatment plant and sprayed at the Parks at Meadowview spray fields – delay in this process
- A cooperation agreement between the developer of this project and the developer of the Parks at Meadowview – not finalized
- If amenity not built by this developer – need to create amenity for this subdivision

Mr. Glick explained that if the legal conflict is not resolved then the current developer would need to decide to either, 1.) change the procedure, 2.) add an amenity into this community, or 3.) build a community without an amenity.

Three (3) year extension request - Ms. Ford asked why a three (3) year extension was requested. Mr. Robinson stated that with the unusual circumstances three (3) years is reasonable; and that five (5) years would be even better but is not realistic. For clarification, Mr. Glick asked what position the County would be in if this project never gets done. Mr. Robinson explained that the County is fine; and that only driveway and roadway improvements would not have been installed. Mr. Megginson stated that there is currently no liability to Chatham County; that final approval has not been approved for any lots except for the nine (9) approved lots in Phase 1.

March 2007 request - Ms. Harrelson stated that she voted against the initial request because she felt that the evidence on the stream delineation was not finalized. Mr. Megginson stated that there was never controversy between DWQ and the consultants as to whether the channel was to be buffered under the existing ordinance.

Existing streams

Mr. Hinkley stated that he recalls that the Corps of Engineers was the source of information regarding existing streams; that the field inspection done was during extreme drought; and that this needs to be redone. Mr. Robinson explained that the developers are treating this channel exactly as though it had been done during the wettest time of the year and it had been concluded that it was an intermittent channel. He noted that it was not the Corps of Engineers but rather John Dorney with DWQ along with S&EC that did the stream inspection.

Adjacent Landowners – comments / concerns

Cynthia Crossen, 1116 Marshall Road

- appreciates developer's willingness to consider stream buffering
- distributed copies of letter from the Haw River Assembly dated July 10, 2006 and her comments dated December 1, 2008 (copies are filed in the Planning Department)
- bad development for this particular site, i.e. , design, creeks
- initially requested an environmental impact assessment
- would like to see this development meet new regulations and submit a redesign
- density
- not in favor of an extension – not good idea

Ken Crossen, 1116 Marshall Road

- Allyson Weakley was prevented from going on the land and being present at the inspection of the stream - process done in a drought season and was not fair and honest
- this is an opportunity to have things done right – go back and redesign

Board conclusion

Mr. Hinkley suggested a motion be made to incorporate the kind of thinking expressed earlier by Mr. Klarmann as the Board disapproves the extension.

Mr. Glick stated that we are not consultants; that this does not preclude Board members from making a motion that includes a variety of items that a member may wish to include; that there are a number of issues the Board needs to consider; and that the Board has the option to:

- provide the extension as requested
- deny the request
- add other features as conditions, environmental assessment, storm water ordinances, erosion and sedimentation

Motion to extend deadline for one (1) year – not seconded

Ms. Harrelson made a motion to extend the deadline for one (1) year with the requirement that the developer look at redesigns; that when the developer comes back to the Board in one (1) year for another extension that the Board reviews these redesigns at that time; and that the redesigns incorporate conservation subdivision, less lots, larger lots and other options. Board discussion followed. It was noted that the Board could not require a redesign with extension approval. The motion died for lack of a second.

Consider motion for denial

Mr. Hinkley suggested that the extension be denied and that the Board request that the developer come back with a redesign. Ms. Ford reiterated Ms. Harrelson's thinking in the above motion but to also include buffering of the ephemeral stream. She stated that it appears the developer has only spent a minimal amount on infrastructure to the extent that a redesign would not be unworkable.

Mr. Robinson asked that the minutes reflect that if there is a denial that this would be the only project that has not been given a one (1) year extension requested this year.

Motion to delay the request - failed

Mr. Copeland made a motion; seconded by Mr. Ernst to delay the request for one (1) month with the provision that the developer come back with a plan (to indicate alterations to make this a better development) that might be followed if a three (3) year extension is approved. Board discussion followed. Mr. Theye voiced concern that the developer has had ample opportunity to bring to the table what could be done to change the plan. Mr. Ernst stated that the waste water issue is his reasoning for support. Mr. Glick stated that it might be more appropriate than postponing to provide a three (3) year extension with conditions as follows:

1. an environmental assessment be provided
2. the project be developed according to the new storm water requirements, i.e., Erosion and Sediment Control Ordinance and Watershed Ordinances

Mr. Hinkley spoke against approving an extension or delaying the request for even one month. He voiced concern regarding, 1.) design, 2.) drainage and 3.) lot sizes less than one (1) acre.

The motion failed 4-5 with Copeland, Ernst, Glick and Klarmann voting in favor of the motion; and Ford, Harrelson, Hinkley, Levy, and Theye voting against.

Motion for denial - failed

Ms. Ford made a motion; seconded by Mr. Hinkley to deny the request for extension. Board discussion was both positive and negative regarding denial. Some specifics noted were:

- legal issues a concern
- more appropriate opportunity to come to some conclusion that would work for all rather than deny, i.e., redesigns
- developer needs to withdraw application and work with new rules and regulations
- current deadline – Phase 2, August 2009; Phase 3, 2010; Phase 4, 2011 under current development schedule
- August 2009 should be ample time for an alternative plan

Call the Question – motion to deny request - failed

Mr. Ernst called the question; seconded by Ms. Levy. The motion to call the question passed unanimously.

The motion to deny the request failed 4-5-0 with Ford, Hinkley, Theye, and Levy voting in favor of the motion; and Glick, Copeland, Ernst, Klarmann, and Harrelson voting against.

Motion for one (1) year extension with condition - failed

Ms. Ford made a motion; seconded by Mr. Ernst to grant a one (1) year extension requiring that the existing ephemeral stream is buffered (as discussed). Following discussion, Ms. Ford asked to withdraw her motion (to consider Ms. Harrelson's comments to add an amendment to include that the Board review redesigns within the one (1) year extension). Mr. Hinkley spoke against Ms. Ford's request to withdraw her motion. The motion to grant a one (1) year extension with requirement noted above regarding the ephemeral stream buffering failed 2-7-0 with Ernst and Klarmann voting in favor of the motion and all other Board members voting against.

Motion to postpone - passed

Mr. Theye made a motion, seconded by Ms. Harrelson, to postpone the request until the following meeting of this Board (January 6, 2009) with the requirement that it comes back at that time indicating what kind of changes would be made to meet all concerns. The motion passed unanimously.

10-minute break was called (8:40 p.m.).

Mr. Ernst left the meeting at this time.

VIII. ZONING AND ORDINANCE AMENDMENTS: *Items from 11-17-08 Public Hearing.*

- A. Request by Michael Foley to rezone approximately 48 acres, Parcel No. 60167, located between US 1, Moncure School Rd., and the Pittsboro Moncure Rd., Haw River Township, from RA-40 (residential/agricultural) to B-1 Business.

Ms. Birchett reviewed the agenda notes for this request. She stated that this is a straight B-1 zoning request and not a conditional use; that a particular use has not been proposed; that the rezoning must tie into the Land Conservation and Development Plan; and that staff thinks that the request is consistent with the Land Conservation and Development Plan and other plans and recommend approval of rezoning to a business district.

Michael Foley, applicant, was present.

Lunday Riggsbee, attorney, was present representing the applicant. Ms. Riggsbee referenced a statement from adjoining landowner, Mr. Ram L. Farmah indicating that he approves this request and that the request would not have any adverse affect on his property; that at this time Mr. Foley continues to try and sell his property; and that there is potential for the corner lot to be developed in a way to provide additional employment for the community and a better tax base for Chatham County.

No adjoining landowners requested to speak.

Motion to approve

Mr. Hinkley made a motion; seconded by Mr. Copeland to grant approval of the rezoning request to a business district as submitted and as recommended by staff. There was no discussion and the motion passed unanimously.

Items B. and C. listed below (Belmeade Farms, LLC) were deferred by staff until the January 6, 2009 Planning Board meeting.

- ~~B. Request by Belmeade Farms, LLC to rezone approximately 194 acres, consisting of multiple parcel numbers located within the zoned portions of the subdivision plat for Belmeade Farms from RA-40 (residential/agricultural) to Conditional Use O & I (office and institutional) for a cemetery and memorial gardens, Center Township.~~
- ~~C. Request by Belmeade Farms, LLC for a conditional use permit for a cemetery and memorial gardens area as well as associated and ancillary structures and uses located on approximately 194 acres, Center Township.~~
- D. Request by LIR, LLC for a Conditional Use B-1 permit on an existing Conditional Use B-1 District portion of Parcel No. 17707, located at 10544 US 64 E, on approximately 1 acre for an eating and drinking establishment in connection with the 1.147 portion currently zoned B-1 Business, New Hope Township.

Ms. Birchett reviewed the agenda notes for this request. She stated that this was a quasi-judicial public hearing and no one spoke in opposition at the hearing; that information presented was sworn testimony; that only questions for clarification would be permitted tonight; and that other testimony should not be entertained at this point in the process. Ms. Birchett noted that this is the part of the Mich Gardens property that had a conditional use permit for greenhouses and etc. associated with the retail business on the corner lot that has a straight B-1 zoning; and that this request is to change that conditional use permit to allow the one tract (split zoning) to work together. Ms. Birchett reviewed the five required findings and stated that staff recommends approval of the request with conditions (15) listed in tonight's agenda notes. She stated that specifics for the proposed sign need to be determined and included in the conditions recommended in tonight's agenda notes as follows:

condition #4 - delete since it has been satisfied and replaced with condition regarding signage; and,

condition #5 – delete since this has been supplied.

Impervious surface / signage

Nicholas Robinson, attorney, was present representing the applicant.

Mr. Robinson stated that if you do the calculation based on existing impervious surface – subtract that out from the acreage – then take whatever acreage is left and apply 24% to that, you would basically be allowed to put about one (1) acre of impervious on this (.96 of an acre); that signage envisioned for this project is that the sign on Hwy. 64 would be no more than 10 x 15; that the sign at the entryway on Beaver Creek Road would be smaller, i.e., 10 x 10 or less; that signs could not be higher than the 30 feet according to regulations; and that lighting would adhere as required.

Carter Crawford, land planner for the project was present. Mr. Crawford stated that a 10 x 15 sign is appropriate on U.S. Highway 64.

Storage of grease

Ms. Harrelson was concerned about grease storage. Ms. Birchett stated that a holding tank would be installed for this purpose; and that a pump-and-haul service would be used for disposal.

- Revise language - condition #2

Stormwater – condition #2

After discussion, it was the consensus of the majority of the Board that staff condition #2 be replaced with language as follows:

“Storm water regulations shall meet Chatham County’s new storm water management rules”.

“Grill - N - Go” sign

Ms. Birchett stated that according to the Ordinance a sign shall not extend above the roof grade; and that the proposed “Grill-N-Go” sign appears not to be in compliance.

- Add language to condition #3

Widening of existing lane

Mr. Robinson stated that the top lane would be widened for traffic to exit out of the lane. He referenced staff condition #3 that states, “An additional entrance lane shall be installed” and asked that additional language be added to state, “**or widening of the existing entrance**”.

Well and Septic location – display on site plan

Mr. Robinson stated that there has been limited ability to ascertain this since the applicant does not yet own the land. He showed on the map the locations where the septic system is thought to be. Mr. Robinson noted that a condition could state on the map that these be displayed on the site plan.

Motion to approve - passed

Mr. Copeland made a motion; seconded by Mr. Theye to grant approval of the request as submitted and as recommended by staff with conditions as discussed tonight. There was no discussion and the motion passed unanimously.

Conditions are as follows:

Site Specific Conditions:

1. The Appearance Commission and the Planning Department may review the landscaping after planting and then yearly to ensure the intent of the Type B screening is being met. Plants are to be maintained to thrive and survive at all times by whatever means necessary by the applicants/owners.
2. Development of this property shall meet the December 1, 2008 adopted Stormwater Management Ordinance and Erosion Control Ordinance.

3. An additional entrance lane or widening of the proposed entrance land shall be installed as well as a cross over lane to allow vehicles to go back through the drive-thru if necessary and to allow for follow-thru traffic. An engineer's letter shall be provided to the Planning Department certifying drives will meet the requirement for vehicles with boats and recreational vehicles to adequately maneuver the turns including turn radius and pass areas.
4. Signage allowed is restricted to two (2) freestanding signs and one (1) to be located on the building. One fronting on US 64 E no larger than 10 x 15 and no higher than is permitted by the Zoning Ordinance, Section 15.7 and one fronting at the entrance of the project on SR 1008 (Beaver Creek Road) no larger than 10 x10 and no higher than is permitted by the Zoning Ordinance, Section 15.7. The building sign shall meet the sign requirements as stated in the Zoning Ordinance, Section 15.7.
5. A new site plan shall be submitted detailing the location of the septic system, including tanks, lines, and repair areas, as well and the well location prior to issuance of the zoning compliance permit of the building application.

Standard Site Conditions:

6. All required local, state, or federal permits (i.e. NCDOT commercial driveway permits, NCDWQ, Chatham County Erosion & Sedimentation Control, Environmental Health Section, etc.) shall be obtained and copies submitted to the Planning Department prior to the issuance of a Certificate of Occupancy.
7. Lighting shall be installed and maintained as per the adopted lighting regulations located in Section 11A of the Chatham County Zoning Ordinance. Any lighting or fixtures found to be non-compliant, existing or new, with the regulations shall be replaced at the expense of the landowner/operator and shall hold no liability against Chatham County for the compliance measures.
8. An "as-built" impervious surface calculation shall be submitted to the Planning Department prior to issuance of a certificate of occupancy.
9. Off-site improvements required by NCDOT or any other agency shall be constructed at no cost to Chatham County.
10. A building permit shall be obtained and remain valid at all times or this permit shall become void. The first building permit shall be approved within 24 months of this approval or the permit becomes void; or from the time of the expiration of an appeal period or any court decision, whichever is later.

Standard Administrative Conditions:

11. Appeal - The County shall be under no obligation to defend any action, cause of action, claim, or appeal involving the decision taken herein. In the event a response is authorized by the County concerning this resolution, or any action to enforce the provisions hereof, the applicant, its successors or assigns shall indemnify and hold the County harmless from all loss, cost or expense, including reasonable attorneys fees, incurred in connection with the defense of or

response to any and all known or unknown actions, causes of action, claims, demands, damages, costs, loss, expenses, compensation, and all consequential damages on account of or resulting from this decision. Nothing in this paragraph shall require the applicant to indemnify and hold the County harmless from any losses or costs associated with defense of the County's actions or procedures in considering and acting upon this application.

12. 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 inspection, established from time to time.
 13. Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued determination with the plans and conditions listed above.
 14. Non-Severability - If any of the above conditions is held to be invalid, this approval in its entirety shall be void.
 15. 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.
- E. Request by Carolina Utility & Grading located at 2835 Farrington Point Rd., Parcel No. 76255, for a revision to the existing conditional use permit to add the selling of retail materials used by the applicant and to include the rental of contractor equipment to the general public, located on approximately 14 acres, Williams Township.

Ms. Birchett reviewed the agenda notes for this request. She stated that this is also a quasi-judicial matter; that no one spoke in opposition of this request at the recent public hearing; that the request is to add another use (as explained above) to the existing conditional use permit. Ms. Birchett reviewed the five (5) required findings and stated that staff recommends that the application be approved with the 11 conditions listed in tonight's agenda notes.

Gloria Perez, applicant / landowner, was present. Ms. Perez asked the Board to approve her request. She stated that she currently does not have signage and has no future plans for a sign.

Public traffic, i.e., large dump trucks

Mr. Theye stated that he recalled concerns regarding, traffic, large dump trucks, mixing of commercial and public traffic on the road, and the safety of children.

Motion to approve - passed

Ms. Ford made a motion; seconded by Ms. Levy, to grant approval of the request as submitted and as recommended by staff. There was no discussion and the motion passed unanimously. The 11 conditions are as follows:

Site Specific Conditions:

1. All previous conditions not expressly listed in this approval shall remain valid.
2. Additional landscaping shall be installed to provide more of an opaque screen of at least 25 feet in depth along the front property boundaries along Farrington Point Road. The Chatham County Appearance Commission may provide suggestions of plant material to meet the request. Plantings shall be installed at the next optimal planting season starting in March 2009 or as indicated by a licensed landscape contractor.
3. No additional signage is permitted with this request.
4. A report shall be provided to the Planning Department from NCDWQ advising of the compliance status of the sediment basin or the corrective measures that must be taken before the incorporation of cleaning of rental equipment on the property.

Standard Site Conditions:

5. Lighting shall be installed and maintained as per the adopted lighting regulations located in Section 11A of the Chatham County Zoning Ordinance. Any lighting or fixtures found to be non-compliant with the regulations shall be replaced at the expense of the landowner/operator and shall hold no liability against Chatham County for the compliance measures.
6. Off-site improvements required by NCDOT or any other agency shall be constructed at no cost to Chatham County, if applicable.

Standard Administrative Conditions:

7. Appeal - The County shall be under no obligation to defend any action, cause of action, claim, or appeal involving the decision taken herein. In the event a response is authorized by the County concerning this resolution, or any action to enforce the provisions hereof, the applicant, its successors or assigns shall indemnify and hold the County harmless from all loss, cost or expense, including reasonable attorneys fees, incurred in connection with the defense of or response to any and all known or unknown actions, causes of action, claims, demands, damages, costs, loss, expenses, compensation, and all consequential damages on account of or resulting from this decision. Nothing in this paragraph shall require the applicant to indemnify and hold the County harmless from any losses or costs associated with defense of the County's actions or procedures in considering and acting upon this application.
8. 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 inspection, established from time to time.
9. Continued Validity - The continued validity and effectiveness of this approval was expressly conditioned upon the continued determination with the plans and conditions listed above.

10. Non-Severability - If any of the above conditions is held to be invalid, this approval in its entirety shall be void.
11. 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.

IX. OLD BUSINESS:

A. *Zoning Subcommittee*

Mr. Glick stated that considering the Commissioners' meeting and the approval of the Zoning Ordinance minus the "Agricultural" part, it is his understanding that that portion is to be reviewed and reported on by some other group and not by the Zoning Subcommittee. Mr. Megginson explained that the Commissioners asked the County's Agricultural Advisory Committee to review this section and to respond back by April, 2009; that the County received a grant that is being administered through the Triangle Land Conservancy to have a farmland preservation plan done and this is part of that; that this would be incorporated with the Agricultural Advisory; and that it would then revert back to the Board for review. Mr. Glick asked that Mr. Megginson check with the Commissioners for clarification on this issue.

B. *New Ordinances*

Mr. Glick asked that copies of the revised ordinances / regulations be furnished Board members. Mr. Megginson stated that as soon as final copies are received from Paul Black hard copies would be provided. (Note: Ms. Harrelson and Ms. Ford stated that they would also like to receive copies by E-mail.)

C. *General Statutes 105-278.2. Burial property and 105-278.3. Real and personal property used for religious purposes*

Mr. Klarmann stated that copies of the above were provided Board members earlier tonight for reference information relative to taxation.

X. NEW BUSINESS:

A. Planning Director's Report

1. *Department Budget Discussion*

Mr. Megginson stated with the economic situation the Commissioners have asked that we reduce our budget; that staff does not anticipate growing any in the next year; and that we expect next year to be more difficult than this year has actually been.

Ms. Harrelson requested that legal counsel be provided at Planning Board meetings. Mr. Megginson stated that Board members might want to talk with Ms. Kost about appointing (at least one of her appointments) an attorney to serve on the Planning Board; and that it has been very beneficial in the past to have an attorney serving on the Board. Ms. Harrelson thought this was a good suggestion. She also mentioned possibly having an ad hoc member who does not serve on the Board but voluntarily attends meetings to answer legal questions.

Ms. Levy asked if budget cuts would affect affordable housing. Mr. Megginson stated that the Commissioners would be reviewing budget priorities during their summit scheduled February 4 and 5, 2009.

2. Planning Board / Planning Department Calendar

Mr. Glick asked that Board members review the calendar and advise staff of any corrections needed. It was noted that this item would be on next month's agenda for final approval since the calendar should be posted on the website as soon as possible for public reference.

B. Planning Board Members Items

1. Election of Planning Board Officers

Mr. Copeland reminded Board members that election of officers is held in January. Mr. Glick asked that this be included on the January 6, 2009 Planning Board agenda.

2. Minority Report

Mr. Hinkley asked about the timing for submitting a minority report. Mr. Megginson stated that the report would be needed in the Planning office by the first week in January, 2009.

3. Quick Link on Website

Ms. Harrelson asked if a "quick link" could be added for previous references, i.e. The Glens. Mr. Sullivan stated that he would begin doing this.

4. The Glens

Mr. Klarmann stated that the Board could approve a three (3) year extension but require the developer to do everything that would have to be done now in a new subdivision; that a large amount of money has yet to be spent on the project; that roads have not been built; and their costs are nothing now to what they are going to be. Mr. Megginson stated that this may be better addressed when it is on the Planning Board agenda.

XI. ADJOURNMENT: There being no further business, the meeting adjourned at 10:05 p.m.

Warren Glick, Vice-Chair

Date

Attest: _____
Kay Everage, Clerk to the Board

Date