

Minutes of the Joint Work Session of
The Cary Town Council and The Chatham County Commissioners
Crosspointe Church, 6911 Carpenter Fire Station Road Cary, N.C.
September 18, 2007

Cary Town Council present: Mayor Ernie McAlister, Mayor Pro Tem Jack Smith, Council Members Marla Dorrel, Erv Portman, Jennifer Robinson, Julie Robison and Nels Roseland

Chatham County Commissioners present: Chair Carl Thompson, Vice Chair George Lucier, Patrick Barnes, Mike Cross, Tom Vanderbeck,

Mayor McAlister called the meeting to order at 7:10 p.m.

Chatham County Planning Director Keith Megginson and Town of Cary Planning Director Jeff Ulma provided a history of the joint planning effort. (Staff's PowerPoint presentation is attached to and incorporated herein as **Exhibit A.**)

Mr. Ulma said that one of the concerns of protecting Jordan Lake surrounds the water quality and protection of that natural resource. Engineering Director Tim Bailey presented information on the water quality issues of concern. He reviewed the current state requirements for watershed protection, and stated that we are getting close to new standards for Jordan Lake, especially in the upper New Hope section.

Mr. Bailey said that in the state watershed requirements we are a WS4 reservoir watershed protection district. This standard is dependent on density. He said that with low density there can be up to 24 percent impervious surface area, which doesn't have best management practices (BMPs) for stormwater devices to meet the reservoir watershed requirements. Low density requires a 30 feet stream buffer on perennial streams (a few of the main channels along the corridor). He said that BMPs must be used with high density options. He said that it requires draw down below the water surface level so that any floatables or petroleum products going to the top aren't drawn through the outlet device. High density has 100 foot buffers on perennial streams.

Mr. Bailey said that Cary's stormwater requirements have been in place since 2001. Cary adopted the same rules that are in the Neuse River basin for the nutrient sensitive waters of the Neuse. He that Cary regulated about 10 times more streaming length than the requirements for reservoir watershed protection.

Mr. Bailey said that the Jordan Lake proposal has a total maximum daily load (TMDL) pounds of nitrogen as a target, which goes back to a study that was done in 2001 targeting a nitrogen reduction from that date. Existing development is in 2002 terms.

Mr. Bailey said that for open space Cary has purchased property along the White Oak corridor (almost 200 acres) and around the Hawes Tract (contains a lot of the area for Panther Creek). With stream buffers Cary has protected about 5000 acres of land. We have impervious surface limits and are considering ordinances that may phase construction in a way to minimize disturbances. Nitrogen requirements automatically limit the impervious cover because it can't meet the target nitrogen loading if it continues to have high impervious levels on the site.

Mr. Bailey provided an example of a typical 3 acre lot subdivision, pointing out areas in septic fields. He said that septic fields are based on state standards—no large trees planted within 30 feet of any drain lines. There can be a large square area with turf on it that has a high runoff. There are other areas that say saturated, especially during certain months, and when it rain additional runoff can occur.

Vice Chair Lucier asked if the models are looking at the runoff and not other factors such as the contribution of fertilizer supplied for lawns. Mr. Bailey said he did not do the models, but there was some assumption about the runoff from development types. He said that the consulting firm for the state made estimates based on other information. Vice Chair Lucier said that a lot of studies have shown that the rate of nitrogen application to residential lawns is 10 times what it is on agricultural uses. He said homeowners use more pesticides and more fertilizer per acre than farmers and the models don't capture that distinction. They underestimate the runoff from dense residential areas.

Vice Chair Lucier said that the Chatham County Commissioners passed a resolution in February requesting that EMC and DENR not delay implementation of the nutrient loading rules. He said the proposal was to delay them from 2011 to 2016. They've also sent additional correspondence to EMC and DENR. He asked if Cary has done a similar resolution. Mr. Bailey responded that the Town is very supportive of implementation, and in the comment period a letter was signed by the mayor to move forward, and this letter was read into the record at that public comment opportunity. He said that Cary did not discuss the 2016 delay; they reviewed the rules and commented on them at face value.

Mr. Lucier said that the proposal was to delay until 2016, so Chatham's proposal was to keep it on track. He urged Cary to do something similar in order to protect the lake.

Mr. Megginson reviewed the county commissioners' proposal, which is 5 acres in the entire planning area with possibly 1 dwelling unit per 10 acres close to the lake. He said the joint staffs' recommendation was for 1 dwelling unit per 10 acres, 1 dwelling unit per 5 acres and then working the higher density eastward. Mr. Megginson said that Chatham already has a designation for 1 dwelling unit per 5 acres, but they don't have a designation anywhere in their jurisdiction of 1 dwelling unit per 10 acres. He said that the county took the low density option because they already had very low density zoning. Chair Thompson added that it is the consensus of their board to have 1 dwelling per 5 acres from the lake all the way back, having the entire area zoned that way.

Mr. Roseland asked for clarification on why Chatham didn't want the 1 unit per 10 acres closest to the lake. Mr. Lucier responded that a large area on the west side of the lake is zoned 1 unit per 5 acres and they would like to keep it that way. Their rationale was to be consistent with the west and east sides of the lake.

Mr. Portman said that aside from density it seems that they have a common interest in protecting the water quality of lake. He asked about the rationale for tying the action plan to density as opposed to sewer and unsewered. He said given an equal density the unsewered properties have four times higher nitrogen load compared to the sewer.

Vice Chair Lucier asked to have sewer and unsewered defined. Mr. Megginson said it's the state's models for septic systems alone; it's the municipal sewer system versus the septic system. Mayor McAlister asked if unsewered would include septic systems. Mr. Megginson said yes, but not the alternative system which may have above ground spray irrigation.

Mr. Portman said that purely relying on land uses is stacking the deck with land uses that could be four times the nitrogen loading and defeats their common objective of protecting the lake. Mr. Lucier said the models don't include the land clearance and land disturbing process when large tracks are cleared for higher density areas.

Mr. Portman said that the DWQ table shows an order of magnitude of four times dealing with sewer versus nonsewer. He said that some of the other densities would have the most potential benefit to the lake. He asked the Chatham County Commissioners what they saw as the detriment to that which would cause them to be more comfortable with larger lots unsewered. Mr. Barnes said that Chatham doesn't look at something as sewer or unsewered; they look at it

as per acre, and they prefer 1 house per 5 acres to the Chatham County line. He said if they agree to 2 house per 5 acres then it makes it more possible for Cary to annex into Chatham County and the ultimate goal is that's not what Chatham wants.

Mr. Portman asked if the goal of preventing Cary from annexing into Chatham County is of a higher priority for the Chatham County Board of Commissioners than the nitrogen loading impact on the lake. Vice Chair Lucier said with the empirical data around lake, where you have more dense development you have more pollution and less dense development you have less pollution.

Mr. Portman said that it seems they are mixing sewer and unsewered with restrictions on clear cutting, exposing soil and runoff, and that there are other effective tools to deal with one or the other. Mr. Vandebek said that it has nothing to do with sewer and unsewered; leaving in forest is the least disruptive. He said they are taking the model, making the lot size a little better for something that can handle a septic field without getting into any other infrastructure, traffic, air pollution, possible runoff or other things.

Mr. Megginson said that the game lands and the burn areas around Jordan Lake are considerable. Those are existing lands controlled by the Wildlife Resources Commission and managed with controlled burns. He said the game lands are for hunting and in that area they recommend a 150 yard buffer, which currently exists. He said they don't want houses in those areas because of the rules. Additionally, they received comments from their community meeting were many said they want the rural character to remain.

Mrs. Robison asked if there is any contradiction with the feedback and comments from NCWRC and other state and federal regulating agencies between the recommendations received and the 1 unit per 5 acre proposal. Mr. Megginson said he didn't know of any conflict in relation of the proximity to the game lands and burn areas. Mr. Ulma said their recommendation in the draft plan was to keep it very low near the lake and then make a more significant jump to higher densities beyond that point.

Ms. Dorrel asked if 1 in 5 units per acre to the lake would be acceptable by those dealing with burn areas and the hunting zones. Mr. Barnes said the Corp's and Wildlife's preference would be no houses. They would like to see 1 house per 10 acres but will accept 1 per 5 acres and nothing lower.

Mr. Roseland asked if it would be helpful for both boards to approve the 58 percent in agreement. Mayor McAlister said the zoning designation is something that needs to be adopted by the Chatham board. He said the Town of Cary expresses no opinion. They are trying to reach agreement on other areas that are in disagreement.

Mr. Lucier said that Chatham does have a land use plan, and there are a number of things they need to do before the moratorium is lifted, such as implementation of the land use plan which involves creation of and amending existing ordinances.

Resolution of Land Uses in Southern Area

Mr. Ulma said the remaining area focuses on three portions, the southern, central and northern areas. He said in the southern remaining area of the plan to the county line there is a zone of 1 unit per acre, and then 2 units to the acre building off the transportation network that goes to I-540. Mr. Megginson said the current existing county zoning is already 1 per acre.

Mr. Portman said the overall shared objective is water quality in the lake. He asked if it would be helpful to model the nitrogen impact of the two views and see which impact on the lake has a basis for justifying adopting one or the other. Chair Thompson said water quality is a primary consideration but it's not the only consideration. The other is the views of the people in the area.

He said maintaining the rural character of the county is a major consideration; there isn't a willingness of the board increase density.

Mr. Portman asked it would be beneficial for the commissioners to know whether the affect of the downzoning was actually damaging to the lake so that they can make that decision on the basis of pros and cons. Mr. Barnes said there isn't anything that would convince Chatham that having a high density would be better for the lake.

Mr. Cross asked why Cary wants to develop Chatham at two houses per acre. Mrs. Robinson said she understands the noble convictions that Chatham has in keeping the area rural. She said Cary is looking for an assurance that future boards in Chatham will not ignore the plan and approve suburban type development using spray fields and other types of non-municipal service sewer type systems detrimental to the lake. She wants to ensure the water quality protection of the lake. She would like, if possible, that if the land use plan as proposed by Chatham County is adopted to have an agreement attached to the plan that if a developer came to Chatham asking for suburban development that Chatham would work with Cary and only do it using sewer.

Mr. Vanderbeck expressed concerned that Cary sees their model as something they should move to in protecting the lake. He said the commissioners are trying to listen to the people, the eco system, and look for something sustainable. He said they shouldn't be clearing massive areas at one time. Mr. Portman said Cary is looking at ordinance changes to prevent that type of mass grading and to restrict the amount of bare land. He said that Cary is equally concerned about this issue.

Mrs. Robinson clarified that there is nothing in the staff's plan that is of the same densities of Amberly.

Mrs. Robison asked why certain densities are proposed in the central south area. She also asked if there are obligations and commitments in the pipeline and, if so, where they are. Mr. Ulma said there were a couple of requests stymied by the moratorium on annexations. He said there was a request to add some property to Amberly which was withdrawn. Mayor McAlister asked if there were any pending annexation requests. Mr. Ulma said there is one.

Mr. Ulma said that Chatham and Cary staff worked together to develop the recommended joint plan. Both boards agreed to bring the joint planning effort together reflecting the existing zoning, looking at continuing the transition, acknowledging the proximity to the road network and the context. They also agreed to not include densities equivalent to Amberly. The highest density recommended by the staff in Chatham County was one-third of some of the densities in Amberly.

Status on Moratorium

Vice Chair Lucier said that on June 3 Chatham adopted a moratorium on residential developments of 25 houses or greater. The moratorium is for one year. Chatham has identified and listed things they need to do before the moratorium is lifted, one of which is a major corridor ordinance that may be relevant to the joint planning area. That work is moving along with assistance from Triangle J Council of Governments. Chatham plans to have something in draft form in the next few months to be in place by spring. He said they are also developing minimum criteria for requiring environmental impact assessments on certain property sizes, which would include slope characteristics and the number of characteristics of that property. They have also formed an environmental review board to review the environmental assessments when received. He said that Chatham has recently formed a new office of environmental resources and will hire at least one person to lead that office. They have prepared draft modifications to the watershed ordinance and established county-wide buffers of greater protections on perennial and intermittent streams. Vice Chair Lucier said that they are also proposing to buffer ephemeral and wet weather streams because studies show that nitrogen and phosphorus releases into the perennial and intermittent streams. They will likely adopt stream buffers on ephemeral or wet

weather streams. He said that Chatham is amending their subdivision ordinance to give commissioners more tools to ensure developments approved in Chatham County benefit Chatham County and are not disruptive to their environment or quality of life. They are also looking at a zoning ordinance that will consider conditional zoning on conditional approval of all subdivisions. Vice Chair Lucier said that they also have an affordable housing part to accomplish. Another thing they are doing is developing a lighting ordinance which regulate lake trespass from either commercial or subdivisions. Their timeline to complete these tasks is by June 2008.

Mr. Ulma said as part of joint resolutions adopted in December 2005 county commissioners asked council to consider a moratorium on annexations. That moratorium was enacted, expired, went back to the council, and was reactivated with an expiration date of September 28, 2007. He said council will need to consider how to proceed—if someone applies to be annexed council doesn't have to approve the request. Council will need to consider whether to revisit and extend the annexation moratorium for another time period while staff continues to work on the plan. Mayor McAlister suggested that Cary take up the consideration of the moratorium in a follow up work session.

Mayor McAlister said that there is a wide area of agreement with both boards. There are some areas where Chatham has been clear about their intentions, and Cary needs to take that into consideration in a subsequent work session.

Mrs. Robison said that Cary should extend the moratorium now to avoid creating further uncertainty. Mayor McAlister said that the gap doesn't cause an issue. He said that anyone choosing to bring a plan forward for consideration knowing the history of events and that council is considering an extension of the moratorium would do so understanding that they won't get very far until this is settled.

Mrs. Robison expressed concerned about the unforeseen consequences of inaction and asked what happens to the project currently in the pipeline. Mayor McAlister said that the project currently in the process has been on hold. Mr. Ulma said that it was tabled for annexation but at the same time it is being reviewed for a county subdivision. Mr. Megginson added that it has gone through sketch design but it hasn't come before the commissioners for consideration. He believes the plan is zoned one dwelling unit per acre, but he didn't remember the number of units. Also, because it's already started it wouldn't be caught by the moratorium.

Mayor McAlister said that council's discussion of the consideration of the continuation of the moratorium is better suited to a work session. Ms. Dorrel said that there is a possible opportunity to have the work session on Tuesday, September 25. Mayor McAlister said that if there is overwhelming support to extend the moratorium then it can go on the September 27 council agenda for discussion. He is not as concerned with the expiration date of the moratorium as he is about council having the opportunity to review discussions from this evening and decide on actions to take.

Chair Thompson asked if it is the sentiment of Cary to abide by or comply with the wishes of the Chatham County Commissioner for the zoning of the area of concern. Mr. Portman said that he wants to understand the environmental impact of the options presented, the joint plan developed by the Chatham and Cary staffs, and the Commissioners' recommendation before answering.

Mr. Lucier asked Cary to consider sending something to EMC asking them not to delay implementation of the nutrient rules in Jordan Lake until 2016. He said that will help protect the lake.

Mr. Roseland said that the water quality standard is 2.2 units of nitrogen drawn down per acre. He said that the water quality standards are most important, not the zoning acreage per unit designation. He asked for a copy of Chatham's ordinance supporting that. Vice Chair Lucier said

that Chatham will send Cary their resolution on the Jordan Lake nutrient rules and the related correspondence.

Elaine Chiosso of the Chatham County environmental review board said that the 2011 implementation deadline for nitrogen reduction for wastewater treatment plants in the entire watershed was changed from the original draft plans of 2005 to the 2016 implementation deadline because of direct pressure from particular groups to have them reviewed in rotation. She said the state first mandated the reduction of nitrogen in 1997 and they feel 2016 is too long.

Mr. Portman asked for clarification on the 2011/2016 issue. He said he's been told that Cary had made significant investments and was below the target of other communities for the 2011 deadline because of those investments in wastewater facilities prior to that. He asked if Cary was expected to go lower than the baseline or if Cary has the same nitrogen targets on wastewater as other communities as it relates to the 2011/2016 change. Mr. Bailey said that Cary's rules have matched the Neuse rules since 2001. Cary has been meeting the 3.6, not quite the 2.2 for the upper New Hope, but exceeding the 4.4 target for the lower New Hope. Since Cary has already required new development to reduce that standard, we're also being asked for a 35 percent reduction on the baseline of 2001. He said it is very difficult for Cary to meet that requirement.

Mr. Portman asked if Cary currently complies with the 2011 requirement. Mr. Bailey said Cary is just beyond that with 3.6 nitrogen for the upper New Hope portion. It would be fairly easy for Cary to comply with those rules today. Mr. Portman said there's no reason for it to be delayed.

Elaine Chiosso said that the question of 2016 versus 2011 doesn't directly affect Cary as a polluter; it affects Cary as a user of the lake. She said that Apex and Chapel Hill have both presented the same resolution as Chatham.

Mrs. Robison asked about the target loadings for phosphorus and whether the proposed implementation rules have looked at that issue. Mr. Lucier said it may be helpful for Chatham's environmental review board's representative to meet with Cary and make recommendations for all of them because Cary and Chatham have a significant stake in the lake.

Mayor McAlister said that it is not necessary to have the joint staffs revise the schedule or hold the third community meeting until Cary has had a follow up work session. He said continuing in the process is the best thing for them to do at this time rather than rushing forward on something where there is clear disagreement. They have reached some agreement on certain areas and Chatham has shared their views with Cary. He said if they can't schedule a work session early next week, then the moratorium consideration can be on the council agenda for Thursday, September 27.

Ms. Dorrel said she wanted to weigh in on the question of Cary's support of the commissioners in their vision for the plan. From the beginning she has felt that the greatest value of having the joint planning process was that the boards would share their visions, learn about and be able to support each other. Her concern has been how the Chatham board viewed environmental protection and how they saw their role in the preservation of the quality of Jordan Lake. She understands that there are different ways for the governing bodies to approach this and she was encouraged to hear the list of things Chatham hopes to accomplish by June. She asked for a summary of all of the initiatives undertaken by Chatham. She said that kind of information gives her assurance that their mutual goal will be met even if they don't see eye-to-eye on issues of density. Chair Thompson said that Chatham staff would provide that information to Cary.

Mayor McAlister adjourned the meeting at 8:55 p.m.