

**Chatham County/Cary Joint Issues Committee Meeting**  
**April 12, 2012**  
**9 a.m.**  
**Town of Cary Council Chambers**  
**316 N. Academy St., Cary, NC**

Chatham County Members Present: Brian Bock, Walter Petty and Pam Stewart (Stewart arrived late; her arrival time is noted in the minutes)

Cary Members Present: Jennifer Robinson, Julie Robison and Lori Bush

Staff from both governments attended.

Robinson called the meeting to order at 9:06 a.m.

**Approval of agenda: Robison moved to approve the agenda; Bush provided the second; committee granted unanimous approval (Stewart was absent for this vote).**

***Plan Discussion***

***IV. Staff Presentation***

- a. Comments received at Public Hearings on Joint Land Use Plan*
  - i. Comments received at Chatham County Joint Public Hearing*
  - ii. Comments received at Cary Town Council Public Hearing*
  - iii. Comments received at Cary Planning Board Public Hearing*
- b. Planning Boards' recommendations*
  - i. Cary Planning Board recommendation*
  - ii. Chatham County Planning Board recommendation*

***V. Committee Discussion***

- a. Discussion of Public Hearing comments*
- b. Discussion of Planning Boards' recommendations*
- c. Identify any amendments to the Joint Plan*
- d. Endorsement of final Joint Land Use Plan for adoption by Governing Boards*
- e. Procedure for Adopting the Joint land Use Plan*

***Other Items for Discussion***

***VI. Future Meeting Schedule for Committee (if needed)***

***VII. Adjournment***

***Stewart arrived at 9:09 a.m.***

**Approval of minutes: Bock moved to approve the minutes of October 28, 2011; Robison provided the second; committee granted unanimous approval.**

The adopted agenda follows:

Exhibits attached to and incorporated herein:

**Exhibit A:** Staff's PowerPoint Presentation for this meeting

**Exhibit B:** Chatham County public hearing comments

**Exhibit C:** Cary Town Council public hearing comments

**Exhibit D:** Written comments for public hearings

**Exhibit E:** Public hearing draft plan map

**Exhibit F:** Public hearing draft plan document

Cary Planner Scott Ramage and Chatham County Planner Ben Howell outlined the PowerPoint Presentation (Exhibit A).

Robison spoke about the rescue issue west of the urban services boundary. She clarified that Cary will be allowed to rescue properties with failed private water and sewer systems. Howell stated it has always been the intent that even with the rescue there will be no change in the density of the land use; however, the Chatham County planning board thought it was important to clearly state this in the plan. Robison reiterated that if a rescue should occur, no changes can occur in density without a plan amendment. Howell concurred.

Discussion about one vs. two mixed use nodes:

After discussion, committee agreed to allow flexibility with the location of the one mixed use node. Committee directed staff to amend the map to show only one mixed use node, remove the mixed use designation from the Sears property, and reflect in the plan document that there is only one mixed node.

Discussion about adding utility to the Very Low Density Residential category as an allowable use

Robison wants to clarify what qualifies as utility. Ramage stated broadly it is water, sewer, pump station, tank, utility lines (Progress Energy, gas, phone, cell tower, etc.). Ramage stated stormwater devices are incidental to development and are not considered utilities.

Robison spoke about alternate methods of handling sewage (spray fields, etc.), and asked if it is adequately addressed. Howell stated staff considers this to be utility services, and it would be prohibited in the rural buffer boundary except in the Very Low Density Residential (VLDR) area. He stated the VLDR can be served with septic. He stated in the VLDR, Chatham County would not consider this utility to be a land use decision; rather, it would be a services issue in how the property would be served.

The committee directed staff to include examples of utilities in the plan. The joint staffs should develop these examples (including cell towers and pump stations) for the benefit of the public.

Discussion about the Horil/Hodge property (LDR or VLDR)

After discussion, the committee agreed with keeping the property as LDR.

Discussion about Riggsbee family property, 1489 New Hope Church Road (LDR or VLDR)

Bock referenced a handwritten note he received from the Riggsbee family requesting that 1489 New Hope Church Road have two units per acre zoning to be compatible with the surrounding properties.

After discussion, the committee agreed to honor the request. They directed staff to change the category for this property from VLDR to LDR.

#### Discussion about the Pittard Sears Road area (Medium Density residential [MDR] or LDR)

After discussion, the committee concurred with supporting the property owners' request to change this area from LDR to MDR. The committee also directed staff to include language on the map explaining how the designations on this plan differ from other Cary designations. They also asked staff to clarify on the map that both Cary and Chatham County must abide by this plan.

#### Discussion about Extra-Territorial Jurisdiction (ETJ)

Bock stated the Chatham County Commissioners will not approve the plan if it includes ETJ authority.

Robinson clarified that the area east of the buffer boundary line is available for voluntary annexation into the Town of Cary. The committee agreed, and noted that annexation is different than ETJ.

Bush asked what is lost if ETJ is not in the plan. Ramage stated ETJ allows the municipality (instead of the county) zoning and development authority over the area. He stated it is an expression by the county about where they expect urban development to occur over time. He stated this statement of ETJ gives the municipality more comfort as they prepare their long-range utility plan for the area. Cary Planning Director Jeff Ulma stated the county commissioners must always approve ETJ requests.

Robinson stated areas deemed to be in Cary's ETJ are allowed to serve on the Town's planning and zoning board.

Bock stated ETJ results in an area controlled by the municipality, but the people who live in this area do not have the right to vote in municipal elections. He does not think it is sufficient that a person in the area may serve on the planning board.

Bock stated Cary will always have the right to request ETJ of the county commissioners. He stated putting ETJ in this plan sends a message that the intent is for the county commissioners to grant Cary ETJ in the future.

Howell stated what he is hearing from the committee is to strike the implementation step of researching and studying the feasibility of ETJ. He stated this will make the plan silent on ETJ; it does not prohibit future ETJ or ETJ discussions.

Robinson stated there are two parts to the Chatham County planning board's recommendation: (1) to remove ETJ implementation step 6.4; and (2) to reiterate that no ETJ should be granted. Bock stated the concern is that adoption of the plan grants ETJ, or at minimum, gives the perception that the plan leads to the granting of ETJ.

Howell clarified that the comment about no ETJ was to allow the planning board and county commissioners to make it clear to the citizens that this plan will not grant ETJ to Cary.

Bock clarified that Section 6.4 will be removed from the plan document, and there will be no mention of ETJ.

Robinson suggested being clear and stating that if the Town wants ETJ, then they must request it of Chatham County, who has the authority to make that decision. Bock supports this as long as it is clear that this decision to grant or deny ETJ is made by the county commissioners.

Howell stated Section 2.5 in the plan document currently addresses and clarifies the ETJ issue, and this language will remain in the Plan. It reads: "Cary currently has ETJ in Wake County, but does not have an ETJ in Chatham County. By state law, Cary may only be granted ETJ in Chatham County by the Chatham County Board of Commissioners." He stated this section ends by stating: "This plan does not grant ETJ authority to the Town of Cary in Chatham County." The committee members concurred that this language is clear about ETJ and will remain the plan. The committee concurred with removing implementation step 6.4 from the plan.

Robison wants to carefully identify infrastructure costs in the plan area and understand investment risks. She is not seeking a plan amendment pertaining to this, but she does think it is an important planning element, and both boards should keep this in mind.

#### General discussion regarding issues related to the ETJ decision

Robison asked if the Town has purchased any land in the plan area for public purposes. Ramage stated implementation item 6.9 recommends that the Town and County work jointly on planning park, greenway and school facilities in the plan area after the plan is adopted. He stated Cary currently has 58 acres of land identified for a park in Amberly and in the Weldon Ridge Planned Development (in Chatham County), as well as the dedicated open space within these communities for the benefit of the residents of these properties.

Ramage stated implementation item 6.7 calls for studying the transportation needs of Cary and Chatham County with the Metropolitan Planning Organizations (MPOs). He stated the committee could add a goal to this implementation item to adopt a joint transportation plan for the study area that would be enforced by both local governments.

Howell stated all roads in Chatham County are Department of Transportation roads, and this may impact transportation planning. He urged caution in developing a joint transportation plan due to multiple entities involved (DOT, MPOs, etc.). He stated it is likely that property east of the rural buffer boundary will want to annex into Cary to develop, at which time all of Cary's ordinances and plans would apply. He stated under current Chatham County rules, if an area were to develop in the LDR area, they could only get one-acre lots.

Robinson thinks it will be better for both entities to work together but ultimately adopt their own transportation and park related plans.

Robinson suggested rolling this plan into the overall land use plan and start planning infrastructure in this area and be consistent. She thinks it is important for people who live in this area to have the same high level of infrastructure as others in Cary. For example, the Town of Cary must plan for transportation in this plan area, and when areas are voluntarily annexed, they need to comply with the Cary transportation plan requirements.

Ulma stated Cary's Town-wide land use plan map will include the land uses from the rural buffer boundary eastward as an extension of the Town-wide plan. Robinson asked if the Town's land use plan will include the entire Cary/Chatham plan boundary. Ulma stated staff needs to look into this. He stated the expectation is that Chatham County will administer certain areas of the plan with Cary administering other areas.

#### Discussion about sewer rescues

With regard to sewer rescues, the committee agreed that a comprehensive plan amendment is required to change densities.

#### Discussion about plan boundaries

Bock questioned the need to include areas in the plan beyond where Cary would ever provide services. He suggested keeping the plan as small as possible, with Chatham County handling everything west of that boundary.

Robinson stated this committee decided it was best to preserve very low densities to the west of the projected urban service boundary. She stated Cary wants the assurance that the land to the west of the boundary will adhere to the very low densities that this committee has recommended. She stated it is important to ensure compatibility with development in this entire area.

Robinson stated this committee has drawn a conceptual urban service line; however, she can envision requests over time to move that line. Therefore, she supports keeping the entire area in the plan. She stated suburban-type densities should be tied to Cary's utility system, which is environmentally the best for treating waste to ensure the health of the lake.

Petty does not think the area west of the urban service line will ever be an issue for expanded growth, because the soil condition will not allow it. Bock added that the people who reside west of the line are being down-zoned. He is concerned that the plan adds restrictions to these property owners. He stated the first priority is to protect the lake. He stated the committee must also consider property owner rights.

Robinson thinks the committee has understood the down-zoning requirement from the beginning; however, the reality of down-zoning is different than a concept based on a principle. She has always thought this would be the hardest part of the plan to implement.

Robinson questioned if the best course of action is to remove the land from the plan or to instead revise the plan to say that in this area the VLDR is one to five acres per unit.

Howell stated the entire plan area is zoned R-1 by Chatham County, which is 40,000 square foot lots. He stated this area in the plan document has an average density of one unit per five acres, and the document states it will meet Chatham County's R-5 zoning district. He stated this zoning district allows one lot per three acres for certain circumstances and even one lot per two acres for family subdivisions.

Robinson again suggested changing it from a density of one unit per five acres to instead one unit to one to five acres. Bock stated once this plan goes to the full boards, people will perceive this as a density increase. Bock suggested that the committee remove this entire area from the plan. He is concerned with the types of utilities that someone might use in this area. He suggested this issue be addressed by an inter-local agreement or some other mechanism and that the area be removed from the plan.

Robinson stated removing this area from the plan will take away Cary's joint oversight over that land.

Bush referred to the plan's original executive summary, which, among other things, spoke to protecting water quality. She does support removing this area from the plan.

Howell stated this land is in the Triassic Basin, and the soils are bad. He stated most people on well and septic systems have one unit on two to three acre lots. He stated the subdivisions approved in this area are generally three to five acre lot subdivisions. He provided the following options for the committee's consideration: (1) a prohibition on anything other than traditional septic systems; (2) change the plan designation to match the current county zoning, which is 40,000 square foot lots if they can get services (the subdivision ordinances requires lots of 65,000

square feet with traditional utility systems, which is about 1.5 acres); (3) create a special zone for this property to keep it at one unit per acre lots but add restrictions to address the concerns.

Howell stated if the plan prohibits anything other than traditional well and septic, then it will result in property owners who cannot do anything further with their properties. Ramage stated this could be addressed by exemptions on a case-by-case basis.

Howell stated Chatham County currently allows engineered utility systems if the property owner provides the county a permit from the county health department or the state that indicates the system serves the lot sizes requested.

Cary Engineering Director Tim Bailey outlined the Best Management Practices Rules; however, he stated the rules do not necessarily apply to the on-site wastewater system. He stated it is important to consider this as part of the stormwater package and make sure there is a thorough inspection process to ensure they work properly.

Robinson suggested reclassifying VLDR as one unit per one to five acres (the current zoning is one unit per one acre). She stated this will protect property rights of homeowners. She suggested maintaining and perhaps strengthening the language in Section 4.1 of the plan that speaks to how water and sewer is accommodated in this area.

Howell stated Section 4.1 will need to be strengthened in order to cover the concerns about engineered systems and spray fields. He stated the current language will not prohibit a property owner who wants more lots and is willing to spend money to purchase an engineered system to serve those smaller lots.

Robinson would like staff to strengthen the language in Section 4.1 in the spirit of joint cooperation to specify the types of utilities that can serve the area.

Howell suggested another implementation item to require the appropriate Chatham County ordinances in addition to strengthening Section 4.1.

Robinson suggested that Section 4.1 should specify that any future public water and sewer will be served by Town of Cary. Other committee members did not want to eliminate the option that Chatham County may in the future be able to provide utility service.

Bock asked for comments about these decision points from a landowner in the audience. This landowner suggested leaving the option for public utilities with Chatham County or Cary. He questioned who would determine what property owners could develop at one unit per one acre vs. one unit per five acres. Robinson clarified that this would be a Chatham County decision, unless the property owner wanted Town water and sewer. He suggested keeping the designation at one dwelling unit per one acre.

Robinson suggested changing the VLDR designation to one acre or larger lot sizes (instead of one unit per one to five acres).

Ramage stated the plan currently defines the rural buffer boundary based on utilities. He stated the plan does not allow utilities for property west of the buffer boundary, and allows public utilities to be provided by Cary or Chatham County east of the buffer boundary. He stated the plan does not describe this as an annexation boundary. He questioned if the committee wants to specify that Cary or Chatham County could provide a water utility but not sewer west of the buffer boundary.

Bock does not want any prohibitions in the plan that prevents Chatham County from providing a utility in Chatham County.

Howell stated the issue about Chatham County potentially providing sewer begins to move away from the original purpose of the plan. He stated the plan will be revisited every two to five years and updated appropriately. Robinson suggested maintaining the restrictions on utilities at this time, with the understanding that the document will be reviewed and updated on a regular basis. Bock stated this is with the understanding that Chatham County will not have sewer in this area in the next five or more years, and the plan will be reviewed at least every five years. He wants to maintain flexibility in the plan to allow either Chatham County or Cary to provide the water utility.

Howell stated if the zoning stays the same, Chatham County still has the 40,000 square foot minimum lot size in this area. He stated even if a property owner gets water, they cannot go any greater density than one unit per one acre. He further clarified that the water utility allows the property owner to develop at the minimum lot size in the zoning ordinance.

Ramage referenced Page 19 of the PowerPoint Presentation, which reads: "West of the buffer zone will receive public water provided by Chatham County." He suggested striking "by Chatham County" and instead ending the sentence with "public water".

Howell suggested adding language that clarifies that density may not be increased even if public water is available.

Bock stated Section 4.1 (Page 19 of the PowerPoint Presentation) is contradictory. The committee asked staff to clean up this language.

Robinson summarized the committee's direction to staff: (1) change the designation for VLDR to be one unit per one acre or greater (matches Chatham County's R-1 designation); (2) keep the entire area west of the rural buffer boundary in the joint plan; (3) add language to Section 4.1 to prohibit engineered sewer systems (i.e., septic fields, spray irrigation, etc.), which means that only traditional systems are allowed, and allow public water by any public provider and not designate the provider. Committee members concurred.

Bock asked about the language pertaining to the buffers around the American Tobacco Trail (ATT). Howell stated this language is on Page 3-8 of Section 3.4.4. He stated it reads: "New development requesting public services, such as water and sewer and/or annexation from the Town of Cary, should provide the natural buffer along either side of the ATT right-of-way consistent with the Town's land development ordinance."

The Chatham County homeowner in this plan area asked if this action will prohibit drip irrigation, which is an alternative to a septic system. Robinson stated this is what the committee is concerned about. The homeowner stated there are some of these systems already in this area.

Howell stated this action will not impact existing alternate systems, but it will prohibit any new alternative treatment systems.

Robinson stated the implementation section will contain a provision that allows for these types of systems with certain conditions to address the nitrogen issue. Robinson stated this would be reviewed on a case-by-case basis.

Ramage stated the case-by-case pertains to minor subdivisions and existing platted lots.

Robinson stated this action will prohibit a new Hills of Rosemont with a non-traditional sewer system. However, if one homeowner requests using an alternative sewer system for one lot, then Chatham County would be permitted to grant permission.

Howell reiterated that the committee wants to exempt minor subdivisions (which in Chatham County is five lots or fewer), as well as existing lots (which will be grandfathered).

Robinson stated the exception is meant to allow just a few people to put in spray systems. It is not meant to cover 20% of the land area with spray fields.

Bock asked if the county commissioners must approve exemptions. Howell stated if minor subdivisions and existing lots are exempt, then they are staff level approvals. He stated staff can develop language in the plan document to clarify when and how this exemption process can be used. He reiterated staff will also amend the implementation step so that the Chatham County commissioners amend their ordinances to better match the plan for this area.

#### Implementation Procedure

Refer to Page 23 of the PowerPoint Presentation, which proposes a joint resolution or inter-local agreement to implement the plan.

Ulma stated the inter-local agreement is set out in state law for municipalities. It reads: "Any unit of government in NC can enter into an inter-local agreement..." He stated there may be a little more statutory authority with an inter-local agreement.

Robison suggested an inter-local agreement, because it is an established framework. All committee members concurred.

Robinson stated the committee needs to establish details of the inter-local agreement, and both boards can affirm these details at a future date. She stated one of these details is the level of change that necessitates the approval of both boards.

Robison suggested that as a test period, any change to the joint land use plan that is adopted should come to both boards. She stated the boards might later delegate certain minor approvals to the staffs.

Robinson stated she wants to avoid bureaucracy with minor plan changes.

Howell stated the inter-local agreement might define minor amendments and stipulate that minor changes to the plan would require approval by both Cary and Chatham County planning directors. He stated these items could be taken to both boards as FYI items. The committee concurred.

Howell suggested one more meeting. Staff will bring forth inter-local agreement language and the plan amendments decided today.

The committee decided to meet on May 8 at 9 a.m. in Pittsboro. This will allow the schedule to progress as planned. Staff will identify a location and share it with the committee.

Robinson adjourned the meeting at 11:48 a.m.