

PLANNING & ZONING REVIEW NOTES

VII. B.

SUBJECT: Amendments to the Chatham County Zoning Ordinance, Subdivision Regulations and Watershed Protection Ordinance incorporating the Chatham County Compact Communities Ordinance.

A joint public hearing was held on the Compact Communities Ordinance March 23 and approximately 34 people spoke. The written comments received were distributed to you March 26 to provide additional review time. I have reviewed my notes from the hearing and the written comments. From my review I could not find any specific comments on the following three text amendments: An Ordinance Amending The Zoning Ordinance of Chatham County; An Ordinance Amending The Subdivision Regulations of Chatham County; An Ordinance Amending The Chatham County Watershed Protection Ordinance.

I will not attempt to address the individual comments received. It is up to the Board members to review them and evaluate their merits. Many of the comments address issues the Planning Board has discussed previously at length. Some comments support existing language within the proposed CCO and some comments recommend changes. There are a few general and individual issues that I will discuss. Many speakers discussed the maximum number of units and separation distance of compact communities. Several recommended a maximum number of 1,500 dwellings. To put this in perspective Ferrington is approved for 1,602 dwellings, Governors Club for 1,830 dwellings, and when the Buck Mt. Lands are completed it will have about 1,400 dwellings. Ferrington has a gross density of 1.73 dwellings per acre. The Briar Chapel lands are approximately 1,600 acres and at the maximum of 2,500 dwellings the density would be 1.56 dwellings per acre. Some of the surrounding subdivisions of Polks Landing and Chatham Development have densities of a little more than two dwellings per acre. The existing zoning district of RA-40 allows 1.09 dwellings per acre. Therefore with 1,600 acres in Briar Chapel the theoretical number of dwellings, not excluding floodable areas, wetlands and other deductions, is 1,744 dwelling units. When separation distances were discussed previously it was the staff recommendation that the Board have a designated goal they were trying to achieve by having a separation distance. It may make more sense to have adjacent compact communities using the same infra-structure than have developments separated by some set distance but have the same impact because the traffic will travel the same roads and children will be in the same school district. Public input addressed the issue of the waiver in Section 15. It is the staff position that this is a legal and Commissioners' policy issue that is most appropriately addressed by the Commissioners and their legal counsel.

Two speakers suggested that Section 12.1 Commercial component be revised to include a maximum building size of 50,000 or 55,000 square feet to discourage mega-stores. The Harris Teeter approved in the Chatham Downs Shopping Center is proposed to be 45,000 square feet. Staff is not familiar with the trends of store sizes. Like with the separation distance issue addressed above if the Board can express the underlying interest of why

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large stores are not desired then regulations may be formulated to address said issues. If the concern is the appearance from the highway then instead of limiting the size it may be addressed with screening or the façade of the building. This may also be addressed without having a specific regulation but through the conditional use permit itself.

Appearance Commission members Sue Schwartz, and Martin Spritzer suggest that Section 12.4 be revised to clarify that a master landscaping plan is to be reviewed by the Appearance Commission. This appears to be a reasonable revision that staff supports.

Section 12.3 Moderately Priced Dwellings addresses providing said housing. The income limit established is no greater than sixty percent of the Area Median Family Income. Chatham Habitat for Humanity has requested that the ordinance ensure that homebuyers earning 50% or less of the median income be included. The ordinance does not presently require this lower level of affordability. Jeffrey Starkweather submitted a map showing the median value of owner occupied homes in Chatham County according to the 2000 census and suggested that the ordinance require that any off-site affordable housing be within five miles of the development in Chatham County.

Ray Greenlaw provided numerous comments. The Board may want to consider revising the title of Section 7.2 to be more descriptive and inclusive by naming it "Wastewater Management System". The Financial Guarantee section addresses assurances for completion of the facilities not long-term operation and maintenance. From my memory this second concern was addressed by the NC Utilities Commission bonding or would be the responsibility of the utility and/or homeowners association, not the County. Attached is a February 18, 2004 e-mail from Ben Hitchings, which addresses this issue.

There may be additional public comments received at the hearing or since that you think warrant revision to the draft ordinance. If there are, please consider specific language for incorporation into the draft, so the entire Board may consider it on Tuesday.

Keith Megginson

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Sent: Wednesday, February 18, 2004 5:45 PM
Subject: Wastewater Operating Bond

George, Charles, and Keith,

At the Planning Board meeting on Feb. 10th, George asked me about maintenance bonding for the wastewater treatment system. Often, new developments using private wastewater treatment systems fall under the jurisdiction of the Public Utilities Commission and have to post an operating bond. However, just to be sure I checked my research and followed up with Andy Lee at the Public Utilities Commission. I left a message for him last week and was able to get through today. It appears there are circumstances in which the systems aren't covered, and in which the County may want to consider establishing its own operation and maintenance bond. Here are the details.

The Public Utilities Commission regulates private investor-owned utilities that have captive customers. The PUC grants these utilities a monopoly in return for rate restrictions and other regulations. Public utilities such as the Chatham County water system are not subject to PUC regulations.

If a new development is served by a private utility, then it is subject to the PUC regulations. These include a provision for the filing of an operating bond sufficient to pay for an emergency operator who can fix a malfunctioning system. The details of this bonding requirement are laid out in North Carolina Utilities Commission Rule R10-24 -- Bonds (go to <http://www.ncuc.commerce.state.nc.us/ncrules/chap10.htm>; then scroll down to Rule R10-24).

However, by PUC definition, bona fide Homeowners Associations (HOA) that only provide their own members with utility service are considered public utilities, and are therefore exempt from PUC regulations. In general, the PUC only considers an HOA to be "bona fide" if its members have equal voting rights and elect their own officers, thereby giving them the ability to influence the policy and practices of the entity that is running the utility system. As we know, developers often maintain control of the HOA in the early stages of a development. In these cases, the members of the HOA don't all have equal voting rights, so Mr. Lee told me that the PUC would generally not consider the HOA to be "bona fide", thus making it subject to PUC regulation.

However, once the developer transfers the HOA over to the residents of the development, then it would generally be considered bona fide in the eyes of the PUC, and so would henceforth be exempt from PUC regulation and bonding requirements.

The upshot is that the County may want to consider requiring an operating bond for all wastewater treatment systems that aren't regulated by the PUC. Since the need for such a bond only becomes greater as the wastewater treatment system ages, the County may want to consider making it an ongoing requirement. The PUC sets the amount of its required bonds based on a number of factors laid out in Rule R-10-24. PUC staff indicated that the general intent is to bond the systems in an amount sufficient to pay an emergency operator to come fix the system if it breaks down and the private utility goes out of business. HOAs would presumably not face this same issue, but there might be instances when an HOA couldn't afford emergency repairs in the short term until it had a chance to assess its members. In such cases, a bond conceivably would provide the County with a resource to tap to help cover such repairs. Another option might be to require the HOA to maintain a base operating reserve for such emergencies. Keith, Bob Gunn, Steve Tabert, and/or others may have some additional thoughts on this issue and what might work best for the County.

Yours,
 Ben

Ben Hitchings, AICP