

MINUTES
CHATHAM COUNTY BOARD OF COMMISSIONERS
WORK SESSION
OCTOBER 15, 2007

The Board of Commissioners (“the Board”) of the County of Chatham, North Carolina, met in the Central Carolina Community College Multipurpose Room, 764 West Street, located in Pittsboro, North Carolina, at 2:00 PM on October 15, 2007.

Present: Chairman Carl Thompson; Vice Chair, George Lucier; Commissioners Mike Cross and Tom Vanderbeck; County Manager, Charlie Horne; Assistant County Manager, Renee Paschal; Finance Officer, Vicki McConnell; County Attorney, Kevin Whiteheart; and Clerk to the Board, Sandra B. Sublett

Absent: Commissioner Patrick Barnes

The meeting was called to order by the Chairman at 2:02 PM.

Work Session

1. Affordable Housing Presentation
2. Lighting
3. Text Amendment to the Chatham County Zoning Ordinance
4. Historic Houses: Update on moving historic houses
5. East Chatham Rescue Squad Franchise and Contract
6. Edgefield Subdivision
7. Ag Advisory Resolution

Chairman Thompson suggested deleting Item #4, Historic Houses, from the agenda and adding it to the agenda for November 5. There was no objection from the Board. Chairman Thompson suggested adding an item on Scattered Site Housing. There was no objection from the Board.

SCATTERED SITE HOUSING

Planning Director, Keith Megginson, provided a brief update on the scattered site housing application which would provide funding to improve and rehabilitate owner-occupied low income housing, stating that all of the paperwork required by the State was now completed; and, they were now ready to award a contract for administration of the CDBG Scattered Site Housing project to Hobbs Upchurch and Associates for an amount not to exceed \$56,000 as decided at the April, 2007 Board of Commissioners’ meeting, contingent upon grant approval and funding agreement, to authorize the Chairman to sign the grant agreement, funding approval, and to authorize the four signatures for the signature card (County Manager, Assistant County Manager, Finance Officer, Planning Director).

Commissioner Vanderbeck moved, seconded by Commissioner Lucier, to award a contract for administration of the CDBG Scattered Site Housing project to Hobbs Upchurch and Associates for an amount not to exceed \$56,000 contingent upon grant approval and funding agreement, to authorize the Chairman to sign the grant agreement, funding approval, and to authorize the four signatures for the signature card (County Manager, Assistant County Manager, Finance Officer, Planning Director). The motion carried four (4) to zero (0).

AGRICULTURAL ADVISORY COMMITTEE RESOLUTION

Charlie Bolton, Chair of the Agricultural Advisory Committee, stated that they had recently learned of plans to consider combining the Chatham County Farm Service Agency Office with Lee County’s office and moving all personnel to Lee County, which would require that Chatham County farmers travel to Sanford to receive services. He said the Agricultural Advisory Committee had passed a resolution recommending that the Chatham County Board of Commissioners and all agricultural organizations and businesses immediately contact US Representatives Price and Etheridge and US Senators Burr and Dole with a protest of the

planned closure of the Chatham County Farm Service Agency office in Pittsboro and relocation to Sanford as this would be detrimental to the County's farmers.

Commissioner Cross commented that Chatham County had many times more farms than Lee County as well as many more farm workers. He recommended supporting the resolution completely.

Commissioner Cross moved to support the Agricultural Advisory Committee's Resolution and to contact US Congressmen Price and Etheridge, US Senators Burr and Dole, Senator Atwater, NC House Speaker Hackney, and the Chairman of the Agriculture Committee to get involved in this matter.

Commissioner Vanderbeck stated he had spoken to Speaker Hackney last week and he had promised to move this forward.

Chairman Thompson stated he had spoken to Congressman Etheridge who had said he was willing to help, and he had suggested getting a resolution to his office posthaste.

Commissioner Lucier stated it may be wise to send the resolution to the State's Agricultural Committee Chair as well as to the ranking Minority member; that they should also include in the resolution the fact that Chatham Central over the last few years had won a number of national FFA awards, and did not believe Lee County had done as well; those awards attested to the fact that there were a number of young Chatham County citizens who may want careers in agriculture; and, another potential in the County's future was growing its own fuel source, and that should be kept in mind.

Commissioner Vanderbeck seconded the motion.

Chairman Thompson called the question. The motion carried four (4) to zero (0).

AFFORDABLE HOUSING PRESENTATION

County Attorney Kevin Whiteheart stated he had emailed to the Board a draft Memorandum of Understanding between the County and EmPOWERment, Inc.; that at the last Affordable Housing Task Force meeting, it was brought up that they needed to move forward with the affordable lots being provided at Briar Chapel; that the number of lots would be between fifty and sixty; that three lots were ready for the process to proceed; that the County take a closer look at an affordable housing policy that may have some different aspects to it; and, that the Briar Chapel lots be used as a test case for that policy.

Mr. Whiteheart stated he had revised Ms. Bailey's draft MOU to add an outline of how EmPOWERment would undertake its work, noted on page 2:

- That the MOU should remain viable for 99 years, at which time the affordability aspect of the homes would be set aside.
- That EmPOWERment would develop single-family homes on all of the building lots designated for affordable housing in the Briar Chapel subdivision.

Commissioner Vanderbeck stated on page 1, the second from the bottom "Whereas," he believed the number of lots that the Board would select a developer for should be designated as three lots, rather than "these lots", to avoid any confusion. He said anywhere in the document that lots were discussed, it should be noted they were talking about three lots. Commissioner Vanderbeck said it would be helpful to designate the lot numbers as well. Attorney Whiteheart agreed to make the amendments in the appropriate places.

The County Attorney continued his explanation of the MOU:

- EmPOWERment should provide administrative services, including finding qualified buyers and determining the eligibility of those buyers for affordable housing; construct and market the houses; providing language in the contracts that protected the affordability of homes for future buyers; and, that a formula be used to recapture a portion of the gain on a house that is resold.

Commissioner Cross stated earlier that they had discussed a plan that if an affordable home came back onto the market and was sold at a profit that the profit would come back to the County to be used to reduce the price of the house for resale to an eligible homeowner. Mr. Whiteheart said there would be some subsidy money that would have to be repaid out of that profit.

Delores Bailey, representing EmPOWERment, Inc., stated that they were moving toward that process, adding this was not about making money. She acknowledged that anything built in Briar Chapel would be two to three times more valuable after four or five years.

Commissioner Cross stated his point was that any profit should be turned back into that house to reduce its resale cost. Ms. Bailey said all of the formulas had not been figured out, but they did know that any profit would be used to keep the cost of the homes affordable.

Mr. Whiteheart stated that EmPOWERment would be involved in making sure that the houses constructed carried restrictions on the resale of the house, preventing its resale without the consent and participation of EmPOWERment.

Chairman Thompson asked was it being recommended that the County own those three lots and that they be leased to EmPOWERment. Mr. Whiteheart said there were two options, one of which was for the County to actually own the lots.

Ms. Bailey stated that the County would own the lots, but turn them over to EmPOWERment. She said that way the houses could not be sold without the County knowing about it.

Mr. Whiteheart stated the other option they were suggesting was a deed restriction as noted earlier. He said there was a need to move ahead with the three lots, and it would take some time to set up a land trust to allow the County to own the lots but turn their management over to EmPOWERment. Mr. Whiteheart said in the future they could consider both options.

Commissioner Vanderbeck stated he understood the need to move forward, but agreed they needed to explore fully both options for future lots.

Mr. Whiteheart stated the last issue he wanted to cover was the supplemental terms in the MOU, in that the parties acknowledged that the MOU provided a framework for initiating the Affordable Housing Program in Briar Chapel subdivision; and, that it may be amended, modified, or superseded by subsequent documents.

Ms. Bailey stated that EmPOWERment, Inc. was founded in 1996; that their mission was to help people and communities through homeownership, community organizing and grassroots economic development; that they had been providing affordable housing in Orange and Chatham Counties for more than ten years; that they had counseled over 2,000 families or individuals towards homeownership and financial literacy; and that they had been members of the Affordable Housing Task Force since its beginning. Ms. Bailey provided the qualifications a potential homeowner must exhibit:

- Attend 8 hours of homebuyers' classes
- Household income limit may not exceed 80% of the area median income for the area, meaning a person could make no more than \$39,900
- Must be a first-time homebuyer
- Must live or work in Chatham County for at least 12 months
- The property must be owner-occupied and cannot be rented out
- Upon resale of the property, the owner must sell to an individual or family that meets the income criteria.

Ms. Bailey stated that long-term affordability would be assured by a series of documents the homebuyer must agree to during the closing process, to include:

- Right of First Refusal – the County or its non-profit designee would have right of first refusal

- Declaration of Deed Restrictions – acknowledgment that the potential homeowner understands the terms of the agreements
- Deed of Trust – the mortgage or deed of trust that secures the mortgage loan and constitutes a lien on a fee simple interest in the development of the land
- Promissory Note

Ms. Bailey stated the next steps were:

- EmPOWERment, Inc would receive buildable lots through the MOU process outlined by the County Attorney
- EmPOWERment, Inc. would contract with a builder to build affordable homes that met the design criteria of Newland Properties
- EmPOWERment, Inc. would apply for the Economic Development Initiative grant of \$198,000 which they would use as a revolving loan fund to assist low-income homebuyers in Chatham County
- EmPOWERment, Inc. would market the homes and provide homebuyers education classes

Commissioner Lucier asked did the 80% of median income not necessarily include all areas of Chatham County but did include other areas outside the County. Ms. Bailey said that 80% was set by HUD, and the area would include any area EmPOWERment might be involved in, including Orange County. She said she was not certain that Siler City was included.

Commissioner Lucier stated that if other areas were factored in then the income levels may be skewed because they were located near the Research Triangle area and it did not take into account other areas where the homes might be less expensive. Ms. Bailey agreed that was correct, adding it was difficult to build affordable homes in this area because of the perception that income levels were higher.

Bob Eby stated that a builder had recently agreed to donate the cost of Hardiplank siding for each of the affordable lots in Briar Chapel, which was a considerable amount.

Chairman Thompson asked if the Board was comfortable with making a decision on the MOU.

Commissioner Lucier said he was comfortable with it given the amendments made to refer to the three lots.

Commissioner Cross stated he remembered that as a part of the approval process that Briar Chapel maintained the right to select the builder for the affordable homes, to ensure that the exterior of the homes met the same standards as others in the development. Ms. Bailey said she did not remember that, but she would check on it.

Commissioner Vanderbeck stated he believed there were some guidelines regarding that as far as how the homes would look, but not necessarily using one of Briar Chapel's builders.

Commissioner Cross stated that was why they had brought a builder forward.

Mr. Whiteheart stated if the Board was comfortable with the MOU as amended, he would have it ready for them to vote on at the night's meeting.

By consensus, the Board agreed.

Chairman Thompson stated that they were fortunate to have EmPOWERment, Inc. as the group that would oversee the building of these homes. He stated that their credentials were strong and he was confident that they would attract homebuyers that were well-qualified.

Commissioner Lucier commented that for accuracy in the MOU, the name of the development was Briar Chapel, not Briars Chapel, and that would be corrected. Mr. Whiteheart replied he would make that change.

PLANNING AND ZONING

Proposed Text Amendment to the Chatham County Zoning Ordinance: Consideration of a request by the Chatham County Board of Commissioners for proposed text amendments to the Chatham County Zoning Ordinance to include a section to regulate outdoor lighting. The amendments include standards for outdoor lighting, establish lighting design review and enforcement procedures, and establish an amortization schedule for vehicular canopies.

Planning Director, Keith Megginson, stated that they had considered various lighting provided by different energy companies and how they might best work to look the same within one neighborhood. He pointed out one error in the information provided, in Section 6.f.1, in that it was referring to lights other than flood lamps, since those were addressed in a different section.

Mr. Megginson stated there were several changes made to the March 8, 2007 draft; the Planning Board had discussed outdoor sports field lights and requiring that when 30% of the lights had to be replaced then they all had to be replaced; that would primarily affect school fields as well as recreation fields; the Planning Board revised the draft to remove the percentage requirement and to require that only when fixtures were being replaced did they have to be upgraded; and, that would also lessen the budgetary impact of the replacement light fixtures.

Commissioner Lucier asked how that might adversely affect having some light fixtures that were different from others as they aged out over time. Mr. Megginson said the directional louvers on the new fixtures would be the biggest change, but did not know if that would affect how lighting was supplied to sports fields; that is, to have half one fixture and half another.

Bob Henderson, LC, CLEP, Progress Energy Lighting Solutions Representative, stated that in most cases, there would be little or no affect; that the directional louvers were designed to control the beam pattern and control the glare, not to light the field; and therefore, he said, it would not affect the functional lighting of the field.

Commissioner Vanderbeck stated actually it may focus the light to a greater degree. Mr. Henderson said that was correct, adding the louvers would have little or no impact.

Commissioner Vanderbeck asked if they were talking about replacing all the hardware or might there be some energy savings in the actual lamp that went inside the fixture, which would possibly provide some savings in the long run to help offset the cost of the fixtures. Mr. Henderson said that one had to think about that from a maintenance standpoint as well, in that staff required to maintain the fixtures knew what lamp to put in what fixture. He said if one was looking for energy efficiency, the best way to achieve that would be to change them all, adding if the wrong lamp was put in the wrong fixture, one ran the risk of it blowing up.

Commissioner Vanderbeck suggested then perhaps they needed more information so that they could decide whether to change all the fixtures, if that would be more energy efficient, and, what the payback time might be. Mr. Henderson stated that sports field lights generally were a higher wattage and the time of use was low, so the payback time would be quite some time.

The Planning Director stated the other issue for discussion was vehicular canopies, and that was possibly a safety issue when one went from various light canopies into a dark area, and the time it took for the eyes to adjust to that change. He said the requirement had been when 25% of the fixtures were replaced they all had to be replaced, or every five years, whichever occurred sooner. Mr. Megginson said the Planning Board was recommending that the percentage be increased to 50%, so that if half were changed, then they all had to be brought up to standard.

Commissioner Vanderbeck stated what was to say that someone could just replace the lamps one at a time in order to avoid the percentage rule. Mr. Megginson said then they would likely not get caught until the five-year period came about, or whatever time period the Board chose to set.

Chairman Thompson stated he believed there was some legal issue regarding that time limit. Mr. Megginson stated he did not believe there was anything that would prevent the amortization over a period of time.

Chairman Thompson asked what the reasons were behind the Planning Board's recommendations on these two issues. Mr. Megginson stated the original draft required that when 30% of the lights had to be replaced then they all had to be replaced, but the Planning Board had recommended removing that percentage and that they be replaced as needed. He stated their seconded recommendation, regarding vehicular canopies, changed the percentage from 25% to 50%. Mr. Megginson said regarding the sports field lights, the issue was the cost involved; that is, the budgetary impact on the schools and the recreation department to replace the lights, which was why the Planning Board was recommending replacement only as needed.

Mr. Megginson stated regarding cost, the cost of a single canopy light would be about \$6,000 to bring it up to compliance. He added they would be taking readings of canopy lights using a light meter and would report the findings at the next meeting.

Commissioner Vanderbeck stated the new service station at Cole Park was already compliant with the lighting ordinance, noting the fixtures were flush and there was no glare. He said it served as an example of what all such stations could achieve. Mr. Megginson said they had contacted the station owners early on and since they knew a light ordinance was coming, they decided to comply from the outset. Commissioner Vanderbeck said it had made an even bigger difference than he had thought it would.

Mr. Megginson stated the next item, on page 7, Section 1.f.4.a, addressed decorative post-mounted fixtures; that this was one of those cases where both Duke Energy and Progress Energy provided service in one development; that acorn-type lights now existed in the Governors Club; that the Planning Board had addressed how to handle that situation; that the recommendation was that non-decorative post-mounted fixtures may be used but must be equipped with solid tops; and, without the solid tops one would experience light pollution to the sky above. He said there was some language regarding the requirement for an internal reflector which was not now available, and the Planning Board had made the recommendation that they be required when they were available to meet the cut-off classification. Mr. Megginson stated that the Planning Board was satisfied with the present regulations regarding security lights and had made no recommendations for change.

Mr. Megginson stated the recommendation was that the Board accept the recommendations, which would be brought back for consideration at the November 19, 2007 Board of Commissioners' meeting. He noted that Mr. John Henville-Shannon may have comments regarding how this might affect the Governor's Club.

John Henville-Shannon, Governor's Club representative, stated there was a fundamental issue associated with the transition in lighting, in that reflectors were available from Progress Energy but were not available from Duke Energy, which could have a significant impact during nighttime hours. He stated the issue was to try to have a uniform appearance that was not disrupted by the ordinance, such as if the fixture needed to be replaced it had to be replaced with the acorn-style, and the exceptions took care of that. Mr. Henville-Shannon said then there was the issue between the two companies where one can provide a reflector but the other could not; in that case, none should be required. He stated that would take care of the "sloppiness" of moving from where they were now to where they would like to be.

Mr. Henville-Shannon stated the other issue that was very profound and was an impediment to transition was the prevailing contract, which stated one had a liability if they moved from the configuration leased today to the new configuration, which was financially substantial. He stated if one could remove that penalty that would enhance the transition to the new configuration.

Commissioner Vanderbeck asked was it possible with the lamps available that the reflectors could be removed so that they would not be required until both energy companies were able to provide them. He said eventually the transition would have to be made.

Mr. Henderson stated the three words "added when available" were included in the draft, and asked was that referring to fixtures with the solid top or to the reflective shield. Mr. Megginson said he believed it was referring to the solid top, but had gotten the feeling today that it might be referring to the reflector shield although that was not the intention.

Sally Kost stated it was referring to the solid top, not the reflector shield.

Mr. Henville-Shannon asked about the longer term contract, noting that Duke Energy had a 20-year term. He asked was that considered non-standard. Mr. Henderson said that was correct. Mr. Henville-Shannon asked when one moves from what was now in the Governor's Club to the new product, would one still be held to the 20-year term. Mr. Henderson responded yes.

Commissioner Lucier asked was that communicated in writing or orally. Mr. Henville-Shannon stated it was communicated orally. Commissioner Lucier said if they had something in writing, they could respond by encouraging them to do something different. Mr. Henville-Shannon stated they would welcome that kind of support.

Mr. Henderson said the cosmetic look of Duke Energy's Deluxe acorn-style and Progress Energy's Masterpiece style were insignificant, but the contract issue would remain. Mr. Henville-Shannon stated there was an appearance issue during the daytime when the lights were off, and hopefully they would look no different at night when they were on. Mr. Henderson said he believed one would find that both models looked very similar in the daytime as well as at night. He said the only remaining issue was Duke Energy's 20-year contract.

Commissioner Lucier moved to agree with and to allow the Planning Department to move forward with the final drafting of the Planning Board's recommendations in their entirety and to obtain a letter from Duke Energy and respond to them from the Board of Commissioners asking them to consider something different than the current 20-year contract in order to meet the suggested November 19, 2007 deadline.

Bob Henderson suggested that the Board request that the cost to make this change for all the lights that Duke Energy serves be forwarded to the Governor's Club.

Commissioner Cross seconded the motion. The motion carried four (4) to zero (0).

Commissioner Lucier moved that a resolution of appreciation be prepared honoring the service of Mr. Bob Henderson and Mr. David LeGrys for their long-standing, tireless efforts and commitment to draft the ordinance and work with multiple stakeholders. Commissioner Vanderbeck seconded the motion. The motion carried four (4) to zero (0). A copy of **Resolution #2007-__ Honoring Mr. Bob Henderson and Mr. David LeGrys for their Service to Chatham County in Drafting the Lighting Ordinance**, is attached hereto and by reference made a part hereof.

Text Amendment to the Chatham County Zoning Ordinance: Consideration of a request by Chatham County for a text amendment to the Chatham County Zoning Ordinance, Section 10, Item 10.1, 10.2, 10.3 Residential Agricultural List of Permitted Uses specifically for public and private schools to reduce the double setback requirement to allow uniformity with the zoning district's minimum setback requirements

The Planning Director stated this text amendment was designed specifically for public and private schools to reduce the double setback requirement to allow uniformity with the zoning district's minimum setback requirements. He provided the Board with some history of how this had come about, noting that no one could determine why the setbacks for public and private schools had been doubled in the first place, but believed it was as much to protect the adjacent landowner from the school as it was to protect the school from the adjacent landowner.

Mr. Megginson stated that the proposed text amendment would set the standard at 40 feet from the front property line, which is 70 feet from the street center line, and 25 feet on the sides and rear; that the issue at this time were four modular classrooms at North Chatham Elementary School that met the 40 foot setback but not the 80-foot setback, which had initiated this text amendment; that the neighboring property owner had indicated this text amendment change would likely not negatively affect his property; the school had installed guard rails along the back side of the ditch just off the DOT right-of-way; and, the cost involved to force compliance with the current standards was included in the materials.

Mr. Megginson said the staff recommendation was to amend the ordinance as proposed; however, the Planning Board's recommendation was to have the mobile units moved over the December holidays to being them into compliance with the 80-foot setback.

Commissioner Cross asked was this the only school in violation. Mr. Megginson said yes. Commissioner Cross asked were they operating under an old CUP. Mr. Megginson said that was correct. Commissioner Cross asked if that CUP could be extended. Mr. Megginson said since they were now a permitted use within the district with standards, those standards would have to be looked at to determine that. Commissioner Cross asked if the units could be grandfathered in. Mr. Megginson said they did not meet the requirements to be grandfathered.

Chairman Thompson asked had a possible extension to the CUP been researched. Mr. Megginson said they had not looked at that. Mr. Whiteheart stated they had discussed the possibility of a variance, which would work if granted. He stated that he and Mr. Megginson would check into the possibility of extending the CUP.

Commissioner Cross stated if they had to move them, they needed to do something to postpone it until the summer months, adding the Christmas break was not a good time to attempt that.

Gerald Totten, School Board Member, stated that they acknowledged that when the ordinance came into being, they had not complied with it; they had complied with the initial agreement pending this hearing, which was to install a guardrail; that the units had been moved back 70 feet from the road; that they had water and sewage concerns that would be difficult to solve if the units were moved further; and, if the text amendment was not granted he did not know where they could move the children, at least until the new middle school was built.

Commissioner Lucier asked how many students were at the school. Mr. Totten stated over 850, adding it was bursting at the seams since it was built to hold 623 students. Commissioner Lucier stated whatever the Board did, they could not create a larger problem than what they were attempting to solve by disrupting the students.

Mr. Megginson suggested that instead of allowing uses to comply with the setback, the Board could include language to say "except for temporary buildings." He stated that since the mobile units would be removed once the new middle school was built, these units could be considered temporary and allowed a lesser setback.

Commissioner Lucier asked if the units now had a 70-foot setback from the street center line, but 110 was the requirement. Mr. Totten responded that was correct. He stated they were guilty of non-compliance, but were asking for some solution for the students. Mr. Totten added that if they were forced to move the units, they would likely have to come before this Board to ask for financial help.

Commissioner Vanderbeck stated he was sorry this had happened, but he was hard pressed to compromise the safety of the children; that the ordinance had been instituted for their safety; that he was not qualified to say that if they compromised on the original formulation that they would not be compromising the children's safety; he did not like the idea of having to spend that money; and, unless someone independently could say that the safety of the children would not be compromised he believed the units had to be brought into compliance.

Commissioner Lucier stated the cost of \$87,000 seemed like a lot, but not when compared to the injury of a child. He said they had been lucky so far, but they needed to find some remedy that took all of these issues into consideration. Mr. Totten stated that DOT had indicated that with the guardrail in place along with the ditch, they were relatively comfortable that this temporary arrangement was acceptable. To further address the safety issue, he said, the School Board had requested and DOT was considering reducing the speed limit on Lystra Road from 55 mph to 45 mph.

Commissioner Vanderbeck said school properties were insured, and he believed the insurance carrier should be contacted to get their opinion on any liability. He said if the liability issue could be satisfactorily addressed, he would be fine with that.

Commissioner Lucier stated he did not believe the option of moving the units over the Christmas break would work; if they tried to enforce that it would likely create a safety issue because they would not likely be ready before the children returned; and, he agreed they should consider this at their next meeting and allow the County Attorney and the Planning Director to gather more information.

Rita Spina stated that she drove Lystra Road and Jack Bennett Road frequently, and the increase in trucks on those roads over the last few years was incredible. She stated that needed to be kept in mind when talking about the safety of the children.

Commissioner Lucier moved to defer a decision on this matter until the Board can obtain further information on the insurance liability and any other ordinance issues/analysis that Mr. Whiteheart and Mr. Megginson will have available at the November 5, 2007 Board of Commissioners' meeting and that any fines be suspended during that period until the issue is resolved.

Ms. Spina requested that the Sheriff's Office be contacted to obtain information regarding the number of traffic accidents that may have occurred in the vicinity of the school. She stated she was interested in determining if the number had increased over the last few years.

Commissioner Cross asked had it been determined why the doubling was included in the ordinance. Mr. Megginson said it had been in the ordinance for over twenty years, and it applied to daycare centers as well.

Sally Kost, Planning Board Chair, stated that in her experience the cost of \$87,000 seemed somewhat high. She urged the Board to determine what time frame was needed to move the units and set them back up for use, noting she believed it could be done quickly. Ms. Kost said the Planning Board's concerns were centered on the issue of safety.

Commissioner Lucier stated it seemed to him that any time a trailer or pod was put up, it always took longer than anticipated. Mr. Totten said much of the \$87,000 cost was to go towards utilities, walkways, steps and ramps.

Commissioner Vanderbeck seconded the motion. The motion carried four (4) to zero (0).

BREAK

The Chairman called for a short break.

GRANTS WRITER

Upon returning from the break, County Manager Charlie Horne stated they had retained the services of another full-time grants writer.

Renee Paschal introduced Lisa West and provided some brief comments on her background and interests.

EAST CHATHAM RESCUE SQUAD

East Chatham Rescue Squad Franchise and Contract: Consideration of a request to cancel the East Chatham Rescue Squad franchise and contract

The County Manager stated over a period of time they had talked with the East Chatham Rescue Squad regarding the franchise and contract, and several issues had arisen; prior Boards had annually designated \$30,300 to the Rescue Squad; and, some issues had arisen regarding auditing and reporting as well as other issues.

Tony Tucker, Emergency Operations Director, stated that over the years, volunteers in Chatham County had saved the County millions of dollars in salaries and benefits; that as times changed the volunteer pool had dropped; that this drop had begun in the 1980's; that the Rescue Squad now had more of a burden placed on it than it could fulfill; and, it had been determined that it was time for a change.

Mr. Tucker provided some information on the history of EMS services in the County and explained how they had arrived at this point; he quoted some statistics of nighttime calls (6 PM to 6 AM) from January through March, stating that of 39 calls, 27 were responded to, resulting in 31% of the calls being missed; and, that the standard was that 95% of the calls should be responded to. Mr. Tucker stated the Rescue Squad had been notified in February, by letter, that they should be responding to 95% of the calls.

Mr. Tucker said this past September, there had been 33 nighttime calls, 6 of which were for ballgames that were not counted; of the 27 calls left, 10 were responded to, resulting in 37% not being responded to. He stated it had come to the point that the volunteers were no longer able to cover the necessary services, and believed that the \$30,300 would be better spent by the Fire Department, whose members were trained as First Responders.

Mr. Tucker said that his recommendation was to cancel the franchise and cancel the contract with East Chatham Rescue Squad.

Michael Brigman, representing the East Chatham Rescue Squad, stated he had served on the Rescue Squad for eleven years; that he was concerned about some of the history as reported by Mr. Tucker; that they had experienced a high turnover rate among its members; that they were attempting to get their new volunteers trained as quickly as possible; that an audit had not been done for several years because a former Chief had been told that as long as an outside third party was keeping the books, an audit was not necessary; that the present Chief had an audit performed for 2005-06, and an audit will be done for 2006-07 shortly; that they were attempting to improve on their statistics, but that took more funding for training; and, the only complaint they had received in the last year involved a squad member driving in an unsafe manner, and that person had been terminated.

Mr. Brigman stated they had received a letter from Mr. Tucker that had stated they were responding to only 52% of the calls, but that figure included days, nights, weekend and holiday calls lumped together. He said they were not supposed to be held accountable for daytime calls. Mr. Brigman said all they were asking for was more time to get that training in place. He said many of the members had been performing this kind of service for many years and were dedicated to it.

Chairman Thompson asked what their response was to just nighttime calls. Mr. Brigman said the percentage would go up somewhat if the daytime calls were not included.

Chairman Thompson said based on the information Mr. Tucker had provided, it appeared he was implying that the County should cover the paid EMS. Mr. Tucker said yes, noting that many times paramedics could not reach a victim of an accident because of the location, such as in the woods, in which case they would need the services of the Fire Department or First Responders. Chairman Thompson said then there would not be a need for a voluntary service such as this as a first responder in some cases. Mr. Tucker said the EMS service did not perform rescue or extrication.

Chairman Thompson asked if the Board followed his recommendation today, there would not be a gaping hole put in the provision of services. Mr. Tucker said no, because the Fire Department had that covered. Chairman Thompson asked if a person wanted to volunteer, were there other similar groups that would benefit from that. Mr. Tucker said there were two other rescue squads in the County, one in Goldston and one in Siler City.

Mr. Brigman noted a person would have to live in those areas to be able to volunteer. He added that the rescue squad provided services at the Thursday and Friday night football games and on Saturdays for Little League games, free of charge.

Commissioner Cross stated that the Board's first priority was the health, safety, and welfare of its citizens, so whatever they did they needed to ensure consistent fire and EMS services that they knew were dependable. He suggested that further discussion should take place in Closed Session since it was a personnel matter.

Mr. Brigman stated that several years ago they had talked with Mr. Tucker about what it would take to put on part-time paid employees to cover daytime hours, and they were told those employees would have to be paid out of the \$30,300 allotment they were receiving now, which was not possible. He said that allotment barely paid for utilities, insurances, gas for vehicles, and training.

Commissioner Lucier stated he would like to see more information, for example, records from Emergency Services, such as what portion of the total calls the County received that the Rescue Squad respond to, how many the Rescue Squad responded to alone, and those sorts of things. Mr. Tucker said they would not respond alone now because they were a paramedic

County, who were required to respond to all medical calls. He said the statistics he had provided earlier for nighttime calls had isolated the East Chatham Rescue Squad's responses to calls; that is, the total number of calls they were paged to respond to and the actual number they had responded to, which was 10 out of 27.

Mr. Brigman stated those figures were for the month of September only, which was a very poor month for them; they had had several years where the numbers were very high.

Chairman Thompson stated his question would be if the Rescue Squad was having one or two bad months or was there persistently poor performance. Mr. Tucker said looking at September 2006 to November 20, 2006, the total of all calls was 132 with no response to 51 of those. He said the nighttime calls totaled 65 and 19 of those had no response. Mr. Tucker said from November 20, 2006 to January, 2007, there were 144 total calls, with 69 calls with no response, and 13 of those were nighttime calls (weekends excluded). He said from March 2007 to August 2007, there were 312 calls with 152 with no response; for the month of September, they had missed 61% of the nighttime calls.

Mr. Brigman said many of their members did not have radios and that some only carried a pager.

Mr. Tucker said for March 2007, 58 calls were paged, and East Chatham Rescue Squad responded to 35; for April, 39 calls were paged and 27 responded to; and, for May 54 calls were paged and 23 were responded to.

Mr. Brigman noted that these people were volunteers and were not being paid, but the Fire Department employees were paid.

Darrell Griffin stated that the Fire Department had become a paid department because of the number of fire calls, not EMS calls, and he wanted that clarified.

Finance Officer, Vicki McConnell, stated that they had received a 2006 audit two weeks ago; the County had never given the Rescue Squad permission not to provide financial statements but they had just not responded; because of problems experienced in the past the County had required an outside bookkeeper but she had recently been removed; and, the audit noted a "related party transaction", in that the Rescue Squad had paid a former Board member \$4,346 for gas and squad supplied during the year.

Mr. Brigman noted it was not a former Board member but a member, who was no longer with the Squad.

Chairman Thompson stated this was getting into a personnel matter that needed to be discussed in Closed Session, and at this time they needed to decide whether there was more information needed or was the Board satisfied with that had been received, and therefore a decision would be made.

Commissioner Lucier asked what this would mean in terms of the County's insurance if they cancelled the contract. County Manager Charlie Horne stated they would have to follow up in terms of the insurance, but basically they had coverage because it would be shifted to a different unit, that is, the Fire Department.

Commissioner Lucier asked was there any enhanced liability if the County did not have the East Chatham Rescue Squad, in terms of insurance rates. The County Manager responded he would have to get a fixed response from the insurance carrier, but based on their experience up to this point it would lead to the conclusion that they would be more secure in what they were proposing than to do otherwise.

Ms. McConnell stated that if the contract required a 95% response and they were not receiving that, then that was a liability issue, and, the Rescue Squad was in non-compliance with the contract.

Commissioner Lucier stated he wanted to know what the liability issues would be if they cancelled the contract and what they would be if they did not cancel it and the response rate stayed well below the 95% response rate.

Chairman Thompson stated it may be that those questions needed to be answered before the Board made a decision. He noted there also appeared to be some issue with the area the Rescue Squad served. Mr. Tucker said it was basically the area around Pittsboro, but, if they could provide a back-up ambulance with personnel, they could cover from the Harnett County line to the Orange County line. He said on a daily basis, the responses being talked about here were from Jordan Lake, Highway #87 towards the Silk Hope area, or Castle Rock Farm Road, over to Pleasant Hill Church Road; and that all of that area was already covered by fire departments in the north and south.

Francie Henville-Shannon, a member of the public, stated it had been said the September responses were "terrible," and the Rescue Squad was shorthanded during that time. She asked had they informed Mr. Tucker that they were so shorthanded that they could not respond to calls, or, was he expecting the Rescue Squad to respond but they were no shows. Mr. Tucker stated that someone would always respond, because the Fire Department would always be there.

Mr. Brigman stated they had hoped to have people trained and ready to serve, but that had not happened.

Chairman Thompson suggested delaying a decision on this issue to allow the County Manager time to obtain answers to the Board's questions.

Commissioner Vanderbeck agreed, and suggested that perhaps the numbers and dates could be displayed on a graph for easier viewing and comprehension.

Edgefield Subdivision: Discussion of a recommendation from the Board of Health to fine Edgefield Subdivision LLC \$90,000.00 for violations of the Erosion and Sedimentation Control Ordinance

The County Manager stated that the Board of Health, due to soil erosion and sedimentation issues, was recommending to the Board of Commissioners that they levy a fine of \$90,000.00 against the Edgefield Subdivision, LLC in southwest Chatham County for violations of the Soil Erosion and Sedimentation Control Ordinance. He stated that County Attorney Whiteheart had been the Board of Health's attorney during that time.

County Attorney, Kevin Whiteheart, stated that Mr. Willis had been notified in early January of this year by the Division of Water Quality that there appeared to be some land disturbing activity on a piece of property located on Devil's Tramping Ground Road; Mr. Willis had visited the site and discovered there was indeed about 30 acres of land that had been timbered, stumped and cleared; photos were taken and research conducted which determined that no permits had been issued; that this land was part of a larger track of land of 467 acres owned by Edgefield Land & Timber Corporation and Melton E. Valentine, III; and, those two parties had purchased this property in September of 2005.

Mr. Whiteheart stated that Mr. Willis issued a Notice of Violation on January 8, 2007, and cited them with four violations of the Chatham County Soil Erosion and Sedimentation Control Ordinance:

- No erosion and sedimentation plan had been filed prior to the land disturbing activities
- Failure to provide adequate ground cover on the property that had been exposed
- Insufficient measures to retain the sedimentation on site
- Inadequate stream buffering, in that no stream buffers were provided

Mr. Whiteheart stated shortly thereafter, Mr. Willis met with the owners of the property on January 11, 2007 to discuss the Notice of Violation, and at that time both men had stated that the property was being timbered as a timber operation; that the property was not a subdivision; and, that the property was not for sale. After further investigation, he stated that Mr. Willis discovered that the 467 acres was listed on a website for Valentine Land and Timber and the land was described as a log cabin community consisting of 21 lots, with a listing price of the property for \$2.1 million. Mr. Whiteheart stated there was an initial survey of this property recorded on September 22, 2005 and it did not have boundaries showing any lots; however, about eight months later in May of 2006 there was another plat recorded that divided the 467 acres into 21 lots.

Mr. Whiteheart stated that the Division of Water Quality had issued a Notice of Violation for disturbance of streams and stream buffering areas and adjacent wetlands on the property. He said Mr. Willis had numerous conversations with the engineers, agents and the owners of the property in an attempt to get them to come up with an erosion control plan and to get them to put in certain erosion control devices.

Mr. Whiteheart stated that on April 16, Mr. Willis reissued the Notice of Violation. When he asked why, Mr. Willis had indicated that the first Notice of Violation had been issued to Edgefield Land & Timber, in care of Mr. Valentine, and at that time he was not aware that those were two separate entities; therefore, the second notice was an attempt to correct that. Mr. Whiteheart said after that, there were a number of meetings between Mr. Willis and Edgefield's attorney, agents and others. Nevertheless, he said, there was no activity in terms of submitting an approvable plan nor was there any activity to make any significant improvement to the erosion problems on the disturbed acreage. Mr. Whiteheart said on May 2, Mr. Willis issued a Continuing Notice of Violation resulting from his visit the day before where he had inspected the site and found no official improvements.

Mr. Whiteheart stated finally, after several erosion control plans were submitted, found inadequate and rejected, Mr. Willis felt it was time to issue a Civil Penalty, so on June 26 he recommended to Ms. Coleman, as the Chatham County Health Director, to issue a Civil Penalty for \$90,000.00; Mr. Willis used the Chatham County Soil Erosion and Sedimentation Control Ordinance's computation formula and factors to arrive at that figure; and, the violation time was for a sixteen-day span between April 16 when the revised Notice of Violation was sent and May 2 when Mr. Willis issued the second Notice of Violation.

Mr. Whiteheart stated the issue before the Board of Health was during that period of time, between January 5, 2007 and May 2, 2007 did Mr. Willis conduct himself properly; did he send out the proper notices; did he make the proper findings; and, was there a legal defense that Edgefield had to mitigate these violations. He said the Board, after hearing all the evidence, had come back with a unanimous vote that Mr. Willis had indeed conducted himself properly, that the four violations noted had been proved, and that there was no legal defense to any of those four violations. Mr. Whiteheart said the Board of Health had then made a recommendation to the Board of Commissioners to uphold the \$90,000.00 Civil Penalty assessment, which was signed on September 19 and transmitted to the Board of Commissioners along with all exhibits introduced at the Board of Health hearing.

Commissioner Lucier asked for an explanation of how the \$90,000.00 penalty was calculated. Mr. Whiteheart stated there was a provision in Section 20.A.2 of the Soil Erosion and Sedimentation Control Ordinance that talked about the method of assessing violations, noting there were five factors:

- the degree and extent of harm caused by the violation
- the cost of rectifying the damage
- the amount of money the violator saved by non-compliance
- whether the violation was committed willfully
- the prior record of the violator in complying or failing to comply with this ordinance

Commissioner Lucier asked how many violation days were there. Mr. Whiteheart responded sixteen days. Commissioner Lucier asked what the multiplier was to reach \$90,000.00, noting that was just over \$5,600 per day. Mr. Whiteheart said the third factor was the amount of money the violator saved by non-compliance, and that was a single number.

Jim Willis, Soil and Erosion Control Officer, stated that the grading without a permit violation was figured at \$5,000 per day for the entire sixteen days; that the violation related to insufficient measures to retain the sediment on site was assessed at a one-day fine of \$5,000; and, that the buffer issues and ground cover issues were assessed at \$2,500 each for one day, for a total of \$90,000.00.

Commissioner Lucier asked why the penalties were assessed for only sixteen days when the violations went on for much longer. Mr. Willis stated this was an ongoing process in that no permit had been issued. He said he had mistakenly directed the original Notice of Violation to the wrong party, so in April a Notice of Violation was issued to both owners which was then followed up on May 2 with a Continuing Notice of Violation. Mr. Willis said that was why they

were looking at only the sixteen-day period. Commissioner Lucier noted the owners had gotten off easy because of that. Mr. Willis agreed.

Holly Coleman, Chatham County Health Director, confirmed that the Board of Health was making the recommendation to the Board of Commissioners to assess the fine as Mr. Willis had described.

Paul Messick, Attorney representing Edgefield Land & Timber Corporation and Melton E. Valentine, III in connection with the penalties assessed for violations of the County's Soil Erosion and Sedimentation Control Ordinance, stated that he knew of no other occurrence of penalties being assessed to this degree. He stated he had participated in the drafting of this ordinance two years ago, and knew what it had intended to cover, and that was to cover situations that the State had previously been dealing with.

Mr. Messick stated obviously Mr. Edgefield and Mr. Valentine had not taken care of business as they should have, and there was no excuse for that. But, he said, over the last month or so there had been significant changes in the situation that he would like to describe: the primary purpose of the ordinance was to protect the land, and whatever penalty was assessed would not help the land or rectify the situation; the owners were involved in a serious and concerted effort to remediate the problems; to some extent they had been fortunate that because of the drought the situation had not gotten any worse; temporary measures had been in place for some time to make sure the situation did not deteriorate any further; the DWQ was involved in this regarding the stream and there was an ongoing penalty proceeding with DWQ as well as Chatham County; the owners and representatives had met with DWQ and they were in the process of developing a remediation plan for the stream and the damage done to the stream by the sediment; DWQ had given the owners 4 weeks, until the early part of November, to come up with the remediation plan, and the penalty proceeding was stayed until that time expired; and, at that time DWQ would re-examine the issue and determine what it would do regarding its penalties in the amount of \$69,000, which was significant.

Mr. Messick suggested that the Board defer taking any action on this recommendation at least until DWQ had a chance to rule on its part. He said the remediation efforts were ready to go forward; the issues with the soil was ready to go forward as well; it was anticipated that the final, revised application for the erosion control permit would be ready for submittal to Chatham County within the next two weeks; the owners had retained the services of a well-known landscape architect to help with the remediation plan; and, the owners were making every effort to see that the problem was corrected and that it would not be repeated.

Mr. Messick stated this was a large track of land, and the owners wanted to correct the problems and wanted the time to do that. He said if the Board would grant them that time, they could then determine if that \$90,000.00 fine was appropriate under the circumstances. Mr. Messick said upon his review of the record, he did not know that the factors that the Board of Health and Mr. Willis had taken into consideration was supported by that record, so to say that \$5,000 a day for sixteen days was an appropriate penalty should be re-examined. He asked that the Board allow the owners to go forward with their remediation plan and see what they could accomplish, and that action on the recommendation for the fine be deferred until the second meeting in November.

Commissioner Vanderbeck asked for what reason were they being asked to defer this until DWQ made its decision. Mr. Messick said that DWQ had given the owners four weeks, until November 8, 2007 to develop a remediation plan, so if DWQ had some of its issues resolved that should take care of some of Chatham County's issues as well, since they were interconnected.

Commissioner Vanderbeck stated that was true, but it appeared this was an ongoing issue in that it was first explained that it was not a development but they were just timbering, which came under best management practices. He stated he was happy to see that the owners were doing everything possible to reverse the effect of what was done, but believed they were getting off cheap. Commissioner Lucier stated perhaps the County needed to do a better job of educating the public, and these types of fees could help to do that.

Mr. Willis commented that the fine would go to the schools, not to the County. Commissioner Vanderbeck stated that was even better.

Chairman Thompson asked how long these parties had been in business. Mr. Messick noted this was the first time the two parties had done business together, although both had been in business separately for some time.

Chairman Thompson stated then it was safe to assume that they probably new the rules and regulations. Mr. Messick stated that the rules and regulations were in their defense, because there were exceptions in the Ordinance for agriculture and others. He stated he was not here to excuse what the owners did or did not do, but would like the Board to consider allowing them to fix the problem. Mr. Messick said this was a substantial amount of money, and there needed to be some discussion of that.

Commissioner Lucier asked when the first notification was sent. Mr. Willis responded January 8, 2007 of this year. Commissioner Lucier said he understood there had been little if any response until this summer. Mr. Willis stated he had met with both owners on January 11, 2007 to discuss the issue, that is, what would be required. He said he had met with various other representatives after that time, including engineers, about what needed to be done before a plan was submitted. Mr. Willis reiterated that the period of the fine was April 16 to May 1.

Mr. Messick noted that the owners had serious issues with their engineer and he was no longer on the project. He acknowledged that did not excuse what had happened, but the owners were making concerted and serious efforts to correct the problems and had now hired a competent engineer.

Chairman Thompson asked if Mr. Willis had to initiate all the action that had taken place, or had the owners of the property participated by communicating what they efforts were to bring the property into compliance. Mr. Willis said there had been an exchange back and forth about what would be required.

Mr. Messick commented that most people did not ignore the regulators. He stated this Board had nothing to loose by waiting a few weeks to see what was done to remediate the issues.

Brian Sewell, who had worked on this project since the end of April, stated he wanted to respond to the comment that nothing had been done to address the issues. He said since he came in on the project over \$25,000 had been spent on straw, seed, a silt fence and labor, and to date the owners had spent almost \$175,000 on engineers, surveyors, attorneys and other things to try to bring the property into compliance. Mr. Sewell said the owners were taking this seriously and at tremendous expense to try to correct the problems. He said with the new team on board, they had made great progress over the last month, likely more than had been made over the previous seven months.

Mr. Sewell said the property was intended to be a cattle farm, and DWQ was aware of that. He said the Army Corp of Engineers had visited the site and conducted an assessment, and had decided not to assess any penalties.

Chairman Thompson asked could anyone tell him whether or not the property was up for sale as a subdivision. Mr. Messick stated it had been on Mr. Valentine's web page for sale, but that did not violate the subdivision regulations, and no one else had been involved in that.

Chairman Thompson said the problem he was having was that it seemed that there had been three or four months of blatant disregard of complying with the regulations, and he could not figure out why. He said if you look at it from the standpoint of the fines that were recommended to be levied it would serve as a deterrent to others who might assume Chatham County was "easy." So, he said, it was something for the Board to consider. Chairman Thompson said he believed in the Board of Health's eyes, this was a blatant disregard of the regulations, and they needed to send a message that the County would not tolerate it.

Commissioner Cross asked when the idea of a farm plan for the acreage come about. Mr. Sewell said he believed in April. Commissioner Cross said then it was "after the fact." He asked how long they had been in business. Mr. Sewell said he did not know.

Ms. Coleman commented that prior to taking any additional measures the Ordinance required that a plan be submitted and be approved by the Board of Health prior to any

groundbreaking taking place. She stated the property had been advertised for sale with a plat, even though that had been on the Internet. Ms. Coleman said there had been concern expressed by Mr. Messick regarding waiting for DWQ to resolve its matters, but that was a totally separate issue in that the violations were different under State rules.

Commissioner Lucier moved, seconded by Commissioner Vanderbeck, to support the Board of Health's recommendation for the \$90,000.00 violation of the Soil Erosion and Sedimentation Control Ordinance by Edgefield Land and Timber Corporation and Melton E. Valentine, III.

Chairman Thompson stated he understood that \$90,000 was a lot of money, but reiterated that this appeared to be blatant disregard of the rules and regulations by the owners. He stated they needed to send the message to anyone wanting to do business in Chatham County that such disregard of the rules and regulations would not be tolerated.

The Chairman called the question. The motion carried four (4) to zero (0).

ADJOURNMENT

Commissioner Cross moved, seconded by Commissioner Vanderbeck, to adjourn the Work Session. The motion carried four (4) to zero (0), and the meeting was adjourned at 4:57 PM.

Carl E. Thompson, Sr., Chairman

ATTEST:

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