

**MINUTES**  
**CHATHAM COUNTY BOARD OF COMMISSIONERS**  
**WORK SESSION**  
**NOVEMBER 19, 2007**

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The Board of Commissioners (“the Board”) of the County of Chatham, North Carolina, met in the Agricultural Building Auditorium, 45 South Street, located in Pittsboro, North Carolina, at 2:00 PM on November 19, 2007.

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

Absent: Chairman Carl Thompson

The meeting was called to order by the Vice Chairman at 2:04 PM.

Vice Chairman Lucier stated that Chairman Thompson had surgery last week and was on a leave of absence for a few weeks.

*Work Session*

1. **Reuse Water/Library Update**
2. **Financing Capital Projects; Options:**
  - A. Increase Impact Fee
  - B. Prepare update on 1999 Impact Fee Study
  - C. Land Transfer Tax
  - D. Other
3. **Business Campus Status Discussion**
4. **Discussion of Corridor Rezoning:**
  - A. Range of zoning 1000 feet minimum to 1500 feet maximum/using property boundaries, if applicable
  - B. Uses existing businesses/industry and expansion
  - C. Buildings that were businesses/industry but are now closed
  - D. Owners who have businesses/industry planned but no building yet in place: proof of intentions
5. **Water Supply Watershed Ordinance Discussion**
6. **Environmental Assessment Options for Subdivision Regulations and Zoning Ordinance**
7. **Closed Session:** Legend Oaks, Phase III and Personnel

**REUSE WATER/LIBRARY UPDATE**

Dr. Hal House provided a PowerPoint presentation on the reuse water options for the Library, and introduced members of the design team; he shared concepts on the plans to recycle water; he noted the opportunities and challenges in Chatham County; he emphasized their focus towards on-site treatment and reuse of water and the electronic network of monitoring; he explained why education about the system was important; that they would be managing nitrogen and phosphorus; and, he explained how nature cleansed water to reuse standards.

Dr. House displayed a number of photos of other systems for which they were responsible. He explained that their system used plants to cleanse the water; how the monitoring was conducted; that such systems were an educational resource; and, how the process of dry and wet was used to manage the nitrogen and phosphorus as well as how ammonia was managed. He noted some of the issues Chatham County would be dealing with in the future, including growth pressures and the resulting water demand estimated to be 1.65 billion gallons by 2020, including all metropolitan areas. Dr. House said one option to meet that demand was the reuse water option, which was just like having another reservoir.

Dr. House stated one issue the Board was looking at was how to manage wastewater, and he shared their strategy using the Library project as an example. He explained that adding a

reuse water line to either Highway #15-501 or US Highway #64 would provide a tremendous opportunity to connect a growing population in Raleigh, Chapel Hill, Pittsboro and others through the use of reuse water. Dr. House suggested a system of taking treated water and turning it back into a reuse network, and provided examples of how that might happen. He explained the reuse options explored for the Library: cooling towers, irrigation, agriculture, and toilet flush irrigating; and how reuse water could be used to grow crops in Chatham County.

Dr. House displayed the plans for the layout of the library, and described the process they would use to manage the wastewater on site and how reuse water would be stored and used. He displayed a plan view of the treatment part of the system and pointed out various features of that system including the rainwater capture system and how the system would cleanse 5,000 gallons of water per day; he explained how much water could be captured from the roof of the building during a one-inch rainfall; he explained how the cost of the system was determined; that for the Library the cost was estimated at between \$30 and \$50 per gallon for a system cost of about \$250,000; and, that the system would pay for itself over a 30-year period.

Mr. House stated that the library was a wonderful opportunity for a reuse water system and to educate others about such systems. He emphasized the options for rainwater capture and the use of wastewater as a liquid fertilizer for agriculture.

Vice Chairman Lucier stated the estimate was one-cent per gallon in terms of the payback, and asked what they paid for water now. Dr. House replied the price now was one-cent per gallon. Another member of the design team stated that one-cent per gallon was what it would cost for a residential consumer, and believed the Library's cost would be one-cent per gallon using Chatham County rates.

Vice Chairman Lucier asked about maintenance costs. Dr. House stated once every five years the septic tank would have to be pumped out at a cost of about \$200; any pump gathering system would have to be replaced every three years at a cost of \$400; the system would have to have an operator at a cost of about \$700 per year; and, landscape maintenance would cost about \$100 per month. Dr. House suggested that this would provide an opportunity for the community college to add to its curriculum the training of operators for such systems as well as how to maintain small wastewater systems, with the Library system used as a training tool.

Vice Chairman Lucier agreed with the concept of using it as an education tool. He said it was one thing to use reuse water at the Library, but another to talk about running reuse water through a pipe system, noting it would likely be very expensive. Vice Chairman Lucier suggested that if other communities were on board with such systems then perhaps the costs could be shared. Dr. House stated that was an important consideration, noting that on average the cost of a 3" reuse pipe and laying it in the ground was \$15 per linear foot. He said the cost of laying an 8" sewer line was closer to \$100 per foot.

Commissioner Barnes stated that was very close to the cost of running a normal water line. Dr. House said when moving clear water the cost went down; when moving water with solids the cost went up.

Commissioner Vanderbeck asked if they could identify any partners in this project, such as teaming up with Central Carolina Community College (CCCC) or the State to do this program. Dr. House stated it may be possible, adding he had held many conversations with the State in terms of their interest in what was being proposed here; the State was interested in reuse water for food crops and would very much like to see a pilot program somewhere in the State as a starting point; and, the State was also interested in the possibility of using reuse water for chickens, cows and other livestock.

David Hughes, Public Works Director, stated from a staff perspective, that was certainly feasible.

Commissioner Vanderbeck stated he did not believe it would take long, in the context of droughts and global warming, to see how valuable a project this could be; that it was ridiculous to be using drinking water to wash cars and other things, and the sooner they got on board with that the sooner they would be ahead of the curve; that they had a full-time grants coordinator that could help to work on these issues; that there may be businesses and others who were interested

in such a project; and, there were likely other possible partnerships. Dr. House noted there was also a system of using crushed brick to clean water.

Commissioner Vanderbeck stated that material could be retrieved from the landfill. Dr. House agreed, noting that concrete, cans and glass could also be used to cleanse water and it would keep them out of the landfill. He stated the Board would receive a written communication of the presentation made this evening, and that they needed some guidance from the Board in terms of how to proceed from this point.

Vice Chairman Lucier stated the Board had decided to move forward, at least at this point, with the library project, and build that into the next round of cost estimates and looked forward to getting that information; and, Mr. Hughes would be looking at future water and sewer needs, and the Board looked forward to his comments as well.

Commissioner Vanderbeck asked if there was a time sensitivity in terms of the library project as a whole. Mr. Louis Cherry, Architect, responded yes, noting they were already into their final construction document phase with the work scheduled to be completed in February 2008; and, that they needed to incorporate the technical resolution of this as quickly as possible.

Vice Chairman Lucier stated it was his understanding that the Board had already agreed to it, and asked if something else was needed. County Manager Charlie Horne stated that budgetarily, it would need to be fleshed out, but the Board had agreed to move forward with the modeling. Vice Chairman Lucier said then nothing was needed to be approved today. Mr. Horne stated that was correct, that they only needed to determine the estimated cost.

Mr. House stated they looked forward to providing the Board with more details including budgetary information as they moved forward. He stated that he would provide the information to the County Manager so that it could be provided to the Board.

Vice Chairman Lucier stated they were all enthusiastic about the project, and encouraged them to move forward.

### **FINANCING CAPITAL PROJECTS**

Vice Chairman Lucier stated that on December 17<sup>th</sup>, they would hold a work session regarding the capital projects for the coming fiscal year, but today they needed to look at options regarding revenues for the capital projects; that there was a possibility of increasing the impact fee from \$2,900 to \$3,500 allowed as the maximum; that they could also request the updating of the 1999 impact fee study to see what would be the maximum allowable from the new study; and then they could consider whether or not or when to put the Land Transfer Tax on the ballot.

The County Manager stated the intent of this discussion was to provide some guidance to the staff as to what options the Board wished to consider as revenue sources. He stated they had budgeted to do the new impact fee study, but that process had not yet been started; and, the Board also had the option on December 17<sup>th</sup> to defer projects.

Vice Chairman Lucier suggested starting the discussion on the possible updating of the 1999 impact fee study.

Commissioner Cross stated when looking at what was going on in the County now as compared to 1999, a new study was warranted.

Vice Chairman Lucier stated they had already identified the need for a new school that did not currently have funding. Vicki McConnell, Finance Officer, stated that was correct. Vice Chairman Lucier said that did not leave too much of an option.

Commissioner Barnes asked if the impact fee was increased from \$2,900 to \$3,500, how much revenue would result from that. The Finance Officer responded she did not know. The County Manager stated they had estimated it at \$600,000 to \$700,000. Ms. McConnell stated the revenue from impact fees was coming in below what was projected when they did their financial plan, since building was slower than projected. She said because it was slower, the revenue was less, so they had to use lottery proceeds to pay the debt. Ms. McConnell stated her conservative

estimate and her contingency had already disappeared, so she was not sure the increase to \$3,500 would fund more schools; it may fund only what they now had.

**Impact Fee Study:**

Commissioner Barnes moved, seconded by Commissioner Vanderbeck, to perform an Impact Fee Study. The motion carried four (4) to zero (0).

Commissioner Vanderbeck asked how long the impact fee study would take if they began the process immediately. The County Manager replied if they started immediately, it would likely be April before the report was submitted.

Vice Chairman Lucier stated the other issue was if they wanted to leave the impact fee at \$2,900 for the time being or consider raising it to \$3,500.

Commissioner Vanderbeck stated their options appeared to be somewhat limited since they would have to build a school that had no identified funding source; in the poll that was done several months ago, it seemed that the general consensus was that funding for schools should come from the impact fee; that during the last election there appeared to be a feeling from residents that newcomers should pay; and, that it was not his funding of choice, but it certainly should be considered.

Commissioner Cross stated he did not like the school impact fee because it had no basis; however, they were in the position of having to build a school and having no funding.

**Impact Fee Increase:**

Commissioner Cross moved, seconded by Commissioner Barnes, to increase the School Impact Fee from \$2,900 to \$3,500.

The County Manager asked when that increase would go into effect, and suggested January 1 or February 1, 2008.

Vice Chairman Lucier asked if that was the earliest they could reasonably expect it to be implemented. The County Manager stated they needed to determine what applications were already in process and would be grandfathered in.

Commissioner Cross suggested that anyone buying a permit after January 1 would pay the new fee.

Vice Chairman Lucier stated that was the normal way to do it and they should proceed in that way. He agreed it was not his funding of choice, but they had little choice to fund the schools and would support having it effective January 1<sup>st</sup>.

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

Planning Director Keith Megginson stated there was more than one impact fee, such as for single-family and multi-family, and said that in the past when one impact fee was changed they all were changed proportionally.

Vice Chairman Lucier stated if those numbers could be determined tonight, the Board would consider it. Mr. Megginson stated he would get that information.

**Land Transfer Tax:**

Vice Chairman Lucier asked when the Land Transfer Tax could be put back on the ballot.

Commissioner Barnes stated he believed they should defer this discussion to a later time.

Vice Chairman Lucier agreed there was a lot to discuss, including whether or not to put it back on the ballot, and if so, when.

Commissioner Barnes and Commissioner Cross agreed.

**Other:**

The County Manager stated he did not know if the Board wanted to discuss other projects at this time; that may need to be deferred or wait until the discussion on December 17<sup>th</sup>.

Vice Chairman Lucier stated he believed they needed to wait until December 17<sup>th</sup>, noting there was a whole menu of projects that needed to be discussed, including the estimated costs, and the Board could then make rational decisions; and, that the Board may want to adjust the priorities based on that December 17<sup>th</sup> discussion.

Commissioner Cross stated he would like the Board to get a review of permitting fees and other fees to determine if they were still in line or should be raised. Mr. Megginson stated he would provide that information.

Commissioner Vanderbeck stated bonds were a reserve option and should be kept in mind, as should all other options.

**BUSINESS CAMPUS**

Fred Hobbs, with Hobbs, Upchurch, & Associates, stated that in the fall of 2005 when the Board authorized the Business Park, the Chatham Hospital and the Juvenile Justice Center were on the table in regard to having space in the Park; they began meeting with NCDOT at the Asheboro Office and at the Aberdeen Office; they realized early on that the amount of wetland impact and the amount of stream channel impact potentially available to the project was such that if they went the conventional methodology of permitting that they would be many years in the permitting phase at a cost of many thousands if not millions of dollars in mitigation; they had asked DOT if they could install bottomless culverts that would span the wetlands and span the stream channel; they had redesigned the alignment of the Park to cross the wetlands and the stream channel at their narrowest point; they were told that they could do that and proceeded with that process; they received further comments from DOT at the Division District level that had been incorporated into the plans; they proceeded with design installation with the full knowledge that DOT was aware of what was being done; in May of 2007 the Design Branch of DOT in Raleigh sent a letter stating that bottomless culverts and headrolls were disallowed; that letter cited other issues that were now being addressed; the culverts were disallowed because DOT had a premise that you should not design any structure larger than the hydraulic capacity that the stream was to carry; and, the reason for the premise was to minimize the long-term operation and maintenance costs of the feature.

Mr. Hobbs stated that DOT acknowledged and recognized that permitting those features may be difficult if not impossible; that DOT's premise came down to the fact that they only allowed such structures when required to do so "by the permitting agency," which in this case would be the Corps of Engineers and Division of Water Quality; that since they had not gone through the permitting process, DOT's Hydraulics Unit stated they had not met the standard; he had met with them several times to explain that the DOT Division Engineer had stated it was fine to do that; and, the Division Engineer does not remember the conversations the way he remembered them.

Mr. Hobbs stated the issue now before them was that there were two culverts whose foundations were not founded on bedrock; that they had talked with DOT about removing those culverts and putting in pipe instead, which they believed would come under a nationwide Corps and DWQ permit that was achievable and readily obtainable; they had talked about extending the other culverts because DOT was not pleased with how narrow they were; the streams on the site meander violently so some stream travel relocation would have to be achieved; he had talked with the Chief Engineer at DOT and he had acknowledged a willingness to consider that; in a prior meeting they had first said they would accept the road as is with extended warranties on it; now DOT has said that they have changed their minds; and, it is fair to say that they were still negotiating with DOT as to under what terms they would accept the road.

Commissioner Cross asked what the options were if DOT did not accept the road. Mr. Hobbs said one option would be to do nothing and take the road as a County road, but in saying that he realized that there were virtually no County roads in Chatham County or any other county; that DOT, because of industrial parks, had made a provision in the General Statutes for counties to own a road, but he believed it was in specific instances when the county wanted to

own the road, and not the reverse; they had explored Siler City taking the road as a city street because it was within their corporate limits, but they were not interested due to the cost associated with maintenance of what could be a major thoroughfare; and, he believed the best option was to continue to negotiate with DOT although that would likely cause some modifications in the design plans.

Vice Chairman Lucier asked what the cost of those modifications might be. Mr. Hobbs stated he did not know, but he had wanted to report to the Board, continue discussions with DOT, and then report back to the Board.

Commissioner Vanderbeck asked how that continued negotiation affected the build out schedule of projects that were currently ongoing in the Park. Mr. Hobbs stated he did not believe it would affect it necessarily, and gave a brief description of what was ongoing in the Park including the installation of utilities. He stated it may require some short periods of closure while the modifications were going on, but nothing that would adversely affect the viability of the Park.

Vice Chairman Lucier stated they had previously agreed to make the road thicker at its base and layer it with asphalt to meet DOT standards, which they had not originally budgeted for. Mr. Hobbs stated they had District approval of the original pavement design but the Raleigh Office had come back and said they wanted it thicker. Vice Chairman Lucier stated they had then increased the base from 8 to 12 inches. Mr. Hobbs said that was correct.

Vice Chairman Lucier stated that as a Board, they would have to decide sometime in the near future as to how to proceed with this; in the meantime, they should certainly continue to negotiate with DOT. Mr. Hobbs said they had not been very flexible so far. Vice Chairman Lucier stated that Mr. Hobbs had a lot of personal time and money invested in this project. Mr. Hobbs said that was correct, noting there were various inspection fees that had not yet been paid. He stated that the County would have no charges coming to it for any of this.

Commissioner Barnes stated from this point forward everything needed to be put in writing, noting that the problems had started because of an oral agreement with an engineer. Mr. Hobbs said he did not disagree with that, but believed that DOT knew what the Division Engineer had told him. He stated he believed they would eventually work with them on the culverts.

Commissioner Barnes stated that before this Board could do anything, they would need a final decision from DOT, and then a final decision on what DOT would not accept and what the cost to change it would be; until that point, there was not a lot to talk about. Mr. Hobbs agreed.

Commissioner Barnes stated this may take a "sit down" with everyone involved. Mr. Hobbs stated he believed that was true, adding that he wanted to get DOT to sit down and lay out exactly what it would take to solve these issues. He added that Senator Atwater and Representative Hackney had asked to be briefed on this, and with the Board's permission he would like to do that.

Vice Chairman Lucier said he saw no problem with that, but asked to be informed when that would happen so if any of the Commissioners wanted to be involved they could do so. Mr. Hobbs agreed.

Vice Chairman Lucier stated the goal would be not to slow down the project. Mr. Hobbs stated he expected to send DOT a letter asking for a proposed solution tomorrow.

### **BREAK**

The Vice Chairman called for a short break.

### **Impact Fees:**

Vice Chairman Lucier stated that Mr. Megginson had obtained the information on the impact fees requested earlier this evening, and suggested discussing that before continuing with the agenda.

Mr. Megginson provided the Board with the Impact Fee ordinance and the justifiable amount of the fees as stated in the Fisher report; that the current fee schedule was \$2,900 for single-family, and \$950 for multi-family; and, since the Board had earlier raised the single-family rate to \$3,500 it was suggested to raise the multi-family rate to \$1,100. Mr. Megginson stated that the last rate increase had occurred during the regular budget process in July.

Commissioner Cross stated the rates had increased at that time because the sitting Board had discovered they did not have enough money for the schools, and had they known that 3 months earlier or 3 months later, it would have happened then.

Vice Chairman Lucier stated that the maximum amounts were specified in the ordinance, so the Board should be free to raise the rates to anything to that maximum amount.

Commissioner Cross suggested taking all the fees to the maximum amount. Mr. Megginson stated that if that were done, then the fees for mobile homes would be paying more than the site-built homes. He said currently both paid \$2,900.

Vice Chairman Lucier stated the Board had earlier this evening changed the single-family rate to \$3,500, and the question now was whether or not to increase the multi-family rate to \$1,100.

Commissioner Cross moved, seconded by Commissioner Barnes, to increase the multi-family Impact Fee to \$1,100. This is applicable to accessory dwellings such as garage apartments and in-house units. The motion carried four (4) to zero (0).

Vice Chairman Lucier recognized Bill Lowery.

Bill Lowery, a citizen, asked for the definition of a duplex. Mr. Megginson stated that a duplex was an attached, single-family dwelling. Mr. Lowery asked if the fee for a duplex would be \$1,100 or \$2,200, or two \$3,500's. Mr. Megginson said he believed it would be two \$3,500's.

Vice Chairman Lucier stated that was because they were considered two separate dwellings.

### **CORRIDOR ZONING**

Mr. Megginson referred the Board to the agenda notes on this issue, which addressed the Planning Board's discussion at its last meeting regarding letters received from Southern Wood Piedmont regarding the property that was formerly used for creosote wood treatment that was currently under a remediation plan by the State; that part of that remediation stated that the property could not be used for residential purposes; and, the concerns about rezoning the property and to what purposes it could be used.

Mr. Megginson said the Planning Board made several motions but none received a majority vote; during the agenda review they were asked to look at a different scenario other than the 1,500 foot corridor area, that is, to consider a 1,000 foot line and then determine what properties were affected between the 1,500 foot line and the 1,000 foot line; under the 1,500 foot corridor, there were 2,884 properties and under the 1,000 foot line there were 2,610 properties. Mr. Megginson referred to a map that showed a green line representing the 1,000 foot right-of-way and the red line representing the 1,500 foot right-of-way; and that at 1,500 there were portions of properties that were in and portions that were out of the lines.

Mr. Megginson pointed out on the map those properties determined not to be in residential use, although that had been determined by driving by the properties so it may not be entirely accurate; that a more in-depth examination would have to be conducted to determine which properties were under a business use and which were used for only residential purposes; and, that there appeared to be six or seven vacant properties that had structures on them but were vacant.

Vice Chairman Lucier stated the plan for this item as well as the next two was to vote on them at tonight's meeting, but some of the discussion needed to be done now due to the long agenda tonight. He said depending on the discussions regarding Items #4, #5, and #6, he hoped that some kind of consensus could be achieved. Vice Chairman Lucier stated one question to

consider was the 1,500 foot right-of-way as opposed to the 1,000 foot right-of-way, and the other was how to give some relief to problems that might be caused to existing businesses. He stated that clearly an existing business could expand to the extent they were able, and essentially they would become nonconforming if this was rezoned RA-40; they could expand the business but could not change it; and, that that was a concern in that a business may need to change to become more relevant in today's market.

Mr. Megginson stated in the agenda materials they had included a chart of all the businesses they could readily identify and what the uses of the property were, and had included what zoning classification they would fit into.

Vice Chairman Lucier stated it looked like there were about 70 existing businesses in the area to be rezoned. Mr. Megginson stated that was correct, noting some were on both sides of the road. He added that a rezoning would trigger the public hearing process.

Vice Chairman Lucier stated one approach would be that if they rezoned this to RA-40, they could then contact each business owner and ask if they preferred to be nonconforming or whatever the classification would be based on that existing business and then determine whether or not they would want to be part of the public hearing. Mr. Megginson asked for clarification.

Vice Chairman Lucier stated if there were 70 existing businesses, many could continue to operate and even expand their business no matter what zoning classifications were applied; that some people may wish to have their property zoned in a particular way and would want to participate in the public hearing; and, they would have to contact each business owner to ascertain their interest. Mr. Megginson stated they could contact each owner and determine if they wanted to be zoned in a particular way. He stated that it was likely the properties would be rezoned again after the Major Corridor Task Force completed its work and made its recommendations; and, that it was his understanding that the Task Force wanted to have an overall district for all the corridors, and then have overlay business districts which would mean the properties would have been rezoned three times in three different ways.

Commissioner Vanderbeck stated he was glad that was brought up, because he wanted to suggest that it be done all at the same time; that is, to rezone it all to RA-40 and recognize that there were some areas that may need to be rezoned. He stated they could then hold the public hearing once those properties were identified.

Vice Chairman Lucier stated then they could have the hearing on the major corridor and then rezone existing businesses at the same time. He asked John Graybeal about the timing on the Major Corridor Task Force's report.

John Graybeal, Chairman of the Major Corridor Task Force, stated they planned to submit their recommendations to the Planning Board by December 31<sup>st</sup> and were striving to meet that goal. He stated the Town Board may want to wait for the Planning Board's reaction before making a decision.

Vice Chairman Lucier stated then potentially they could hold a public hearing in January or February, and do everything at once; and, that would allow time to contact existing businesses to determine what they wanted to do.

Commissioner Cross stated there appeared to be a misunderstanding between the Planning Board and the Task Force as to commercial nodes and whether they were to be rezoned or grandfathered. He stated he did like the idea of doing the rezonings all together, and he wanted to give the boards a chance to finish what they were assigned to do.

Vice Chairman Lucier stated the purpose of the RA-40 rezoning was to create a holding pattern while the Boards did their work, so one option would be to vote on the RA-40 corridors today, and then hold a public hearing on the major corridors as well as any other changes to zoning for existing businesses at the same time.

Commissioner Cross stated that a person had called him this weekend who owned property in that area and he was trying to sell it as commercial property, but the idea of rezoning that property had caused him not to have any buyers. So, he stated, he did not know how to deal with that problem.



Commissioner Vanderbeck suggested rezoning it to Conditional Use.

Commissioner Cross stated that would make a difference to a buyer, in that if the property was rezoned today to RA-40, the owner would have to go through another rezoning.

Commissioner Vanderbeck stated if the sale did not go through and when they had their commercial nodes identified, it would be more valuable to him to sell it under the commercial zoning. He stated that anything could go into these areas now as currently zoned, and they were trying to do the rezoning as a temporary hold.

Commissioner Cross stated it would place a hold on the property, but regardless he was still trying to sell the property as a commercial property. Mr. Graybeal stated there was a person at the Planning Board meeting with the same problem, and his property was in the same area as that being recommended for a commercial node. He stated if that was the case, then that would solve his problem.

Shannon Plummer stated that they had a commercial building that was not an existing business, so they were in a grey area and were trying to understand where they fit in. He said their original intent was to rent the property out to a small business, but because they were upset by this process, they were now trying to sell it and be done with it. Mr. Plummer said his concern was if the property was zoned RA-40 that it would require a Conditional Use Permit just to rent it out. He asked if a business was not successful and they had to re-rent it, would they have to go through the four-month process again.

Mr. Plummer stated he understood the process of asking existing businesses what they wanted to be zoned, but at this point they had not been asked if they wanted to be zoned RA-40. He asked the Board to consider a zoning that was more conducive to commercial activity rather than a residential zoning. Mr. Plummer said since he did not have an existing business, he did not know if it even referred to him.

Vice Chairman Lucier stated there were several categories of groups, and one was a business that had been used as a business but had not been used for that purpose for a year or more and would then lose its nonconforming status. He said in that case, they would need to give some relief to those businesses, and believed Mr. Plummer would fall into that category. Vice Chairman Lucier stated the reason for this action was because Chatham County was at risk to have potentially unpleasant things happen along major corridors that were not in existence some years ago. He stated the purpose then was that the RA-40 zoning would provide initial zoning so that if someone wanted to start a business during that short duration they could apply for a Conditional Use Permit, and it would allow existing businesses to expand. Vice Chairman Lucier stated once the Task Force completed its work, there would be an overlay of various business districts that would include the existing businesses.

Vice Chairman Lucier stated that the purpose of this was to encourage businesses, not to discourage businesses, and to protect the major corridors. He stated they had an economic development plan that they were in the process of creating to establish commercial nodes so they could attract businesses in those areas and bring in jobs. Vice Chairman Lucier stated he believed Mr. Plummer's property was in an area to be designated as a commercial node. Mr. Graybeal said he was not sure about that.

Commissioner Barnes asked Mr. Plummer to point out his property on the map. Mr. Plummer did so.

Mr. Graybeal stated his only concern was that Mr. Plummer's property was not at an intersection, and usually commercial nodes were identified at intersections.

Vice Chairman Lucier said they wanted to work with everyone who had a former or existing business to see that their needs were met, and they wanted to have all of that completed by June after having the public hearing in February.

Commissioner Vanderbeck stated that the Conditional Use would allow for businesses to proceed during that process.

Mr. Plummer stated his only concern was that this was a blanket rezoning, and they were not taking into consideration properties that were what they were in this moment in time. He said it sounded like they were saying that once they had the Task Force's recommendations that they would allow people to submit applications for rezonings at that time.

Vice Chairman Lucier stated that was correct, and it would be at no cost. He stated there were perhaps 70 to 75 businesses that would be affected, plus 6 or 7 in the same category as Mr. Plummer's, so there were between 75 and 80 former or existing businesses that could request a rezoning. Mr. Plummer stated that would mean that until that time, a tenant on his property would have to apply for a Conditional Use Permit. Vice Chairman Lucier responded that was correct.

Commissioner Cross stated, for the record, that the property he had mentioned was not Mr. Plummer's property; that the property he was referring to was on Pittsboro-Moncure Road at the intersection of US Highway #1.

Vice Chairman Lucier stated that clearly would be a commercial node.

Commissioner Cross agreed, but noted that at the present time, the property did not have a building on it, and the buyer had backed out of the sale because of the rezoning possibility.

Vice Chairman Lucier stated perhaps they could provide that person with a draft of the commercial nodes designated in the corridor by the Task Force.

Dave Klarman stated he did not understand the rush to zone the corridor to RA-40 before receiving the Task Force's recommendations; he suggested waiting until that report was received, noting there may be things that businesses did not want to hear about; he did not see a threat of businesses being established along the major corridors at a rapid rate; and, he asked if properties behind the RA-40 zone wanted to establish a business, would they be provided access.

Vice Chairman Lucier stated he did not see why they would not be provided access. Mr. Graybeal stated from the discussion so far, unless the property was rezoned then access would not be provided. He pointed out that the zoning of the unzoned corridors to RA-40 was a Task Force recommendation in order to get control over the existing corridors. Mr. Graybeal stated that the Task Force recommendations would not just be identifying and recommending certain nodes, but was identifying the entire corridor and standards that should apply along the corridors. He stated the purpose was to state that there were higher standards that should apply to commercial businesses that wanted to operate in the corridor, and that should encourage businesses to move into the commercial nodes.

Vice Chairman Lucier stated that they were only talking about six months to put this in place, once the various Boards reviewed it and the public hearing was held; and, that this issue would be revisited at this evening's meeting.

### **WATER SUPPLY WATERSHED ORDINANCE**

Fred Royal, Environmental Resources Director, described the process of where they were today and how they had gotten to this point; he stated the purpose and intent of water quality rules was as stated in the recommendations by the Chatham County Environmental Review Board (ERB) in June of 2007, and called the Board's attention to that document in the materials; that Section 304 of the Watershed Protection Ordinance, which described the criteria and procedures required in classifying streams within Chatham County but did not include State rules; and, that great effort had been taken to make sure the document was legally defensible and scientifically based.

Mr. Royal stated that the maps referred to in "A" referred to the Division of Water Quality maps; that if a stream was on the map then it would be buffered, but if it was a stream not on one of those maps, then it would not be buffered. He stated that Chatham County's ordinance did not require that a stream be shown on those maps, but the map be used as a screening tool; that you actually had to go into the field and look at the feature to determine what type it was based on the criteria; and, that exemptions had been added for clarity for existing lots and existing developments.

Mr. Royal stated that Section E defined the types of streams, such as perennial, intermittent, ephemeral, seeps and springs, and others. He stated that most streams were ephemeral streams and were located throughout the County, and they had written a definition of ephemeral stream for the County's ordinance; that they were using the Army Corps of Engineers' definition for wetlands; and seeps and streams were not recognized by the Corps but were features on the ground; the ERB had recommended that they be buffered as well since they had water and habitat value; he described the procedure for how determinations were done in the field and what methodology was used; and, that they had created a policy document that would not require a public hearing to revise that included what was and was not allowed in the riparian buffers and the standards to be used.

Mr. Royal stated there were many footnotes in the document due to the inability to reference everything that was needed in the ordinance, and those footnotes referenced other documents that described such things as when trails may or may not be acceptable; that the ERB was very interested in preserving the floodplain and floodplain use; that they were requiring the use of "best management practices"; that the regulations would not prohibit the use of septic systems as long as certain requirements were met; that prohibited uses in the buffer were spelled out; that how concentrated stormwater runoff was to be eliminated or severely curtailed in the buffers was spelled out; that basic land clearing and excavation was not allowed except under certain circumstances; that stream buffer vegetation be required to enhance the buffer; and, that there were no changes to variances in the ordinance.

Mr. Royal noted that the next section contained the definitions.

Vice Chairman Lucier stated he believed the Board could go through those at will. He stated it was his understanding with all the changes that had been made to the June 21<sup>st</sup> ERB document, perhaps with a few exceptions, that those changes made the ordinance less stringent and less strict. Mr. Royal stated that was correct.

Vice Chairman Lucier stated there were a couple of issues that needed discussion; one was the ephemeral buffers which at one point were 40 feet and now it had been changed to 30 feet, but he believed that 30 feet was the more appropriate number and he agreed with that. He stated the second issue was bridge crossings of 10 feet or more, noting 10 feet was not much.

Commissioner Barnes stated that building a bridge that was 10 feet bank-to-bank did not leave room for the bank fall. Mr. Royal commented he had seen golf cart crossings made of timbers that length.

Commissioner Barnes stated he believed the word "bridges" should be struck, since if anything were to be put in a space that size it should be a pipe or a culvert. Mr. Royal asked if he was referring to Section 4.B. Commissioner Barnes said that was correct.

Vice Chairman Lucier stated one option might be to take it out now, and if the ERB wanted to revisit it they could make a recommendation later to amend the ordinance.

Commissioner Vanderbeck stated that at the same time if they did decide to make changes later on, they could probably revisit the ephemeral buffers if necessary under the same public hearing. Mr. Royal stated his comment to the ERB about the process was that in his experience, they could reassess the ordinance in about 12 months.

Vice Chairman Lucier stated he believed there was general agreement among the Board about the buffer issue and the ephemeral stream issue. No Board members disagreed.

Mr. Royal stated there were still points of confusion and concern he wanted to make the Board aware of, one of which was the review time for administering the ordinance.

Vice Chairman Lucier asked was that something that the staff could make a proposal on. Mr. Royal stated he believed so.

Vice Chairman Lucier stated there was one other issue he wanted to bring up, which was G.4 under Prohibited Structures and Uses in the Riparian Buffer, in that there were perhaps circumstances in which they would be beneficial. He stated that was a question to be asked of

the ERB. Mr. Royal stated that the intent of G.4 was for new development stormwater features to prevent such features from being built in the buffer.

### **ENVIRONMENTAL ASSESSMENT OPTIONS**

Mr. Royal stated this was a discussion on direct minimum triggers for environmental assessments, with an exemption for any development project less than two contiguous acres in extent. He stated the three options offered for consideration were:

- Option 1: Non-residential development in zoned areas of the County: If the land disturbance is of 2 acres or more, then a full environmental assessment was required.
- Option 2: Major/Minor Subdivisions: If a major subdivision, then a full environmental assessment was required if 2 acres or more in extent; or, if a minor subdivision (less than 6 lots), exempt unless other criterion/criteria met. If other criterion/criteria met, environmental documentation must be submitted to the County only for those items required.
- Option 3: Residential lots option: If subdivision is less than or equal to 25 lots, exempt from environmental assessment requirement unless other criterion/criteria met. If other criterion/criteria met, then environmental documentation required.

OR

If subdivision is less than 25 lots, then a full environmental assessment is required.

Gerald Totten, School Board Member, asked if Option 1 would apply to schools as well. Mr. Royal stated it would, since schools were non-residential and were more than two (2) acres.

Mr. Royal stated that the revised November 14<sup>th</sup> document talked about the Natural Heritage program and other agencies where you could look for element occurrences, with the goal being to make this an easy process for developers so they could go to the website and look at the maps to determine if there had been any element occurrences. He stated one of the questions about that was that the occurrences were updated every quarter, which could be a problem if a development came in with a sketch plan and suddenly the element occurrences changed because the quarterly report came out. He said that was something that raised a flag and should be addressed.

Mr. Royal said another issue was the percent probability; they believed it was a good idea to discuss anything that the property touched on the map, because a lot of the areas were based on probability and theory and not reality. He suggested coming up with a specific percent probability, such as 50% or 75%, so that it would actually reduce the occurrence if it were based on some scientific method that the Natural Heritage program had decided to use.

Vice Chairman Lucier stated they had no proposals for that, so perhaps this needed to be approved without that and let the ERB come back with a recommended percentage. He said they would not want to adopt something now without it having some scientific basis of probability of occurrence.

The Planning Director stated that the State had that information, so setting a percent probability was likely the thing to do since not everyone would have to do this.

Vice Chairman Lucier asked if the Planning Director said they needed to set a percent probability in order to enact the ordinance. Mr. Megginson said he was saying that if the Board adopted it without the percent probability, then every development would have to address element occurrence.

Vice Chairman Lucier stated they would have to address it anyway to come up with a probability. Mr. Megginson stated they would only have to look at the data the State provided.

Mr. Royal stated that regarding slopes under Item #13, he was not sure that 15% was appropriate.

Vice Chairman Lucier asked if that percentage should be higher or lower. Mr. Royal stated he would have to do more research, but something along the lines of 30% may be more appropriate for the County.

Vice Chairman Lucier stated that would mean you would have to have a slope of 30% or greater to trigger Item #13. Mr. Royal said yes, if that was the percentage decided on. He said that figure had to be based on historical landslide data, soil type, and other factors. Mr. Royal stated that 15% could be used now and it could be modified at a later time as better information was obtained.

Vice Chairman Lucier stated he would be more worried about erosion than landslides.

Mr. Royal stated regarding Option 3, the sliding scale was similar to the sliding scale alternative example presented during the public hearing for environmental assessment criteria.

Vice Chairman Lucier stated that was not his understanding of what was presented on June 21<sup>st</sup>; his understanding was that with the sliding scale, if you met any one of those triggers, then you would have to address that trigger. Mr. Royal stated the ERB would be present at the meeting tonight so they could clarify that.

Dave Klarman stated he had that information now. He read from the June 21<sup>st</sup> document regarding environmental assessments required for non-exempt properties.

Vice Chairman Lucier stated there was also a sliding scale introduced during the PowerPoint presentation on June 21<sup>st</sup>. Mr. Klarman said he did not have that.

Mr. Royal stated the key was the two acre threshold, and did not believe the Board would want to go below that threshold.

Vice Chairman Lucier agreed, stating the major discussion point was to talk about the major subdivision requiring an environmental assessment for anything more than 5 lots, or using the sliding scale and addressing the triggers if any.

Commissioner Barnes stated they were talking about anything 6 lots or more had to have an environmental assessment, and asked Mr. Klarman if he preferred the sliding scale. Mr. Klarman stated he did not understand the question.

Vice Chairman Lucier stated that had come up on June 21<sup>st</sup>, when Mr. Ferrington objected because he believed it would place an unfair burden on the smaller developer, and he believed rightly so. He stated he had asked Mr. Ferrington if the sliding scale was used, if it would address his concerns, and Mr. Ferrington had responded yes.

Mr. Royal stated that would be under Option 3. Vice Chairman Lucier stated that was correct. Mr. Royal stated he had interpreted that slide to say that an environmental assessment would be required even if you were a minor subdivision, if you met one criteria.

Vice Chairman Lucier stated his impression was that the Board wanted to address those options this evening.

Commissioner Vanderbeck stated he thought they were discussing using the sliding scale for Option 3.

Vice Chairman Lucier stated that was correct.

Mr. Klarman stated that members of the ERB would be present at tonight's meeting to address any concerns.

Vice Chairman Lucier stated they would revisit these issues tonight.

### **CLOSED SESSION**

Commissioner Vanderbeck moved, seconded by Commissioner Barnes, to go out of the Work Session and convene in Closed Session for the purpose of consulting with the County

Attorney under NCGS §143-318.11(a)(3) regarding the case of HBP Properties LLC v Chatham County and to discuss personnel under NCGS §143-318.11(a)(5). The motion carried four (4) to zero (0).

### **WORK SESSION**

Commissioner Vanderbeck moved, seconded by Commissioner Barnes, to adjourn the Closed Session and reconvene in the Work Session. The motion carried four (4) to zero (0).

Kevin Whiteheart, County Attorney, stated they had just held a mediation settlement discussion in Closed Session; that the mediation of October 24<sup>th</sup> was subject to the Board's approval in the case of HBP Properties LLC v Chatham County; and, that all the terms of that settlement had been explained to the Board.

Commissioner Vanderbeck moved, seconded by Commissioner Cross, to accept the mediated version of the Legend Oaks property.

Vice Chairman Lucier stated he appreciated the work of the Attorney, noting they had identified a number of issues in the original sketch design that had now been addressed.

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

### **ADJOURNMENT**

Commissioner Vanderbeck moved, seconded by Commissioner Cross, to adjourn the Work Session. The motion carried four (4) to zero (0), and the meeting was adjourned at 4:59 PM.

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George Lucier, Chairman

ATTEST:

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