



Chatham County Planning Board Agenda Notes

Date: April 2, 2019

Agenda Item: VIII-1

Attachment #: 3

- Subdivision**
 Conditional Use Permit
 Rezoning Request
 Other:

Subject:	A Legislative public hearing request by Charles Walker for conditional district rezoning from R-1 Residential to CD-RB Conditional District Regional Business on property located off Hillside Dairy Rd., Parcel No. 12236, being approx. 29.594 acres, for grounds and facilities for open air games or sports specifically for regulation size cricket fields.
Action Requested:	See Recommendation
Attachments:	<ol style="list-style-type: none"> 1. Alternative site plans for consideration as requested by the Planning Board 2. Follow up answers to original staff report 3. Easement agreement with owners off Hillside Dairy Road for use of existing farm road

Introduction & Background:
 A legislative public hearing was held on February 18, 2019. Planning staff presented the request. Also speaking were adjacent/adjoining landowners Linda Smith, Mark Weitzel, Mary Ellen Spivey, and Marty Raynor. Charles Walker presented for the applicant.

Discussion & Analysis:
 Conditional Zoning districts are districts in which the development and use of the property is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of a legislative decision creating the district and applying it to the particular property.

Some land uses are of such a nature or scale that they have significant impacts on both the immediate surrounding area and on the entire community, which cannot be predetermined and controlled by general district standards. The review process established in this Ordinance provides for accommodation of such uses by a reclassification of property into a conditional zoning district, subject to specific conditions, which ensure compatibility of the use with neighboring properties. A conditional zoning district is not intended for securing early zoning for a proposal, except when that proposal

is consistent with an approved land use plan or the proposal can demonstrate that public infrastructure needed to serve the development will be made available within a reasonable time period.

A community meeting was held on January 2, 2019. One adjoining neighbor attended, Mary Spivey. Questions were about driveway improvements, drainage questions, and buffering. Mr. Walker also met with the owner of M and M Alpaca Farm on December 4, 2018 on site prior to this official community meeting.

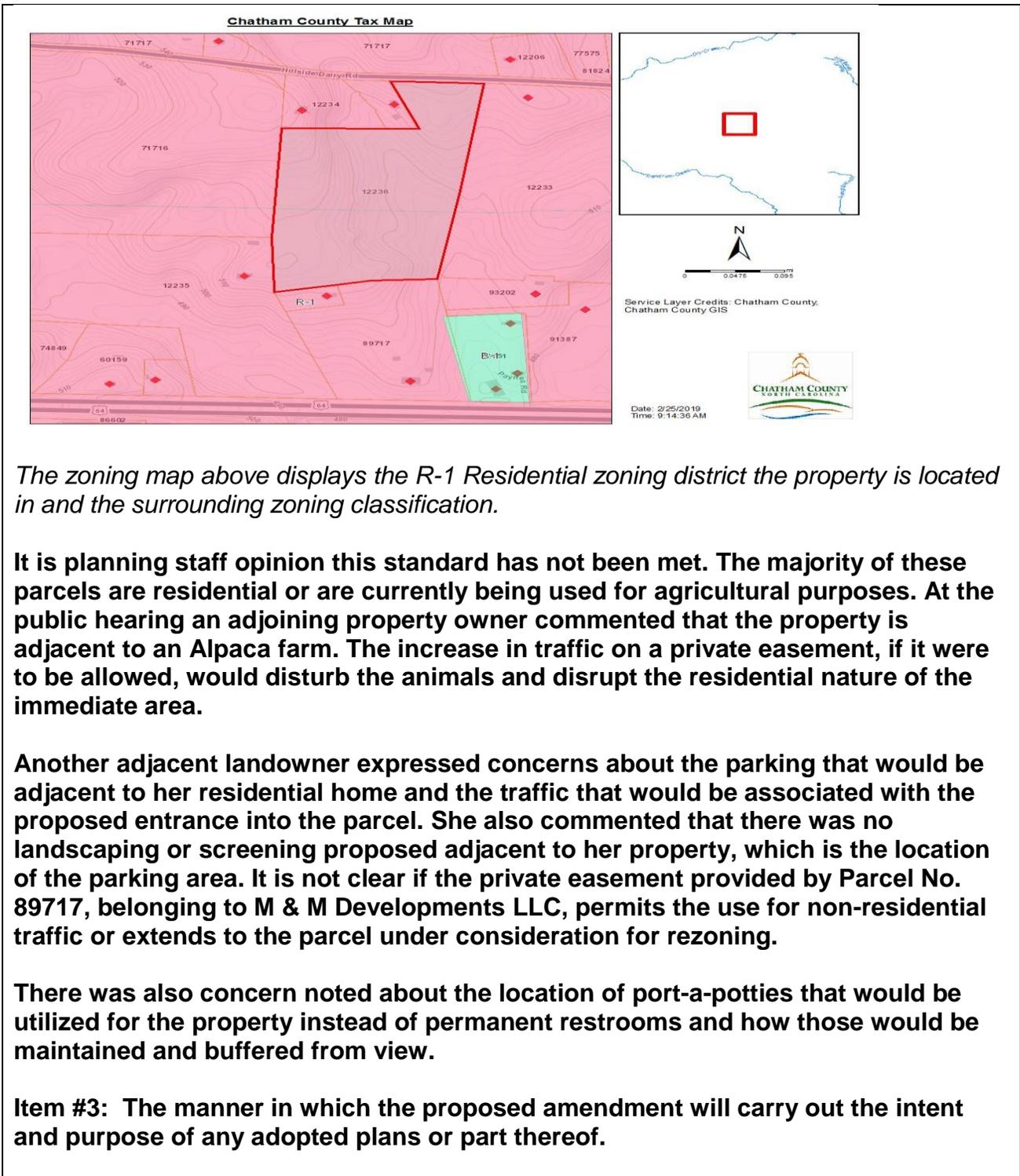
A meeting with the Chatham County Appearance Commission (CCAC) was held November 28, 2018. There was a concern about the buffering along the western property boundary and the commission recommended a minimum 30 foot wide strip to be left unmowed and undisturbed to protect the adjacent property owner.

There are five standard items listed in the Zoning Ordinance that must be addressed by an applicant when submitting a rezoning application. The applicant has addressed those items in the application materials or in supplemental material and they are also discussed below.

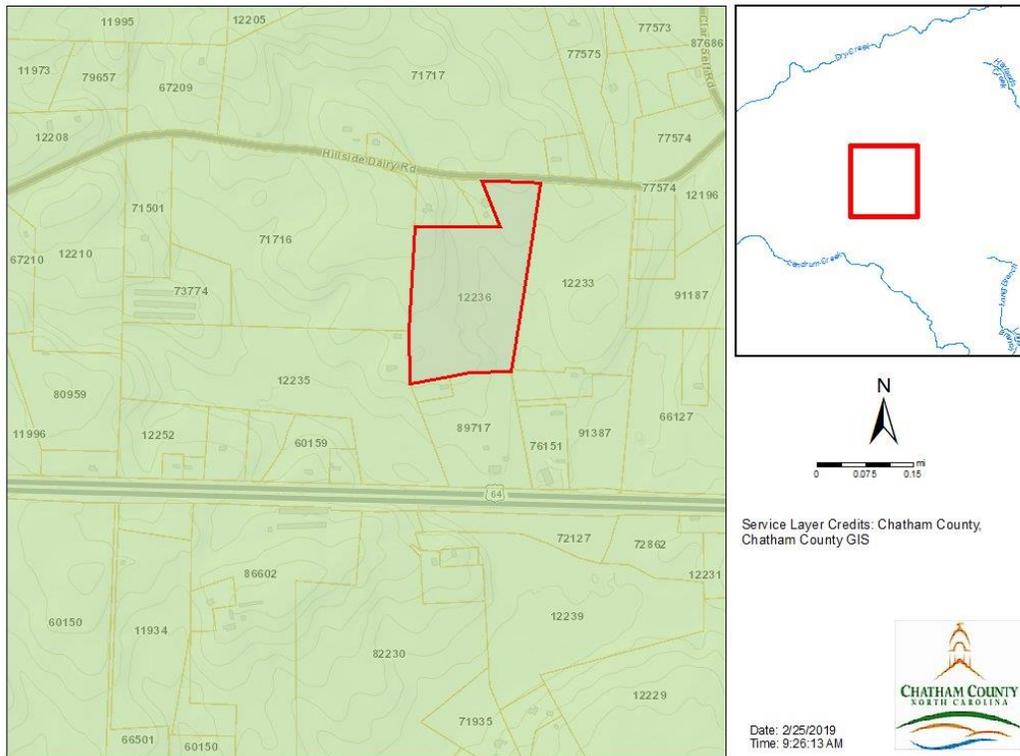
Item #1: The alleged error in this Ordinance, if any, which would be remedied by the proposed amendment with a detailed description of such error in the Ordinance and detailed reasons how the proposed amendment will correct the same. The applicant is claiming no errors in the Ordinance.

It is planning staff opinion this standard is met.

Item #2: The changed or changing conditions, if any, of the area or in the County generally, which make the proposed amendment reasonably necessary to the promotion of the public health, safety, and general welfare. The applicant states based on an interest in creating an area that could offer recreation for outdoor sports, specifically international sports such as Cricket, that would be run by charitable organizations and volunteers makes this location suitable to promote public health, welfare and safety in privately-owned designated area.



Chatham County Tax Map



The map above shows the Future Land Use and Conservation Map and the property is located in an area identified as Agriculture. The map is a guide showing the intended future land use pattern using various land use areas. Strict adherence to the map in making land use decisions is not recommended but should be used as a guide.

The applicant states the Comprehensive Land Use Plan shows the property within the Agricultural areas. Chapter 4, page 80 of the Plan encourages a diverse range of uses, amenities, services, and programs that can contribute to a healthier community. One main goal of the recreation area is to promote this concept.

The applicant states the Plan also encourages the conservation of rural landscapes as noted in Chapter 3, page 41. They are proposing to preserve the old silo located at the corner of the property that would restore a cultural and historic resource of the area. It has not yet been determined what, if anything, will be done to the silo. The applicant also states by limiting the amount of ground disturbance, not adding any buildings or structures, and utilizing grass parking, will aide in the continued preservation of the rural landscape.

It is planning staff opinion this standard has been addressed but not supported. Chapter 3, page 41 of the Plan also states there should be preservation and protection of existing agricultural uses. The owner of the adjacent alpaca farm stated at the public hearing this activity, because of the increase in traffic, noise, etc., would potentially disrupt the animals and related activities associated with his agricultural business. The owner stated he is not opposed to the cricket fields, but

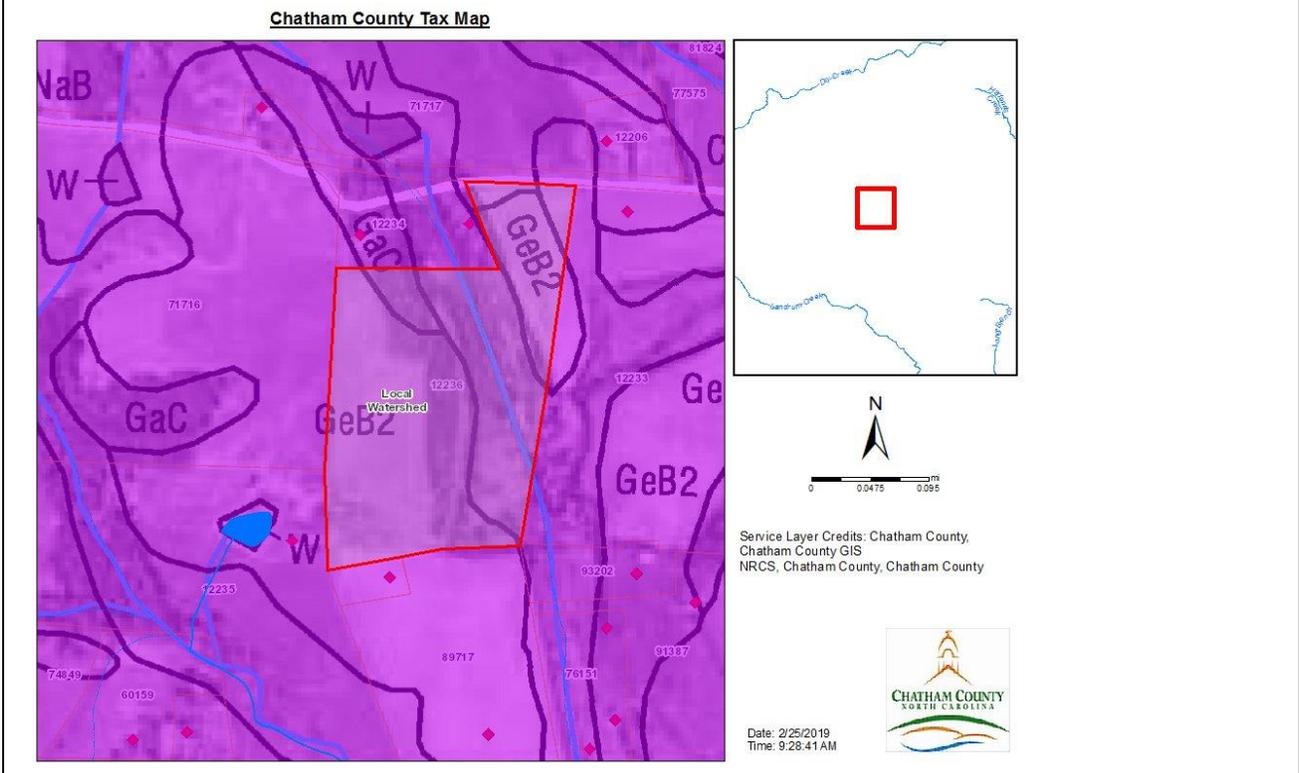
is opposed to the proposed access via the private easement that would bring the traffic by his farm is the issue.

Item #4: The requested amendment is either essential or desirable for the public convenience or welfare. The applicant notes 3 goals of the comprehensive plan lend support to the request as noted on page 40. They area goal 1 to preserve the rural character and lifestyle of the county, goal 6 to provide recreational opportunities and access to open space, and goal 10 to foster a healthy community.

It is planning staff opinion this standard has not been met. Based on concerns raised by the adjacent and adjoining landowners, the use of the private easement for access, and the undetermined use or changes to be made to the existing silo do not support that the use is convenient or desirable for the public welfare in this particular location.

Item #5: All other circumstances, factors, and reasons which the applicant offers in support of the proposed amendment include:

The map below shows the property in the Local Watershed outside of the Jordan Lake Buffer rule area and the Natural Resources Conservation Service soils map below shows one potential blueline stream on the property. An on-site inventory of the water features on the property would be required if the property is subdivided or accessed from Hillside Dairy Road, to determine applicable riparian buffers. There is no special flood hazard area identified on the property.



The property is located within the Local Watershed classification that allows up to 36% impervious surface. Other than installing a driveway onto the property, the site plan calls for grass parking and no proposal for buildings or structures so the ISA limit is not a concern.

Currently the applicants are proposing no land disturbance within 100 feet of the existing creek that runs through the property as shown on the above soils map.

It is planning staff opinion this finding may be met.

It is planning staff opinion this request be recommended for denial based on Standards 2, 3, and 4 not being met. Also, it is not clear if the private easement can be utilized for the parcel for non-residential traffic. Planning staff has asked for the applicant's attorney to provide an opinion regarding the legality of the easement and access to the parcel.

Based on the concerns from the adjacent landowners, as noted above, it is planning staff opinion that public convenience and welfare have not been protected.

The Planning Board discussed this item during their regularly scheduled meeting on March 5, 2019 and voted to continue it to their April meeting to allow the applicant additional time to address questions raised during the meeting. Adjacent landowners, an attorney representing an adjoining property owner, the applicant and applicant's representative were also present to speak on the matter. The following are comments that were provided during the discussion:

- **Ben Atwater (attorney representing Marty Raynor)**

Mr. Atwater addressed the access easement serving the proposed cricket club and commented that it was established in 1981 between family members to serve a farm property; it could be argued that farm use was the only purpose of the easement; if the use of the easement is increased the courts could view it as overburdening the easement; and that the increased traffic associated with the proposed use would disturb the surrounding area.

- **Marty Raynor (adjoining property owner)**

Mr. Raynor owns and operates M&M Alpaca Farm and commented that alpacas are expensive show animals are easily distracted. The access easement and driveway were established in 1981 by a group of family members and was never intended for non-residential use, but for single family dwellings and agriculture farmland; the proposed activity would over-burden the easement; the cricket fields would disturb the quality of life due to the amount of activity during weekends; and the driveway would not meet NCDOT requirements for a commercial drive.

- **Linda Smith (adjoining property owner)**

Ms. Smith said that she doesn't want sporting events next to her residence which she purchased in December 2018. She also commented there are generally 60 players per game with two fields, and if friends and family come there could be 200-300 people over the weekend using their easement. Other concerns noted were

increased noise, traffic, trash, and the parking area would be immediately adjacent to the front of her house.

- **Mark Weitzel (adjoining property owner)**

Mr. Weitzel commented that there was no increased economic impact from the use; the owner and a majority of the players do not live in the county; and runoff from the site was a concern.

- **Charles Walker (representative for the applicant)**

Mr. Walker's comments included that the neighbors were invited to a community meeting and chose not to attend; the fields would only be used between 8am and 6pm on weekends; the property is owned by a non-profit corporation and will have insurance; their attorney evaluated the easement and doesn't think there are any limitations on the easement; a private non-profit wants to bring a new sport to the county; and the activity is low impact.

The Planning Board comments and concerns were as follows:

- **Why can't the site be accessed from Hillside Dairy Rd? The applicant's representative stated they were trying to avoid crossing the stream that bisects the property and minimize impacts to the site.**
- **Concerns over legal use of the easement for non-residential purposes. The Board requested clarification from the county attorney as to whether or not the easement can be used for this purpose. Mr. Walker, applicant's representative, stated they already provided their attorney's legal opinion and believe they have the right to use it as they deem necessary. Staff also commented that they had discussed the easement with the County Attorney and were advised that the applicant needed to have their attorney evaluate the easement, and that if there is a dispute it would ultimately have to be addressed in court.**
- **Concerns over whether this is a professional playing field or for recreational practice. The applicant stated there would be no spectators as it would just be practice fields for the players.**
- **Comment that this use is not appropriate for an agricultural area and as also identified in the comprehensive plan.**
- **Concerns over protection of the adjacent landowner's view of the site and that additional landscaping along the southern property line is needed.**
- **Would more excavation be necessary in order to construct the parking and fields? The applicant stated less than 10 acres will need to be disturbed and they may decide to have only one field. It was noted that if more than 10 acres is disturbed, an environmental impact assessment will be required before any grading could commence.**
- **Several Planning Board members commented that they could not support the rezoning request if the easement continued to be used to access the site.**

The Planning Board voted 10-1 to continue their deliberations until the April 2, 2019 meeting to give the applicant an opportunity to develop an alternative site design and to determine if the neighbors' concerns could be addressed. The applicant's representative has developed 4 alternative site plans, including obtaining another access easement from the adjoining property to the west and connecting to Hillside

Dairy Road (see attachment #1). Two additional attachments have been provided (see attachments #2 and 3) which provide additional feedback about the items that have to be addressed as part of a rezoning application and a proposed easement agreement for a new easement to access the property.

Recommendation:

The planning staff recommends denial of the conditional district regional business rezoning request. The Planning Board has up to three meetings in which to make a recommendation for approval or denial to the Board of Commissioners.

A proposed consistency statement has been provided below in support of the denial of the rezoning request:

It is the Planning Board recommendation that the rezoning of parcel 12236 is not consistent with Plan Chatham by being located within an agricultural land use designation which recommends protection of rural character and existing agricultural activities.