

MINUTES  
TOWN OF PITTSBORO  
BOARD OF COMMISSIONERS  
REGULAR MEETING  
MONDAY, APRIL 27, 2015  
7:00 PM

Mayor Terry called the meeting to order and called for a moment of silence.

**PLEDGE OF ALLEGIANCE**

Commissioner Farrell led the Pledge of Allegiance.

**ATTENDANCE**

Members present: Mayor Bill Terry, Mayor Pro Tem Pamela Baldwin, Commissioner Jay Farrell, Michael Fiocco, Bett Wilson Foley and Beth Turner.

Staff present: Manager Bryan Gruesbeck, Clerk Alice F. Lloyd, Attorney Messick Paul S. Messick, Jr., Chief of Police Percy Crutchfield, Planner Stuart Bass, Engineer Fred Royal and Finance Director Nancy Emslie.

**CONSENT AGENDA**

Commissioner Fiocco asked that item #3 be moved to new business #1. Motion made by Commissioner Fiocco seconded by Commissioner Foley to approve the consent agenda with the above change. The Consent Agenda contains the following items:

1. Approve minutes of the April 13, 2015 regular meeting.
2. Approve Ordinance to Amend the FY 2014-2015 Budget to create a restricted fund for the Retire NC Certified Retirement Community Program.
3. Approve ordinance to amend the FY 2014-2015 budget to transfer funds from the capital reserve fund. **(Moved to new business #1)**
4. Approve Ordinance to Amend FY 2014-2015 Budget to draw and appropriate funds for Police Department vehicle financing.

Vote     Aye-5     Nay-0

**AN ORDINANCE TO AMEND THE FY 2014-2015 BUDGET TO CREATE A RESTRICTED FUND FOR THE RETIRE NC CERTIFIED RETIREMENTS COMMUNITY PROGRAM IS RECORDED IN THE BOOK OF ORDINANCES NUMBER ONE, PAGE 24**

**AN ORDINANCE TO AMEND FY 2014-2015 BUDGET TO DRAW AND APPROPRIATE FUNDS FOR POLICE DEPARTMENT VEHICLE FINANCING IS RECORDED IN THE BOOK OF ORDINANCES NUMBER ONE, PAGE 25**

**REGULAR MEETING AGENDA**

**CITIZENS MATTERS**

None

**PUBLIC HEARINGS**

Motion made by Commissioner Fiocco seconded by Commissioner Foley to go into public hearing.  
Vote Aye-5 Nay-0

**TO AMEND THE ZONING ORDINANCE TO ESTABLISH A PLANNED DEVELOPMENT DISTRICT ZONING DISTRICT; AMEND SUBDIVISION REGULATIONS TO MAKE APPROPRIATE REFERENCES TO AND ACCOMMODATE THE PLANNED DEVELOPMENT ZONING DISTRICT; AND TO AMEND SECTION 10.4.3 B. OF THE ZONING ORDINANCE TO CONFORM ITS WORDING TO THE WORDING IN SECTION 160A-383 OF THE NORTH CAROLINA GENERAL STATUTES**

Manager Gruesbeck went over the memorandum he submitted in the agenda packet.

Attorney Messick stated the first amendments relating to the zoning ordinance is essentially the proposal that was created for the PDD in April 2013. The only difference is in the formatting, using numbers for bullets.

Attorney Messick said the other is a subdivision amendment that is the same – as what was adopted by the board in 2013. The second amendment to the Zoning Ordinance is to Section 10.4.3B which conforms the ordinance to the current State statutes regarding the consistency plan and when it is to be submitted to the board for approval.

Commissioner Fiocco asked for clarification whether the public hearing tonight is for the changes marked in red and green are for Town Board action. Attorney Messick said that is correct.

**PUBLIC COMMENTS:**

Dee Reid, 590 Old Goldston Rd., Pittsboro read the following prepared statement:

This is the second time you've had to conduct an additional public hearing because of deficiencies identified in Pittsboro Matters' lawsuit concerning Chatham Park.

I believe this is happening because you have lost control of the planning process by allowing one property owner (Chatham Park Investors) to rush you into poor decisions that ignored the interests of hundreds of local property owners in Pittsboro and the Extra Territorial Planning Jurisdiction (i.e. all of us who already live, work and play here).

In doing this, you have ceded control of our community's future to two developers from Cary. I respectfully implore you to take this opportunity to regain control of Pittsboro's planning process, before it's too late.

Many of us were very pleased when you approved most of the recommendations made by the Lawrence Group consultant and most of the local citizens who testified at the public hearings.

We were baffled and disappointed when you suddenly changed your mind because the developers said they could not go along with some of the conditions.

You allowed the developers to essentially write the Planned Development District and the Master Plan that would govern their development.

And you turned your backs on the reasonable and standard recommendations of local citizens and your expert consultant – recommendations that include the kinds of conditions that other much smaller developments have had to abide by in Pittsboro, Chatham County and throughout the Triangle and the nation.

For example, major developments are usually required to provide an environmental impact assessment, transportation analysis, affordable housing, public school planning and commitments to contribute land or other resources for their construction. But not Chatham Park.

It's still puzzles me as to why you would omit this kind of oversight for the largest mixed-use development in North Carolina, and one of the largest in the United States.

You seemed afraid that Chatham Park would turn and run if they were asked to heed the same requirements they would have in Cary where they have been doing business for years.

Now you have a third opportunity to get it right, to take back control of the planning process by listening to the experts you hired and the citizens who have pleaded for more conditions to protect the community we all share and love.

I recommend that instead of putting a small band-aid on the PDD, you should create a new PDD or similar instrument, by working closely with all stakeholders including the general public, not just the developers.

To do this, I recommend that you engage a consultant, perhaps Roger Waldon of Clarion Associate who is already working with you on the Unified Development Ordinance. He is aware of best practices, such as the terms of the new draft Development Agreement Chapel Hill is considering for Obie Creek, a much smaller development than Chatham Park.

Ideally, we could all be working together with you, along with a consultant, other local residents of Pittsboro AND the ETJ, and yes, the developers.

What Pittsboro needs most at this time is a balanced, accountable process that addresses the needs of all property owners and residents, not just the two developers from Cary.

It will be hard work to balance all of the needs and interests of our current and future community.

We are ready to begin and hope that you are, too.

Jeffrey Starkweather, 590 Old Goldston Road, Pittsboro, read the following prepared statement for the record:

We all understand the charade this public hearing on a new PDD is intended to be, especially given that we are presented with essentially the same flawed, developer crafted ordinance designed to give Chatham Park Investors maximum flexibility to put forward another blank slate, trust us PDD master plan.

Of course, this public hearing on a revised PDD technically gives this board an opportunity to pass a much better large mixed-use development zoning district ordinance, such as the Development Agreement District ordinance that Chapel Hill has developed to codify its citizen friendly process in use since 2013.

Pittsboro already has contracted the ideal outside professional planning consultant to assist them in utilizing the Chapel Hill draft Development Agreement District as a model to develop a similar district ordinance here to replace the PDD. I am referring to Roger Waldon of Clarion Associates, who is under contract to help the town develop a UDO. I hesitate to make this recommendation since we all know what happened the last time the town contracted with an expert planning consultant to review and provide recommendations concerning the PDD master plan. But what choice do citizens of Pittsboro have but to play Charlie Brown again hoping this time Lucy doesn't pull the ball out from him again.

Regardless, it is important to remind ourselves how this ordinance came about in the first place. We now know a draft PDD ordinance was presented by the developers to town staff in December 2012. It was pretty much the same ordinance passed on April 8, 2013. Not surprisingly, it completely ignored the only action step related to Chatham Park contained in Pittsboro's Comprehensive land use plan passed three months earlier. That land use action step called for the developers to develop an area plan "with a public process and design charrette that builds on the Southwest Shore Assessment." Moreover, this action step was never mentioned in any town public hearings or meetings to consider the PDD ordinance.

The public was not made aware that there was a public hearing on a new zoning district created specifically by the Chatham Park developers for their planned 55,000 resident development. How would anyone know that a PDD had anything to do with Chatham Park? I certainly didn't, despite the fact that I was serving with town planner Stuart Bass on the county's committee that was developing a countywide conceptual land use plan. And that is why not one citizen showed up to speak at the March 25, 2013 public hearing.

Bass' only explanation of the PDD at the public hearing was that "it allows a lot of flexibility," a gross understatement. No one informed the town board that the planning board only voted 4-2 to recommend the ordinance or that planning board member Karl Shaffer objected that it was "too loose, too broad, too opened ended, and it lacked control." Sound familiar?

Of course, there was one Chapel Hill resident there to speak in favor, the developer's planner/lobbyist Philip Culpepper.

Naturally, at the next meeting the PDD as proposed was passed unanimously approved without any discussion, nor was it listed on the meeting agenda posted on the town's website.

Does it shock anyone to learn that during this same time period, the citizens of Chapel Hill were being presented a "best practices" Development Agreement process to govern mixed-use developments much smaller than Chatham Park?

We cannot go back and undo this unfortunate past, but tonight's hearing does give you an opportunity to put Pittsboro and its citizens back in the driver's seat for the future development of Chatham Park and Pittsboro.

Amanda Robertson 244 Prince Creek read the following:

I am speaking tonight on behalf of Pittsboro Matters.

First off, this is essentially the same PDD ordinance as was approved in April 2013, which was crafted by Chatham Park Investors to provide the standards, approval process, and implementation procedures for their proposed 55,000-resident development. As Town Commissioner Michael Fiocco stated when he proposed this public hearing at the tail end of the March 23 board meeting (following a closed door session with the town attorney), its purpose is to "cure deficiencies" alleged by Pittsboro Matters in its lawsuit challenging the validity of the PDD ordinance and Chatham Park PDD Master Plan and Rezoning. We all know where this is headed, but I will none-the-less appeal to you all to consider the following two alternatives, and remind you that these procedural issues regarding the PDD ordinance do not represent all of the claims in our lawsuit. However, by pursuing one of the alternatives outlined here you have an opportunity to address many, perhaps even all of them.

The two choices include having a consultant revise the existing PDD to eliminate its obvious shortcomings or, better yet, take the Chapel Hill Development Agreement District and re-craft it to work here in Pittsboro. We recommend that the Town hire consultant Roger Waldon of Clarion Associates to help; he is already helping Pittsboro develop its new Unified Development Ordinance, which a PDD or its alternative would be incorporated into, and which will apply to Chatham Park.

### **Option 1: Revise the PDD Ordinance**

**1. Require environmental, traffic, fiscal and socio-economic impact assessments for the overall design of a development.** The current ordinance fails to require any of these. This is extremely forgiving for this one developer, since the town can require impact assessments for any subdivision, planned unit development or master planned unit development over 50 dwelling units. Chatham Park has locked in 22,000 dwelling units, the largest-ever mixed-use development in North Carolina's history.

**2. Follow the town's land use plan, passed in October 2012, that specifically provides that the town will "work with the developers of Chatham Park to develop an area plan with a public process and design charrette that builds on the Southwestern Shore Assessment (October 2008)."** Instead, the PDD has no public process for designing the development, nor does it indicate that this

process should include utilizing an environmental assessment of the development area to guide its design.

3. **Include specific standards.** The current PDD is unconstitutionally vague, with no standards for determining the adequacy of utility, stormwater, public service, multi-modal transportation, recreation and open space, boundary buffers and phasing plans. The resulting approved PDD master plan, therefore, provided extremely general and undefined plans.

4. **Require design standards.**

5. **Require landscaping, affordable housing, tree protection, public arts and other similar plans for approval of the master plan.** Instead, the developers were given two years to get such “additional elements” approved and incorporated in a Development Agreement. As a result, there is little or no information yet available about potential impacts or mitigation plans.

6. **Require a Development Agreement that includes citizen input.** There was no requirement for a Development Agreement and no provisions for obtaining citizen input in crafting that agreement.

7. **Balance the “wins” for both the town, town citizens and the developer.** This ordinance provides maximum flexibility to the developer, while not requiring the developer to give back to the town substantial benefits in return. As planning board member Karl Shaffer said in voting against recommending approval of this ordinance in 2013, it is “too loose, open ended, lack of control, too broad.” This has enabled CPI to make all kinds of utopian promises without being required to put those promises in writing.

#### **Option 2: Adopt a Developer Agreement District Similar to Chapel Hill’s**

1. It would not be crafted by the developers, and, instead would be overseen by an unbiased outside professional planning consultant, who can make sure Pittsboro’s public interests are paramount.

2. Chapel Hill’s Developer Agreement District requires environmental, fiscal, socio-economic, and traffic impact assessment for the overall development, including developing a mitigation plan with clear enforcement standards.

3. It allows for development and approval of a conceptual master plan following significant citizen input before the town commits to proceed to a detailed plan and development agreement.

4. It includes substantial citizen input throughout the process leading up the development agreement.

5. It allows no construction until the final master plan and Development Agreement are approved.

6. Flexibility is balanced to address the needs of the developer for innovative design and the citizens for community concerns.

7. It requires design guidelines that include building, landscape, signage and sustainability designs.

We hope you will strongly consider these recommendations. Thank you.

On behalf of Pittsboro Matters Board of Directors:

Amanda Robertson, Jeffrey Starkweather, Elaine Chiosso, Mike Watkins, Peter Theye, Dee Reid

George Horwitz, Bynum, NC spoke of his disapproval of Chatham Park’s PDD and the effects on the area.

Liz Cullington – 390 Rocky Hills Road, Pittsboro read the following statement into the record:

I guess Chatham Park's lawyers agree that there was something wrong with how the PDD language was adopted two years ago, so that it has to be done again. That means none of

the Chatham Park Master Plans are actually valid either, and you will have to take another vote on that as well. So you actually have a chance to fix the problems with the original PDD language instead of making the same mistake over again, and getting a better plan as a result.

Chatham Park's lawyers don't want you to know this and don't want you to do that, because Chatham Park has currently got such a great deal. Their ultimate client is the developer, not the Town, its residents or current and future taxpayers. It is folly to believe that their interests are identical to yours.

We have already seen what problems were caused by this PDD language, it allowed a developer to submit inadequate plans, and to resist many major changes because of the PDD's apparent lack of teeth.

This language also contradicts at least five recommendations of your UDO contractor, regarding PDD zoning, including ensuring an actual phasing plan, open space and buffer maps in the Master Plan, and consistency with MUPD zoning.

You could try to close all the loopholes that Chatham Park has found, though they would find more. You could give the Town authority to designate conservation areas on a site specific basis, require affordable housing at each stage, require traffic analysis, I could go on and on, but that is like trying to tweak a bad Master Plan. Rather than passing the original language or amending it, you have the chance to start over entirely. And what's more it appears that Chatham Park's lawyers have essentially opened that door for you. The Town of Chapel Hill's Development Agreement District provides an excellent model for the kind of zoning language that is more appropriate for a development of this great magnitude and long duration, and is a far better starting point.

The proposed change to the Subdivision Ordinance is stunning, as it would exempt a PDD from all subdivision regulations once a Master Plan is approved. This is not what Chatham Park previously agreed, conforming to certain aspects of our current regulations and a future Unified Development Ordinance. I urge you to reject this amendment, it's dangerous and unnecessary.

As for Article X (Ten) of the zoning ordinance: this may change language to match language in a state statute, but the statute does not require that this language be the language of our ordinance. Not all towns and counties have a land use plan, or call it that. To eliminate reference to our Land Use Plan is to render it toothless for all future rezonings. In addition, the additional reference to "any other officially adopted plan" could include a past Chatham Park Master Plan.

Over the last two years the developer has been less than fully co-operative, they have acted like we need them more than they need us, have embarked on construction that bears no resemblance to their supposed design goals, and have been bulldozing areas for which no plans have been submitted. I urge you to stop doing what they and their lawyers tell you to do, and take this golden opportunity to get back in the way back machine and get us a better planning process.

Thank you.

Mike Watkins – 400 Prince Creek read the following statement into the record:

The number one concern I have about this PDD, is that it was crafted entirely by the developer and without conversation with the residents of the Pittsboro ETJ – literally on top of whom (without the right of vote) this PDD has been dumped.

Chatham Park Investors will have had many conversations over the years with politicians and economic development folks, all of whom have agendas or missions for growth, and from whom they would get no argument.

However, they have talked AT local residents, rather than talked WITH them. Told them what will happen but not asked for their input.

Had they had a real dialogue, they would have learned more about the true character of this community – something they have, I believe, sadly misread – and also discovered a community open to both growth and progress - just not at any price.

This board has laid itself open to the same criticism. You have held now four hearings. You have allowed people their say but events show you haven't heard them. You even reneged on an earlier promise to involve citizens in a planning sub-committee.

From the outset, the lack of a process for genuine discussion has been the key problem. I honestly doubt that had this process been in place you would be facing your second lawsuit today.

Luckily, such a process does exist and is close by. The Development Agreement District ordinance from Chapel Hill has been used very successfully in the Obie Creek planning process and could be an excellent model for Pittsboro to adopt with Chatham Park.

It is not too late. The consultants currently under contract for UDO development are apparently very familiar with it. At the very least, discuss it with them.

My second major concern is the notion that the small area plan is a panacea for deficiencies in the PDD and Master Plan. Several times I have heard it referred to on this board as if some kind of safety net.

Deferring major, PDD wide decisions like contiguous conservation areas and buffers, traffic and socio-economic impacts, to the small area plan is oxymoronic. As, incidentally, is the EDC promotion of a recent “economic impact study” where the only data source was CPI themselves.

The point of the PDD is to set the ground rules for all development as part of an overarching, master planned community.

Its key benefit is the ability to identify and address potential cumulative impacts of that over-arching plan before they become insuperable barriers to a successful build out down at the small area plan level.

As things stand, there are no rules that aren't both a) - set by the developer themselves and b) - so vague as to be unenforceable.

You may as well authorize 27 separate sub-division from 27 different developers with unprecedented flexibility to do what they want, where they want, without any oversight from the town. In effect, this “small area plan fall back” approach renders any PDD pointless.

To conclude, amazingly, I believe you are also perhaps the luckiest board in office. You don’t get just one chance to do the right thing, you get four!

Elaine Chiosso – Haw Riverkeeper, Haw River Assembly urged the Board to require an Environmental Impact Analysis for the entire piece of land owned by Chatham Park in order to protect and preserve the streams and sensitive areas. And to make the PDD ordinance have “teeth” instead of “lip service”.

Commissioner Fiocco asked for a copy of Ms. Robertson’s comments – she said she gave them to Ms. Lloyd.

Motion made by Commissioner Fiocco seconded by Commissioner Turner to go out of public hearing.  
Vote Aye-5 Nay-0

### **OLD BUSINESS**

#### **UNIFIED DEVELOPMENT ORDINANCE – CODE ASSESSMENT PRESENTATION. (CLARION ASSOCIATES)**

Roger Waldon and Steven Sizemore were present from Clarion Associates to make a presentation on the UDO – Code Assessment.

PowerPoint presentation can be seen at:

[http://pittsboronc.gov/index.asp?Type=B\\_BASIC&SEC={D571086B-2D4C-4B53-9CCC-A9CE5ADA0456}&DE={36BC307D-CD7A-46AF-8F1C-49BD78C39118}](http://pittsboronc.gov/index.asp?Type=B_BASIC&SEC={D571086B-2D4C-4B53-9CCC-A9CE5ADA0456}&DE={36BC307D-CD7A-46AF-8F1C-49BD78C39118})

Mr. Waldon stated after tonight and they receive comments from the board and others they will begin doing some writing.

Mr. Waldon said tonight is their opinion and assessment of what the situation is. They are hoping for feedback from the board.

After discussion the board agreed to send all questions and comments to Clarion Associates (and each board member) and set a work session for further discussion on the UDO – Code Assessment for May 21, 2015 at 6 pm.

### **NEW BUSINESS**

#### **APPROVE ORDINANCE TO AMEND THE FY 2014-2015 BUDGET TO TRANSFER FUNDS FROM THE CAPITAL RESERVE FUND**

Commissioner Fiocco stated he was concerned we are spending money on consultants for plan reviews and are not getting reimbursed. He wanted to know is this related to that.

Ms. Emslie said yes. The fees collected was put into the capital reserve fund and this budget amendment would move it to the correct fund.

After discussion a motion was made by Commissioner Turner seconded by Commissioner Foley to approve the budget ordinance amendment.

Vote    Aye-5    Nay-0

**AN ORDINANCE AMENDING THE TOWN OF PITTSBORO 2014-2015 OPERATING BUDGET IS RECORDED IN THE BOOK OF ORDINANCES NUMBER ONE, PAGE 26**

**FUND BALANCE AND FUND RESERVE POLICY**

Mayor Terry thanked Mr. Gruesbeck and Ms. Emslie for this policy. He said his thought the target set as a minimum goal of at least 10% of annual budgeted expenditures for each operating fund is a little too low.

After discussion a motion was made by Commissioner Baldwin seconded by Commissioner Turner to approve the Fund Balance and Fund Reserve Policy changing from 10% to 15% as a minimum of annual budgeted expenditures for each operating fund.

Vote    Aye-5    Nay-0

**A COPY OF THE TOWN OF PITTSBORO FUND BALANCE AND RESERVE POLICY IS RECORDED IN THE BOOK OF RESOLUTIONS NUMBER ONE, PAGES 195-199**

**ORDINANCE TO AMEND THE FY 2014-2015 BUDGET TO ACCEPT AND EXPEND CHATHAM PARK PAYMENTS. (BRYAN GRUESBECK, NANCY EMSLIE)**

Manager Gruesbeck gave the reason for the budget amendment. Document can be found at: [http://pittsboronc.gov/index.asp?Type=B\\_BASIC&SEC={D571086B-2D4C-4B53-9CCC-A9CE5ADA0456}&DE={36BC307D-CD7A-46AF-8F1C-49BD78C39118}](http://pittsboronc.gov/index.asp?Type=B_BASIC&SEC={D571086B-2D4C-4B53-9CCC-A9CE5ADA0456}&DE={36BC307D-CD7A-46AF-8F1C-49BD78C39118})

After discussion a motion made by Commissioner Fiocco seconded by Commissioner Baldwin to approve the Ordinance Amending the FY 2014-2015 Operating Budget.

Vote    Aye-5    Nay-0

**AN ORDINANCE AMENDING THE TOWN OF PITTSBORO 2014-2015 OPERATING BUDGET IS RECORDED IN THE BOOK OF ORDINANCES NUMBER ONE, PAGE 27**

**UPDATES AND REPORTS**

**MANAGER'S UPDATE ON CAPITAL PROJECTS**

Manager Gruesbeck reported on the following:

Page Vernon Park will be on the next agenda for discussion by staff.

Chatham Park Utility Plan – met with McKim & Creed last week. They discussed options for elevated water tanks.

WWTP Expansion – working with Wooten Company and met with City of Sanford staff.

Downtown Visioning – they had a good meeting with NCDOT, NCDOT consultant, Preston Development and staff on what we want to do next for downtown visioning. Mr. Horne is starting to get the Small Town Main Street Project going again.

Haw River Intake switch should be installed tomorrow.

Highway 64 Sidewalk bids have been received. Staff should have them analyzed by the next meeting.

### **FY 2014-2015 FINANCIAL REPORT AS OF MARCH 31, 2015. (NANCY EMSLIE)**

Ms. Emslie went over the report submitted with the agenda packet. She also stated they have been cross training in utility billing and payroll. Ms. Cassandra Bullock has joined the team as a customer service specialist.

Ms. Emslie said she has been working on a Purchasing Protocol and will have it ready by next meeting.

#### **Mayor Updates**

- EDC – had EDC meeting last week and Certified Retire Meeting this week
- RPO
- Solid Waste
- Fairground Association
- PBA/Downtown

### **COMMISSIONER CONCERNS**

Commissioner Foley stated a resident asked her about planting something in the circle in front of the library. Manager Gruesbeck said he would check with NCDOT.

Commissioner Fiocco wanted to thank staff for fixing the curbs downtown – they look very nice.

Commissioner Fiocco said there was about 30 present for the Main Street Meeting. He would like to see a volunteer take a leadership role in this effort.

Commissioner Turner reported that the stop sign was down at Launis/Credle Street.

**ADJOURNMENT**

Motion made by Commissioner Fiocco seconded by Commissioner Turner to adjourn at 9:35 p.m.  
Vote    Aye-5    Nay-0

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William G. Terry, Mayor

ATTEST:

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Alice F. Lloyd, CMC, NCCMC  
Town Clerk