

**DRAFT**

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**TOWN OF PITTSBORO  
PLANNING BOARD MEETING MINUTES  
Monday, May 4, 2015, 7:00 PM**

**ATTENDANCE**

**Members Present:** Raeford Bland, Shannon Plummer, Brian Taylor, Carolyn Elfland, Oakley Bennett, Wayne Herndon (Alternate)

**Members Not Present:** Alfreda Alston, Bob McConnaughey (Alternate)

**Staff Present:** Stuart Bass, Planning Director, Paul S. Messick, Jr., Town Attorney, Crystal Ours, Administrative Support Specialist

**A. CALL TO ORDER**

**Chairman Bland called the meeting to order at 7:00 pm**

**B. APPROVAL OF MINUTES**

- **Mr. Taylor made motion to approve the minutes of March 2, 2015**
- **Seconded by Mr. Bennett.**
- **Vote: Unanimous**

**C. OLD BUSINESS**

**None.**

**D. NEW BUSINESS**

- **SUB-2015-02**  
**Chatham Park- Suttles Road Subdivision**  
***Action Needed – Discussion, Recommendation to Town Board***

**Mr. Bass** presented the staff report to the board. The Developer has submitted a Final Plat for review and consideration. The proposed subdivision is for 10 lots located in the Chatham Park

Planned Development District, off of Suttles Road near the 15-501 / US 64 interchange. The proposed subdivision totals approximately 52.3 acres.

Also attached is an overall site layout for your information. Please note that Lot 5 is where the current construction is taking place for the Medical Office Building, (SP-2014-03, approved 8/11/14). Individual site plans for Lots 4 and 8, (another office building and a hospice respectively) are currently under review and will soon be forthcoming to the Board.

Hydrostructures, PA has reviewed the plat and provided comments. The Fire Marshall, Fire Chief, and Town Attorney have also reviewed the plat. Revisions were made based on the comments provided. The layout shown and planned improvements are acceptable.

**Staff Recommendation:** Recommendation for Conditional Approval and forward to the Town Board of Commissioners, subject to the approval of the Subdivision Improvement Agreement with appropriate surety. Forward to Town Board of Commissioners for consideration.

**Discussion ensued.**

**Ms. Elfland** asked how the stormwater work for the whole plat. How does the stormwater work now? She knows what happened with the stormwater on the medical office building, we looked at that. Now it looks like there is control structure that is for more... How does it work now?

**Mr. Robbie Oldham**, Engineer with **Withers and Ravenel**, stated that it is actually a variety of stormwater treatments as proposed. Lots 3, 4 and 5 will be treated with bioretention area that you see labeled on lot 3. Some will serve multiple lots, and then with the road we are doing bioretention/ tree well- which is under review right now by the Town.

**Ms. Elfland** asked how they are going to manage these stormwater structures in this subdivision. Are you going to do a property owners' association for the 52 acres?

**Mr. Ken Eagle**, 2235 Gateway Access Point, Raleigh, Attorney representing **Chatham Park Investors** stated that under the Master Plan, we are required to have a property owners' association. We are actually in the process of putting together documents to have two master property owners' associations. One would be for residential development, one would be for non-residential development. The current formulation of our thinking is the non-residential property owners' association will be the association charged with managing all of the stormwater structures in Chatham Park. All 7500 acres, not just the 52 here. Assessments will be determined and

charged on a per lot basis for residential and on a per lot or an acreage basis for the non-residential developers. We are trying to put together a comprehensive association structure so that we can deal with all these issues in Chatham Park. We won't know all the details about stormwater until we know what's going to go on each individual lot. So we know how much impervious surface there will be and what type of structure there will be. We are establishing, with this particular subdivision on this preliminary map, at least a couple of areas for stormwater areas that will serve more than one lot.

We will have to maintain the stormwater structures to comply with the Town's stormwater ordinance. The Town would certainly be involved in enforcing it.

**Ms. Elfland** stated that the Town does not have to figure out which of these hundreds of corporations because it is going to be one entity.

**Mr. Eagle** stated that it would be one, or at the most two associations. Probably just one. We are going to try and simplify it as best as we can.

We have, just for information purposes, as of 6-8 weeks ago, started to staff people working for Chatham Park- Robbie and others- are meeting with the Town staff on a biweekly basis to look at what's coming and talk about what's in the process. Just to make sure the Town has all the information that we can give the Town about what we're thinking about doing there and what is actually has already been submitted and to talk about the Town's concerns, if any, and what we are trying to accomplish. We think that will help keep the Town informed on a regular basis and we are very appreciative of the fact that staff has been willing to do that with us so that we can try to keep everybody as current as we can.

**Mr. Ricky Spoon**, 2475 Redbud, Pittsboro asked to speak as an adjoining property owner. He stated that he is the original owner of this land, he sold it to Chatham Park. He does own a 3.5 acre tract and he talked to Chatham Park about buying it. He would like to have it connect to where it can go across the backside and stay away from the Carolina Living and Learning Center. I ask that you put that in the recommendation that it go to the Commissioners.

**Mr. Bland** asked why he didn't reserve right-of-way at the time that he sold the property.

**Mr. Spoon** replied that he just didn't at the time but he should have. It was an oversight on his part to do that.

**Mr. Bland** asked Mr. Spoon if he has access to his property from the backside on the gravel road at the hook.

**Mr. Spoon** answered yes.

**Mr. Eagle** stated that looking at the map itself, you can see going up the common boundary line from south to north between Chatham Park and Mr. Spoon's property, there is, what he presumes, would be a 200 foot stream buffer, because once you get on to Chatham Park's property at Mr. Spoon's southern boundary line, there is a 200 foot stream buffer there and the creek certainly continues up through Mr. Spoon's property and as it works out, most of the 200 foot buffer would be on his property. We are already, in order to extend this road up to Russet Run, working with the State on permitting to cross that creek that is running down through there. We are trying to minimize stream crossings, we have not shown any kind of road going out to there because we think it will be problematical just connecting another street for one 3 acre lot in particular, and crossing that stream. We, of course, wouldn't be really crossing the stream because it would be all on his property. But, it would require us to have to stub out a road over to an area that we don't even know if we could get permitted for a crossing and just would create another close by stream crossing to one that is already going to be there. We would prefer and ask that the board not recommend that there be a road stubbed out to there because there is certainly a likelihood that there could never be a road there anyway. Of course, we don't know that for sure until he would go and try to get it permitted. It does create some issues with respect to that. And as has been pointed out, Mr. Spoon knew what his access was when he bought that land and when he sold us his other land. We're not doing anything to harm him or anything to change what he already has.

**Mr. Bland** observed that Mr. Spoon does have access to his property as of right now.

**Mr. Spoon** agreed but is concerned that it has been rezoned commercial and it would be a medical office.

**Mr. Culpepper** stated it is Office and Institution, it is not zoned commercial- it is O & I.

**Mr. Spoon** stated that Chatham Park is not interested in purchasing the property. He offered it to them at a reasonable rate. His concern, regarding the Autistic Center, is that when we make it commercial, we're going to have increased traffic and it's going to have to get paved. The commissioners have told him that they don't want to bother the Autistic Center, they'd rather have the commercial traffic to go another way if we can. He doesn't think this would be a big burden to make the commercial traffic go the other way, especially if he is maybe willing to pay half of

the extra paving if they have to come down and connect to it. He doesn't think that is a big burden on their big corporation.

**Ms. Elfland** stated that the facts are that Mr. Spoon sold them all that property and didn't have any discussions with them at the time about access to the triangle.

**Mr. Spoon** said that is correct and it didn't come up at the time because the Commissioners had not voiced their opinion about that.

**Mr. Bland** is of the opinion that this looks like this is not a planning issue, as it is some other issue or problem that needs to be worked out, that is not his place to decide. Especially since Mr. Spoon does not lack access. He cannot say in good faith what somebody ought to do with their stuff quite like that.

- **Ms. Elfland made motion to approve the preliminary plat of the subdivision. Included was that the Board not recommended the road connection as to serve Mr. Spoon's property as he requested.**
- **Mr. Bland Seconded**
- **Vote: Aye 6      Nay 0**

- **ZTA-2015-01 PDD, ZTA-2015-02 PDD Sub. Ord.**  
**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.**

*Action Needed – Discussion, Recommendation to Town Board*

**Mr. Messick** presented the staff report to the board.

The Town Board of Commissioners, on its own motion, has initiated proposed amendments to the Town's zoning and subdivision regulations. Copies of the proposed amendments are attached. A public hearing was held on all three on Monday, April 27, 2015.

The first amendment proposes to amend various sections of the zoning ordinance to create the Planned Development District. It is the same text that was considered by the Planning Board and approved by the Board of Commissioners in April 2013.

The reason for the reconsideration is to eliminate possible irregularities in the public notice and consistency statements that were alleged in the current litigation between the Town and Pittsboro Matters and the other individual Plaintiffs. The Town has alleged various defenses to the allegations of the Complaint, but this reconsideration will eliminate those objections.

The second proposed amendment is to the Town's subdivision regulations that was also adopted by the Town in April, 2013, and is intended for the same purpose.

In the last two years, the appellate courts have been exploring the issue of the consistency statement. Originally it was not thought that a text amendment required a consistency statement and logically it really doesn't make sense, but the law may be that it does. This is not only an effort to redo the notices for the public hearing that was held last week, but also to provide a consistency statement with this before you with regard to both the text amendment to the zoning ordinance and the text amendment for the subdivision regulations that deal with the creation of the Planned Development District in the first place.

The third proposed amendment is to the zoning ordinance to make the language in the ordinance conform to the current requirements of state law. This changes article 10 with respect to this consistency statement. The ordinance was written a number of years ago before the legislature changed the law, and again, the provisions in the ordinance were not consistent with what the law said. For example, the ordinance required that the consistency statement be adopted before the rezoning was approved. This is an attempt to make sure the consistency statement can be done at the same time, in the same motion as the rezoning.

Proposed written recommendations as to each amendment are also attached.

**Discussion ensued.**

- **RE: Written Consistency Statement and Recommendation of The Town of Pittsboro Planning Board to the Town of Pittsboro Board of Commissioners as to Proposed Amendment to the Town of Pittsboro Zoning Ordinance to Amend Section 10.4.3 B. (Town of Pittsboro File No. ZTA-2015-01)**

**Ms. Elfland** wanted to know which one that just conforms the zoning ordinance to the wording of 160A.383 and then get that amendment out of the way. It says the Board of Commissioners need not await the recommendations of the Planning Board before taking action on a proposed amendment. When adopting or rejecting any zoning amendment, the Board of Commissioners shall also approve a statement describing whether its action is consistent with an adopted comprehensive plan and any other officially adopted plan that is applicable, and briefly explaining why the Board of Commissioners considers the action taken to be reasonable and in the public interest.

**Mr. Messick** explained that it means that they have to do a consistency statement regardless of what the Planning Board does. It just says that they don't have to do that first, they can do it at the same time.

**Mr. Culpepper** said that this is the wording of the General Statutes- it applies to the Town already, regardless of what the Town's ordinance says. It is just making the Town ordinance say the same thing.

- *<Mr. Bland reading for Ms. Elfland>* **this is the motion that I am reading for Carolyn: Motion to adopt the following resolution recommending adoption of the proposed amendment: RESOLVED, that the Planning Board hereby advises and comments to the Town of Pittsboro Board of Commissioners that the proposed amendment to the Town's Zoning Ordinance is consistent with the Town's comprehensive plan, including the Land Use Plan, and other applicable plans and policies adopted by the Town of Pittsboro. The Planning Board recommends that the Board of Commissioners adopt the proposed amendment, the Planning Board having considered the following reasons and other matters in making this recommendation: (i) the proposed amendment to Section 10.4.3 B will remove an inconsistency between the North Carolina General Statutes and the Town's Zoning Ordinance with respect to the time of adoption by the Board of Commissioners of a statement describing whether its action**

in adopting or rejecting an amendment to the Town's Zoning Ordinance is consistent with the Town's adopted comprehensive plan and any other officially adopted plan that is applicable, and briefly explaining why the Board of Commissioners considers the action taken to be reasonable and in the public interest; (ii) the proposed amendment will advance the public health, safety and welfare of the Town of Pittsboro; (iii) and other such matters, if any, discussed at this the May 4, 2015 regular meeting of the Planning Board, as contained in the recording of such meeting, which is incorporated herein by reference.

- **Seconded by Mr. Plummer**
- **Vote: Aye 6          Nay 0**

- **RE: Recommendation of the Town of Pittsboro Planning Board to the Town of Pittsboro Board of Commissioners as to Proposed Amendment to Section 9 of the Town of Pittsboro Subdivision Regulations (Town of Pittsboro File No. ZTA-2015-02)**

**Ms. Elfland** is struggling with Pittsboro's Land Development Ordinances. Chatham Park was ready and didn't feel that the Mixed Use Development Ordinances that the Town had were sufficient and put forth a whole new ordinance, which went through the Planning Board and got approved in 2013. Subsequently, a master plan was approved based on that. In between the zoning ordinance and the master plan approval, there were numerous concerns raised- a consultant was hired, recommendations were made, Pittsboro recognized the shortcomings in a current suite of land use regulations and embarked upon a whole new unified development ordinance, which we are now in the midst of working on. A lot of the things that are going to be included in that are things that people think are very much needed and there will be significant changes to the current PDD. It bothers her to come back after they have moved on beyond all that and ask for them to approve this old ordinance from 2 years ago that we have moved beyond. We didn't write this ordinance- the developer wrote this ordinance.

**Mr. Bennett** stated that this has already been approved. The only thing we are doing is now coming back with a consistency statement and looking forward to a new UDO to address these ordinances.

**Mr. Bland** said this is not anything that Chatham Park is doing, this is something that the Town of Pittsboro has instigated to correct procedural issues. Is that right, Mr. Messick?

**Mr. Messick** answered yes.

**Ms. Elfland** stated that it still requires reapproving all of this ordinance.

**Mr. Messick** stated Ms. Elfland is correct- it does do that. But the impotence of this is the Town and the lawsuit and yes, it might be changed in the future in terms of UDO, but that could be a year or 18 months from now and we have a lawsuit on our doorstep and you all have subdivisions coming up on a regular basis. The developer can't wait until the UDO is finished. So, as Mr. Bland suggested, this is an attempt to eliminate some procedural deficiencies that have been alleged in the complaint that could make a difference- we don't think that it does- but, just to be safe. That's why this process is being undertaken at this point.

**Mr. Culpepper** stated the only thing this corrects is that one sentence was left out of one advertisement and that is the basis for which the lawsuit is. The Town, by their own accord, decided that that was an omission that they made that left us vulnerable to challenge. The only thing we are trying to do here is eliminate a vulnerability that we did not create. No revision in the ordinance is different than what was originally approved.

Mr. Chairman, we respectfully request that the Planning Board forward a recommendation for approval, I understand what is being said but this is an action that is being done by the Town, that we think is the appropriate action to correct a previous omission and that would be corrected once the Board of Commissioners would vote on this and approve this.

- **Mr. Bennett made motion to approve this recommending option of the proposed amendment.**
- **Mr. Bland stated that we have a Motion on the floor which is: a Motion to adopt the following resolution recommending adoption of the proposed amendment: RESOLVED, that the Planning Board recommends that the Board of Commissioners adopt the proposed amendment, for the purpose of providing for the purpose of providing for the public health, safety and general welfare of the Town of Pittsboro. Mr. Oakley made that motion.**
- **Seconded by Mr. Plummer**
- **Discussion: Ms. Elfland has no discussion, she is going to vote no. Her concern is if the master plan is sufficient to waive design standards, she is voting against that.**

➤ **Vote: Aye 5      Nay 1- Elfland**

- **RE: Written Consistency Statement and Recommendation of the Town of Pittsboro Planning Board to the Town of Pittsboro Board of Commissioners as to Proposed Amendment to the Town of Pittsboro Zoning Ordinance to Add a Planned Development District (Town of Pittsboro File No. ZTA-2015-01)**

**Mr. Messick** said this text is identical to what was approved in April 2013. It redoes the same thing.

**Mr. Bland** said what we are having to do this time is make a consistency statement with the text amendment. And that is why we are redoing the amendment.

**Mr. Messick** answered yes and it fixes the public hearing notice. The sentence is in the legal notice that was in the newspaper. It essentially said that the thing could be changed after the public hearing and so people should be aware of that.

**Mr. Taylor** stated that since he was not here in 2013, not being aware of what this is, he can't vote on this. He is fine with the board proceeding and voting on this issue.

**Mr. Bland** said that is fine, he just wants to clarify what we are discussing, which is, the point of redoing the text amendment is so that we can add a consistency statement. When we originally did the text amendment, we did not have a consistency statement affixed to it. Now we are discovering, that due to case law and other issues, we need to add consistency statements also to text amendments.

- **Mr. Plummer made Motion to adopt the following resolution recommending adoption of the proposed amendment: RESOLVED, that the Planning Board hereby advises and comments to the Town of Pittsboro Board of Commissioners that the proposed amendment to the Town's comprehensive plan, including the Land Use Plan, and other applicable plans and policies adopted by the Town. The Planning Board recommends that the Board of Commissioners adopt the proposed amendment, the Planning Board having considered the following reasons and other matters in making this recommendation: (i) the proposed amendment to add a Planned Development District**

zoning classification provides a means for coordinated planning and development of projects containing 100 acres or more, while at the same time providing flexibility to adapt to changing economic conditions and accommodate growth in the Town's population and infrastructure; (ii) the proposed amendment will advance the public health, safety or welfare of the Town of Pittsboro; and (iii) such other matters, if any, discussed at the May 4, 2015 regular meeting of the Planning Board, as contained in the recording of such meeting, which is incorporated herein by reference.

- **Seconded by Mr. Herndon**
- **Vote: Aye 4      Nay 1- Elfland      Abstain 1- Taylor**

#### **D. BOARD MEMBER CONCERNS**

Concerns were expressed regarding the timeliness of the minutes and agendas being completed.

#### **E. REPORTS AND ANNOUNCEMENTS**

None.

#### **F. ADJOURNMENT**

- **Chairman Bland asked for motion to adjourn.**
- **Mr. Herndon made motion to adjourn.**
- **Motion carried unanimously.**

**Planning Board meeting adjourned at 8:25pm**

*Next Planning Board Meeting is scheduled for Monday June 1, 2015*

*Crystal Ours*

**Administrative Support Specialist**