

**MINUTES
TOWN OF PITTSBORO
PLANNING BOARD MEETING
Monday, March 4, 2013 7:00 PM**

ATTENDANCE

Members Present: Kenneth Hoyle, Raeford Bland, Alfreda Alston, Karl Shaffer, Shannon Plummer, Bob McConnaughey {Alternate}

Members Absent: John Clifford, Rob Butler {Alternate}.

Staff Present: Stuart Bass, Planning Director, Paul Messick, Town Attorney, Ileana Platon, Administrative Support Specialist.

A. CALL TO ORDER

Chairman Kenneth Hoyle called the meeting to order at 7:00 pm.

B. APPROVAL OF MINUTES

- **Approval of the minutes of meeting held on February 4, 2013 (Chair Hoyle)**
Motion made by Ms. Alston to approve the minutes.
Seconded by Mr. Bland.
Vote: 6-0

C. OLD BUSINESS

None listed in the Agenda

D. NEW BUSINESS

- 1. SD-2013-01 Proposed Subdivision Development – Kensington Park**
Action Recommended – Presentation & Discussion, Recommendation to Town Board of Commissioners

Mr. Bass explained that this is a conceptual Preliminary Plat review for a proposed subdivision development, Kensington Park. The property is located on Park Drive west of the intersection of

Hillsboro Street. The project is a proposed 16 lot subdivision currently zoned R-12 and totals 7.741 acres in size. The minimum lot size is 12,000 square feet. All lots are greater than 14,000 square feet in size. The Town Board of Commissioners approved an allocation of wastewater for the proposed development at their meeting on January 28, 2013.

In general the layout shown is acceptable. Hydrostructures, PA reviewed the plan and has provided their comments. The Fire Marshall and Fire Chief have also reviewed the plan and find it generally acceptable with a few comments in the general area of overall design. The proposal for entry is to come off Park Drive between two existing houses into the cul-de-sac. Two primary issues for consideration at this time include; (1) the absence of curb and gutter, and (2) the provision of a sidewalk on just one side of the street. As per the Subdivision Ordinance (Section 6.2.C7), streets without curb and gutter must be approved by the Town Board of Commissioners. The package distributed contains aerial photographs of the proposed site.

Mr. Hoyle and Mr. Shaffer questioned the entrance to the development between the two currently occupied houses and **Mr. Hoyle** also asked about the slope into the cul-de-sac because he knows there is a hill there.

Mr. Shaffer stated that on the map it shows that it provides access to a parcel north of this development and asked Mr. Bass if he knew if this was the only access to that parcel.

Mr. Messick said he did not know whether it was or not the only access but it is potentially a private easement.

Mr. Shaffer had some questions about storm water. He sees a storm water detention of 11,400 square feet on the southwest corner and 13,000 square feet on the southeast corner, what sort of structures or improvements are they going to intake.

Richard Ladd with Triangle Construction Group took the floor and stated that the parcel is less than 8 acres but the exhibit shows the runoff. The part shown in green runs to one and the other shown in blue runs into the other. They are treating and collecting all the water that is on site.

Mr. Shaffer asked if each of those detention parcels will be going to be the pond in its entirety.

Mr. Ladd responded that the majority of the site, approximately 90% will drain to a dry detention basin at the southwest corner of the site. The other portion will drain into the smaller detention basin at the southeast corner of the site they will each have an outlet. This is a subdivision that was approved in some form or fashion 5 to 6 years ago so there is restricted conveyance that accompanies this property. The four existing lots on Park Drive to the right of the driveway and the one lot to the left of the driveway are part of Kensington Park subdivision and its restricted conveyance. The house built on the left the builder had to bring in a significant amount of fill and extend 36 inch pipes underneath the driveway. Their design will be able to

make a box connection where this house is, do a drop inlet and connect and continue that pipe, this shall improve the situation. In regards to storm water on the top left of the map, as mentioned before there is a fairly steep grade as you work your way up Park Drive so this comes up on the two corners and starts falling back off to the left and it will flow away from the site. Initially this subdivision was approved for smaller lots, about 30 to 32 but they can't find where that was zoned, they have doubled the lots size, the smaller being 14,500 and the largest is 2100 square feet. They will continue the architectural style of the houses already on Park Drive.

Mr. Plummer recalled flooding on the front yards of those three homes on Park Drive on a heavy downpour. Is their detention going to help with that problem?

Mr. Ladd said they have meet with all the home owners adjacent to the entrance of the subdivision because they share that storm water and the issues are with a house that is not part of the Kensington Park project, this is an older home that did not design the runoff properly. It will not help but it will not add to the flooding, it will just control the water from their site.

Mr. Shafer asked if the southwest corner pond will be fenced or screened with some kind of vegetation.

Mr. Ladd replied that they don't have planned fencing but they will have 6 feet Nelly Stevens Hollies wrapped all the way around it which will create a nice buffer along with landscaping and brick columns.

Because of the 60 feet grade height increase of the area **Mr. Bland** wanted to know the distance from Park Drive to the center of the cul-de-sac.

Mr. Ladd explained that there is 150 feet up to an existing sewer manhole, from that point on each line is approximately 100 to 125 feet. It would be roughly 750 to 800 feet from Park Drive all the way up to the center line of the cul-de-sac.

In response to Mr. Hoyle's question on what was the ordinance in regards to curb and gutter requirements in terms of the development, **Mr. Bass** said it was an option.

Mr. Hoyle said that since they want to make a nice entrance with brick columns and so forth wouldn't they want to follow it all the way up with curb and gutter?

Mr. Ladd stated that Park Drive does not have curb or sidewalks even though there may be a Town plan to incorporate sidewalks. It is a less impervious area which creates less run off. The ditches collect water but they are also curbless areas which makes it a better way to control Nitrogen and run off. They are proposing one side sidewalk just because there are only 16 lots.

Mr. Hoyle stated that he can understand their point and agrees but esthetically if they are going to start part of it why not follow it through.

Mr. Shaffer made motion to approve Conceptual Preliminary Plat review as proposed without curb and gutter and with a sidewalk on one side.

Second: Mr. Plummer.

Vote: 5-1

Mr. Hoyle voted against it.

Mr. Hoyle asked if once they propose this and assuming the Board of Commissioners approves it and it comes back to the Planning Board what is the projection on working land? **Mr. Ladd** replied they hope they can start in late spring, early summer.

Mr. Shaffer expressed concern on the storm water detention facilities with all those houses and children.

Mr. Ladd said that if they feel it is necessary for life safety issues they would be happy to look over the situation. They want something that looks good. As far as visibility for the other neighbors they don't want it to look like a sediment pond, that is why they are doing landscaping around it, if some fencing needs to be incorporated they could strategically hide it within the greenery.

2. Proposed Text Amendment – ZTA-2013-01 Zoning Ordinance Planned Development District

Action Recommended-Discussion & Recommendation to Town Board Of Commissioners

Mr. Bass stated that these are actually two proposed text amendments. One would amend the zoning ordinance, there is text language there for a planned development district and then it will become incorporated into the zoning ordinance as its own separate district, and become part of the zoning map. The second one provides a small amendment to the subdivision ordinance which would make a few items coexist and workable. These have been submitted by Chatham Park LLC in anticipation of their future development.

Mr. Phillip Culpepper addressed the Board by saying he submitted a new zoning district and explained that it may look somewhat chopped up but it was designed to fit in with the Town's existing ordinance. The reason for the subdivision is in the zoning text, it says that you may amend or vary certain subdivision standards you have to go into the subdivision ordinance and say that is ok. Although they have developed this planned development district and hope to use it for Chatham Park it is not intended specifically for Chatham Park it is for any development of 100 acres or more, 100 acres being the minimum.

A Planned Development District is a district that is used in numerous other jurisdictions across the state, in fact after their team worked on it and presented it to Mr. Bass and Mr. Messick for comments, Mr. Bass handed him a copy of a new zoning ordinance that was recently adopted in Currituck County which parallels almost exactly what they had done. They tried to create something that was workable for the Town and gave the Town all the information needed to make a decision. When the Board comes in for the rezoning case a master plan must be produce, the master plan has to be very detailed and give all the information that will be necessary for the Town to make a decision but also to create enough flexibility in it, so for a project that will take years to come there is enough flexibility but also it does not take too much effort when making a revision.

In response to Mr. Shaffer's question on why they did not use MUPD, it is too rigid in some places and it is missed timed because it requires information in places that is unnecessary. He had mentioned before how the economic analysis required for Eubanks Road was extensive and expensive and was put to no use whatsoever by the Town. They have tried to structure things so at the time the application is obtained it also contains the information needed. They set it up as a system where when the plan comes forward with the rezoning the Town Board of Commissioners and the Planning Board can suggest revisions and they can make revisions to that plan prior to the vote. It is a legislative process. They have tried to do something that would work for the Town and that is standard practice in the State and also develop an ordinance that would meet the needs of their project. They have received comments from Mr. Bass, Mr. Messick, Commissioner Fiocco and others and have tried to incorporate all those comments.

Mr. Hoyle asked I the reason this approach as mentioned could not be done with the current MUPD was because of its restrictions.

Mr. Culpepper said that the MUPD is set for at least 25 acres, they could do a MUPD for 100 acres but having worked on an MUPD for 75 acres he knows the results is not what this would allow and some of the uses specifically allowed are prohibited in the MUPD and they would be uses that are desirable in a Planned Development District. For example manufacturing is completely prohibited in the MUPD and clean manufacturing would be something they would like to have in the Planned Development District.

Mr. Hoyle had a question on Internal Transitions, it reads no buffers or transitions are required between land uses within the PDD, that does not mean they will not be, it just says they are not required.

Mr. Culpepper stated that they would have the flexibility to determine what would be best for that site. The transition of most concern would be with the adjacent properties. Within it there

can be a project that has an apartment building next to an office building. If there was an existing apartment building and someone was going to build an office building next to it then they could be talking about what type of transitions it is. They feel they can handle that within the project on their own, in some cases it can be a big transition or a very small transition but not a hard and fast regulation that is applied and can be somewhat arbitrary when there is a master plan being implemented. In reference to Mr. Hoyle's statement it is correct, just because they are none required it does not mean there won't be any.

Mr. Plummer asked if the Town would relinquish any authority to request one. **Mr. Culpepper** said no, everything would be approved through the same process as they would normally do, site plans, subdivisions, it would still be the same. If the board looks at a site plan for an apartment complex and they feel it really needs a transition the Board can comment on that suggest it and even recommend denial of it but it is not required, there will be enough flexibility to figure out what is best to work with the Board and the Board has the right to deny the application.

Mr. Hoyle expressed that he specifically likes the objectives on their presentation that states:

- Allowing greater freedom for a broad mix of various land uses in the same development.
- Advancing Public health, safety and general welfare.

Mr. Bland said that if he could take a broad view and look downward, is it correct to suggest that they want to submit a plan for the entire 7,000 acres as a unit rather than in a MUPD which does it on a set series of phases.

Mr. Culpepper said it is correct. Whether it would be for somebody who would only be doing 100 or 200 acre project for them it would be a 7,000 acre project. The master plan has to cover the entirety of the area requesting to be rezoned. They are asking for flexibility but they are also giving back some things, such as, at the time they do the application they will advise the Town on how many dwelling units they propose to put on the entire project and how many square feet of non residential development they intend to place, they also have to evaluate such things as the impact on the schools, police department, fire department, sewer and water, that is part of the reason why they need to have that fixed number when bringing forward the master plan. While they have some flexibility to do thing they also have some rigidity that has to be applied which states in fact the total project and the total project's impact on the area.

Mr. Shaffer said that he is extremely skeptical of it, he read over the MUPD requirements today and after listening to what was said he does not see how it confines or limits and is requesting to hear the other members opinions. He feels it pulls the plug from any restrictions.

Mr. Plummer was also somewhat confused since they have been doing MUPD's all these years and now they are being told MUPD are no good.

Mr. Culpepper said that it does not mean that the MUPD product is no good but for this kind of project he does not believe it is appropriate, they are still following the same restrictions and usage that is currently allowed. They will bring the subset of the uses but they will start with no more than what is now allowed.

Mr. Shaffer said he understood but his skepticism is not on the entity that is bringing it, is the potential use by anybody.

Mr. Hoyle asked Mr. Messick to provide his feedback.

Mr. Messick stated that in general both parties are right. It does give an extreme amount of flexibility and in terms of specific standards it sort of opens the door for the builder to propose anything they want, but on the other side it provides the Town the ability to approve or deny it. The plan is the key. The main question is “does the Town like or dislike the plan?” Is the town going to be affirmative and require the specificity it believes it needs?

Mr. Shafer also expressed concern on some of the language on the amendment and said it seems to further reduce the integrity or the need to follow any code or guidelines the town currently has.

Mr. Messick replied that it allows the code or existing ordinance requirement to be ignored and to come up with entirely separate rules and regulations, but it is incumbent upon the Town to insist on whatever rules and regulations it thinks is appropriate.

Mr. Shaffer stated that he feels it would impose a huge burden on the town and its limited staff when it comes to reviewing 7,000 acres. **Mr. Hoyle** explained to Mr. Shaffer that it would not be coming in all at the same time. They are now looking at the overall acreage and then they would come back and put the pieces together.

Mr. Bland stated that he would rather have the whole project at once and see what the general idea is rather than be surprised and have to start over again in phases. **Mr. Messick** responded that on a project this size it would be done in phases, according to the ordinance they asking for 100 acres phases.

Mr. Culpepper stated that the master plan has to cover the entire project which would be an overriding guidebook for all the developments within it, but currently they would continue to do separate approvals for projects within that, such as a subdivision or a site plan, it is just that the uses allowed within it would be allowed only in those areas. Within the 7,000 acres one are may only have 10 uses in it, another section may have another 10 entirely different uses listed even

though there may be 100 listed uses on the table. There will be areas that would have more residential uses or more commercial or office uses. By no means would a residential area be allowed manufacturing and office use that will be separated in the master plan. This is one of the concepts they are trying to lay out, to provide some specificity on what is going to go on in this entire project. It may be that all the uses are allowed in the entire plan but they will identify specific areas for specify uses and the entire piece would be laid out as one.

Mr. Shaffer asked Mr. Bass if they have any PDD code in the neighboring towns on other places he may know and if so has he spoken to those planners to see how the use of that language has been working out for them?

Mr. Bass stated that he did find one in Currituck County which has just been adopted. He looked at a model code and this is similar. He also noted that it can be confusing when you are talking about a Planned Development District, Mixed Use Planned Development, and Planned Unit Development sometimes those boundaries get blurred when you are looking at different codes. The devil is going to be in the details so when the Master Plan gets submitted it has to be reviewed carefully and make sure that subsequent development stays true.

Mr. Culpepper asked if Commissioner Fiocco would like to address the question since he has worked in multiple jurisdictions in the area that have Planned Development Districts; i.e. Cary, Greensboro and Raleigh have it.

Mr. Fiocco stated that he understands Mr. Shaffer's concern but the way to think about it is that the Master Plan is the ordinance and those are the regulation of that Planned Development.

Mr. Culpepper said that if they state some regulations it does not mean that they can't change but if they do not put down regulations then whatever applies in the town's regulations would be the rule. If the builder does not address it, it will fall back to the Town's right.

Mr. Shaffer brought attention to a phrase on page 3 which states "*The applicant, at anytime prior to the Board's vote, may amend a propped PDD Master Plan, or a proposed amendment to a PDD Master Plan*" this concerns him because anyone can walk in 5 minutes before a Town Board Meeting with an amended package.

Mr. Culpepper suggested a sentence to be added to say "*giving adequate time for review by the staff.*" or something along that line.

Mr. Shaffer continued to another phrase on page 6 that states "*if practicable the on-site transportation system shall be integrated with the off-site transportation system shown on the adopted comprehensive plan*" Frankly to him it means nothing. It means you might do it but you don't have to do it. It feels too open ended. A traffic impact analysis is not required and they have spoken about this in the past and they had set it up within a given threshold.

Mr. Culpepper stated that when they talk about transportation system it covers far more than the roads. Even though they are not required they would still do a Traffic Impact Analysis as they do site plans. Following an example on a development in Apex where a detailed traffic impact analysis was done and DOT said “so what”. The timing is not right at the time of the master plan to put forward a traffic impact analysis. Once there is a developer agreement then there will be specifics on what has to be built and in order to do that there will be a necessity to have a Traffic Impact Analysis. The Town does not require a Traffic Impact Statement now but they are hoping it does soon and they will meet all the requirements for a Traffic Impact Analysis as they develop but it would not be for the entire 7,000 acres, it would be a waste of time and money because DOT would not accept it then.

Mr. Shaffer brought up another phrase on page 8- 5.8.10 (b) *The Town Manager is authorized to approve these amendments.* This is under *Other Amendments* which is the exceptions that would not require rezoning. He feels is too loose and should be more thorough.

Mr. Culpepper said that they felt that the town manager would be the one that is responsive to the Board to make sure it is done right and would consult with the planning director and other staff.

Mr. Bland corroborated that if it comes down to something the Planning Board does not like they have the ability to deny it.

Mr. Culpepper in response to Mr. Plummer’s concern said this is not a new concept. Cary and Wake County have been doing it for 25 to 30 years. Allow the flexibility, get a Master Plan that has enough definition to it to guide what is going on and make sure it follows that plan but allows enough flexibility over time to make adjustments as needed. A project this size they could be looking at 40 to 50 years ahead. They want to make sure that the Town had a real good idea of what they would get 50 years from now but they also need to make sure there is enough adjustments there that to work with future changes.

Mr. Messick stated that it would be helpful for the Board to consider whether the concept of doing something like this is appropriate or something they would like to recommend. The other part is the text. Is it strict enough in some view to satisfy in what the Town’s requirements are?

Mr. Hoyle said that he views it as a concept and sees nothing wrong with it. It has been used for quite some time in some other places and has been given the blessing of four other people present tonight that are much more experienced and they need to rely on them. He sees nothing wrong in recommending it to the Commissioners as it stands.

Mr. Culpepper said that this is a framework on what they can present to the Board, without this they have no real way to present a large project in a meaningful way. This is not the plan, this is the framework from which they would formulate the plan and present it to the Board. It is their intention to have a series of Public Meetings before they present their plan because they want public input. They hope that they would meet a level of communication with the public that would be expected and the Town deserves.

Mr. Hoyle asked for a motion

Ms. Alston made motion to accept it.

Mr. Bland seconded.

Motion made to accept it and submitted to the Board with their recommendations

Mr. Shaffer wanted to alert the Board that what they have received in promises from Mr. Culpepper on how they would do it is not necessarily how anyone else would do it and it is not clear that the structure of this is insistent or clearly written enough that we would get that level of integrity from a known entity versus an unknown entity. Mr. Messick has already indicated that even though Chatham Park intends to come with a 7,000 acre plan there is no requirement, they can still come with 100 acre pieces over the next 20 years. Just because they are going to do it the way it makes the Board feel more comfortable it does not mean that this document will track their operation.

Mr. Bland asked that such a development could be with 100 acres or 7,000 acres but whatever it is would it not be done at once?

Mr. Culpepper replied that all the area that is asked to be rezoned would have to have a master plan. You can own 7,000 acres and ask to rezone 2000 acres only, not their intention but yes, it could happen.

Mr. Hoyle said that he understand Mr. Shaffer point of view but with regards to anything that is written as far as an ordinance text is concerned this is done with the blessing of the Board of Commissioners. Let's say XYZ comes before us with some kind of something regarding development it is up to the Planning Board to make a recommendation to the Commissioners and then they make their decision. They still have a way of directing the outcome.

Mr. Shaffer stated that he agrees but does not believe this is clearly worded to make him comfortable.

Mr. Bland asked if the Town's legal counsel has read it and is there something they should be leery off.

Mr. Messick said that yes he has read it but it is a policy statement not a legal issue. There is nothing illegal about the way this is worded, the question is if it's something they want to ban or recommended to be used by the Town. The benefits are that you have complete flexibility, you

don't have to pay attention to your own rules nor do them and you can create and fashion a project that suits you which it's good. It does require a level of responsibility, expertise and self Control to be able to say you don't like something. You don't have to fall back on what the book says that some other planner determined 20 years ago, it's up to you now to determine what you want. It will require more work but it could be a good thing.

Mr. Bass reminded the Board that it is a new zoning district so they would have to go through the process as any property would have to be rezoned.

Mr. Plummer stated that if he has any reservations it would be the size of 100 acres, he wished it would be a little bit larger but what other municipality has dealt with a development of this size, so he can certainly see why the flexibility is needed on the developer's side and this looks like a good opportunity to give them that flexibility. As Mr. Messick said we are using a 20 year old Town Ordinances and they have a 40 to 50 year built out how outdated would that be. He would encourage an amendment to large size acreage not for Chatham Park but for any other future developments.

Mr. Culpepper stated that they thought it was creating a good rule that the Town may want to use but if they want to limit it to a larger size he has no problem doing it.

Mr. Shaffer said that his concern is not with the size of acreage but with the way the Text Amendment reads right now, he feels is too loose, open ended, lack of control, too broad.

{Motion was made by Ms. Alston to recommend approval of the proposed text amendment. Seconded by Mr. Bland}

Vote: 4-2 Opposed, Shaffer & McConnaughey

3. **Proposed Text Amendment – ZTA-2013-01 Subdivision Ordinance, {Related to the Planned Development District Zoning Ordinance Amendment}, Design Standards**
Action Recommended – Discussion & Recommendation to Town Board of Commissioners

Mr. Hoyle stated that this is a component of the previous discussion.

Motion made by Ms. Alston to accept this. Seconded by Mr. Bland

Motion made to accept this and submit it to the Commissioners and duly seconded.

Vote: 5-1 Opposed, Shaffer

E. BOARD MEMBER CONCERS

Ms. Alston asked if they had any idea when Hillsboro Street would be repaired.

Mr. Bass replied that it could be by the end of the March.

F. REPORTS AND ANNOUNCEMENTS

1. Information Item, Voting in Rezoning Decisions

Mr. Bass provided the Board members with an article from Coates' Canon: NC Local Government Law Blog.

Mr. Hoyle asked Ms. Alston about the architects claiming that Kensington Park had been approved 5 or 6 years ago and he has no recollection of it. Ms. Alston stated that she does not either. **Mr. Bass** said that he believes that something was submitted some years ago but nothing was ever approved to his knowledge

Due to April 1st falling on the Monday right after the Easter weekend the next Planning Board Meeting is scheduled for Wednesday, April 3, 2013 at 7:00 p.m.

G. ADJOURNMENT

Mr. Hoyle asked for motion to adjourn.

Ms. Alston made motion to adjourn, seconded by **Mr. Shaffer**.

Meeting adjourned at 8:24 p.m.