

Mr. Chairman and Board of Commissioners:

Thank you for this opportunity to address you on behalf of the Planning Board this evening. You have before you our recommendation for adoption of amendments to the zoning ordinance allowing for oil and gas exploration, development and production in all zoning districts upon issuance of a Conditional Use Permit (CUP). Additionally the recommendation provides for the requirement of a special study on high impact uses such as oil and gas industries as part of a permit application. For projects exceeding 10 acres the recommendation allows for a special study to be required in addition to an Environmental Impact Assessment (EIA) regardless of size.

We began this discussion on Nov. 13th and resumed it at greater length on Dec 4th with the objective of concluding discussion and making a recommendation in advance of the expiration of the moratorium.

Attorney Glenn Dunn was present at our Dec. meeting to answer questions and to offer advise on the inherent legal issues the county faces in these regulatory efforts. We heard public input at both meetings.

As you are aware the State has limited county authority over the oil and gas industry by granting a statute distinguishing it from other forms of mining and prohibiting rules specific to the industry. Additionally the statute allows for preemption by the North Carolina Oil and Gas Commission should an application for exploration, development and production be denied by the County.

While avoidance of preemption is an important goal, we became aware that preemption may be unavoidable and that provision for a strong, defensible legal position in case of a petition for preemption is of equal importance.

Discussion centered around two options. Should the oil and gas industry be limited only to heavy industrial districts with a Conditional Use Permit or should that industry be allowed in all zoning districts with a Conditional Use Permit as proposed in the draft amendment.

Since the Planning Board was unified in its intent to best protect the County from harmful impacts, initially the latter option struck the board as counter intuitive and several members favored limiting oil and gas activities to heavy industrial areas. Ultimately the majority was persuaded that allowing for oil and gas industries in all zoning districts was in fact the most protective option.

In considering a restriction to heavy industrial zones it became clear that because of a reliance on the underlying geology and the relatively small area currently zoned heavy industrial, this restriction would neither prevent nor deter an oil and gas industry applicant from seeking to locate in other zoning

districts, requesting a rezoning and a CUP. The initial request would be a legislative general rezoning and a denial of such a request would likely result in a petition to the state's Oil and Gas Commission for preemption.

In this case the subsequent CUP would not come into consideration and the evidence considered by the Commission during a hearing would be limited to the more general legislative request. While the state Commission would be required to make 4 findings of fact it is unclear how thorough their review would be and documentation provided by the county in its own defense would be scant and nonspecific since a rezoning decision must consider all designated heavy industrial uses. In other words, the county would be in a weaker position to argue against a preemption petition.

In the event that the preemption hearing is decided in favor of the petitioner, that petitioner is then authorized by the state to move forward with their development and the county would have lost the opportunity to impose conditions on that operation.

In contrast the proposed amendment allows for oil and gas industry in all zoning districts with a CUP that provides for a special study to be required, enabling the County to address specific concerns related to potential impacts. While the county can request an EIA for projects exceeding 10 acres, the special study would apply to smaller projects as well, providing documentation of factual evidence for the record.

A legislative rezoning decision is considered by courts to have a high degree of discretion, carrying less weight than a quasi-judicial CUP decision bound by reasonable standards. Furthermore the special study provides the County with expert testimony to support their position and thereby strengthen Chatham's position against a preemption petition.

The Planning Board concluded by a vote of 7-2 that a CUP in all zoning districts with the inclusion of the special studies provision allows the county to impose reasonable standards that may provide good reason for a denial of a development project as well as providing documentation and findings of fact that can hold up to the scrutiny of a preemption hearing.

There were three issues discussed by the board, not included in this recommendation that we would like to bring to your attention for further consideration.

There was an interest by some board members to extend the moratorium to provide further study of this issue and to hold the text amendment in reserve to be enacted if needed should the moratorium be challenged by the state. However this approach would put the county at a disadvantage should an application be submitted during the time it would take to reinstate the

moratorium. Furthermore, extending the moratorium again would give the appearance of targeting the oil and gas industry.

Concerns for additional protection of Jordan Lake, Harris Lake and the area in proximity to the Sharon Harris Plant brought up the discussion of an overlay district. Complications as to the viability of an overlay prevented further consideration of the topic for this recommendation. However the dangers posed to these areas by a fracking operation could have grave consequences and this issue requires more consideration. While county rules designate the areas surrounding Jordan Lake as a critical watershed and the Oil and Gas Rules provide setbacks, Harris Lake does not benefit from those rules, as it is not a drinking water resource. Here again the special study provision is seen as an advantage to the county should a proposal seek to locate close to these areas.

Board discussion included questions about the structuring of the special studies provision regarding how consultants would be selected and how the county would review those studies. It is clear that these details need to be worked out and I believe planning staff is currently discussing how to move forward with the development of special study criteria.

We recognize the particular peril posed by the oil and gas industry to the citizens and lands of Chatham County. We acknowledge the County's unique responsibility to protect the water resources of Jordan Lake as well as Harris Lake and the neighboring Sharon Harris Power Plant. The Planning Board has the responsibility to offer the Board of Commissioners informed recommendations on effective, legally defensible land use policy in order to protect Chatham County. Because of the strictures put on the County by state law we are not entirely satisfied with our limited options but the Planning Board majority believes we have made the best recommendation possible at this time. Nonetheless we encourage Chatham County to continue to seek opportunities to strengthen our regulatory hand and to engage with the state by lobbying the Oil and Gas Commission for more local control and flexibility to protect our unique resources and to mitigate impacts.

Lastly the Planning Board appreciates the efforts by Mr. Dunn and Mr. Sullivan to draft amendments that walk the fine line of imposing regulation conforming with state statute regarding the oil and gas industry while providing recourse for the protection of the people and lands of Chatham County from the potential harmful impacts of that industry.

Thank you,
Caroline Siverson
Planning Board Chair