

Chatham County's Land Grab

*A selfish elite is trying to take over
23,000 acres for their personal benefit*

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EXECUTIVE SUMMARY

- ♦ Chatham County's proposed Corridor Overlay District ordinance, if adopted, represents a radical land-use plan that would allow county government to take control of over 23,000 acres of private land without financial compensation.
- ♦ The "Scenic Overlay" part of the ordinance would transfer over 23,000 acres of private property from private control by landowners to political control by planners and the most powerful interest group in the county.
- ♦ The "Overlay Nodes" that the ordinance would establish would restrict most retail business to ten specific areas of the county, which would severely limit the supply of land for commercial and retail developments to less than 7.5 percent of the county's land, thereby making a few landowners very rich.
- ♦ The ordinance would also make starting or expanding a business extremely costly, which would severely limit the ability of Chatham County entrepreneurs to start or expand businesses.
- ♦ As a direct result of those high costs, if the ordinance were adopted, Chatham County residents should not be surprised if only national chain stores open in the county.
- ♦ Additionally, such high costs would inhibit competition, driving up

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prices primarily for rural residents. Businesses outside the county and in the cities in the county would benefit from the higher prices caused by this lack of competition.

- ♦ The ordinance would give county planners enormous discretionary power to interfere with landowners' ability to use their land. This arbitrary and capricious rule by planners would provide opportunities for graft and corruption.
- ♦ Finally, this ordinance would unjustly take private property without financial compensation, thereby imposing costs on some landowners for the benefit of an elite that believes its aesthetic vision justifies the use of governmental force.

INTRODUCTION

The Chatham County Commission is considering a major land-use ordinance that would strictly control the use of privately owned land along the county's major roadways and would force most, if not all, new commercial and retail development into ten designated intersections along those roads. The proposed Chatham County Corridor Overlay District ordinance was developed by county planners with the help of regional planners at the Triangle J Council of Governments. Planners and their supporters argue that the ordinance, if adopted, would maintain the rural character of the county, protect open space, promote economic development, and improve property values.

The first major feature of the proposed ordinance is that it would control all non-residential, large subdivision, and mixed-use development projects by specifying the exact location of future development. The ordinance would designate 10 locations called "nodes" that would vary by kind and size: neighborhood, community, regional, and special (see map and table, following pages). In each node, the ordinance would control the size, location, and proportions of new buildings. In addition, regulations would dictate the location of sidewalks, parking,

and landscaping. In fact, they would control building facades and proportions down to specifying the ratios of the height to width of windows and doors. They would also require a 100-foot-deep landscaped screening buffer along all roadways in order to block the view of the development from the roadways. If the land under development did not already contain natural vegetation, the ordinance would require the developer to plant a mix of 110 trees and shrubs for every 100 linear feet along the road. In addition, the regulations would require all parking lots to be planted with trees in order to provide shade to 50 percent of the parking area. Some supporters of the ordinance consider the sight of a shopping center "visual pollution" and believe it is the proper role of government to eliminate it.

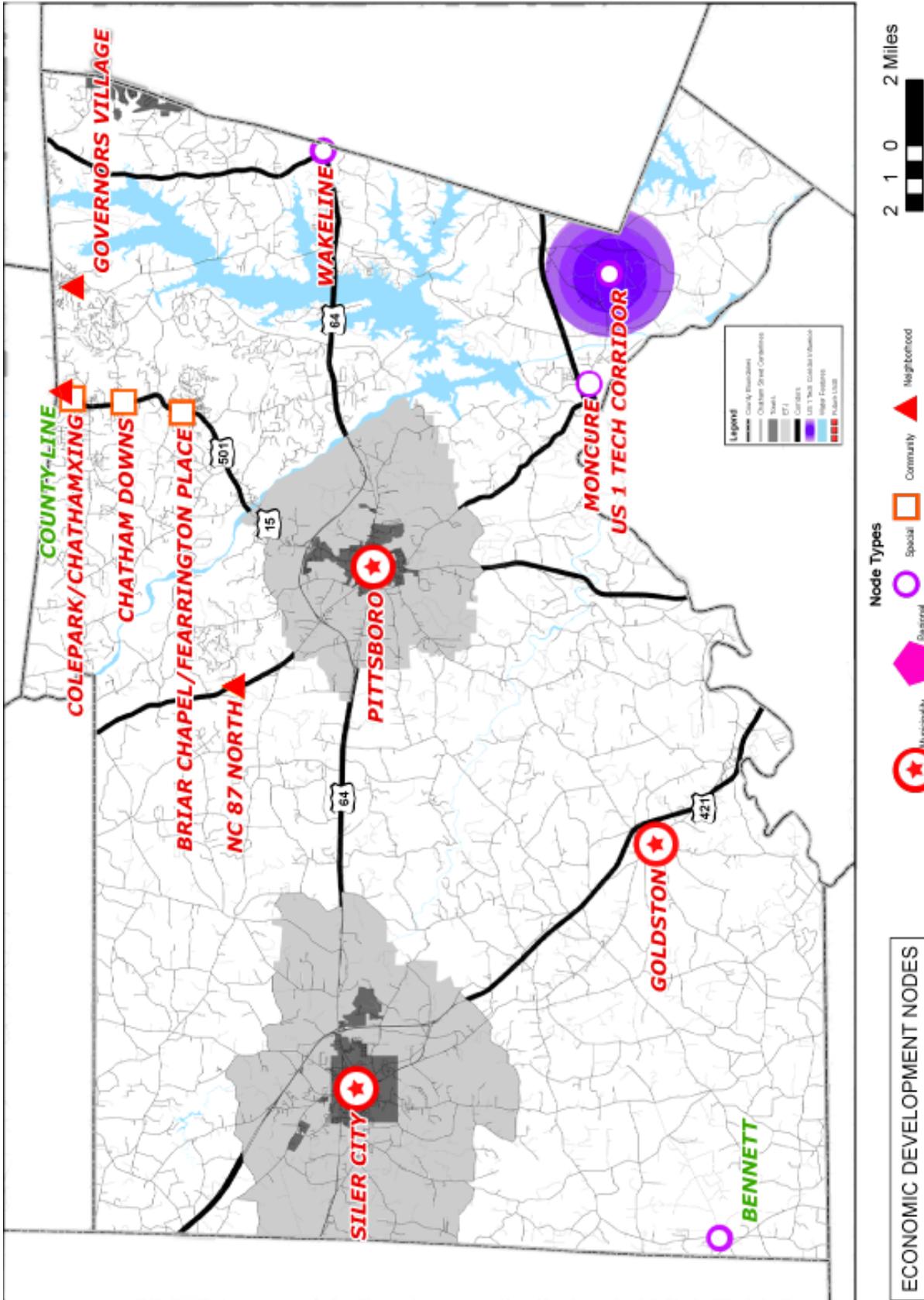
Second, the ordinance would create a 3,000-foot-wide scenic overlay district on about 60 miles of the county's major roadways (see map, next page). The ordinance also would require a 150-foot-deep landscaped screening buffer on each side of the road. Landowners who would want to build would be required to preserve any existing trees in this buffer or, if no trees were present, to plant a buffer containing a mix of 165 trees and shrubs for every 100 linear feet along the roadway.

The ordinance would require that the property owner obtain a conditional-use permit (CUP) from the county for all new non-residential, large subdivision, and mixed-use development projects in the scenic overlay and the commercial/retail nodes.

Supporters argue that if this ordinance were adopted, Chatham County residents and visitors would benefit from lush, tree-lined roadways and small-town-style, pedestrian-friendly shopping centers. What could be nicer?

This report looks at some of the consequences of this proposed ordinance. Make no mistake, this plan is a radical land-use plan that would not only have major financial and political impacts, but also it would impose

Map: Chatham County Economic Development Nodes



Source: Chatham County Corridor Overlay Districts, Draft, June 4, 2008.

Table 1. Chatham County Proposed Corridor Overlay Districts Ordinance, Summary Data

Type of node*	No. of nodes in the county	Max. retail space (sq. ft.)	Max. store size (sq. ft.)	Conditional-use permit (CUP)	Screening buffers	Parking lot shading	Residential (but not stand-alone)
Neighborhood	3	160,000 minus existing retail space	Two at 40,000 each [§]	Required	100' deep, 110 plants per 100'	50% trees on 50' centers	Encouraged in mixed-use developments
Community	3	320,000 minus existing retail space	Two at 80,000 each [§]	Required	100' deep, 110 plants per 100'	50% trees on 50' centers	Encouraged in mixed-use developments
Regional	0	Multiple large stores	No limits	Required	100' deep, 110 plants per 100'	50% trees on 50' centers	Encouraged in mixed-use developments
Special	4	Corporate or research campus (non-retail)	No limits	Required	100' deep, 110 plants per 100'	50% trees on 50' centers	
Scenic Roadway Overlay	About 60 miles	N/A	65,000 (single-use bldg.)	Required	150' deep, 165 plants per 100'		

Source: Chatham County Corridor Overlay Districts, Draft, June 4, 2008.*

* This ordinance is still in draft form, and there are several options concerning the number and location of the nodes. This report, therefore, uses the map attached to the June 4, 2008 draft.

§ The ordinance states “envisions up to two” — “envisions” is yet another example of the nebulous terminology that provides planners and the commission with the opportunity for arbitrary decisions.



dramatic restrictions on people’s freedoms and property rights.

POLITICAL LAND-USE PLANNING

Under the proposed Chatham County Corridor Overlay District ordinance, all new non-residential, major subdivision, or mixed-use projects along the scenic corridors or in the development nodes would be subject to the conditional-use process and require a conditional-use permit (CUP).¹ An applicant for a CUP would have to submit plans to the planning department, which would check the plans for compliance with ordinance provisions, after which they would be considered by the planning board and the county commission. As discussed in detail below, this ordinance would provide the planning department officials with language ambiguous enough for them to be able to impose their own will on the applicant’s plans.

The commission’s decision to approve or deny the CUP is based on the procedures in Section 15 of the Chatham County Zon-

ing Ordinance. This procedure requires the commission to make affirmative findings to certain issues such as whether the project is “either essential or desirable for the public convenience or welfare” and whether it is “consistent with the objectives of the Land [Conservation and] Development Plan.” One of the most important objectives of this plan is to “preserve both the form and function of rural character — the landscape, agriculture, and home-based businesses.”² In other words, if planners and commissioners believe that a proposed development is not consistent with the “rural character” of the county, they will deny the CUP. Considering that every new housing, commercial and retail development converts rural land to a non-rural use, this provision of the CUP process gives planners and commissioners a ready-to-use excuse to reject any development.

In addition, the county commission has another extremely broad grant of discretionary power (some would say excessive power) under CUP regulations:

In granting a conditional use permit, the Board of Commissioners *may impose such additional restrictions and requirements upon such permit as it may deem necessary* in order that the *purpose and intent* of this Ordinance are served, public welfare secured and substantial justice done.³ (Emphasis added.)

It should be clear that the “purpose and intent” of the ordinance is in the eye of the beholder. Commissioners are free to justify imposing their personal preferences by stating that they are only following the “purpose and intent” of the ordinance.

And just in case the applicant misunderstands his inferior position before his superiors on the commission, the ordinance states:

If all requirements and conditions [imposed by the commissioners] are accepted by the applicant, the Board of Commissioners shall authorize the issuance of the conditional use permit, *otherwise the permit shall be denied.*⁴ (Emphasis added.)

This relationship reminds one of a medieval peasant groveling toward the king with his hat in hand.

Given such extremely broad grants of power, it is likely that that justice would *not* be done. Instead, landowners *would* be denied the freedom to use what is rightfully theirs in ways that they see fit.

If a landowner applied for a CUP, but the planning department, the planning board, or the Board of Commissioners were hostile to the project, it is highly unlikely that the project would be approved on time or without substantial changes, both of which would impose increased costs on the project.

THE RICH GET RICHER, THE POOR GET POORER

This ordinance, if approved, would force all new commercial and retail businesses into 10 specified intersections called nodes⁵ (see map). It would severely restrict the availabil-

ity of commercial/retail land in the county. The land in these nodes would comprise only 7.25 percent of county land (excluding existing cities and natural areas).⁶ In reality, the amount of land available for new development would be much smaller. The square footage of existing retail outlets in the nodes would be subtracted from the total allowed in the ordinance.⁷ Obviously, such a severe restriction of the supply of land would cause land prices in the nodes to skyrocket.

Landowners who own land along the major corridors outside the nodes, however, would suffer a large loss of land value due to the restrictions and costs imposed by the ordinance. Many of those landowners may have plans to start their own businesses or sell land to builders who would provide buildings for local entrepreneurs to establish or expand businesses. The Chatham County Corridor Overlay District ordinance would make it extremely difficult and excessively costly to develop businesses along the scenic corridors (see detailed discussion of development costs below). And if the commission believed a proposed project violated the “rural character” of the county, which by definition it would, a CUP for the project could be denied.

For that reason, land values outside the nodes would plummet. Landowners who are cash poor and land rich would suffer. Those who have planned to use the value of their land, for example, to send children to college or for their retirement would see those dreams dashed. If the ordinance were passed, some of those landowners would face financial ruin. Since most area farmers find themselves in this position, this ordinance should be seen as fundamentally anti-farmer while at the same time promoting the preservation of farmland. In a bizarre twist on the concept of property rights, the supporters of this ordinance seem to believe that the rights belong to the physical property rather than to the people who own it.

In addition to creating high land prices in the nodes, the plan would impose extremely

high development costs within the nodes (see Table 1). For example, it would require a 100-foot-wide landscaped screening buffer to be maintained or planted along all adjoining roads. The ordinance would require that, for each 100 linear feet along the roadways, the developer plant a mix of 110 trees and shrubs — and even the plant sizes would be prescribed: “Shade trees, 2-1/2” caliper, and 14’ in height,” “Evergreen Trees, 6–8’ minimum height,” etc. Furthermore, the ordinance would require all parking lots to be planted with trees to provide 50 percent shade cover, with trees planted on 50-foot centers.

For example, consider a small development in a “neighborhood” node that has a maximum of 160,000 square feet of retail space. Typically, such a development could be constructed on a corner lot of 1,000 feet by 500 feet road frontage containing 11.5 acres. The screening buffer alone would occupy 3.2 acres, or 28 percent of the total acreage. The first impact of the ordinance would be to require the developer to buy an extra 3.2 acres more to compensate for the loss of land devoted to the buffer. Next, the buffer would need a mix of 1,540 trees and shrubs in order to block all views of the buildings and parking lot from the roadways. A very conservative estimate of the cost of buying and installing those trees and shrubs would be about \$20,000 for every 100 feet of road frontage. That amounts to \$280,000 just to plant the buffer. This amount does not include the cost of the landscape plan that must be designed by a “certified landscape architect,” or the cost of planting approximately 50 trees to provide 50 percent shade cover for the parking lot, or the cost from the loss of more land owing to the requirement that parking spaces be separated by seven-foot-wide planted areas, among other costs. Local entrepreneurs and their families could not afford such high development costs or the extremely high rents associated with locating in one of these new developments. Only national chain stores such as

Wal-Mart, Home Depot, Target, Starbucks and McDonald’s, would have the resources to cover those extremely high development costs before recouping them through sales.

Two goals of the ordinance and the Land Conservation and Development plan are to preserve the “rural character” and have “a mix of different types of development.”⁸ Chatham residents should not be surprised, however, if under the ordinance the county became dominated instead by national chain stores.

USING COUNTY GOVERNMENT TO ROB PETER TO BENEFIT PAUL

The second part of the proposed ordinance would create a 3,000-foot-wide “Scenic Overlay District” along about 60 miles of the county’s major highways (see map).⁹ This district would comprise over 23,000 acres of private property that the county would transfer from private control (i.e., responsive to market signals) to county political control (responsive to whomever holds political power in the county). If a special-interest group were able to vote in a majority on the commission, then under the ordinance it would be able to control this land. While the property owners still would technically “own” the land — and they certainly would still pay county taxes on it — the county planning bureaucrats, the unelected county planning board, the Board of Commissioners and the most powerful special-interest group would exercise real control over it. Almost any change the landowner would desire to make concerning the use of his land would depend upon receiving the required CUP from the county.

The exact degree of control exercised by those political forces through the CUP process would be uncertain because it would depend on the prevailing political winds at any particular time. What is certain is the ordinance would seize from private landowners without compensation a 150-foot landscape buffer on each side of the roadway. The ordinance would prohibit the property

owner, now in name only, from using his property for any purpose other than a diagonally installed driveway. Supporters argue that this 300-foot landscape buffer (150 feet on each side) would provide a scenic view for those traveling the county's major roadways.¹⁰ Regardless, that requirement would amount to the county seizing about 2,300 acres from private property owners for public use without any financial compensation. In other words, if the ordinance passed, the county commission would use governmental force to prevent landowners from using their land, without compensation, for their own purposes in order to provide presumptive aesthetic benefits to those who drive through the county.

While only the courts could decide if such a measure were a violation of the U.S. Constitution's takings clause of the Fifth Amendment, it would be a clear violation of Chatham County's policy expressed in the Land Conservation and Development Plan. That plan states that the first and foremost policy of the county is for "balanced growth," and balanced growth occurs when "benefits and burdens of growth are shared."¹¹ The 150-foot buffer requirement (and the 100-foot buffer in the nodes) would place all of the burden (costs) on the property owners, and give all of the aesthetic benefits to those who use the roadways.

ARBITRARY AND CAPRICIOUS RULE BY PLANNERS

The long experience of arbitrary and capricious rule by monarchs and their ministers led the American Founders to base our system of government on the rule of law. The actions of government must be based, not on the whims of bureaucrats or elected officials, but on written laws that clearly and specifically tell citizens what is expected. County land-use controls are no exception. And certainly no exception can or should be made simply to allow planners and commissioners to impose their sense of aesthetics on others. Unfortunately, that is exactly what this ordinance is all about — forcing the planners' view of aesthetics on others.

In order to accomplish that goal, the proposed Chatham County Corridor Overlay District ordinance would grant county planners a high degree of discretionary power, which would likely become bullying and abusive to landowners. At least twenty parts of the ordinance would specifically grant Chatham County Planning Department officials powers to determine compliance with the ordinance. For example, under the ordinance:

- Selective thinning of buffers would be allowed, but the planning department would decide whether the thinning violated the "intent of the buffer requirement."¹²
- Before any construction began, the planning department would use an on-site inspection to determine if "the natural tree buffer should remain pristine, be supplemented with additional plant materials, or be planted anew."¹³
- The degree of excavating or grading in a buffer area and adequacy of the existing vegetative screening would have to be addressed "in submitted plans to the satisfaction of the Planning Department in advance of site plan approval, to ensure compliance with the intent of this section."¹⁴
- When a developer wanted to use a path instead of a sidewalk, "paths must be approximately parallel to the course of the sidewalk they are 'replacing' and must be approved by the Planning Department."¹⁵
- Driveways and walkways that cut through a landscape buffer must cross at a diagonal angle in order "to minimize the visual opening from the corridor," and developers would be required to submit their plans for these cuts and any grading or excavating within a buffer on their plans "to the satisfaction of the Planning Department."¹⁶

Worse, the innumerable vague expressions in the ordinance would stray even farther from the rule of law. Certain things are "encouraged," others are "recommended,"

and still others are “strongly encouraged.” For example,

- ♦ In regional nodes, “residential units over smaller commercial tenants are encouraged.”¹⁷
- ♦ Greenways shall have “adequate lighting and signage.”¹⁸
- ♦ Furniture at outdoor cafes “shall be of a professional quality and workmanship to ensure public safety.”¹⁹
- ♦ “Buffers shall be left in an undisturbed natural vegetative state where possible.”²⁰

Who would decide if lighting is “adequate?” Who would decide what is “possible” and what is impossible? When would something that is “encouraged” become required? Arming planners with vague language and the CUP process would foment politically and ideologically inspired micromanagement of the development process. It would make possible, even likely, an uneven application of the ordinance based on whether a landowner is favored or on the outs with the planners and the county commissioners.

It also would leave plenty of room for graft and corruption. While most public employees are faithful to their public trust, some go astray, and providing them with broad grants of power would offer many temptations. For example, in 2005, Wake County Public School transportation department officials, including the transportation director, pocketed \$3.8 million by submitting fake invoices for bus parts that were never delivered. Wake County District Attorney Colon Willoughby called it “the largest theft of public dollars I’ve ever seen in 18 years as a prosecutor.”²¹ More recently, a North Carolina Department of Environment and Natural Resources official accepted a \$208,000 bribe to speed approval of a DENR-required permit for an ethanol plant in Beaufort County.²²

The CUP process allows endless changes with resulting delays to meet the whims of the planners, the planning board, the county

commissioners, and any politically powerful special-interest group in the county. It would jettison the certainty that builders need (and would have under the rule of law), and those who bear no costs and run no financial risks would be able to use their political power to force those who do bear the costs and are exposed to the financial risks of markets to suffer.

It is worth remembering that the Declaration of Independence protested King George III’s arbitrary and capricious use of political power, including this charge: “He [the King] has erected a Multitude of new Offices [bureaucratic agencies], and sent hither Swarms of Officers [bureaucrats] to harass our People, and eat out their Substance.” Chatham county’s elected and bureaucratic officials should not repeat King George’s mistake.

WHAT WOULD HAPPEN IF THE CORRIDOR OVERLAY ORDINANCE WERE ADOPTED?

The immediate result of the passage of the ordinance would be to transfer control over a large portion of county land from the private sector to the political sector. Decisions regarding where and what to offer for sale to consumers would be made not by those risking their own money, but by any politically powerful special-interest group in the county that can control the county commission. People with no financial stakes in them would make those politically controlled decisions. By definition, their decisions would be irresponsible because the ones making the decisions would suffer no financial consequences if the decisions turned out badly.

The ordinance would make some landowners wealthy because it would restrict the supply of developable land to the land in the nodes. Others who own land along the scenic corridors would find developing their land to be extremely difficult and costly, so their land values would drop dramatically. County government should not be in the business of making decisions that would enrich some people at the expense of others. If noth-

ing else, this ordinance would result in a large-scale coercive wealth transfer. Whether intended or not, the ordinance would have a “Robin Hood in reverse” effect, benefiting the rich at the expense of the poor.

Additionally, high development costs would drive new businesses outside the county or into its cities. Chatham County’s rural residents would then have to drive to shop, wasting gas and creating more congestion and pollution. Chatham County families who want to start businesses would also be forced out of the county or into its cities. Thus, the plan would create major restraints on trade. Existing county and city businesses would face less competition, resulting in general price increases. In other words, this plan would represent a major transfer of wealth from rural county residents to city and out-of-county residents.

The ordinance and the architectural guidelines would allow for little to no architectural diversity. Building size, shape, proportions, and spacing would be strictly prescribed. Height and width ratios of windows and doors would be dictated.²³ The result would be homogenized, sterile, and plastic developments. The example photos in the draft ordinance, which planners believe are models to be copied, are testimony to the fact that, if adopted, this ordinance would destroy architectural diversity in the county. Those photos could have been taken in a suburb anywhere: Los Angeles, Atlanta, Cleveland, Boston. Why would Chatham County want to require suburban architecture that leaves no room for Chatham County’s distinctive character? (No leading architect would even consider a project in Chatham County because the way this ordinance would tie his hands.)

Finally, even if the ordinance were able to pass every legal, procedural and constitutional hurdle, it would violate the fundamental concept of justice. County commissioners are charged with the task of seeing that “substantial justice is done” when considering CUP applications. Justice should

be the responsibility of the commission when it considers this ordinance. What concept of justice, what moral code justifies imposing costs on one segment of the county (mostly the poorer segment) and bestowing benefits on others, most of who are already in better financial shape? What concept of justice is centered around the destruction of property rights and using force to impose subjective aesthetics of some on others?

RECOMMENDATIONS

1. If the county commissioners believe that the scenic buffers are in the public interest, justice requires them to use tax money to buy the property or easements from the property owners. If trees are required in these buffers, the county should buy and plant them. That way the landowners would not be forced to pay all the costs for benefits all residents of the county share.
2. Any radical land-use plan such as this one that would create a drastic change in the future development of the county should be put to an advisory vote of county residents, and only county residents, instead of a vote by a temporary majority of the county commission. (Including city residents of the county would not be appropriate, because they would benefit from the ordinance without bearing any of its costs.)

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NOTES

1. 10.9 Chatham County Corridor Overlay Districts, Draft 6/4/2008, page 2.
2. Chatham County Land Conservation and Development Plan, p. 1.
3. Chatham County Zoning Ordinance, Section 15, page 65.
4. *Ibid.*
5. While there are exceptions and procedures for other locations of businesses, these are limited and subject political decisions by the county commission.
6. Land Conservation and Development Plan, p. 6.

7. Corridor Overlay Districts, pp. 2 and 3
8. Land Conservation and Development Plan, p. 1.
9. Early drafts of the ordinance specify that the scenic overlay is 1,500 feet in distance from the edge of the right-of-way on each side of the county's major roads, or 3,000 feet total. Later drafts delete this language and just state "These districts [node overlay and scenic overlay] are shown on the Official Zoning Map." This report uses the Official Zoning Map to estimate that the scenic overlay district is approximately 3,400 feet wide including the roadways. The calculation that the ordinance would transfer over 23,000 acres to public control was made by subtracting the roadways and multiplying the remainder by 60 miles.
10. It takes a very large stretch of the imagination to argue that this in any way protects the health and safety of the public and is therefore an appropriate use of governmental police powers.
11. Land Conservation and Development Plan, p. 1.
12. Corridor Overlay Districts, p. 24
13. *Ibid.*, p. 28
14. *Ibid.*, p. 24
15. *Ibid.*, p. 12
16. *Ibid.*, p. 24
17. *Ibid.*, p. 7
18. *Ibid.*, p. 13
19. *Ibid.*, p. 23
20. *Ibid.*, p. 24
21. T. Keung Hui, "Bus parts scheme detailed," *The News & Observer*, July 20, 2005.
22. Benjamin Niolet, "State official pleads guilty in bribery case," *The News & Observer*, May 28, 2008.
23. Chatham County Major Corridor Design and Planting Guidelines, draft, 6/6/2008, pp. 1-2.