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November 1, 2007

VIA ELECTRONIC MAIL

Chatham County Board of Commissioners
Chatham County Planning Board
c/o Keith Megginson, Planning Director
80-A East Street
P. O. Box 54
Pittsboro, NC 27312

Dear Members of the Board:

This law firm represents Southern Wood Piedmont Company (“SWP”). As you may be aware, SWP is the owner of the former Gulf wood treating plant (the “Gulf Facility”) located north of Route 421 near the southern border of Chatham County (the “County”). It has been brought to our attention that the County is presently considering adoption of an ordinance which would zone portions of SWP’s property. For the reasons outlined below, SWP has serious concerns about the adverse impact the County’s proposed zoning would have on the Gulf Facility. As a result, SWP requests that the County consider not zoning portions of the Gulf Facility, or, at minimum, consider making certain text changes to its Zoning Ordinance as indicated below.

The Gulf Facility operated as a wood treating plant from 1947 until the 1980s. SWP has been engaged in the process of environmental remediation of the Gulf Facility since its closure. SWP’s remediation efforts are memorialized in a Consent Order with the North Carolina Department of Environment and Natural Resources. In connection with this Consent Order, SWP will be engaged in additional remediation for some time, and operation and maintenance activities at the Gulf Facility for the foreseeable future.

The Gulf Facility consists of three tax parcels:

- Parcel No. 9869: Consisting of approximately 49.44 acres, located north of R. Jordan Road and Robert Poe Road (the “Main Gulf Facility”).
- Parcel No. 9871: Consisting of three separate tracts, totaling 5.06 acres, scattered between Route 421 and R. Jordan Road.
- Parcel No. 71765: Consisting of 3.95 acres, located immediately south of R. Jordan Road.

In September 2007, the County Board of Commissioners and Planning Board held a joint public hearing, the purpose of which was to solicit comment on the proposed change in zoning classification of property located within 1,500 feet of certain major County roadway corridors from unzoned to RA-40 Residential-Agricultural District (the "RA-40 District"). The proposed corridor zoning places all of Parcel Nos. 9871 and 71765 in the RA-40 District. Significantly, the proposed zoning line also splits the Main Gulf Facility (Parcel No. 9869), with the extreme southern sliver of the property fronting on Robert Poe Road and R. Jordan Road being zoned to RA-40, while most of the property remains unzoned.

The proposed RA-40 zoning will have two principal negative consequences for the Gulf Facility.

First, with respect to all of the tracts, they would not fall within the definition of a "non-conforming situation", since the former industrial usage of the Gulf Facility no longer exists. Yet, as a practical matter, given the history of the properties, it is unlikely that they could be utilized in the future for anything other than industrial, or perhaps commercial, uses. Accordingly, rezoning these properties to RA-40 has the potential to render them essentially valueless.

Second, SWP has significant concerns about the "split zoning" of the Main Gulf Facility. While the vast majority of that tract would be outside the proposed RA-40 District and therefore, at least theoretically, could be used for industrial or commercial uses, the fact that the extreme southern portion of that tract would be in the RA-40 zone might legally prevent any of the property from being used for industrial or commercial purposes. The only vehicular access points to the Main Gulf Facility are located on the portion of the property proposed to be zoned RA-40. Case law exists in several jurisdictions to the effect that a property owner cannot use the residentially-zoned portion of a property to access a commercial or industrial use on the non-residentially zoned portion. Should such a position be adopted by the North Carolina courts, drawing the RA-40 line as presently proposed would, for all practical purposes, have the effect of rezoning the entire Main Gulf Facility to that zoning classification.

In order to avoid these adverse results, SWP respectfully requests that the County consider modifying the proposed zoning district line, or, in the alternative, the text of the County Zoning Ordinance, in one of the following fashions:

Split-Zoning

Amend the zoning map by moving the RA-40 District line to the south so that it is coterminous with the southern boundary of the Main Gulf Facility (Parcel No. 9869)

or

Amend Section 8.5, entitled "Interpretation of District Boundaries" to add one or more of the following as new subsections:

Where a district boundary divides a lot of record at the time such boundary is adopted, the district zoning requirements of the less restrictive zone shall become the requirements for the entire lot.

or

Where a district boundary divides a lot of record at the time such boundary is adopted, the district zoning requirements of the district in which the majority of the land area of the lot lies shall become the requirements for the entire lot.

or

Where the district boundary divides a lot of record at the time such boundary is adopted, the district zoning requirements of the district in which 90% or more of the land area of the lot lies shall become the requirements for the entire lot.

or

Where the district boundary divides a lot of record at the time such boundary is adopted, vehicular, pedestrian and utility access shall be permitted to all portions of the lot, notwithstanding the use restrictions or other district zoning requirements which may exist on the portion of the lot where said access is located.

Non-conforming uses

Add one or both of the following sentences to the definition of non-conforming situation in Sections 7 and 9.1:

A non-conforming situation shall also include any former industrial property which is in the process of environmental remediation as of the effective date of this Ordinance or any amendment to it.

or

A non-conforming situation shall also include the most recent active use of a property, even if the use ceased prior to the effective date of this Ordinance or any amendment to it.


Modify Section 9.6.2 to read:

A non-conforming use may be changed to another non-conforming use, provided the new use is of the same general character or of a character that is less intrusive than the prior non-conforming use.

* * * * *

On behalf of SWP, we appreciate the opportunity to provide input regarding the County's proposed rezoning and ask that you favorably consider one or more of the above alternatives.

Yours very truly,



Blaine A. Lucas

BAL/dms

cc: William Arrants, Southern Wood Piedmont Company
Carla Yetter