

NORTH CAROLINA
CHATHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
14 CVS _____

PITTSBORO MATTERS, INC., a)
North Carolina Not-For -Profit)
Corporation, and)
AMANDA T. ROBERTSON,)
GEORGE A. ROBERTSON,)
J. TURNER WHITTED,)
CHRISTOPHER M. WATKINS,)
LINDA M. WATKINS,)
DUCKA KELLY, GREG OGLE,)
KAY OGLE, NED KELLY,)
LINDA STARKWEATHER,)
JEFFREY STARKWEATHER,)
DEE REID, STEVE SAMUEL,)
BRADLEY PAGE and)
MARY PHYLLIS HORN,)
)
Plaintiffs,)
)
v.)
)
TOWN OF PITTSBORO, a)
North Carolina Municipality,)
)
Defendant.)

COMPLAINT

NOW COME the Plaintiffs, by their undersigned attorney, complaining of the Defendant, and say as follows:

FACTUAL BACKGROUND

1. Plaintiff, Pittsboro Matters, Inc. ("Plaintiff" or "Pittsboro Matters"), is a North Carolina not-for-profit corporation with its principal office located in Chatham County, North Carolina. Pittsboro Matters was formed and operates in accordance

with the laws of the State of North Carolina, for the purpose of organizing residents in Pittsboro and the surrounding area, to protect and advance the well-being of the residents of the area, and to protect the rural, small town character of Pittsboro. Several of the Individual Plaintiffs identified in this Complaint are Board members of Pittsboro Matters.

2. The Individual Plaintiffs own real property and/or reside in Chatham County, in and around the Town of Pittsboro. Several Individual Plaintiffs reside on property lying directly adjacent to and abutting the Subject Property referred to below. All Plaintiffs will be directly affected by the decisions challenged in this action in a manner not common to the general public, due to the significant increase in population and related effects that will result from the approval of the Chatham Park Planned Development District as alleged herein. Those effects include, but are not limited to, increased noise, traffic, odors, stormwater runoff, congestion, construction traffic, noise and debris, increased use and overburdening of public infrastructure (such as roads, water, sewer and stormwater facilities) and capacity, loss of rural character, and loss of important riparian buffers along and adjacent to the Haw River, Jordan Lake, and vital tributaries thereto, including the critical and protected watershed areas adjacent to such water bodies. All Individual Plaintiffs will suffer a loss in the value of their properties and/or a loss in the use and quiet enjoyment of their properties as a result of the Defendant's actions challenged herein.

3. Defendant Town of Pittsboro, is a North Carolina municipal corporation formed and operated by virtue of the laws of the State of North Carolina, having such

powers and duties as are conferred upon it by the State. Among the powers and duties are those granted and stated in North Carolina General Statutes Chapter 160A, Article 19, Chapter 132 and Chapter 143, Article 33C.

4. On June 9, 2014, Defendant Town of Pittsboro's Board of Commissioners (the "Town Board") approved an ordinance rezoning more than 7,100 acres of land (referred to herein as "Chatham Park" or the "Subject Property") within the Town of Pittsboro's zoning jurisdiction to a Planned Development District. A copy of "An Ordinance Amending the Zoning Ordinance of the Town of Pittsboro for Chatham Park" adopted by Defendant's Town Board on June 9, 2014 (hereinafter the "Rezoning Ordinance") is annexed to this Complaint as Exhibit A. According to the Town of Pittsboro Zoning Ordinance (the "Zoning Ordinance"), the Chatham Park rezoning was considered a general use rezoning subject to all the requirements of the Zoning Ordinance for such rezonings. The rezoning of the Chatham Park Property by the Town Board was a legislative act.

5. On that same date, Defendant Town of Pittsboro's Board of Commissioners also approved a Master Plan for the Chatham Park Planned District Development, which Master Plan purports to establish the vision and plan for the development of up to 22,000 residential dwellings and up to 22 Million square feet of non-residential structures and uses on the approximately 7100 acres encompassed by the Master Plan and the Rezoning Ordinance.

6. According to the Town of Pittsboro's Land Use Plan adopted by Defendant's Town Board in October 2012, as of 2010 the Town of Pittsboro had 3764

residents in 1480 households, and Pittsboro's incorporated area encompassed 11.5 square miles. Thus, the Chatham Park development, if completed as approved by Defendant's Town Board on June 9, 2014, would have about 15 times the number of dwellings as existed in Pittsboro in 2010, is projected to likewise have about 15 times the number of residents as lived in Pittsboro in 2010, all in an area roughly the same as lies within the current corporate limits of Pittsboro.

7. Fewer than two months have passed since the rezoning of the Chatham Park Property and the approval of the Chatham Park Master Plan by Defendant's Town Board.

8. The Individual Plaintiffs are identified in the caption above and on the Schedule of Individual Plaintiffs annexed to the Complaint as Exhibit B. The Individual Plaintiffs own real property and/or reside and/or own and operate small businesses in Chatham County, in or nearby to Pittsboro.

9. All Plaintiffs have been and will be injured by the invasion of legally protected interests, and their injury results from the Defendant's actions challenged herein. Plaintiffs' injuries will be redressed by a favorable result in this action. Therefore, all Plaintiffs have standing to maintain this action.

10. Upon information and belief, sometime in 2013 and prior to the June 9, 2014 Rezoning Ordinance, an application (the "Rezoning Application") was made by Chatham Park Investors, LLC (the "Developer") to Defendant Town of Pittsboro to rezone 7,119 acres of land from the theretofore existing zoning districts (primarily R-A,

R-A2, and R-A5) to a Planned Development District. A copy of the Rezoning Application is annexed hereto as Exhibit C.

11. On further information and belief, there had been discussions between and among the Chatham Park Developers and/or their representatives and representatives of Defendant Town, including both elected and appointed Town officials and employees, about the potential Chatham Park development for many months prior to the submission of the Rezoning Application.

12. At about the same time as the Developer submitted the Rezoning Application, Defendant Town of Pittsboro, with the assistance of a consultant working with or for the Developer, amended the Town of Pittsboro Zoning Ordinance to authorize the creation of planned development districts in Pittsboro's zoning jurisdiction. On April 8, 2013, the Town of Pittsboro adopted an Ordinance Amending the Pittsboro Zoning Ordinance to create the Planned Development District (hereinafter referred to as the "PDD Ordinance") zoning district, and to establish regulations regarding such districts. A copy of the PDD Ordinance is annexed hereto as Exhibit D.

13. Prior to the adoption of the PDD Ordinance, the Zoning Ordinance did not include provisions authorizing the creation of planned development districts or establishing the regulatory framework for such districts. On information and belief, the Developer's representatives played a significant role in organizing and drafting the PDD Ordinance and Defendant's officials and staff acquiesced in allowing the

Developer to craft a PDD Ordinance so as to suit the Developer's plans for the Chatham Park development.

14. The PDD Ordinance, now embodied primarily in Section 5.8 of the Zoning Ordinance, includes specific provisions and requirements for a proposed planned development district. As will be more fully alleged in this Complaint, Defendant Town failed to require the Developer to comply with the requirements of the PDD Ordinance in various material respects when Defendant Town reviewed and ultimately adopted the Rezoning Ordinance and approved the Master Plan for Chatham Park on June 9, 2014.

15. At about the same time as Defendant Town of Pittsboro was considering the PDD Ordinances, the Town Staff, the Town's Planning Board, and the Town Board began reviewing the Rezoning Application for the Chatham Park Plan Development District.

16. In late 2012 and continuing into 2013, Defendant Town, at the Developer's request, considered extending Pittsboro's extraterritorial zoning jurisdiction to include an additional approximately 1,900 acres of land which, up until that time, had not been included in Defendant, Town of Pittsboro's, zoning jurisdiction.

17. On February 20, 2013, Defendant's Town Board adopted an ordinance extending the Town's extraterritorial zoning jurisdiction to include the approximately 1,900 acres of land, as the Developer had requested. The area of the extended extraterritorial zoning jurisdiction is now part of the Chatham Park Planned Development District.

18. As a result of the extension of its extraterritorial zoning jurisdiction, Defendant Town of Pittsboro had jurisdiction to regulate land uses in the entire 7,100 acre Chatham Park Property which was the subject of the Rezoning Application.

19. Plaintiffs seek a judgment nullifying the actions rezoning the Subject Property and approving the Chatham Park Master Plan, taken by Defendant Town of Pittsboro Board of Commissioners on June 9, 2014. The Complaint is timely filed in accordance with N.C. Gen. Stat. § 1-54.1 and § 160A-364.1. This Court has jurisdiction pursuant to, *inter alia*, N.C. Gen. Stat. § 1-253 et seq., and venue in this Court is proper pursuant to N.C. Gen. Stat. § 1-77 and § 1-82.

FIRST CLAIM

20. The Defendant, Town of Pittsboro, at all times referenced herein had a duly adopted Zoning Ordinance. The Zoning Ordinance establishes the process for adopting and amending the zoning regulations and the Zoning Map for the Town of Pittsboro.

21. Section 10.4.2(E) of the Zoning Ordinance establishes specific requirements for the content of notices for public hearings concerning zoning map amendments, such as the rezoning of the Chatham Park property which is the subject of this action.

22. The rezoning of the Chatham Park Property on June 9, 2014 by Defendant's Board of Commissioners constituted a zoning map amendment subject to the public notice requirements of Section 10.4.2(E), a copy of which section is annexed to this Complaint as Exhibit E.

23. Annexed hereto as Exhibit F is a copy of the Notice of Public Hearing published in the local, Pittsboro-area newspaper in advance of the public hearing conducted by Defendant with respect to the Chatham Park rezoning, and the affidavits of publication of the Notices.

24. The notices of the public hearings regarding the Chatham Park Planned Development District rezoning did not include all of the information required for such notices by Zoning Ordinance Section 10.4.2(E).

25. Based on the foregoing, the Notice of Public Hearing for the public hearings to consider the rezoning and the Chatham Park Master Plan were legally insufficient, and as a result the actions taken by Defendant Town of Pittsboro Board of Commissioners on June 9, 2014 to rezone the Subject Property to the Planned Development District and to approve the Master Plan, should be declared null, void and of no effect.

SECOND CLAIM

26. Plaintiffs repeat and reallege each and every allegation stated above as if fully set forth herein.

27. Section 3.4 of the Town of Pittsboro Zoning Ordinance (copy annexed hereto as Exhibit G) provides that the standards contained in the Zoning Ordinance are the minimum requirements needed to preserve the health, safety and welfare of the community. Section 3.4 further provides that if, or when, there are variances or discrepancies between requirements of the Zoning Ordinance and the requirement of any other regulation, the more stringent regulation shall apply.

28. The Master Plan for the Chatham Park Planned Development District (a copy of which is annexed hereto as Exhibit H) demonstrates that the proposed Chatham Park development does not comply with the requirements of the Zoning Ordinance in numerous material respects, such as (but not limited to) procedural compliance with the PDD Ordinance and substantive compliance regarding riparian buffers, density of development (in some areas), maximum building heights and minimum landscape buffers and setbacks.

29. Moreover, the Chatham Park Master Plan and the Rezoning Ordinance do not satisfy the requirements of the PDD Ordinance adopted by Defendant Town Board in April 2013 at the Developer's request, in various material respects.

30. For example, Zoning Ordinance Section 5.8.3 establishes the requirements for a PDD Master Plan, which must be included with a request for rezoning to a PDD district. Among the required submissions for a PDD rezoning, but conspicuously absent from the Chatham Park Master Plan, are the following:

- a. a utility plan showing the type and general location of existing and proposed public utilities such as water, wastewater and reuse water;
- b. a general plan addressing stormwater within Chatham Park;
- c. a boundary buffer plan showing transition treatments between Chatham Park and adjacent properties; and
- d. a plan for development phasing within Chatham Park.

31. To the extent that the development specifications contained in the Master Plan for the Chatham Park Planned Development District conflict with, or do not

satisfy, the “minimum requirements” established by the Town of Pittsboro Zoning Ordinance, including the PDD Ordinance which was incorporated into the Zoning Ordinance at Section 5.8, the rezoning of the Chatham Park Property to the Planned Development District and the approval of the Chatham Park Master Plan were arbitrary, capricious and unreasonable, and violated Defendant’s own Zoning Ordinance.

32. For the foregoing reasons, the Defendant Town Board’s actions on June 9, 2014 to rezone the Subject Property and to approve the Chatham Park Master Plan should be declared null, void and of no effect.

THIRD CLAIM

33. Plaintiffs repeat and reallege each and every allegation stated above as if fully set forth herein.

34. Both Zoning Ordinance Section 10.4.3 and N.C. Gen. Stat. § 160A-383 require the Defendant, Town of Pittsboro’s Board of Commissioners, to adopt a “statement describing whether [the Town Board’s] action is consistent within an adopted comprehensive plan and any other officially adopted plan that is applicable and briefly explaining why the board considers the action taken to be reasonable and in the public interest.”

35. Defendant Town of Pittsboro’s Town Board failed to comply with the procedural requirements of Zoning Ordinance Section 10.4.3 and N.C. Gen. Stat. 160A-383 when the Town Board adopted the Rezoning Ordinance on June 9, 2014.

36. Defendant Town Board did not adopt a separate "Consistency Statement" prior to adopting the Rezoning Ordinance.

37. The only language regarding consistency in the Rezoning Ordinance is found in two short passages included in the "Whereas" clause of the Rezoning Ordinance. Such a consistency statement, in the form in which it was adopted by Defendant's Board of Commissioners, did not adequately describe how the adoption of the Master Plan and the rezoning of the Subject Property to the Planned Development District were consistent with Defendant's adopted Land Use Plan, nor did the Consistency Statement adequately explain why Defendant's Town Board considers the rezoning of the Chatham Park Property and the approval of the Chatham Park Master Plan to be reasonable and in the public interest.

38. The rezoning of the 7,100 acre Chatham Park Property and the approval of the Chatham Park Master Plan were not reasonable or in the public interest.

39. For the foregoing reasons, Defendant Town Board's actions taken on June 9, 2014 to rezone the Chatham Park Property to a Planned Development District, and to approve the Chatham Park Master Plan, should be declared null, void and of no effect.

FOURTH CLAIM

40. Plaintiffs repeat and reallege each and every allegation stated above as if fully set forth herein.

41. North Carolina General Statutes Section 160A-383 provides that all zoning regulations "shall be made in accordance with a comprehensive plan."

42. Defendant, Town of Pittsboro, has a duly adopted Land Use Plan, most recently amended as of October 2012.

43. The rezoning of the Chatham Park Property and the approval of the Planned Development District and Master Plan for Chatham Park were inconsistent with the approved Town of Pittsboro Land Use Plan in various material respects.

44. For example, but not as a limitation, among the specific goals stated in the recently adopted Land Use Plan are the preservation of Pittsboro's character and in particular its downtown area, and the preservation of existing neighborhoods. The Chatham Park Planned Development District, as approved by Defendant Town Board on June 9, 2014, fails to address or satisfy these goals.

45. Defendant's Land Use Plan identified 11 "key issues" identified during the process of development of that Plan. Among those "key issues" are transportation, water supply and wastewater treatment, water quality and stormwater management, preservation of Pittsboro's downtown area, and historic character. The Chatham Park Master Plan fails to adequately address these issues, and is inconsistent in various respects with the approved Land Use Plan with regard to its treatment of these issues.

46. Moreover, significant portions — hundreds, if not thousands, of acres — of the Subject Property have been identified as a Natural Heritage Area and/or were included in the Southwest Shore Assessment study, both of which factors played major roles and were given significant consideration by Defendant Town in the development of its Land Use Plan adopted in October 2012. Various aspects of the Chatham Park Master Plan are at odds with the Southwest Shore Assessment and with the interests

identified and intended to be protected and advanced by the Natural Heritage Area designation.

47. Rather than requiring the Developer to specifically address issues such as these in the Master Plan prior to approval, Defendant Town Board approved a Master Plan which essentially allows the Developer to proceed with development in the area rezoned for at least two years, with a vague promise by the Developer to come back in 2 years to address some of those issues.

48. For the foregoing reasons, the Defendant Town Board's actions on June 9, 2014 to rezone the Chatham Park Property to Planned Development District and to approve the Master Plan for Chatham Park, were not consistent with the Town of Pittsboro's adopted land Use Plan, nor with General Statutes and the Town of Pittsboro Zoning Ordinance, and should therefore be declared null, void and of no effect.

FIFTH CLAIM

49. Plaintiffs repeat and reallege each and every allegation stated above as if fully set forth herein.

50. The Chatham Park Master Plan, as adopted by Defendant's Town Board on June 9, 2014, is supposed to establish the regulations for the development of all property within the Planned Development District.

51. The Chatham Park Master Plan is vague in numerous respects, and fails to establish sufficiently detailed rules and regulations for development in Chatham Park to ensure that the development proposed is consistent with the vision stated and the

vision presented to Defendant and to the public in the process leading to the adoption of the Master Plan.

52. As previously alleged, elements required by the PDD Ordinance to be included in a master plan submitted with a request for rezoning to a planned development district were omitted from the Developer's Rezoning Application and Master Plan, and to the extent that some of the elements were addressed, Defendant has allowed the Developer to delay addressing these required elements for 2 years, during which time development is allowed to proceed.

53. Defendant Town Board did not require the Developer to prepare a Traffic Impact Analysis to address how the area's road network would accommodate the tens of thousands of vehicle trips that will be generated each day by the proposed Chatham Park Development.

54. Likewise, Defendant Town Board did not prepare, or require, a detailed environmental impact statement or similarly detailed analysis of the potential impacts of the proposed Chatham Park development on the sensitive environmental character of the area, particularly Jordan Lake, the Haw River and its tributaries, which provide the drinking water supply for much of the area.

55. The Chatham Park development, as proposed with vague and uncertain plans and development regulations, threatens to overwhelm Defendant, Town of Pittsboro, and all residents of the area, including Plaintiffs.

56. The Chatham Park Planned Development District regulations and the Chatham Park Master Plan are so vague in numerous material respects as to be unenforceable.

57. For the foregoing reasons, the rezoning of the Chatham Park Property and the approval of the Chatham Park Master Plan granted by Defendant's Town Board on June 9, 2014 are unreasonable, arbitrary and capricious and therefore should be declared null, void and of no effect.

SIXTH CLAIM

58. Plaintiffs repeat and reallege each and every allegation stated above as if fully set forth herein.

59. For all the reasons stated in paragraphs 49 through 56 above, the rezoning of the Chatham Park Property and the approval of the Chatham Park Master Plan by Defendants' Town Board on June 9, 2014 violated Plaintiff's rights to equal protection of the law and to substantive due process in violation of the "law of the land" clause established by North Carolina Constitution Article I, Section 19, and therefore should be declared null, void and of no effect.

SEVENTH CLAIM

60. Plaintiffs repeat and reallege each and every allegation stated above as if fully set forth herein at length.

61. The Chatham Park Master Plan as approved by Defendant on June 9, 2014 had been revised by the Developer after the May 20, 2014 public hearing on the Rezoning Ordinance in various respects.

62. The revisions made to the Master Plan after the public hearing and prior to adoption of the Rezoning Ordinance on June 9, 2014 were significant enough to have warranted and required an additional, new public hearing, with required notice, because those revisions substantially changed and reduced the Developer's obligations to provide detailed plans for development of Chatham Park prior to rezoning. Moreover, the revisions were not consistent with the requirements of the PDD Ordinance.

63. For the foregoing reasons, the Rezoning of the Chatham Park Property and the approval of the Chatham Park Master Plan by Defendant Town Board on June 9, 2014 should be declared null, void and of no effect.

EIGHTH CLAIM

64. Plaintiffs repeat and reallege each and every allegation stated above as if fully set forth herein.

65. Over the course of the approximately two (2) year period leading up to the rezoning of the Chatham Park Property and the approval Chatham Park Master Plan on June 9, 2014, Defendant's Town Board created various committees and subcommittees, and appointed various members, including Town Board members, to such committees and subcommittees. An example of the formation of such a committee is found in the minutes of the August 24, 2013 Town Board meeting.

66. The committees and subcommittees created and appointed by the Town Board as part of the review of the Chatham Park Planned Development District are "public bodies" required to comply with the Open Meetings Laws established by N.C.

Gen. Stat. Chapter 143, Article 33C, and with the Public Records Laws established by N.C. Gen. Stat. Chapter 132.

67. Defendant Town of Pittsboro failed to comply with the Open Meetings Law established by N.C. Gen. Stat. 143-318.9 *et seq.*, by conducting meetings of committees and subcommittees without adequate public notice, and by failing to keep adequate minutes of such meetings.

68. On information and belief, at some of the committee or subcommittee meetings, there were discussions or negotiations by Town representatives and Developer representatives regarding the proposed Chatham Park development and its potential impacts on the Town, which discussions were not, but should have been, conducted in public and made part of the public record.

69. Moreover, Defendant has failed to provide copies of any public records regarding the meetings of any such committees or subcommittees upon written requests for such minutes (and other records).

70. Defendant has failed to comply with its statutory obligations, including, but not limited to, the obligations established by N.C. Gen. Stat. § 143-318.10, § 143-318.12, and § 132-1, *et. seq.*, regarding conducting open meetings and providing and making available to the public records of such meetings. As a result, the process for approval of the Chatham Park Planned Development District has been tainted in its entirety.

71. For the foregoing reasons, and as authorized by N.C. Gen. Stat. § 143-318.16A, the actions taken by Defendant's Town Board on June 9, 2014 to rezone the

Chatham Park Property and to approve the Chatham Park Master Plan as a result of a secret process which was deficient in various material respects, should be declared null, void and of no effect.

NINTH CLAIM

72. Plaintiffs repeat and reallege each and every allegation stated above as if fully set forth herein.

73. All the actions taken by Defendant Town Board with respect to and affecting the Chatham Park Property, including but not limited to (a) extending Defendant's extraterritorial zoning jurisdiction to encompass an additional 1900 acres of the Chatham Park Property, (b) adopting the PDD Ordinance, (c) adopting the Rezoning Ordinance and (d) approving the Chatham Park Master Plan, were part of a continuing course of conduct undertaken by Defendant for the sole benefit of a single property owner – the Developer – for the Developer's sole benefit and to the detriment of the Plaintiffs.

74. Defendant's actions complained of in this Complaint were arbitrary, capricious and unreasonable and were contrary to Defendant Town's lawful authority. The Plaintiffs rights to due process and equal protection of the law guaranteed by the "law of the land clause" found at Article 1, Section 19 of the North Carolina Constitution and by the Fourth and Fourteenth Amendments to the United States Constitution have been violated by Defendant's actions and conduct.

75. As a result, Plaintiffs are entitled to maintain an action pursuant to 42 U.S.C. Section 1983 and Section 1988 for redress of these violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request an Order and Judgment of this Court as follows:

- a. Declaring the actions taken by Defendant's Town Board on June 9, 2014 to rezone the Chatham Park Property to a Planned Development District, and to approve the Chatham Park Master Plan, to be null, void and of no effect;
- b. Temporarily and permanently restraining and enjoining Defendant Town of Pittsboro from enforcing the PDD Ordinance, the Rezoning Ordinance and the Chatham Park Master Plan and from issuing any development permits for the Subject Property;
- c. Awarding Plaintiff's their costs and reasonable attorneys' fees in this action as authorized by, *inter alia*, N.C. Gen. Stat. § 6-21.7, N.C. Gen. Stat. § 143-318.16B; and
- d. Granting Plaintiffs such other and further relief as to the Court seems just and proper.

This the ____ day of August, 2014.

THE BROUGH LAW FIRM

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