

**Chatham County Environmental Review Board
Minutes from closed session on the EA process on 7/26/07:**

Attorney Whiteheart discussed the memo to ERB and why he wrote it. The Subdivision Ordinance is 113 pages long. That is what the Planning Board uses when it is reviewing subdivisions. The ERB has 6 lines in that. Weakley read the pertinent lines from the ordinance:

The environmental impact assessment shall address the following areas:

- a) The environmental impact of the proposed action
- b) Any significant adverse environmental effects which cannot be avoided should the proposal be implemented
- c) Mitigation measures proposed to minimize the impacts
- d) Alternatives to the proposed action
- e) The relationship between the short term uses of the environment involved in the proposed action and the maintenance and enhancement of long-term productivity
- f) Any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented

Those six sentences represent our standards. If we had to review a subdivision, what we want before us? And how would we make our decision? PB has 113 pages, we have 6 sentences. The BoC wants this board to have credibility. If we go into the process of doing reviews without sufficient standards, we could jeopardize that credibility. He feels the statute is probably void for vagueness. It is difficult for someone that has been asked to do an EA to know what they are supposed to do based on those six sentences. Butalia thinks we are not asking for something that is unreasonable. Whiteheart reiterated that he is unaware of any standard required by any county for residential development. Developers are attending because they are unsure what they will be required to do. For us the challenge is determining what the acceptable format that we want is. Void for vagueness is where you are getting ready to comply with the law and you can't figure out what it is you need to do, you need to guess at it. The arbitrary and capricious part of the due process analysis comes when the decision making body takes the information you have given them and they apply standards to it. In a lawsuit they could say that on the front end we didn't know what you wanted and on the back end you made a decision made on no standards at all. Butalia stated he did not think we would be required to give the BoC a yeah or nay on projects but rather a peer review. The issue is what we do in the interim period before the triggers go to the BoC. Attorney Whiteheart suggests that the BoC will need to amend the ordinance and put some specific standards in it. We also need to come up with what we want – what form will provide the information we want so that people that come up for environmental review will know what information to provide. He also responded to Butalia and thinks that the BoC may be looking to this Board for a yeah or nay answer. Allden stated that we should commend those developers that are being foresighted but we can't rush the process. White heart suggested that we cannot tell developers anything as yet. Suggested wording may be that we are working on some procedural aspects of the reviews and until we

get those resolved we cannot give you any specific information about what is required. Thank them for being involved.

Chiosso made a motion that we finish the closed session. Butalia seconded. Approved 8-0 (Keisler left at the beginning of the closed session).

Resumed open session at 9:15 p.m.

Minutes provided by Mike Dunn