

APPROVED 10/01/2019

**MINUTES
BOARD OF COUNTY COMMISSIONERS
REGULAR MEETING
September 17, 2019
7:00 p.m.**

The Orange County Board of Commissioners met in regular session on Tuesday, September 17, 2019 at 7:00 p.m. at the Southern Human Services Center in Chapel Hill, N.C.

COUNTY COMMISSIONERS PRESENT: Chair Penny Rich and Commissioners Jamezetta Bedford, Mark Dorosin, Sally Greene, Earl McKee, Mark Marcoplos, and Renee Price

COUNTY COMMISSIONERS ABSENT: None

COUNTY ATTORNEYS PRESENT: John Roberts

COUNTY STAFF PRESENT: County Manager Bonnie Hammersley, Deputy County Manager Travis Myren and Clerk to the Board Donna Baker (All other staff members will be identified appropriately below)

Chair Rich called the meeting to order at 7:01 p.m.

1. Additions or Changes to the Agenda

PUBLIC CHARGE

Chair Rich acknowledged the public charge.

Arts Moment

Emily Cataneo introduced herself:

Emily Cataneo is a graduate of North Carolina State University's creative writing MFA. Her short fiction has appeared in magazines such as Nightmare, Lightspeed, cream city review, Smokelong Quarterly, and Beneath Ceaseless Skies, and was long listed for Best Science Fiction and Fantasy 2016 and mentioned in Best Science Fiction and Fantasy 2018. She is a journalist whose nonfiction has appeared in venues such as Slate, NPR, and the Boston Globe. Currently, she is the co-founder of the Redbud Writing Project, the Triangle's only adult education creative writing school, which offers six-week courses in memoir, fiction, and novel.

Emily Cataneo read the opening of "The Birch Circle," which takes place in Stalinist Russia.

2. Public Comments

a. Matters not on the Printed Agenda

Don O'Leary said he does not come to Board meetings unless the Board does something that he considers unconstitutional or stupid, and what the Board is considering with the safety ordinance and guns is stupid. He said he does not believe any of this is about noise or safety, but it is about a mindset, and he finds the Stalinist opening to the meeting apropos. He said the Board is trying to take away their rights, and undermine the constitution.

Neal Galloway submitted a written petition requesting that all Board of County Commissioner (BOCC) meetings allow for public comment, in order to allow timely and open dialogue between the public and its elected officials. He said denying public comment at a work session could be interpreted as a refusal to consider opposing views, or an intent to forge an ordinance, which limits the rights of some citizens, under the guise of public safety. He said personal convenience of the BOCC should not be the primary concern regarding meetings.

Chair Rich said the Board will bring this issue for discussion at a work session soon.

Riley Ruske said he submitted a petition about the Pledge of Allegiance being recited at Board meetings at the September 3 meeting, and a follow up BOCC actions list states that it will take 2 months to write a letter back to him. He said a second, more complex petition was listed as “done,” indicating a lack of consistency in responding to citizen petitions. He made another petition for the BOCC to:

1. create a written process, or procedure, for handling citizen petitions, which includes timelines for completion of actions by the BOCC.
2. direct Orange County management to permanently post this procedure on the Orange County website homepage, with a sincere invitation to the citizens of Orange County to avail themselves of the petition process for better communication to the Board.
3. direct Orange County management to establish and maintain a database of petitions submitted to, and actions taken by the Board, and provide a link to that database in the above posted procedure.
4. To complete all these actions by November 1, 2019.

Riley Ruske said taking these actions would provide for more open communication between citizens and the Board, and hopefully reduce distrust that citizens have for the Board. He said if the Board chooses to deny this petition, it should provide a written and verbal statement as to why. He said today is Constitution Day, recognizing 232 years since the Constitution was ratified.

b. Matters on the Printed Agenda

(These matters will be considered when the Board addresses that item on the agenda below.)

3. Announcements, Petitions and Comments by Board Members

Commissioner McKee referred to the meeting follow-up actions, and the petition regarding the pledge of allegiance, which noted a letter will be drafted for an information item. He said he hopes a copy of this letter will be sent to the petitioner.

Commissioner Bedford said, this afternoon, at least three Board members watched a webinar from the North Carolina Department of Health and Human Services (DHHS) about the opioid crisis. She said the state website contains a lot of information.

Commissioner Price said she has been in touch with Ralph Gabellieri and his wife Elaine Malek-Madani, who are interested in naming a body of water near their home to Glass House Creek. She said, in order to do so, they need a letter of recommendation from a governing board. She provided the necessary information, and asked if it would be considered at agenda review. She said the couple is working on all the necessary criteria, and there is no apparent conflict.

Commissioner Price said she went to the Family Success Alliance (FSA) celebration on Sunday, which was wonderful.

Commissioner Price said she attended the ABC Board meeting, and reported that the new store in Hillsborough is moving along on time.

Commissioner Price said there will be a Climate Strike event on September 20th at Peace and Justice Plaza, and she hoped that any students wanting to attend would be allowed to do so by their administrators. She said this is a teachable moment for the students.

Commissioner Greene said as the Board representative to the Partnership for Homelessness, she and others will be visiting Dr. Allison DeMarco’s social work class to discuss racial equity. She said they have been asked to bring a proposed problem, on which the students can work. She said she will present the housing + transportation index, and how the students would address this need, especially given the County’s rural areas.

Commissioner Marcoplos had no comments.

Commissioner Dorosin reported that he attended the Fire Chief's Council meeting in July, and the Board is meeting with them in October. He said there is a need for additional funding for the training facility, around \$60,000. He said he would like to flag this item, and consider if the County can provide the funds to complete this project.

Chair Rich said at the last meeting she informed the Board of a letter from Governor Cooper about the budget, and has now also received a letter from Senator Berger stating that the Governor's letter did not contain all the facts. She said this is all a moot point given that the General Assembly voted the budget on September 11.

Chair Rich referred to the Climate Walk, and said that all involved are being asked to take public transportation.

Chair Rich said she and Commissioner Marcoplos did a field trip to West Virginia to research the process of taking trash and turning it into fuel. She said members of the Solid Waste staff also attended, and this was very interesting. She said it is not a question of if this will happen, but when, as recycling cannot continue as it has been. She said a neighboring cement plant used the fuel to operate its plant (80% waste fuel, and 20% coal). She said it is hoped that UNC will get on board in the future, and the County will need to start thinking in bigger ways, sooner rather than later. She said there would need to be a regional plant, involving several neighboring counties.

Commissioner Marcoplos said the neighboring cement plant used the fuel, and this is quite successful. He said this is a real option for local cement plants.

Chair Rich said renewable energy must be used moving forward, and the County must start having hard conversations to address this issue. She said it will cost money to fight the climate crisis.

Commissioner Greene said asked if there is anything that enters the air as a result of burning the trash.

Chair Rich said the gas is clean, as everything that is not clean burning is removed. She said some goes to the landfill and some goes to recycling.

Commissioner Marcoplos said it is cleaner, and nothing is completely clean. He said there is an environmental impact of using the landfill, and all variables need to be weighed out.

Commissioner Dorosin asked if any Board members attended the Chapel Hill Carrboro City Schools (CHCCS) press conference about new software being unveiled to make schools safer. He said there is concern among parents about this software, and the collection of data on the students. He said it would be good to bring this issue up at the next school collaboration meeting.

Chair Rich said she would take that as a petition.

4. Proclamations/ Resolutions/ Special Presentations
NONE

5. Public Hearings

a. Public Hearing on Refinancing Existing Bond Obligations

The Board conducted a public hearing on the issuance of up to \$24 million to refinance existing debt to achieve debt service savings; and consider voting to approve a related resolution supporting the County's application to the Local Government Commission (LGC) for approval of the refinancing plan.

Gary Donaldson, Chief Financial Officer, presented the information below:

BACKGROUND: The County and its financing team estimates that the total amount to be refinanced is an amount Not-to-Exceed \$24 million in Limited Obligation Bonds. Although the

Refinancing Summary (Attachment 3) currently identifies a principal amount to be refinanced of \$16.6 million, the actual amount to be refinanced is contingent on prevailing market conditions at the time of market pricing. The Not to Exceed amount provides sufficient pricing considerations and flexibility for the financing team as it works to secure the lowest interest costs and maximize debt service savings.

If the Board adopts the resolution indicating its intent to continue with the refinancing plan, the Board will be asked to consider a resolution giving final approval to the refinancing plans at the October 1, 2019 BOCC meeting. A copy of the published notice of this hearing is provided as Attachment 1.

North Carolina General Statutes require that the County conduct a public hearing on the proposed financing. After conducting the public hearing and receiving public input, the Board will consider the adoption of the resolution (Attachment 2). This resolution formally requests the required approval from the North Carolina Local Government Commission (LGC) for the County's refinancing.

The refinancing of existing installment bond obligations is designed to provide savings to the County without extending the terms of the existing loans (Attachment 3). The proposed financing would be secured by a lien on some or all of the property purchased or improved through the loans that are being refinanced, as well as the County's promise to repay the financing.

Five Refunding Bond Opportunities	Original Interest Rates	Current Market Interest Rates
2010 General Obligation Bonds	3.49%	1.91%
2012 Installment Financing	2.45%	1.65%
2013 Installment Financing	2.13%	1.34%
2016 Installment Financing Draw 2	2.55%	1.44%
2016 Installment Financing Draw 1	2.30%	1.59%

Gary Donaldson, Chief Financial Officer, made the following presentation:

FY 2019-20 Refinancing
Various Bond Obligations
Gary Donaldson, Chief Financial Officer
September 17, 2019

Public Hearing Purpose

- Board Approval for FY 2019-20 Installment Purchase Financing as authorized under Section 160A-20 of North Carolina General Statutes
- Not to exceed \$24,000,000 in Bonds to refinance existing debt and achieve estimated County savings of \$649,464 through final maturity
- Approve Resolution supporting Limited Obligation Bond application to the Local Government Commission

Refinancing Terms

- Security Pledge- Annual Appropriations and County collateral of Southern Campus, Seymour Center and Northern Campus Site added to Master Deed of Trust
- No extension of Loan Maturities; Final Maturity June 1, 2030

- Net Present Value Savings- 3.9% which exceeds the County's 3% Policy
- Source of Repayment- Property Taxes
- Subordinate Lien to General Obligation Bonds
- Current and Projected Ratings- Aa1/AA+/AA+ from Moody's, Standard & Poor's and Fitch Ratings
- LGC Approval required

Interest Rate Savings (table)

Five Refunding Bond Opportunities (table)

Financing Calendar

Commissioner Bedford referred to the debit to the liability for the interest payable, and asked if this saved money goes to a particular place in the budget.

Gary Donaldson said this money goes to the General Fund.

A motion was made by Commissioner McKee, seconded by Commissioner McKee to open the public hearing.

VOTE: UNANIMOUS

**Public Comments:
NONE**

A motion was made by Commissioner Marcoplos, seconded by Commissioner Price to close the Public Hearing.

VOTE: UNANIMOUS

Resolution supporting an application to the Local Government Commission for its approval of a County financing agreement for the refinancing of existing loans

WHEREAS –

The County has determined that it can save money by refinancing some of its existing installment contracts, general obligation bonds and other loans. The refinancings will save the County money without extending the terms of the existing loans.

The County desires to carry out this refinancing using a single new installment financing contract, as authorized under Section 160A-20 of the North Carolina General Statutes. The County expects the refinancings will be combined into a single County financing contract with another County financing for new public assets and improvements.

Under the guidelines of the North Carolina Local Government Commission, this governing body must make certain findings of fact to support the County's application for the LGC's approval of the County's financing arrangements.

***THEREFORE, BE IT RESOLVED* by the Board of Commissioners of Orange County, North Carolina, that the County makes a preliminary determination to finance approximately**

\$24,000,000 to refinance existing obligations. The County requests that the LGC approve the County's application for this new financing.

The Board will determine the final amount to be financed by a later resolution. The final amount financed may be slightly lower or slightly higher than \$24,000,000. Some of the financing proceeds may be used to pay financing expenses or to provide any required reserves.

The Board will also determine the collateral for the financing by a subsequent resolution. The County expects that the collateral for the financing will include property in the County's planned "northern campus" off Highway 70 just north of Hillsborough (including the site of the planned new jail) and portions of the County's "southern campus" off Homestead Road in Chapel Hill, along with other properties that have been previously pledged to other related County financings.

***BE IT FURTHER RESOLVED* that the Board of Commissioners makes the following findings of fact in accordance with LGC guidelines:**

- (1) The proposed refinancing is appropriate for the County under all the circumstances.
- (2) The proposed installment financing is preferable to a bond issue for the same purposes. Some of the obligations to be refinanced are also installment financings, so it makes sense to use the same vehicle for the refinancing. As the County is already planning a substantial installment financing for new public assets and improvements, combining the refinancings into the same overall financing package will be convenient and cost-effective.
- (3) The estimated sums to fall due under the proposed financing contract are adequate and not excessive for the proposed purpose. The refinancings will save money without extending any loan terms.
- (4) As confirmed by the County's Finance Officer, (a) the County's debt management procedures and policies are sound and in compliance with law, and (b) the County is not in default under any of its debt service obligations.
- (5) The County expects that there will be no actual increase in taxes necessary to meet debt obligations under the proposed financing arrangements because of the overall debt service savings.
- (6) The County Attorney is of the opinion that the proposed projects are authorized by law and are purposes for which public funds of the County may be expended pursuant to the Constitution and laws of North Carolina.

***BE IT FURTHER RESOLVED* that the Board authorizes all County officers and employees to take all appropriate steps to complete the proposed refinancing, including completing an application to the LGC for its required approval, that the Board ratifies all prior actions taken toward accomplishing these purposes, and that this resolution takes effect immediately.**

A motion was made by Commissioner Marcoplos, seconded by Commissioner Price to adopt the resolution supporting the application to the Local Government Commission for approval of the refinancing.

VOTE: UNANIMOUS

Commissioner Price thanked Gary Donaldson and his team.

6. Regular Agenda

a. Refund Request from John C. and Judith K. Guibert, Lake Orange Property

The Board received additional information regarding a refund request made by John C. and Judith K. Guibert at the June 4, 2019 BOCC Meeting; and take action on the Guibert refund request.

Nancy Freeman, Tax Administrator, Dawn Perry, Land Records/GIS Deputy Director and Michael Burton- Land Records/GIS Director made the following presentation:

BACKGROUND: At the June 4, 2019 Board of County Commissioners meeting, John C. and Judith K. Guibert submitted a refund request for property at Lake Orange for taxes overpaid from 2014 through 2018. A copy of the request is attached. The Guiberts state that double taxation of the 615' to 620' elevation line has occurred and that he has been taxed for property he does not own based on an incorrect survey/plat from the 1970's.

Following discussion on the Guibert refund request, the Board requested more comprehensive information regarding Lake Orange parcels to make a more informed decision following the summer break. A PowerPoint presentation is attached detailing this additional information.

Key Points

- Mr. Guibert recorded a new survey in February 2019, and the change in size of the property and a reduction in value will be effective for the 2019 tax bill and future years. In accordance with state law, the change should not become effective until 2020, but the decision was made in March 2019 by the Tax Office to change the 2019 value in this particular case.
- Pursuant to North Carolina State law, the 2019 survey is not sufficient information to support the Guibert request for a refund for tax years 2014 through 2018. Based on that new survey/plat, the County cannot determine if double taxation occurred during the years 2014 through 2018. Rather, it seems that the prior years' taxation is in adherence to the law, in accordance with the plat/survey recorded in the 1970's.
- Property ownership in North Carolina is deed document based, and taxing jurisdictions do not have the authority to change the property lines or the size of a property without a legal document being recorded that indicates the change in acreage or property lines. Tax records are based on the recorded document, and cannot be changed without a new recorded document.
- Pursuant to NC Statute 105-381, a refund may be made for the prior five years if it is based on a clerical error made by the County, or due to an illegal tax. Because the issue in this situation is created by the surveys and deeds that do not clearly define ownership, it is not a clerical error on the part of the County. In addition, because the ownership is not clearly defined, the County cannot determine if this is an issue of double taxation (which would be an illegal tax).
- Overlappage Issue – Both the Guibert prior survey and the surveys of Lake Orange Inc. make claim to the same area of property (the area between the 615' and the 620' contour lines). This creates an overlappage issue. As in every overlappage situation, the issue must be resolved between the owners involved, in this case the Guiberts and Lake Orange, Inc. The issue may be settled between the parties through a newly recorded survey, deed, or a judgement from a court. Mr. Guibert has recorded a new survey, and the issue has been settled for future tax years.

- Other landowners at Lake Orange in this same situation should use the same method to solve their overlappage issue by obtaining a new survey. After a new survey has been recorded for the properties, then adjustments to size and property lines will be made by Orange County Tax staff in accordance with the updated survey, and any resulting reduction in value will be effective for January 1 of the year following the recording of the survey.
- In order to be equitable, the County must require that all Lake Orange land owners are treated the same, and follow the statutes regarding land ownership as all other Orange County property owners. Standard procedure by Tax Office staff when contacted for assistance is to advise the taxpayer to seek legal guidance and ultimately to record a new survey. It is expressed that the County must tax property owners according to recorded documents, and is not able to change what a property owner's tax is based on without a new survey.
- It is important to recognize that approximately half of the current Lake Orange Land owners have already taken the appropriate steps to establish the correct ownership of the Lake Orange property.
- It is significant to realize that overlappage issues are not restricted to just the Lake Orange area. Other landowners in the County have had situations that required a new deed or survey to establish ownership and update tax records. During the June 4th Board meeting, County Attorney John Roberts pointed out that if the issue with the Guibert property is one of double taxation, then the Guiberts should be eligible for a refund. If the issue were not determined as double taxation, the Board would be at risk of personal liability to anyone in the County who challenged it.

Lake Orange Issues

Both of the original deeds creating the area known as Lake Orange made reference to the same survey which used "contour lines" as their property boundaries.

as "Hollinsworth contour, north, a new survey, bearing a new line South 30° 15' East 100.00 feet to the point identified on said plan as Point B; bearing a new line South 60° 15' East 100.00 feet to the point identified on said plan as "Point C" and following the line identified on said plan as "Hollinsworth" to Point D on said plan, a new survey thence from Point D South 12° 07' 00" East 100 feet to Point E on said plan, a new corner with Harold G. Hollinsworth property;

being the point at which the shortest line of the "Hollinsworth contour, north" shown on said plan is intersected by the line identified on said plan as "Hollinsworth" contour, thence southerly to said Point C and following a new line (being said line identified on said plan as "Hollinsworth" contour) to a corner monument in the South line of the County property, a new survey thence along the South line of said the County property South 12° 07' 00" East 100.00 feet to the South

From five families who got together to convey all of the area to Lake Orange Inc. recorded on August 5, 1967

From Lake Orange Inc. to Orange County also recorded on August 5, 1967 in order to create Lake Orange.



The original survey

ORANGE COUNTY
NORTH CAROLINA

Lake Orange Issues

From five families who got together to convey all of the area to Lake Orange Inc.

as "willow control area", a new survey, across a new line South 30° 13' 24" East 147.22 feet to the point indicated on said plat as Point B; across a new line representing the line of the "willow control area" identified on said plat as "615' Contour Line" on said plat, a new survey, across the River of South 67° 12' East 100 feet to Point 5 on said plat, a new survey with Harold E. Tolner property



Because there are no directions or distances along any part of the blue line, we cannot determine its course in order to map it.



Lake Orange Issues

From Lake Orange Inc to Orange County in order to create Lake Orange.

with the point at which the horizontal line of the "willow control area" shown on said plat is intersected by the line identified on said plat as "615' Contour Line", shown connecting to said "615' Contour Line" in a curve, as shown on the South line of the "willow control area" and a survey across the South line of said the County property South 67° 12' East 100 feet to the bridge



Legend as shown on the plat.

Conversely, we were able to map the 615 contour line. The Legend on the survey tells us that the solid lines shown with a course (Direction) and Distance represent the "Traverse 615' contour" referred to in the deed description and clearly defines its boundaries.

These two original deed descriptions established a gap between the 620 and 615 contour lines which Lake Orange Inc. retained ownership of.



Lake Orange Issues



In 1976, this survey for the Arrowhead subdivision on the eastern side of Lake Orange was recorded. This survey does not reflect the gap between the 615 and 620 contour lines and shows every lot carried out to the 615 contour line i.e. the water line. Because of this, the developers of the Arrowhead subdivision are making a claim to the same land as held by Lake Orange Inc.



Lake Orange Issues

THIS DEED made this _____ day of October, 2002, by and between

GRANTOR HENRY R. KAESTNER and wife, KIMBERLEY R. KAESTNER	GRANTEE JOHN C. GUIBERT III and wife, JUDITH K. GUIBERT 4316 Arrowhead Trail Hillsborough, N.C. 27278
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Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g. corporation or partnership.
The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.
WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of _____ County, Orange Township, Orange County, North Carolina and more particularly described as follows:
BEING all of Lot 10, ARROWHEAD SUBDIVISION, as shown on plat of Arrowhead, property of R.B. Nichols, recorded in Plat Book 26, Page 73, Orange County Registry.

This is the deed that was recorded in 2002 when the John and Judith Guibert bought their property and it refers to the 1976 Arrowhead survey.



Lake Orange Issues



This slide shows the Guibert property shaded in blue to illustrate how it was depicted per the survey that their deed referred to.



Lake Orange Issues

Here you can see how the Guibert property was originally mapped according to the 1976 survey. It was one entire parcel going from the road to the waterline as the survey depicted.

Even though Lake Orange Inc. had already laid claim to the property between the 615 and 620 contour line, nothing had been recorded in the nine years between the original survey and the time of this 1976 survey to define the 620 line.

Because settling land disputes is a matter for the courts, the only recourse we have is to acknowledge that both parties are making the claim and tax them according to the recorded document until another document is recorded to change the property lines.



Lake Orange Issues

This is the plat that was recorded by the Guilberts in February 2019. When we received this, we followed our procedures in order to split the property along the line the surveyor had defined as the 620 contour line (shown in red). This was the first time that the 620 contour line was defined with directions and distances as required. It was over fifty years after the original survey was recorded.

ORANGE COUNTY
NORTH CAROLINA

Lake Orange Issues

We have updated the mapping to show this property split into two parcels per the new survey. The transparent area you see in this picture has been put into the Lake Orange ownership while the solid area represents how the 2019 survey defined the Guilbert property.

ORANGE COUNTY
NORTH CAROLINA

Lake Orange Issues

Here you can see three of the parcels from this subdivision where the owners have rectified the situation on their own.

The Guilbert's property is the one with the Blue arrow.

All three of these properties have hired a surveyor to find the 620 contour line and then had that survey recorded so that we could update the mapping. As required by statute, any changes the new surveys make that affect the value and taxation are effective for the following January 1st.

Anytime a resident has brought up this matter, we have advised them to follow this course of action in order to fix the issue. Until the 620 line is defined, both Lake Orange and the individual resident have recorded documents making claim to the same undefined area.

Because North Carolina statutes require us to be governed by recorded documents, we can only be as accurate as the recorded documents allow.

ORANGE COUNTY
NORTH CAROLINA

Commissioner Dorosin referred to the maps on the first slides, and asked if the blue and the red and green lines were recorded.

Dawn Perry said yes, in 1967 when the deeds were recorded.

Commissioner Marcoplos asked if the other landowners were not as concerned, and if these landowners knew that Lake Orange was also claiming rights to the property.

Nancy Freeman said she does not know.

Dawn Perry said the County would have had the opportunity to tell the landowner this information, because the County is not involved in the sale process. She said an attorney, who had researched the property, should have cleared this up at closings.

Nancy Freeman said the County puts disclaimers on all of their public maps, and this would be easy to research. She said it is clear on all maps that 615-620 is owned by Lake Orange, Inc.

Commissioner Marcoplos said it seems odd that some residents picked up it, while others did not.

Nancy Freeman said it may depend on the person, the level of research conducted, the attorney that was chosen, etc.

Commissioner Dorosin said it could also depend on how a parcel is shaped.

PUBLIC COMMENT:

John Guibert said this is a very complex subject. He said he would like to address the question of why other landowners were not concerned or aware of the issue. He said the owner of the Arrowhead land (the Nichols family) was also the President of Lake Orange, Inc. at the time that all of these deals were made; when the land was transferred from the five owners to Lake Orange, Inc., which was land from 620 down. He said this was also the time when the transfer of 615 and down was made. He said ownership was well known, and the County required that the land between 615 and 620 be owned by Lake Orange, Inc. He said the County was to be informed of, and given the right of first refusal on this land, in the case that there was a transfer of the land to another owner. He said the County wanted to protect 615 to 620, which was the maximum flood stage. He said it is unequivocal that this land is owned by Lake Orange, Inc., and the owner of the Arrowhead subdivision knew full well. He said the very first deed for each of the 15 lots accounts for an exception of the land between 615-620, which did not convey as part of the sale. He said the Nichols family knew they had made a mistake, and did not solve it by a survey, but rather by noting the exemption of the land on the deeds. He said there was a new survey of sorts in the 1980s, which was an attempt to show where the lines lay on the 615-620 contour, but staff rejected these surveys for every lot. He said this all shows that both Lake Orange, Inc., and the owner of the subdivision knew exactly who owned the land. He said it also very clear that the County was informed.

John Guibert said two newer subdivisions were built in the 1990s, and this issue was clearly handled, and the land delineated, so as to avoid these same problems. He said in order to know what amount of back taxes one should claim, one must know the amount of land in question, and the percentage of one's taxes it constitutes. He said he did a survey of his land, to determine how much of his land between 615 and 620 belongs to Lake Orange, Inc., and on which he had paid taxes. He said this survey showed he paid taxes on land that belonged to somebody else, and the County was aware due to the 1986 plats that were attached. He said there has never been any sale of the 615-620 land, and if there were, the County would have to first be advised and given the right of first refusal. He said ownership is clear in his mind, as is the question of double taxation. He said he has paperwork back to 2003 showing that he has paid taxes on the 0.37 acres of land owned by Lake Orange, Inc. He said the County has changed his taxable land to 1.53 acres, but he, and all previous owners, have been taxed for the land all the way to the water line. He said 2 parties were paying taxes on the same piece of land, which is a clear case of double taxation. He said staff can explain the basis on which the County has been taxing Lake Orange, Inc.

Commissioner Dorosin referred to a picture on page 13 of the PowerPoint, and asked if the property with the blue arrow belonged to John Guilbert.

John Guibert said yes.

Commissioner Dorosin asked if the dock belonged to him, and if he built it.

John Guibert said the dock was pre-existing, and is accessed through a recorded easement.

Commissioner Dorosin asked if the Board has a copy of this easement.

John Guibert said there is an easement for every lot in the subdivision. He said the easement was granted to each of the families that donated land from 620 out, after they donated the land from 620 in and below. He said this happened in 1972, and is documented.

John Roberts said there is a recorded easement on the plat, which provides access across the land that is subject to this issue.

John Guibert said there is ingress and egress easement, but one must pay recreational fees to Lake Orange, Inc. (including a dock, pier, boat, etc.)

Commissioner McKee referred to page 22 of the abstract, and asked if the value of \$512,000 is solely for the acreage, or for the acreage and improvements.

Nancy Freeman said that would include the land and his improvements.

Commissioner McKee asked if the land in question (0.39 acres) would give the financial impact that is shown.

Nancy Freeman said the adjusted value would show the difference between the \$512,000 and the \$482,000, which would give the value of the 0.39 acres.

Commissioner Bedford referred to page 22, and said the value is \$1,622.43, but page 16 says \$1,658.15, and she asked if she should consider one of these numbers over the other.

Nancy Freeman said page 16 is the information John Guibert provided, and page 22 is from staff.

Chair Rich said the Board will go with what is on page 22.

Commissioner Marcoplos said it looks like Lake Orange and the Guiberts were both paying taxes on this land, and asked if this is correct.

Nancy Freeman said yes.

Commissioner Marcoplos said he is curious about the state law, as it seems to be a major part of this story.

John Roberts said he does not think he can explain this. He said if it is proved to be a double taxation issue, it can be corrected, which has been done. He said the Guiberts provided a new survey, which shows the difference in ownership, and going forward the County can correct this. He said prior to the date on which the survey was recorded, the surveys and evidence is conflicting, and the tax department does not have clear evidence to say who paid what, and how much.

Commissioner Marcoplos asked if a clear deed was needed.

John Roberts said all of these plats that were recorded in error, and closing attorneys and real estate agents were not doing their jobs in pointing these issues out. He said this allowed for confusion, and he does know of any way to record something that is retroactive.

Commissioner Marcoplos said in the end the County received double taxes for this land.

Nancy Freeman said the County taxed based on the deeds that were recorded, and once the deed was changed the County was able to change that which is taxed, and will continue to do so moving forward. She said as the line had not been previously defined, there was no way for the County to know what was being taxed and what was not, or by whom.

Commissioner Marcoplos said the County may not have known, but the overlappage meant that the money was coming in from both parties for that piece of land.

Michael Burton said yes, there was an overlappage.

Commissioner Dorosin said the real issue is that the County has collected twice on the same piece of property, at no fault of the County, but due to conflicting claims. He said the first recorded plat show that Lake Orange owned the land, and as this was first, it should be the defining thing. He said Lake Orange believed it owned the land, paid taxes on the land, and has not contested the new plat that has been filed. He said there is a legal concept called "unjust enrichment," where one receives a benefit that was undeserved. He said one could take a narrow view of the phrase double taxation to mean one taxpayer got charged twice for the same thing, or one could take a broader view, which would say that the same parcel of land got charged twice. He said this case does not seem to involve a dispute between the parties over land ownership, and the appropriate thing to do would be to refund the taxes, as the property was double taxed. He said it would be a different case if no one had paid the taxes.

Commissioner Greene agreed that there appears to be unjust enrichment, and since the County is the other party, it can reimburse the taxes. She asked if the County were to do so, would it be obligated to pay it back for all the previous owners of the property back to the creation of the subdivision in the 1970s.

Nancy Freeman said the landowners would need to request a refund, and they have 5 years to ask for a refund. She said there are a few other property owners who have completed surveys, and if they were to request a refund, could be granted it.

Commissioner Greene clarified that the Guiberts could only be given 5 years of a refund, not back to 2002 when the property was purchased.

Nancy Freeman said that is correct.

John Roberts said the State Statute is very specific about the five years.

Nancy Freeman said there are roughly 75 other parcels on Lake Orange that have not had a corrected survey, the owners of which, may now do so, and would then be able to request a refund for 5 years.

Commissioner Dorosin said this is all property upon which the County has collected double taxes.

Michael Burton said both parties were taxed for what they claimed.

Commissioner Dorosin said there are now property owners that have resolved the claim, and are making it clear that they do not own the land, and another taxpayer making it clear that they do own the land.

Michael Burton said, per Statute, the County has corrected the record based upon the new recording of survey, which moves forward from here on.

Commissioner Dorosin said there are other homeowners, and there is this notion that the County is opening up a Pandora's box, but the homeowners would only be eligible to a refund if it can be shown that taxes were doubly taxed.

Michael Burton said there may be some parties that will be unwilling to give the land back to Lake Orange, now that they may have adverse possession. He said many cases have gone to the Supreme Court regarding overlapping land. He said one of the most precise things in those cases is that the individual has been paying taxes on the land all along.

Commissioner Price asked if the exact process for taxing land could be explained. She said she had an issue with her property and the former Tax Administrator said there is one set amount for the land, and the improvement (building) is assessed separately. She asked if taxation is done by square footage.

Michael Burton said it is done by acreage of land, and based upon the schedule of values adopted by the BOCC.

Commissioner Price clarified that if the BOCC awards repayment in this case, that anyone who has had a dispute could have a survey completed and determine if double taxation has occurred.

Michael Burton said there are over 55,000 parcels of land in Orange County, of which, each and every one of those neighboring properties could have a survey done, and both surveys may overlap with each other.

Nancy Freeman said there are other cases in Orange County that staff has noted on maps, which have not yet been corrected, and there may be more.

Commissioner McKee asked if this has been corrected now.

Nancy Freeman said yes.

Commissioner McKee asked if John Roberts would explain his recommendation that the Manager deny the refund.

John Roberts said there are only a very limited number of reasons to issue a refund: clerical error, unlawful tax, or tax for unlawful purpose. He said, at the time this was taxed, this was not a clerical error by County staff; it was not a tax that was for an unlawful purpose; and at the time it was not an unlawful tax. He said through the land records, two parties were claiming

the same property, and because of that, staff cannot say this was an unlawful tax, or an issue of double taxation, even though two parties were paying the tax on it. He said they both had, what appeared to be, lawful claims based on their recorded documents. He said, based on the risk to the Board for refunding a tax outside of those three purposes, he recommends denying the refund.

Commissioner Marcoplos clarified that the County cannot be reasonably responsible for sorting out these land issues, wherever they may occur.

Nancy Freeman said that is correct.

Commissioner Marcoplos said the County may have received taxes from both parties, and perhaps someone is due a refund, but it is not the County's responsibility to be there at the transaction, to examine transactions, and confirm that all i's are dotted and t's are crossed.

John Roberts said that is correct.

Commissioner Marcoplos said that makes sense.

Commissioner Greene referred to the abstract, which states: "If the issue were not determined as double taxation, the Board would be at risk of personal liability to anyone in the County who challenged it," and asked if the "it" could be defined.

John Roberts said the refund. He said if this is not an unlawful tax, not for an unlawful purpose, and is not a clerical error, but if the Board issues a refund anyway, then each Board member who votes in favor of a refund, is personally liable for the refund.

Commissioner Greene asked if those with standing to challenge it could be identified.

John Roberts said any taxpayer in the County.

Commissioner Marcoplos said staff mentioned there are a lot of instances of overlappage in the County, and asked if these property owners have been contacted.

Michael Burton said typically property owners find out by hiring a surveyor, who defines the land and the properties which people own, and attorneys are responsible for doing the title search and history. He said any overlaps that arise should be disclosed to the purchaser when buying a property. He said the mapping world does show these as conflict lines, now that the age of GIS has come a little further. He said the original cadaster of the mappings show the 615-620 contour line being owned by Lake Orange, Inc. He said Lake Orange was created because the Town of Hillsborough was running out of water, and it was to be a water supply.

Commissioner Marcoplos asked if he had overlappage, of which he was unaware, would he receive a letter from the County. He said it sounds like the County knows of some of these instances.

Michael Burton said the last time these types of issues were discovered was in the 1980s, and property owners were sent letters, and asked to bring in documents, so that the County could put it on record. He said the maps still depict the conflict lines as the mappers find them.

Commissioner Price said it seems that the burden is on the homeowner.

Commissioner Greene asked if this is a situation that a person's title insurance would take care of.

Michael Burton said possibly.

Commissioner Greene asked John Roberts if there have been any reported cases on the argument that Commissioner Dorosin and she are making about an equitable solution of unjust enrichment, when the government gets paid twice for the same taxable land.

John Roberts said he does not know of any, and has researched this topic at a previous time, but not in this instance.

Commissioner Bedford asked if she voted yes to the refund, and a resident objected, if she would liable for the \$1,622 one time back to the County, or to every single taxpayer.

John Roberts said one time back to the County. He said he is not sure that this would happen, but it is his job to advise the Board of risk.

Commissioner Bedford said it seems to her that the law has tied the hands of the County staff, and the equitable solution is to refund the monies, and the other property owners along Lake Orange should be alerted to consider having a survey completed, so that going forward taxes would be lower. She said this strikes her as the right and just thing to do.

Michael Burton said the owners around Lake Orange are routinely contacted by Lake Orange, Inc. for the dues that they pay to cross that area of land, basically informing them that Lake Orange still claims that land.

Commissioner Bedford said she understands that, but when she receives her tax bill, she does not know anything about the contours, etc.

A motion was made by Commissioner McKee, seconded by Commissioner Marcoplos to approve the resolution denying the refund request based on consultation with the County Attorney.

Commissioner Price said the wording in the proposed resolution is confusing.

Commissioner Dorosin said to amend the language to say the property tax refund is denied.

Commissioner McKee accepted this amendment.

Commissioner Marcoplos agreed.

Commissioner Dorosin said he would vote against this resolution, and this is a matter of equity and fairness. He said the County was unintentionally unjustly enriched.

Commissioner Price said she does see the argument of double taxation, but she also understands this is prevalent throughout Orange County, and once surveys are done, property lines are being corrected. She said it is unfortunate that some of these property lines and plats were recorded without the advantage of modern technology and good surveys.

Commissioner Marcoplos said this is a tough call. He agrees with much of Commissioner Dorosin's statements, but the County did not create these problems, and the County should not be in the position of arbiter and money distributor every time a mistake is made.

Chair Rich asked if these types of mistakes really are that prevalent.

Nancy Freeman said the revaluation process does correct any errors or issues with the details of the home, but not with the land itself. She said the County is required to record a survey and tax by it, and this can only be fixed by the landowner.

Bonnie Hammersley said the County would not know if this is a prevalent problem, and this is an example of change in technology, and the County is getting better at looking at the surveying as technology improves. She said her office and the tax administration office do not challenge surveys, and during the revaluation process, staff is simply looking at value. She said the County is not aware of a prevalence of these types of issues, but if staff is made aware of such a situation, it will alert property owners.

Commissioner Price said many surveys were done years ago, when technology was not as accurate.

VOTE: Ayes, 4 (Chair Rich, Commissioner McKee, Commissioner Marcoplos, and Commissioner Price); Nays, 3 (Commissioner Bedford, Commissioner Greene, and Commissioner Dorosin)

MOTION PASSES

Commissioner McKee asked if there is a reason why the parties themselves could not handle this issue.

John Roberts said there is no reason, and is likely more appropriate.

Commissioner Dorosin said the County received the double taxes, and there is nothing the parties can do. He said the County got paid twice.

7. Reports
NONE

8. Consent Agenda

- **Removal of Any Items from Consent Agenda**
- **Approval of Remaining Consent Agenda**

A motion was made by Commissioner Dorosin, seconded by Commissioner Bedford to approve the Consent Agenda.

VOTE: UNANIMOUS

- Discussion and Approval of the Items Removed from the Consent Agenda

a. Minutes – None

b. Refund of Overpayment of Excise Tax

The Board refunded an overpayment of excise tax in the amount of \$328 to Tatum Law Firm.

c. FY 2019-20 Home and Community Care Block Grant for Older Adults Funding Plan

The Board approved the recommended Home and Community Care Block Grant (HCCBG) for Older Adults Funding Plan for FY 2019-20 and authorized the Manager to sign.

d. Amendments to North Chatham Fire Protection and Emergency Services Agreement

The Board ratified the County Manager's signature on amendments to allow the 2013 contract between Orange County and North Chatham to remain in effect until a new contract is agreed upon and implemented.

e. Link Building Remediation Project – Rejection of Bids

The Board authorized the County Manager to reject all bids for the remediation of the John M. Link, Jr. Government Services Center project that were opened on Thursday, September 5, 2019, and to rebid the project.

9. County Manager's Report
NONE

10. County Attorney's Report
NONE

11. *Appointments

a. Advisory Board on Aging – Appointment

The Board considered making an appointment to the Advisory Board on Aging.

A motion was made by Commissioner Dorosin, seconded by Commissioner McKee to appoint the following to the Advisory Board on Aging:

- Position 3, Jeffrey Charles, Chapel Hill Town Limits, Partial Term ending 06/30/2021

VOTE: UNANIMOUS

A motion was made by Commissioner Dorosin, seconded by Commissioner Greene to appoint the following:

- Position 8, Tiketha Collins, At-Large, Partial Term ending 06/30/2021
- Position 10, Karen Green McElveen, At-Large, Term ending 06/30/2022
- Position 12, Jerry Gregory, At-Large, Partial Term ending 06/30/2021

VOTE: UNANIMOUS

b. Affordable Housing Advisory Board – Appointments

The Board considered making appointments to the Affordable Housing Advisory Board.

A motion was made by Commissioner Dorosin, seconded by Commissioner Marcoplos to appoint the following to the Affordable Housing Advisory Board:

- Position 1, Keith Cook, At-Large, Second Full Term ending 09/30/2022
- Position 10, Douglas Boemker, At-Large, Second Full Term ending 06/30/2022

VOTE: UNANIMOUS

A motion was made by Commissioner Price, seconded by Commissioner Dorosin to appoint:

- Position 4, Adejuwon Ojebuoboh, At Large, Term ending 6/30/2022

VOTE: UNANIMOUS

A motion was made by Commissioner Greene, seconded by Commissioner Marcoplos to appoint:

- Position 7, James Eichel, At Large, Term ending 9/30/2022

VOTE: UNANIMOUS

A motion was made by Commissioner Dorosin, seconded by Commissioner Greene to appoint:

- Position 13, Jennifer Moore, At Large, Term ending 6/30/2022

VOTE: UNANIMOUS

Commissioner Marcoplos asked if applicants are ever asked to list their age.

Staff said no.

Commissioner Marcoplos said it would be informative to have this information, as he would like to facilitate young leadership.

c. Arts Commission – Appointments and Term Extension

The Board considered making appointments to the Arts Commission.

A motion was made by Commissioner Price, seconded by Commissioner Bedford to appoint the following to the Arts Commission:

- Position 6, Linda Williamson, At-Large, One Year Term Extension ending 09/30/2020
- Position 7, Doris Friend, At-Large, First Full Term ending 09/30/2022
- Position 14, Justin Haslett, At-Large, First Full Term ending 09/30/2022

VOTE: UNANIMOUS

d. Board of Health – Appointment

The Board considered making an appointment to the Board of Health.

A motion was made by Commissioner McKee, seconded by Commissioner Price to appoint the following to the Board of Health:

- Position 1, Dr. Lee Pickett, Veterinarian, Partial Term ending 06/30/2020

NOTE - Dr. Pickett is currently serving on the Animal Services Advisory Board (ASAB) and if appointed to the Board of Health Veterinarian position, would become the Board of Health representative on the ASAB.

VOTE: UNANIMOUS

e. Chapel Hill Orange County Visitors Bureau – Appointments

The Board considered making appointments to the Chapel Hill Orange County Visitors Bureau.

A motion was made by Commissioner Price, seconded by Commissioner McKee to appoint the following to the Chapel Hill Orange County Visitors Bureau:

- Position 1, Mayor Pam Hemminger, Chapel Hill Town Council, First Full Term ending 12/31/2021
- Position 2, Dixon Pitt, Chapel Hill-Carrboro Chamber of Commerce, Partial Term ending 12/31/2020
- Position 8, Shailan “Sam” Vadgama, O/C Lodging Association, First Full Term ending 12/31/2021
- Position 13, Anita “Spring” Council, Economic Development Staff – Town of Carrboro, Partial Term ending 12/31/2019
- Position 15, Matt Gladdeck, Chapel Hill Downtown Partnership Staff, Partial Term ending 12/31/2020

VOTE: UNANIMOUS

f. Nursing Home Community Advisory Committee – Appointment

The Board considered making an appointment to the Nursing Home Community Advisory Committee.

A motion was made by Commissioner Greene, seconded by Commissioner McKee to appoint the following to the Nursing Home Community Advisory Committee:

- Position 6, Jacquelyn Podger, At-Large, One Year Preliminary Term ending 09/17/2020

VOTE: UNANIMOUS

g. Orange County Parks and Recreation Council – Appointment

The Board considered making an appointment to the Orange County Parks and Recreation Council.

A motion was made by Commissioner Bedford, seconded by Commissioner Price to appoint the following to the Orange County Parks and Recreation Council:

- Position 7, Cecily Kritz, Chapel Hill Township, Partial Term ending 03/31/2020

VOTE: UNANIMOUS

h. Orange County Planning Board – Appointment

The Board considered making an appointment to the Orange County Planning Board.

A motion was made by Commissioner Dorosin, seconded by Commissioner Price to appoint the following to the Orange County Planning Board:

- Position 10, Gio Mollinedo, At-Large, First Full Term ending 03/31/2022

VOTE: Ayes, 4 (Commissioner Dorosin, Commissioner McKee, Commissioner Price, Commissioner Bedford); Nays, 3 (Chair Rich, Commissioner Marcoplos, Commissioner Greene)

Commissioner Marcoplos said he was very impressed with the list of possible appointees for all of these boards. He asked if the Board has any interest in including age on the application form.

Donna Baker said age has never been included on the application during her tenure with the Board. She said she is not sure if it would be age discrimination.

Commissioner Marcoplos said he always wonders about an applicant's age.

Commissioner Greene said applicants list their email and phone number, and a Commissioner can always reach out for further discussion.

Commissioner Marcoplos said having it on the form would save a lot of time.

Commissioner Dorosin said he would also be interested in this information, and if one chooses not to answer that would be their prerogative.

Donna Baker said staff can research this topic further.

Chair Rich said perhaps the application could ask for an age range, as opposed to a specific age.

Commissioner Marcoplos said there is a lack of young participants.

Chair Rich said she thinks people want to get here, but do not know how to.

Commissioner Marcoplos said, or we don't know they are young.

Commissioner Dorosin said perhaps a youth advisory committee would be warranted. He petitioned the Board to consider this idea.

12. Information Items

- September 3, 2019 BOCC Meeting Follow-up Actions List

13. Closed Session

A motion was made by Commissioner McKee, seconded by Commissioner Marcoplos to go into closed session 8:43 p.m. for the purpose below:

Pursuant to G.S. § 143-318.11(a)(3) "to consult with an attorney retained by the Board in order to preserve the attorney-client privilege between the attorney and the Board."

VOTE: UNANIMOUS

A motion was made by Commissioner McKee, seconded by Commissioner Greene to reconvene into regular session at 9:05 p.m.

VOTE: UNANIMOUS

14. Adjournment

A motion was made by Commissioner Greene, seconded by Commissioner McKee to adjourn the meeting at 9:06 p.m.

VOTE: UNANIMOUS

Penny Rich, Chair

Donna Baker
Clerk to the Board