

**TOWN OF BURGAW BOARD OF COMMISSIONERS
REGULAR MEETING**

DATE: January 14, 2014
TIME: 4:00 PM
PLACE: Burgaw Municipal Building
BOARD MEMBERS PRESENT: Mayor Eugene Mulligan
Mayor Pro-tem Howard Walker
Commissioners Jan Dawson, Wilfred Robbins, Charles Rooks and Elaine Tyson
STAFF PRESENT: Chad McEwen, Town Manager
Sylvia W. Raynor, Town Clerk
Robert Kenan, Town Attorney
Bill Fay, Director of Public Works
Louis Hesse, Building Inspector
Ashley Loftis, Finance Officer
Rebekah Roth, Planning Administrator
Montrina Sutton, Chief of Police
Allen Wilson, Fire Administrator
MEDIA PRESENT: Andy Pettigrew – The Pender Post
INVOCATION: Nick Smith, Chaplain
PLEDGE OF ALLEGIANCE: All

The meeting was called to order by Mayor Eugene Mulligan at 4:00PM.

Approval of Agenda

Mayor Mulligan requested approval of the agenda. There being no discussion, Commissioner Rooks made a motion to approve the agenda as presented. The motion was seconded by Commissioner Walker and carried by unanimous vote.

Approval of Consent Agenda

Mayor Mulligan requested approval of the consent agenda. There being no discussion, Commissioner Dawson made a motion to approve the consent agenda as presented. The motion was seconded by Commissioner Robbins and carried by unanimous vote. The consent agenda and the following items were approved:

- A. Minutes of the December 10, 2013 regular session and closed session meetings

SPECIAL PRESENTATIONS

Don Hall, Chairman of the Pender County ABC Board appeared before the board to give an update on the re-organization of the ABC system. Mr. Hall also took questions from the Board.

William Jeffreys, President of A. C. Schultes, Inc. gave the Board an update on the sewer re-hab project that is currently in progress. Mr. Jeffreys apologized for the delays in the project and explained the issues with the project manager and contractors that caused some of the delays. There was a very lengthy discussion regarding this issue.

OLD BUSINESS

Discussion – Citizen’s petition presented at the December 10, 2013 meeting

Mayor Mulligan opened the floor for discussion regarding the citizen’s petition that was presented at the December 10, 2013 Board of Commissioners meeting.

Commissioner Howard Walker asked Attorney Kenan if Mayor Mulligan has met all requirements listed in the letter that was sent to him. Attorney Kenan responded that in the letter dated December 16, 2013 he asked Mayor Mulligan for seven items to be presented to the Board for review. Attorney Kenan advised Mayor Mulligan was asked for copies of utility bills for the three previous months. He advised Mayor Mulligan provided copies of water bills for the previous three months, but did not provide electric bills or any other bills of that nature. Attorney Kenan advised that a copy of Mayor Mulligan's NC Driver's License that was in effect on December 10 was requested. Mayor Mulligan presented a NC Driver's License that was effective December 11, 2013. Attorney Kenan advised there were no copies of abstracts for property owned provided as requested. Attorney Kenan advised there were no copies of vehicle registration received. He said according to Mayor Mulligan the vehicles that he owns are registered in his wife's name. Attorney Kenan advised Mayor Mulligan did provide a copy of an affidavit of his NC Voter's Registration application. Attorney Kenan advised Mayor Mulligan provided a copy of the lease agreement for the residence at 214 S. Dickerson Street as requested. Attorney Kenan advised Mayor Mulligan provided copies of mailings that were received at 214 S. Dickerson Street in Burgaw, NC. Attorney Kenan advised for the most part the documents were provided pursuant to the letter to Mayor Mulligan dated December 16, 2013. Attorney Kenan advised that based on the information received, the Board may utilize the information to make a determination as to whether or not Mayor Mulligan resides here.

Commissioner Tyson commented there are no Duke Energy bills enclosed in the packet, only a statement showing an active account at 214 S. Dickerson Street. Attorney Kenan said to Mayor Mulligan that he may not have copied that utility bill and asked if Mayor Mulligan had the bills with him today. Mayor Mulligan commented that he did not bring the folder with him. Mayor Mulligan commented that the reason that he did not provide property abstracts is because ownership of the property does not qualify him for citizenship because all his property holdings are business related.

Commissioner Walker commented that according to news reports, Mayor Mulligan stated that he has lived in Burgaw twenty three years. He asked Mayor Mulligan if he had lived anywhere other than Burgaw. Mayor Mulligan stated that he did live in Wilmington for a while and that he comes and goes depending on his work and recreation requirements. Mayor Mulligan said he goes away for six months at a time when he works for the film business and he also goes to Ireland for three to six months at a time. He commented that he is not here every day, he does come and go but he returns. Mayor Mulligan commented that he has provided a copy of an offer he made on a house on Fremont Street in November of this year.

Commissioner Walker asked Mayor Mulligan if he has a daughter that attends school in the Topsail area. Mayor Mulligan confirmed that his daughter does attend school in the Topsail district. Commissioner Walker further stated that during the election time, he believes Mayor Mulligan's wife voted in the election even though she lives in the Topsail area. Mayor Mulligan then questioned "are we discussing my residency or my wife's residency?" Commissioner Walker then asked Mayor Mulligan who his daughter resides with. Mayor Mulligan stated that his daughter resides with his wife, and then he said his daughter resides with him at 214 S Dickerson Street where she returns every weekend after five days at school. He also said his wife's domicile and residence is at 214 S Dickerson which has nothing to do with where he lives. Commissioner Walker asked if his daughter commutes to school every day. Mayor Mulligan said "no". He said that would be too many miles and luckily he can afford that she doesn't have to commute.

Commissioner Walker stated that since the petition was brought up by the public he would like to ask the public if they have any comments to make regarding this issue. Mayor Mulligan commented that he would like for the public to speak if they so desire. Attorney Kenan stated that the public will need to state their name and address for the minutes before speaking.

Vernon Harrell stated he resides at 108 N McRae Street in Burgaw. Mr. Harrell stated that he has known Mr. Mulligan for a number of years. Mr. Harrell said he knows Mayor Mulligan does reside at the address he has given on Dickerson Street. Mr. Harrell said Mayor Mulligan has been a member of this town for twenty years and he does go away from time to time, but at the same time Mr. Harrell stated that he goes away from time to time as well for employment purposes. Mr. Harrell said he doesn't feel that this is a valid situation and the questions that have been put forward have no standing whatsoever.

Bob Connelly stated he resides at 801 E Fremont Street in Burgaw. Mr. Connelly asked Mayor Mulligan if he was a resident of Burgaw thirty days prior to signing up for the election. Mayor Mulligan answered "yes sir". Mr. Connelly questioned "every day"? Mayor Mulligan answered "every day, well not every day, I am allowed to leave town". Mr. Connelly then commented that the people in this room, the Commissioners and the Mayor have taken an oath swearing to uphold the laws and the regulations of the Town of Burgaw, the County of Pender and the State of North Carolina and with that comes obligations that stresses everybody's integrity. Mr. Connelly commented that he understands children going to school in another district but either you live here or you don't live here. He said it really bothers him. Mr. Connelly said when each of us goes home tonight the last person you will see is yourself in the mirror. He said you cannot fool that "cat" that is looking back at you. He said we all know right from wrong. He said if we go to the Election Board and we don't get any answers then we go to the State Election Board, he said he doesn't want to have to go into all that, he just wants someone to be straight up and honest. Mr. Connelly said he has heard many different stories (regarding Mayor Mulligan's residency) and he just wants a "straight up" answer because there is an obligation to the citizens of this town.

Jim Robinson stated he resides at 204 E Bridgers Street in Burgaw. Mr. Robinson asked Mayor Mulligan if he is gone six months out of the year, who is going to be the Mayor of Burgaw. Mayor Mulligan said when he volunteered for this position he took that into consideration. Mayor Mulligan stated that this position will actually curtail his movie career at great expense to him. Mayor Mulligan said his commitment to Burgaw is to put his life on hold and serve as Mayor of Burgaw.

L. J. Ezzell stated he resides at 256 Basden Road in Burgaw. Mr. Ezzell asked Mayor Mulligan what his address was at the time he signed up to run for election. Mayor Mulligan stated "off the top of my head, I'm not sure if it was Dudley Street or whether it was Dickerson Street". Mr. Ezzell then asked how much time lapsed between the two addresses. Mayor Mulligan stated that he didn't know if there was any time lapse. He said he purchased the house in Hampstead two months after he sold his house in Burgaw. Mr. Ezzell asked Mayor Mulligan if he had both addresses at the same time. Mayor Mulligan said "no". Mayor Mulligan said there was a lapse between the time he sold his house in Burgaw and purchased the house in Hampstead but he was here in Burgaw. Mr. Ezzell then asked Mayor Mulligan what address he used when he filed to run for office. Mayor Mulligan said it should be on one of the documents presented to the Board. Attorney Kenan advised Mayor Mulligan changed his address with the Board of Elections to 214 S Dickerson on September 5, 2013. Mayor Mulligan said he must have signed up when he was at Dudley Street.

Suzan Cowan stated that she resides at 314 S Bickett Street. Ms. Cowan directed her questions to Attorney Kenan. She asked what date Attorney Kenan asked for the information that was to have been presented to the Board. Attorney Kenan stated "it was asked for on the date of the letter, December 16, 2013". Ms. Cowan then inquired as to what date the information requested was to be submitted. Attorney Kenan said the information was to be provided by 5PM, Monday, January 6, 2014. Ms. Cowan then asked "did that happen"? Attorney Kenan replied the information was provided on Friday, January 10, 2014. Ms. Cowan said to Attorney Kenan "you asked for a driver's license as of the date he (Mayor Mulligan) was sworn in; is that correct, on December 10"? Attorney Kenan replied "correct". Ms. Cowan asked Attorney Kenan if he stated that he (Mayor Mulligan) presented a driver's license dated December 11th. Attorney Kenan advised the driver's license is dated December 11 which is a duplicate of his license. Ms. Cowan asked when the license was issued. Attorney Kenan advised the license was issued on December 11, 2013. Ms. Cowan said "so he didn't provide you with the license that he had on December 10, is that correct? Attorney Kenan replied "based on the request in the letter that is correct".

Commissioner Rooks said this Board has been given the job of basically addressing the petition that was read at the December meeting. He said a lot of the problems have come about because of the discrepancies in information that the citizens have gathered or the Board members have gathered. Commissioner Rooks asked Mayor Mulligan what was the address on his driver's license prior to the change on December 11th. Mayor Mulligan said it was a Wilmington address. Commissioner Rooks said when people started hearing that, they questioned why Mayor Mulligan has a Wilmington address on his license when he understands the law to be that you must change your driver's license within thirty days of a change of residence. Commissioner Rooks said that is one thing he knows as fact, but other things are a lot of gray area. He commented to Mayor Mulligan that when people hear that he has purchased a home in Hampstead and his wife and child are living there and he is living in Burgaw, it has created a lot of doubt. Commissioner Rooks said it would be a closed minded person to not see that doubt. He said that as a

Board member, he is obligated to assure the citizens of Burgaw that Mayor Mulligan's residence is in Burgaw. Commissioner Rooks also said the water usage at the residence of Mayor Mulligan (214 S Dickerson Street) is very minimal. Commissioner Rooks said if you live here you use water and sewer. He asked Mayor Mulligan if he understands why the people that signed the petition are questioning his residency. Mayor Mulligan said "yes sir, I do". Commissioner Rooks said he also has been advised by other legal sources that proving or disproving somebody's legal residence is a slippery slope and a very difficult thing to do. He said as a Board member he is not interested in spending a bunch of money on legal fees. Commissioner Rooks said we should not have to be having this meeting right now; he thinks some integrity has been lost in the election process and he doesn't know of anybody that we can give credit to other than Mayor Mulligan. Commissioner Rooks said he would like to have more comment from Mayor Mulligan as to why he has different addresses and no water usage at the S. Dickerson Street address. Commissioner Rooks said Mayor Mulligan says he plans to stay here. Commissioner Rooks stated that he needs answers for the citizens that are asking him if Mayor Mulligan is authorized to serve as Mayor. He asked Mayor Mulligan to address this group of people in regards to the questions being asked.

Mayor Mulligan stated that over the last twenty years he has lived here in Burgaw and he is prepared to stay here. He advised that on occasion he has left to go on vacation to Ireland for extended periods of time, he has lived in Wilmington for a time where his daughter attended school, he traveled to the Bahamas for eight months and his work regularly takes him away for extended periods but every time he returns home to Burgaw. He advised that last year his family went to a house in Hampstead for the school year but he stayed at the Dudley Street address to which his family returned every weekend. He advised this year they purchased a house in Hampstead for school purposes but also rented a house on Dickerson Street until they settle where they will live. He advised he made an offer to purchase a house on Fremont Street in November, but is waiting for the result of the short sale which takes time.

Mayor Mulligan said that his reason for signing up for election was to give the citizens an option from the status quo. He advised he has spent a lot of time in Burgaw but more importantly he sees himself as a part of the community. Mayor Mulligan read a lengthy list of his accomplishments on a personal level as well as civic organizations that he has participated in since coming to Burgaw. Mayor Mulligan said that he admits that he was naive when he was newly elected as Mayor, because he expected his opponent (Cowan) to be gracious in defeat and he expected congratulations from his local elected officials whose ranks he was about to join. He advised with the exception of one Commissioner he received neither. He said he does not expect his peers to agree with all the new ideas he brings to the table and he will welcome and respect their point of view. Mayor Mulligan said that after twenty two years in this community he has put his life and his career on hold at great financial cost to himself and electing to separate himself from his family during the school year, he finds it interesting that now you choose to distrust him.

Mayor Mulligan further commented that the public asked him to be their Mayor. He said he will not step down and go about his life because he does live in Burgaw and he was elected by a majority and he will serve as the Mayor to do the things he was elected to do. He said he has chosen to live in difficult circumstances to serve the people of Burgaw as their mayor for what they elected him to do. He said he can look in the mirror and say "I am a resident of Burgaw, I'm doing what I was asked to do and I am doing it for the right reasons".

Commissioner Walker commented that he still feels there are some gray areas regarding some of the issues that have been mentioned especially the lack of some of the requested information from Mayor Mulligan. He said he has concerns and doesn't want anybody to slip in the back door on us. He said he wants everything to come through the front door and be done right.

Mayor Mulligan stated that the reason he renewed his driver's license on December 11 was because he realized he was negligent by not having done so when he moved back here to Dudley Street from Wilmington in 2009.

L J Ezzell commented that there was very little activity at Mayor Mulligan's current address on Dickerson Street until the petition was presented to the Board. Mayor Mulligan responded by stating that the house is not the most comfortable spot and for that reason he spends time at his other properties as well most especially his office above the coffee shop on Fremont Street. He advised he has access to restrooms, heat and internet at the coffee shop and only spends evenings at the house on Dickerson Street. He said he prefers to meet with the public at the Fremont Street location or on the streets somewhere downtown. Mr. Ezzell further commented that he is satisfied having

spoken with Mayor Mulligan face to face about this subject and he is looking for the Board to come to a resolution regarding the petition and the citizen's request.

Commissioner Tyson asked Mayor Mulligan about addresses listed on copies of property deeds in his name. She commented there was a strikethrough on the S Dudley Street address and it had been changed to a Mallard Bay Drive, Hampstead NC address. She also commented that there was a Wilmington address listed on a deed that was drawn up on August 15, 2013. Mayor Mulligan commented that he never lived at the Wilmington address listed on the deed. He said there may be discrepancies but he has lived in Burgaw before, during and after the election. Commissioner Tyson stated she has a problem with legal documents that have these addresses and Mayor Mulligan is saying they are not correct. Commissioner Tyson also said she has issues with the fact that there is no water usage and no electric bills for the 214 S Dickerson Street address. Mayor Mulligan stated that his electric bills are e-bills and he does not have paper copies. Mayor Mulligan read a portion of the memorandum that was sent to the Board that stated that "as a part of the Board of Commissioners' deliberations on January 14, 2014 it should consider only evidence and testimony that pertains to the Mayor's residency within the corporate limits of the Town from the time he assumed office on December 10, 2013". Attorney Kenan commented that the Board can only consider evidence of the mayor's residency from the time he assumed office. Attorney Kenan also commented that the documentation that was requested was to give a little history of the time.

At that point, Mayor Mulligan asked if there was any further discussion. There being no further discussion, Mayor Mulligan asked for a motion. Commissioner Rooks asked what kind of motion would be necessary in this case. Attorney Kenan commented that the Board can vote to substantiate the petition, to find the petition is not substantiated or take no action at all. Commissioner Rooks commented that he feels we need to take a stand to either support his residency or we don't agree with his residency. At that time Commissioner Rooks made a motion to accept Mayor Mulligan's proof that he is a resident of Burgaw. Commissioner Robbins commented in regards to being able to only consider his residency from December 10, 2013 when the mayor assumed office, he sees no reason not to second the motion because as far as he knows Mayor Mulligan has been at his Burgaw residence since he assumed office and anything prior to December 10 is left up to the Board of Elections. Commissioner Robbins then seconded the motion. Mayor Mulligan called for a vote on the motion to accept the proof of residency that has been presented. Commissioners Rooks, Robbins and Dawson voted "aye". Commissioners Walker and Tyson voted "nay". The motion carried three to two.

Discussion concerning tabled Ordinance 2013-31 Amending Town of Burgaw Code of Ordinances regarding the reorganization of Committees of the Board of Commissioners

Mayor Mulligan stated that before consolidation of the advisory boards he would like to impress upon the Board the value of the committees. He commented that he agrees with the infrastructure board and the finance board. Mayor Mulligan said the buildings and grounds board covers way too much area and he would like to break that board down into smaller boards. He said he would like for those boards to be parks, recreation and events; depot and community house responsible for operations of each property and the government building and grounds including the depot, community house, the cemetery, Christmas decorations and the tree board. Mayor Mulligan presented a lengthy proposal which included adding citizens to the proposed boards. He advised he has passed out numerous applications for the boards and has found that many people are interested in serving.

Mr. McEwen touched briefly on the proposed ordinance from last month and there was much discussion regarding the division of the boards. Commissioner Rooks said he needs a more formal written proposal that can be studied for approval at a later meeting. He requested to table this item until the February meeting. Commissioner Rooks made a motion to table the discussion regarding the advisory boards until the February meeting at which time a formal written description including Mayor Mulligan's requests can be presented for review by the Board of Commissioners. The motion was seconded by Commissioner Walker and carried by unanimous vote.

BREAK

Mayor Mulligan called for a break at 5:10PM. The meeting reconvened at 5:20PM.

PUBLIC FORUM

Joyce Harrell advised she is here to voice her concern about the roundabout. She said she thinks the roundabout is a terrible idea and there is no real need for it. She advised she wants something done about it.

Chris May, Director of Cape Fear Council of Governments advised this is the time of year to seek out municipal elected officials to serve on the Rural Transportation Planning Board (RPO). He advised a mayor's caucus will be held to submit names for possible board members to serve on the RPO. Mr. May briefly reviewed the formula change for approving roads. Mr. May also offered his services as facilitator for the Board retreat.

Barry Klingel, 504 S Walker Street stated that the Board of Commissioners just wasted forty five minutes of good time on a witch hunt. Mr. Klingel spoke in support of Mayor Mulligan and asked the Board to work with him. Commissioner Rooks stated that as a Board Member, Mr. Klingel was out of line to call it a witch hunt. He said this Board was challenged by a petition and we had an obligation to the citizens. Commissioner Rooks told Mr. Klingel that he has a right to disagree but he (Commissioner Rooks) wanted to challenge Mr. Klingel's comment. Mr. Klingel commented there were plenty of questions made that were totally irrelevant to the matter at hand.

NEW BUSINESS

DEPARTMENTAL ITEMS

Police Department – Resolution 2014-01 Amending Article XVI of the Town of Burgaw Personnel Policy – Job Descriptions for Major and Captain

Montrina Sutton, Chief of Police advised it has come to her attention that there needs to be some amendments made to the job descriptions of the Major and the Captain. She advised the position of Major has many tasks to perform and it would be in the best interest of the department to minimize some of the tasks in order to enable the Major to focus on the primary daily tasks. Chief Sutton advised she is requesting removal of the primary tasks listed below:

- Supervise and participates in the operations of the patrol division.
- Develops and maintains contacts with community members aiding in enforcement of drug laws.
- Develops informants, participates in drug buys and calls, and marijuana eradication.
- Presents drug eradication talks and demonstrations.

Chief Sutton advised the four tasks listed above would be performed by the Narcotics Division. These tasks require multiple man hours and time to collect evidence for a conviction.

Chief Sutton also advised she is requesting the addition of the following tasks to the Major's position:

- Responsible for all criminal investigations to include but not limited to, Misdemeanor and Felony Crimes Investigations and Juvenile Investigations.
- Participate with and supervise subordinate police personnel assigned to a shift in all phases of police work and supervise the police administrative assistant functions and job performance.

The two tasks listed above would be more appropriate under the Major's position.

Chief Sutton advised she is requesting the following tasks to be removed from the Captain's primary tasks:

- Responsible for all criminal investigations to include but not limited to, Misdemeanor and Felony Crimes Investigations and Juvenile Investigations.
- Supervise the police administrative assistant functions and job performance.

Chief Sutton advised the above listed tasks would be more appropriate under the position of the Major due to the fact that the position will be primarily criminal investigations. She said approval of Resolution 2014-01 will create more productive job descriptions for the Major and Captain.

After much discussion and questions, Commissioner Robbins made a motion to approve Resolution 2014-01 as presented. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

**Resolution 2014-01
Amending Article XVI Town of Burgaw Personnel Policy Job Descriptions**

WHEREAS, the Town of Burgaw Personnel Policy was adopted on September 11, 2012; and

WHEREAS, Article XVI of said Town of Burgaw Personnel Policy sets forth certain job descriptions; and

WHEREAS, the duties set forth in the job descriptions for the Police Department Major and Captain have been reviewed; and

WHEREAS, it has been determined that the two job descriptions (Major and Captain) require amendment to reflect the primary tasks of actual day to day duties; and

WHEREAS, there are four primary tasks to be removed from the Major's job description as follows:

- 1) Supervise and participates in the operations of the patrol division.
- 2) Develops and maintains contacts with community members aiding in enforcement of drug laws.
- 3) Develops informants, participates in drug buys and calls, and marijuana eradication.
- 4) Presents drug eradication talks and demonstrations.

WHEREAS, there are two primary tasks to be removed from the Captain's job description as follows:

- a) Responsible for all criminal investigations to include but not limited to, Misdemeanor and Felony Crimes Investigations and Juvenile Investigations.
- b) Supervise the police administrative assistant functions and job performance.

NOW, THEREFORE, BE IT RESOLVED by the Town of Burgaw Board of Commissioners that:

Section 1: The Board of Commissioners does hereby authorize the removal of the abovementioned tasks from the Major's and Captain's job duties in Article XVI of the Town of Burgaw personnel policy.

Section 2: The Town of Burgaw Board of Commissioners does hereby amend the Town of Burgaw Personnel Policy, Article XVI Job Descriptions to reflect the addition of the following tasks to the Major's position:

- Responsible for all criminal investigations to include but not limited to Misdemeanor and Felony Crimes Investigations and Juvenile Investigations
- Participate with and supervise subordinate police personnel assigned to a shift in all phases of police work and supervise the police administrative assistant's functions and job performance.

ADOPTED this fourteenth day of January, 2014.

ITEMS FROM THE ATTORNEY

None.

ITEMS FROM THE MANAGER

Resolution 2014-02 Amending a Contract with McKim and Creed for Design and Encroachment Services Related to the Proposed Sidewalk from the Post Office on Satchwell Street to the Pender Senior Center on South Walker Street

Mr. McEwen, Town Manager advised in June of 2012, the Town Board approved a contract with McKim and Creed for design and engineering services associated with the Senior Center sidewalk project. The sidewalk project was required to be professionally designed by NCDOT since South Walker Street is a state maintained road and as such any structure (i.e. proposed sidewalk) must receive encroachment approval. The original amount of the contract was \$15,600.

Mr. McEwen further advised following the completion of all design and survey work by McKim and Creed a design for the sidewalk was submitted for encroachment review to NCDOT which included an 8' asphalt trail. After several months of review by NCDOT at the division, district, and state level comments were provided regarding the

proposed project. The majority of the comments could be addressed with little effort on behalf of McKim and Creed. However, the requirement was established that the project must involve a 5' sidewalk rather than an 8' multi-purpose trail. This requirement by NCDOT required additional redesign work and additional stormwater designs which resulted in the proposed contract amendment. He advised an additional \$1500.00 would be necessary to revise the design plans.

After a brief discussion, Commissioner Rooks made a motion to approve Resolution 2014-02 as presented. The motion was seconded by Commissioner Robbins and carried by unanimous vote.

RESOLUTION 2014-02

RESOLUTION AMENDING A CONTRACT WITH MCKIM AND CREED FOR DESIGN AND ENCROACHMENT SERVICES RELATED TO THE PROPOSED SIDEWALK FROM THE POST OFFICE ON SATCHWELL STREET TO THE PENDER SENIOR CENTER ON SOUTH WALKER STREET

WHEREAS, the Town and NCDOT acknowledges the need for a sidewalk along US 117 South Business due to the volume of pedestrians which use this road as well as many physical features of this road which present safety related issues to pedestrians and bicyclists alike; and

WHEREAS, for several years the Town has discussed with NCDOT the prospects of partnering together to build the necessary sidewalk and related improvements which will address these issues; and

WHEREAS, in 2011, the Board of Commissioners approved as part of the Capital Improvement Plan the design and encroachment process related to the above referenced sidewalk project; and

WHEREAS, McKim and Creed has been selected based on the bid proposed to perform the design and encroachment services related to the above referenced sidewalk project; and

WHEREAS, a contract with McKim and Creed was authorized for the design and encroachment services related to the proposed trail from the Post Office on Satchwell Street to the Pender Senior Center on South Walker Street for an amount not to exceed \$15,600; and

WHEREAS, during the encroachment review conducted by the North Carolina Department of Transportation, the proposed 8' multi-purpose trail was changed to a 5' sidewalk; and

WHEREAS, this requirement from the North Carolina Department of Transportation required additional design and engineering services beyond the original scope approved as part of the contract with McKim and Creed.

NOW THEREFORE BE IT RESOLVED BY THE TOWN OF BURGAW BOARD OF COMMISSIONERS THAT:

Section 1. A contract amendment in the amount of \$1,500 is hereby approved with McKim and Creed in order to revise the design plans for the sidewalk project as well as to resubmit the revisions to the North Carolina Department of Transportation for final review and issuance of the encroachment agreement.

SECTION 2. The Board hereby authorizes the Mayor or Town Manager to execute the necessary contracts in regard to the above referenced work.

ADOPTED this the 14th day of January, 2014.

Discussion: Use of old EMS building for Blueberry Pancake Breakfast take-outs

Mr. McEwen advised the Blueberry Festival Committee is requesting use of the old EMS building for take-out plates for the pancake breakfast on February 08, 2014. He said last year it was done at the depot but there is an event scheduled for that day that will prevent them from setting up there. After a brief discussion, Commissioner Robbins made a motion to approve the use of the old EMS building by the Blueberry Festival committee for the pancake breakfast. The motion was seconded by Commissioner Dawson and carried by unanimous vote. Mayor Mulligan requested police presence on that corner due to safety reasons.

Discussion: Use of the Community House for Commercial Purposes

Mr. McEwen advised a request for use of the Community House in a commercial capacity has been presented and it is his understanding that according to policy that use is not allowed. He said someone has asked to rent the building

and sell their services from the building. He advised this item is not addressed on the application and he would like clarification for future rentals. Commissioner Robbins stated that he remembered discussing this during the planning stages and it was the intention of the committee to allow non-profit groups to have fund raisers but not for profit business ventures. After a brief discussion, Commissioner Robbins made a motion to not allow any commercial entities to rent the Community House for profit. The motion was seconded by Commissioner Tyson and carried by unanimous vote.

Discussion: Plaque for Depot Founders

Mr. McEwen presented a proof of the proposed plaque for the Depot Founders to be placed at the depot. Mr. McEwen said those individuals that donated to the depot had been promised recognition with a plaque and this will fill that commitment. After a brief discussion, Commissioner Rooks made a motion to approve the proof and have the plaque prepared and placed in the depot based on the earlier commitment. The motion was seconded by Commissioner Tyson and carried by unanimous vote.

Update on Resolution presented to Pender County Commissioners

Mr. McEwen advised that the resolution regarding keeping the court facilities in the downtown area that was presented to the Pender County Commissioners was pulled from their agenda because they wanted to discuss it before placing it on the agenda. Mr. McEwen was asked to call the county manager and request that the resolution be put back on the agenda as soon as possible.

Strategic Planning Session

Mr. McEwen asked the Board if they desire to hold a strategic planning session in the morning with a capital improvement plan session in the afternoon. After discussion, it was the consensus of the Board to hold only a capital improvement plan session on February 19, 2014 beginning with breakfast at 8:00AM followed by the meeting at 9:00AM.

ITEMS FROM MAYOR AND BOARD OF COMMISSIONERS

Mayor Mulligan asked for the street committee to consider an extra street light to be placed on Court House Avenue between the intersection of the alley and Wright Street. He also requested the street committee consider placement of a handicap space in the middle of Fremont Street at the intersection of the alley.

Mayor Mulligan commented there is a lot of talk about the roundabout and a lot of people cannot understand how we got here, whose problem it solves and what form it is going to take. He said he would like to see at some stage a public forum to explain to the public what they are getting, what problems it will solve and why we are doing it. He requested a public forum for this purpose. After a brief discussion, it was the consensus of the Board to hold a public forum regarding the roundabout after 5:00PM at the February meeting. Commissioner Rooks requested a sign-up sheet so speakers would be required to sign up instead of having an open forum.

Commissioner Robbins thanked Chief Sutton for the new design of her police report.

Commissioner Robbins expressed concerns about the way the I-40 interchange at NC 53 looks. He said the area is littered with garbage and it needs to be cleaned up. After discussion, the Board requested that NCDOT be contacted to take care of the matter. Mr. McEwen asked Bill Fay to check on this.

Commissioner Robbins asked for an update on the coyote situation. He said he understands that some small pets have gone missing. Mr. McEwen advised he has called NC Wildlife and Animal Control. He was advised they have no programs to help in this situation. He also called Vic French (retired wildlife biologist) and was informed there are people who trap coyotes. Mr. French advised coyotes are very wise in terms of a cage which makes it necessary to use foot traps. He said use of foot traps could trap someone's dog instead of the intended coyote target. Mr. McEwen said it will be difficult to solve one problem by injuring someone's pet. He said there is liability in almost aspect of the issue. Mr. McEwen said Mr. French stated that part of the solution is to educate the public by

eliminating pet food outside and keeping small pets inside. After much discussion, the Board asked that some public information be placed on the website.

Commissioner Dawson thanked Allen Wilson, Fire Administrator for doing the fire inspections and for the associated reports.

Commissioner Tyson stated that she has received a request from a citizen on N McNeil Street requesting consideration of placing a stop sign to slow down traffic. She said the primary complaint is the Domino's drivers speeding on McNeil Street. Attorney Kenan suggested some traffic intervention with a police car before putting in a stop sign. Bill Fay advised he knows the district manager of Domino's and he would be willing to speak with him regarding the issue. In the meantime Chief Sutton advised she will put a patrol unit in the area.

Public Hearing 1. Consideration of an amendment to the official Town of Burgaw Zoning Map. Applicant Leddell Casey is requesting the rezoning of his property along NC Highway 53 East (PINs 3320-70-8564-0000 and 3320-70-9955-0000) from R-20 & C/P to B-2 & C/P.

Mayor Mulligan opened the public hearing at 6:24PM.

General Information.

Rebekah Roth, Planning Administrator advised applicant Leddell Casey is requesting the rezoning of approximately 16 acres from R-20 and C/P to B-2 and C/P. Only approximately 4 acres of the properties would be affected by the proposed rezoning. The western tract is the location of Mr. Casey's residence and a multi-tenant commercial building, currently occupied by a grandfathered, nonconforming tire repair shop and a church (received a conditional use permit in April of 2013). He is interested in renting a portion of that building to another commercial tenant. However, while the Board of Commissioners recently approved a text change amendment that would allow a greater variety of grandfathered uses, it does not allow new additional commercial uses. As a result, Mr. Casey is requesting the properties be rezoned to B-2 to allow a wider spectrum of uses.

Ms. Roth advised the subject properties are primarily surrounded by vacant tracts. To the west, however, is a tract zoned B-2 that contains a residence and a small auto repair garage. Several more tracts are commercially zoned to the west.

Zoning District Information.

Ms. Roth advised the R-20 Residential Zoning District is established by the Unified Development Ordinance (UDO) as a district in which the principal use of land is for low-density residential uses.

The B-2 Highway Business Zoning District is defined by the UDO as "certain areas that are designed to serve both nonresidents and transients using the major arterials that run through or around the town. This district is intended to provide for a wide range of commercial uses which will serve the needs of the community as a whole. The district shall be located along the US Highway 117 Bypass and NC Highway 53 thoroughfares. All uses within this district should have ample parking, controlled traffic movement, and suitable landscaping. It is designed to accommodate retail or service establishments customarily patronized by transient traffic as well as non-transient traffic."

(A list of all uses currently allowed in the R-20 and B-2 districts is attached. The list is on file in the clerk's office.)

Ms. Roth presented the following background information regarding the rezoning request.

Background.

After Mr. Casey's former tenant, Economy Tire, moved to a new location, he had difficulty finding another appropriate use because of the regulations for grandfathering in the UDO prior to a recent text change amendment. We spoke last December about the grandfathering issue and how only another tire repair shop would be grandfathered without the property being rezoned. In March 2013, Mr. Casey found a new tire repair shop tenant, Lopez Tires. He also found a church to occupy a portion of the building this past March, and the church applied for a conditional use permit on March 14, 2013. The town issued the permit April 9, 2013. It was permitted conditionally based on the R-20 zoning district designation.

Recently, Mr. Casey found another potential tenant for another portion of the building. However, because this commercial use (small scale auto sales) was neither grandfathered nor permitted in the R-20 zoning district, I could not issue a zoning permit.

Analysis.

In considering this request, the Planning Board considered the following items (in no particular order):

- Best use of the property
- Financial impacts on the town
- Potential impacts on adjacent properties
- Conformity to the Burgaw 2030 Comprehensive Land Use Plan
- Spot zoning and other legal issues

Best use of the property

There is an existing commercial structure already located on this tract. In the past, Mr. Casey has had difficulty finding appropriate tenants because of the town's nonconforming regulations prior to the text change amendment approved in October. With that text change, replacement of the existing tire shop tenant would be possible with an approved conditional use permit; however, new commercial tenants would not be allowed.

In terms of the best use of the property, for the owner, wider latitude in the type of permitted uses for the commercial structure would be best—indicating that a rezoning would be appropriate. However, in terms of future development and redevelopment of the properties in question, commercial uses would be inappropriate. As discussed further below, the properties are entirely within the floodway, indicating that encouraging commercial development, especially the wide variety of commercial development possible in the B-2 zoning district, would not be prudent.

Financial impacts on the town

The rezoning of this property will not require additional infrastructure or services. However, rezoning the property to B-2 indicates the town's willingness to allow commercial development on the lots. Commercial development within the floodway, unless we are very vigilant, can also affect the town's compliance with the National Flood Insurance Program. Noncompliance can result in higher flood insurance rates. In addition, new development within the floodplain can affect the likelihood of greater damages during flooding events.

Potential impacts on adjacent properties

The subject properties are located within the floodway. According to the NC Department of Crime Control and Public Safety, "the floodway is the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to pass the base flood discharge without increasing flood depths." There is annually a 10% chance of flood elevations in the floodway, or a once-every-10-years chance. Development within the floodway can have ramifications for other properties if causes an increase in flood depths. NCDCCPS recommends to "let the floodplain perform its natural functions—if possible, keep it as open space. Other compatible uses: recreational areas, playgrounds, reforestation, parking, gardens, pasture, and created wetlands."

Some uses permitted as a use-by-right in the B-2 zoning district, such as LP Gas Retail Stores, small Repossession Services, Automotive Detail Shops, etc., could have possible negative ramifications for adjacent property owners in the case of a flood event.

Conformity to the Burgaw 2030 Comprehensive Land Use Plan

The Planning Board acknowledged that the proposed rezoning is not in conformity with the following portions of the Burgaw 2030 Comprehensive Land use Plan because it

- Does not limit the density and intensity of development in the floodway and 100-year floodplain (Land Use Goal 2, Action 5)
- Does not indicate strengthened regulations on development in floodplains and wetlands to protect adjacent property owners and prevent economic losses during flood events (Environmental Protection Goal 3, Action 3)

In addition, these tracts are located in the Rural Transition zone, as shown on the Future Land Use Map, which recommends the following land uses due to environmental concerns: agriculture, forestry, and recreational amenities.

Spot zoning and other legal issues

Because of the adjacent commercially zoned tracts, spot zoning is not a concern. There are no other legal issues with this proposed rezoning.

Planning Department Recommendation

Based on the existing conditions of the properties and the proximity to other commercially zoned property, it would seem that B-2 zoning would be the most appropriate. However, due to the properties' environmental hazards, commercial zoning is not prudent. By designating it B-2, especially in terms of future development or redevelopment, the town would be indicating that the site is appropriate for large-scale commercial development, which it is not.

Acknowledging that the board has shown an indication in the past to want to encourage development of this corridor, if the board decides to recommend approval of the rezoning, I would urge that only the western property (3320-70-8564-0000) be included in this rezoning. This property is immediately adjacent to existing B-2 zoned property and currently includes a commercial structure. The eastern property contains potential wetlands and is currently not developed.

Planning Board Review. At a December 2, 2013 special meeting, the Town of Burgaw Planning and Zoning Board approved the following statements.

Statement Regarding the Compliance of a Proposed Amendment to the Town of Burgaw Official Zoning Map with the Burgaw 2030 Comprehensive Land Use Plan

The proposed rezoning is not in conformity with the following portions of the Burgaw 2030 Comprehensive Land Use Plan because it

- Does not limit the density and intensity of development in the floodway and 100-year floodplain (Land Use Goal 2, Action 5)
- Does not indicate strengthened regulations on development in floodplains and wetlands to protect adjacent property owners and prevent economic losses during flood events

However, in recognition of the current and historic uses of the property, we recommend the proposed amendment to the Official Zoning Map.

Planning Board Recommendation Regarding a Proposed Amendment to the Town of Burgaw Official Zoning Map

The Town of Burgaw Planning and Zoning Board recommends approval of the proposed rezoning of properties 3320-70-8564-0000 and 3320-70-9955-0000 from R-20 and C/P to B-2 and C/P.

Elizabeth James resides at 1761 NC Hwy 53 East. Ms. James advised she did not really understand what this meeting was about and she was present to find out what was going on. Mayor Mulligan asked Ms. James if she understands the request. Ms. James replied “no”. Ms. Roth briefly explained the process to Ms. James. Ms. James advised she wanted to know what was happening in her neighborhood. Mayor Mulligan asked her if she had a better understanding now. She said she understands and has no other comment.

Leddell Casey asked for a definition of overlay. Ms. Roth advised an overlay zoning district adds additional requirements that you put on top of a regular zoning district. She provided some examples of an overlay zoning district.

Mayor Mulligan asked if we rezone this land today and create the overlay period later will it affect Mr. Casey’s property or will he be grandfathered. Ms. Roth advised the overlay would affect Mr. Casey if any uses were to come in the interim that would no longer be allowed if the overlay were in place; then they would be grandfathered in. Ms. Roth commented that any overlay would have to go through this process again to both the Planning Board and the Board of Commissioners. Mr. Casey asked if that would have to be done for him to make any changes in the future. Ms. Roth advised “yes”.

There being no further comments, the public hearing was closed at 6:40PM by motion of Commissioner Robbins and second by Commissioner Dawson. Motion carried.

Ordinance 2014-01

Commissioner Tyson made a motion to approve Ordinance 2014-01 as presented. The motion was seconded by Commissioner Walker and carried by unanimous vote.

**ORDINANCE 2014-01
APPROVING AN AMENDMENT TO THE TOWN OF BURGAW OFFICIAL ZONING MAP REZONING TWO
PROPERTIES ALONG NC HIGHWAY 53 EAST (PINS 3320-70-8564-0000 AND 3320-70-9955-0000) FROM R-20 AND C/P
TO B-2 AND C/P**

WHEREAS, the Town of Burgaw is a municipal corporation organized under the laws of North Carolina, invested with the powers enumerated in Chapter 160A of the North Carolina General Statutes; and

WHEREAS, the Town of Burgaw Board of Commissioners adopted the Unified Development Ordinance (UDO) and official zoning map on December 12, 2000; and

WHEREAS, applicant Leddell Casey is requesting the rezoning of two properties (PINs 3320-70-8564-0000 and 3320-70-9955-0000) from R-20 (Residential) and C/P (Conservation/Preservation) to B-2 (Highway Business) and C/P (Conservation/Preservation); and

WHEREAS, the Town of Burgaw Planning and Zoning Board voted at a December 2, 2013 special meeting to recommend the requested rezoning despite its lack of conformance with the Burgaw 2030 Comprehensive Land Use Plan; and

WHEREAS, while the Town of Burgaw Board of Commissioners finds that the attached text change amendment is not consistent with the goals of the Burgaw 2030 Comprehensive Land Use Plan, in recognition of the current and historic uses of the property, it finds the requested rezoning to be in the best interest of the Town of Burgaw;

NOW THEREFORE BE IT ORDAINED BY THE TOWN OF BURGAW BOARD OF COMMISSIONERS THAT:

SECTION 1: The Town of Burgaw Official Zoning Map be amended and the parcels referenced above are hereby rezoned as stated above.

SECTION 2. This amendment becomes effective immediately upon adoption of this ordinance on this, the 14th day of January, 2014.

CLOSED SESSION

Commissioner Rooks made a motion to go into closed session pursuant to GS 143-318.11 paragraph (a) item (3) attorney/client privilege, paragraph (a) item (5) proposed contract for acquisition of real property and paragraph (a) item (6) Personnel. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

OPEN SESSION RECONVENED

Commissioner Robbins made a motion to reconvene to open session. The motion was seconded by Commissioner Dawson and carried by unanimous vote. There was no action taken in closed session.

ADJOURNMENT

There being no further business, Commissioner Rooks made a motion to adjourn. The motion was seconded by Commissioner Walker and carried by unanimous vote. The meeting adjourned at 7:20PM.

Eugene Mulligan, Mayor

Attest: _____
Sylvia W. Raynor, Town Clerk