

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

**DATE:** May 15, 2018  
**TIME:** 4:00 PM  
**PLACE:** Burgaw Municipal Building  
**BOARD MEMBERS PRESENT:** Mayor Kenneth Cowan  
Mayor Pro-tem Wilfred Robbins  
Commissioners Jan Dawson, Bill George, Vernon Harrell and James Murphy  
**STAFF PRESENT:** Joseph Pierce, Town Manager  
Sylvia W. Raynor, Town Clerk  
Zachary Rivenbark, Town Attorney  
Alan Moore, Director of Public Works  
Louis Hesse, Building Inspector  
Jim Hock, Chief of Police  
Wendy Pope, Finance Officer  
Karen Dunn, Planning Administrator  
Kristin Wells, Deputy Clerk  
Zachary White, Parks/Recreation Coordinator  
**MEDIA PRESENT:** None  
**INVOCATION:** Reverend Bryant Crosson  
**PLEDGE OF ALLEGIANCE:** All

The meeting was called to order by Mayor Kenneth Cowan at 4:00PM. The invocation was delivered by Reverend Bryant Crosson. The Pledge of Allegiance was said by all.

**Approval of Agenda**

Mayor Cowan requested to add a closed session for attorney/client privilege to the agenda. Commissioner Robbins made a motion to approve the agenda as amended. The motion was seconded by Commissioner Harrell and carried by unanimous vote.

**Approval of Consent Agenda**

Commissioner Dawson made a motion to approve the consent agenda as presented. The motion was seconded by Commissioner Murphy and carried by unanimous vote. The following items were approved:

- o Minutes of April 10, 2018 regular meeting and closed session

**SPECIAL PRESENTATION**

**McGill & Associates – Presentation regarding Town of Burgaw Final System Development Fee Report**

Andy Lovingood, Principal/Vice President and Michael Ballard, Senior Project Manager appeared on behalf of McGill & Associates to present information regarding House Bill 436 and System Development Fees.

Mr. Lovingood advised that House Bill 436 is legislation establishing a uniform approach to calculating, collecting and using System Development Fees. He advised this legislation requires a public hearing, ordinance adoption into the budget ordinance and implementation by July 01, 2018. He gave a brief overview of the requirements established in HB 436.

Mr. Ballard spoke at length in regards to the fees, how they are calculated and how they may be used by the municipalities. The System Development Fee proceeds must be placed in a separate capital reserve fund and may be used for existing or future capital projects. Due to the length and depth of detail in this presentation the full documentation is on file in the clerk's office.

After completion of a lengthy presentation, the Board was informed that they will be required to hold a special public hearing to adopt this plan. The Board was in agreement to hold a public hearing on June 21, 2018 at 2:00PM.

## **DEPARTMENTAL ITEMS**

### **Parks & Recreation – *Zachary White, Parks & Recreation Coordinator***

#### **Sidewalk Art Project**

Mr. White informed the Board that the Blueberry Festival desires to have a kid's day to allow the children to paint blueberries on the sidewalk along Courthouse Avenue with chalk. He said the chalk will wash away. Mr. White asked the Board if they would allow the children to use chalk on the sidewalk this one time since there is an ordinance on the books about defacing sidewalks. He advised this event will be held on Thursday, June 14<sup>th</sup> prior to the festival on Saturday. Commissioner Robbins made a motion to allow children to use chalk to draw on the sidewalk along Courthouse Avenue on Thursday, June 14<sup>th</sup> and to be cleaned up at the expense of the Blueberry Festival on Sunday or Monday after the festival and to instruct code enforcement personnel not to issue citations for this event. The motion was seconded by Commissioner Harrell and carried by unanimous vote.

#### **Wilmington Sharks Baseball game Pender County night**

Mr. White advised Wilmington Sharks wants to do something for Pender County youth athletics. He advised on July 28<sup>th</sup> each child that plays Pender County youth sports may wear their jersey to the Sharks stadium and be admitted to the game at no charge and parents and others will only pay five dollars for admission. Mr. White advised there will be a cost to the town for this. Ms. Pope advised there is a line item in the budget under the governing board miscellaneous account which is for donations for athletic, clubs and school groups and that \$300 has been allocated for that particular line item. After much discussion, Commissioner Dawson made a motion to approve a \$100 donation from the town to be donated to the Wilmington Sharks in support of Pender County night at the stadium. The motion was seconded by Commissioner Harrell and carried by unanimous vote.

#### **Approval of Fencing Quote - Harrell Park Fence Replacement**

Mr. White advised he has received three quotes for the fence replacement at Harrell Park. He received quotes from Seegars Fencing \$6,500, Outer Banks 6,075 and J&J Fence for \$5950 (for a higher quality gauge than the others). He said he recommends that the bid go to J&J Fence because of the higher quality fencing at a lesser cost and because they have done the fencing behind town hall and did good work. Commissioner George made a motion to accept the bid from J&J Fencing at \$5950 with a 15% contingency. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

#### **Courthouse Avenue Park Discussion**

Mr. White advised he has reviewed the plans drawn by Mr. Westbrook for the park on Courthouse Avenue. He said all the plans that he has seen have the splash pad on them and he was under the impression that there are other plans without the splash pad. He asked the Board to give guidance on where to go from here with plans for the proposed park. Commissioner Harrell said he did not want to give up on the splash pad plans. Commissioner Dawson said she would like for Mr. White to bring back a plan for Courthouse Avenue with restroom facilities. There was much discussion regarding the county's plan for Pender Park and what amenities will be put there. Mr. White said there has not been much progress of late on the county plan. Commissioner Dawson said she will check on the county plans and Mr. White said he will follow up and bring something back to the next meeting.

### **Public Works – *Alan Moore, Public Works Director***

#### **Consideration of Approval of Resolution 2018-06 Approving Local Water Supply Plan**

Mr. Moore advised the Town of Burgaw 2017 Local Water Supply Plan (LWSP) update has been submitted to the state and meets the minimum criteria established in NC General Statute 143-355 (1). This plan must be adopted by the Board of Commissioners by resolution. The LWSP cannot be considered compliant with the requirements of NCGS until an adopted resolution is received by the Department of Environmental Quality, Division of Water Services. The recommendation is approval of Resolution 2018-06. Commissioner Harrell made a motion to approve

Resolution 2018-06 approving the Local Water Supply Plan. The motion was seconded by Commissioner George and carried by unanimous vote.

**RESOLUTION 2018-06  
APPROVING LOCAL WATER SUPPLY PLAN**

**WHEREAS**, North Carolina General Statute 143-355(I) requires that each unit of local government that provides public water services or plans to provide such services shall, either individually or together with other such units of local government, prepare and submit a Local Water Supply Plan; and

**WHEREAS**, as required by the statute and in the interest of sound local planning, a Local Water Supply Plan for the Town of Burgaw, has been developed and submitted to the Board of Commissioners for approval; and

**WHEREAS**, the Board of Commissioners finds that the Local Water Supply Plan is in accordance with the provisions of North Carolina General Statute 143-355(I) and that it will provide appropriate guidance for the future management of water supplies for the Town of Burgaw, as well as useful information to the Department of Environmental Quality for the development of a state water supply plan required by statute;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Commissioners of the Town of Burgaw that the Water Supply Report entitled, Town of Burgaw Local Water Supply Plan dated for the year 2017, is hereby approved and shall be submitted to the Department of Environmental Quality, Division of Water Resources; and

**BE IT FURTHER RESOLVED** that the Board of Commissioners intends that this plan shall be revised to reflect changes in relevant data and projections at least once every five years or as otherwise requested by the Department, in accordance with the statute and sound planning practice.

**APPROVED** this fifteenth day of May, 2018.

**ITEMS FROM ATTORNEY - Zachary Rivenbark, Town Attorney**

**Harding/Mulligan Release and Indemnification Agreement**

Attorney Rivenbark advised the Board has before them a Release and Indemnification Agreement that has been discussed at length for some time with Ms. Karen Harding and Mr. Eugene Mulligan. Attorney Rivenbark reviewed the minor changes that have been made to the document which has been signed by Ms. Harding and Mr. Mulligan. Attorney Rivenbark advised in light of those changes the Board needs to approve, if they desire, this agreement with these changes. Commissioner Harrell made a motion to approve the changes as made in this agreement. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

**Discussion regarding use of the Community House by fitness instructors**

Attorney Rivenbark said at the budget meeting there was considerable discussion on use of the community house and specifically for the fitness instructors. He said he has spoken to the manager today and he made a brief statement at the budget meeting and his opinion stays the same being that Option 3 is the best method. That option states that the town will allow a fitness instructor to rent the building and have a profit sharing split. He said that is the best option for the town to limit its liability however that would cause a change in the current usage policy because it would cause a profit to be generated for a business. He advised that if the town continues to allow the current usage it puts the liability on the town if there are any incidents that cause injury etc. He said personally he feels this change needs to be made to limit the town's liability. Mr. Pierce advised this change would essentially transition an expenditure into a revenue item. He said he really needs this settled for the budget to be finalized. He then commented that a change to the policy would be necessary.

After a lengthy discussion regarding the issues surrounding the current situation with free classes and paid instructors as opposed to going into a profit sharing agreement and the need to get this settled in time to put any changes in the budget, Commissioner George made a motion to approve Option 3 as proposed by the attorney. The motion died for lack of a second. Commissioner Harrell made a motion to continue the program as it currently stands. Mr. White asked if he could speak about this matter. He advised the purpose of the proposed change is to give the town more control over the classes because the recommended changes made previously by the Board regarding giving attendance sheets has not been fulfilled by the instructors. He spoke about the issues that are there at this time that need to be addressed with more oversight by the town. Mr. White said this issue is not new in the parks and recreation world because it happens in other places as well. He said if we control the program we can promote it, control the location and have a better handle on the billing practices of the instructors. Commissioner Dawson said there are too many issues and she wants to see the policy and guidelines before voting on anything. She

was in favor of Attorney Rivenbark and Mr. White drawing up an amendment to the policy to be considered by the Board. Commissioner Harrell withdrew his motion. Mayor Cowan announced this item will be tabled until the next meeting. Attorney Rivenbark advised he has other items that are for closed session only.

#### **ITEMS FROM MANAGER - *Joseph Pierce, Town Manager***

##### **Alligator hunting request discussion**

Mr. Pierce advised he has received two requests to hunt alligators in town. He said this has recently been approved by the state because for many years it has been illegal to hunt alligators at all. He said the season will be begin August 1 and end on September 1. Mr. Pierce said he has not heard of any issues with alligators in the area and Chief Hock checked to see if there have been any complaints and he has not found any record of complaints concerning alligators. After a brief discussion, Mr. Pierce said his recommendation is to not take any action on this item because there are no alligators in the area. The Board members were in agreement. No action was taken on this item.

##### **Request for public hearing at June meeting**

Mr. Pierce requested the Board to call for a public hearing on June 12, 2018 to approve the FY 2018-2019 budget. Commissioner Harrell made a motion to hold a public hearing on June 12, 2018 for the purpose of approving the FY 2018-2019 budget. The motion was seconded by Commissioner Robbins and carried by unanimous vote.

#### **OTHER DEPARTMENTAL ITEMS**

Mayor Cowan recognized Karen Dunn, Planning Administrator for a brief presentation. Ms. Dunn advised she has some figures for some of the road, sidewalk and crosswalk improvements. She has only been able to identify the crosswalks of which most of them are on the trail. She presented a handout depicting the areas that need some crosswalk improvements. The prices presented were representative of pedestrian activated flashing beacons at a cost of \$12,050.00 per pair. There were twelve locations presented. Ms. Dunn said she needs more time to get bids on bulb-outs and sidewalks.

Mr. Hesse advised there will be some fiber optic work going on tomorrow between the hospital and the sheriff's office.

#### **BREAK (5:23PM – 5:32PM)**

#### **PUBLIC FORUM**

##### **Speakers:**

**Olivia Dawson, Blueberry Festival Coordinator** advised the Blueberry Festival Committee is requesting to close a portion of Dudley Street beginning at Fremont traveling north to the last driveway entrance to the Piggly Wiggly parking lot before reaching Wilmington Street for the barbeque cook-off event on Friday. After discussion Commissioner Dawson made a motion to close Dudley Street from Fremont Street north to the last entrance to the Piggly Wiggly parking lot before arriving to Wilmington Street and to have the street closed from 7:00AM to 6:00PM on Friday, June 15<sup>th</sup>. The motion was seconded by Commissioner Harrell and carried by unanimous vote.

**Michael Peterson, 111 W. Bridgers Street** stated that he is here for the third time to complain about the flooding on Bridgers Street in front of his house. He requested that the town do something to alleviate the issue. He advised the ditch across the street at the blue house is stopped up with leaves and needs to be cleaned. Mr. Moore advised we will have to have an easement to clean that area. It was suggested that Attorney Rivenbark and Mr. Pierce work on this issue to try to get an easement. Mr. Peterson also complained about the truck traffic on Bridgers Street which is a no through truck street. Mr. Pierce was asked to work on this issue as well.

**Nancy Aycock, Cripple Creek Corner 100 South Walker Street** presented photos of a sidewalk that she has complained about in the past. She said this is her third time appearing in front of the Board and the problem has not yet been solved. She said instead of repairing the sidewalk it was ground down on the rough edges and it is very unattractive. She said she wants to upgrade her building but the sidewalk looks so bad she has no desire to make improvements to her property. She said after speaking to Ms. Dunn she learned that the sidewalk is slated to be

repaired in a DOT project. She advised the entire sidewalk all the way down to the church is dangerous and she would appreciate someone repairing the sidewalk. She asked the Board to look into this and do something. Mayor Cowan told Ms. Dunn he would like to see some estimated numbers on repairing the sidewalk all the way down to the Presbyterian Church.

**Karen Harding, 109 South Wright Street** said the Courthouse Avenue sidewalk needs work. She also commented that she doesn't believe there needs to be public rest rooms on Courthouse Avenue in the proposed park. Ms. Harding said there are three restaurants, two coffee shops, three government buildings, a pub and a few businesses with rest rooms that are within steps of that proposed park. She said it's not good use of money. Lastly she commented she is concerned about donating town property; that's not something that can actually be done but then there was talk of allowing an individual to purchase town property. She said in one instance you are taking people's property using eminent domain and then you want to give an individual property because it suits him to have a foot or two extra. She said the board had voted to allow that individual to have the few inches to unencumber his property; that should be sufficient. She said it's not good to start selling town property and if that's the case there are several other property owners along Wright Street and Fremont Street that would be interested in purchasing an extra foot or two off of their building because it would suit them and their businesses.

**Antron Hayes** presented two letters to the Board. One letter was from Hall Family Properties concerning the vacant lot across from their building regarding their tenant's request to have a parking lot instead of a park on the vacant lot because there is not enough parking in that area. The second letter was from Will Williford, owner of the Wash House at the corner of Courthouse Avenue and Dickerson Street. Mr. Williford complained about the lack of parking in the area and the fact that his parking lot which is marked for customer parking only is used by people required to appear in court or customers for other businesses. Mr. Hayes commented that he was not aware that Spring Festival was going on and it caused some issues for his business because his customers could not get to his store. Mr. Hayes spoke in opposition to the rest rooms in the proposed park because he believes there will be problems with criminal activities etc. He requested that a parking lot be put there instead.

**Josie Taylor** said she would rather see more parking spaces in the area of Courthouse Avenue instead of a park. She commented that people from the next block over come to her block to park their cars during business hours. She also commented that there are residents in the apartments upstairs that leave their cars there all the time and it takes away business parking.

**Barbra Dee** asked for more parking for merchants in the Courthouse Avenue area. Ms. Dee advised there are rest rooms in the area. She advised there are public rest rooms at the court house, court house annex, depot, the old bank and the Wash House. She said Burgaw has three parks already. She commented that the sidewalks are bad and they need to be improved.

**Ella Jordan** advised her elderly customers need parking so they can come into her shop. She wants somewhere to park and the sidewalks to be more accessible to the elderly.

#### **PUBLIC HEARING – Karen Dunn, Planning Administrator**

**Consideration of a Conditional Use Permit for a “Restaurant, Full Service and Limited Service” to be Located at 211 Hwy 117 South. Applicants, Gregorio and Celerina Sanchez are petitioning the town for a conditional use permit to allow a restaurant in an existing building in the B-2, Highway Business, zoning district.**

Mayor Cowan declared the public hearing open at 6:16PM.

Joel Sanchez and Karen Dunn were sworn in by Attorney Rivenbark in order to present evidence during this hearing.

Ms. Dunn advised applicants Gregorio and Celerina B. Sanchez are petitioning the town for a conditional use permit to renovate an existing building and open a 50 seat restaurant (30 indoor and 20 outdoor patio seats) and a grocery store at 211US Highway 117 South. Past land uses of this property include a Bingo Parlor, Eating & Drinking Facility, Thrift Store, and Print Shop since 2001. Ms. Dunn presented all background information including site maps/pictures, exhibits, review of standards of evaluation, ordinance requirements etc.

Upon completion of the presentation, Ms. Dunn asked if there are any questions regarding the evidence presented. Commissioner Robbins suggested that the dumpster area be landscaped with wax myrtles or similar vegetation to

screen the dumpster area. Mr. Sanchez was in agreement with Commissioner Robbins' suggestion. Mayor Cowan asked about the ice machine on the property and wanted to know if Mr. Sanchez will be responsible for maintaining the site of the ice machine. Mr. Sanchez said they will maintain the grounds around the ice machine. There being no further questions, Mayor Cowan read the standards for evaluation. The Board of Commissioners voted unanimously in the affirmative on all standards. All additional conditions are listed.

The public hearing was closed at 6:35 PM.

## **SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **Standard 1. The use will not materially endanger the public health, safety, or general welfare if located where proposed and developed according to the plan as submitted and approved.**

As a result, the Board of Commissioners finds that the proposed application meets the requirements of this standard, provided the following conditions:

- Applicant shall repair existing potholes and improve pavement of the driveways within the NCDOT right of way.

### **Standard 2. The use meets all required conditions and specifications.**

As a result, the Board of Commissioners finds that the proposed application meets the requirements of this standard, provided the following conditions:

- A solid waste plan, including specifications for dumpster screenings (6'-8' wooden fence made with pressure treated lumber and trees/shrubs), must be approved by the Planning Administrator prior to occupancy.
- Applicant shall pave the area to the right of the building to the dumpster and it will be used for off-street loading and unloading.
- Existing mature trees along rear and left side yard buffer adjacent residentially zoned property and shall be preserved and maintained on the site.
- The existing parking lot is deteriorated and shall be repaved. Parking spaces in paved area shall be striped.
- Existing conditions preclude street trees and parking lot landscaping. Maintain/enhance landscaping between building and lot. Planning Administrator shall review any landscape plans prior to planting.
- Lighting fixtures shall be full cut off.
- Clean out the existing back flow and grease trap and have them inspected with test results submitted to Public Works prior to Certificate of Occupancy per Alan Moore.
- A separate sign permit shall be issued for proposed signs.
- Maintain cross access to adjacent property.

### **Standard 3. The use will not adversely affect the use of or any physical attribute of adjoining or abutting property or the use is a public necessity.**

As a result, the Board of Commissioners finds that the proposed application meets the requirements of this standard, provided the following conditions:

- Applicant shall preserve and maintain the existing buffer around the perimeter of the property.

### **Standard 4. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the Town of Burgaw Unified Development Ordinance, Burgaw 2030 Comprehensive Land Use Plan, and NC Highway 53 Corridor Study.**

As a result, the Board of Commissioners finds that the proposed application meets the requirements of the standard, provided the following conditions:

- A bicycle rack shall be installed prior to occupancy in a location approved by the Planning Administrator.
- Since US Hwy 117 South is a well-traveled highway for automobiles and trucks and is unlikely to be subject to heavy pedestrian traffic, sidewalks should not be required at this location

**Motion:** Commissioner Robbins made a motion to approve the conditional use permit as presented. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

## **ITEMS FROM MAYOR AND BOARD OF COMMISSIONERS**

**Commissioner Robbins** commented that the trees and plants on the Hood property need to be weeded and mulched. He also advised the crape myrtles and trees that the town planted on North Wright Street need to be pruned and mulched. Commissioner Robbins said the live oak tree at the bank building needs some attention and requested that if necessary to hire an arborist look at it and try to save it. He asked for the manager to contact the arborist at the county extension office.

**Commissioner Robbins** asked how many applications have come in for the Parks and Recreation Advisory Board. After being informed that only one application has been received, Commissioner Robbins urged the Board to try to recruit some members.

**Commissioner Dawson** asked about the sidewalk on Walker Street. Ms. Dunn advised after meeting with NCDOT they advised the sidewalk will be completed by June first.

**Commissioner Harrell** asked what can be done to move forward with the project on Courthouse Avenue. He said at the very least we need to move forward with the replacement of the sidewalks. He asked Ms. Dunn to get some prices on replacing the sidewalks on Courthouse Avenue. Mayor Cowan commented that she needs to work on the Walker Street sidewalk as well as working on Ms. Aycock's request for repairs along the 100 South Block of Walker.

**Commissioner Harrell** requested that Ms. Dunn look at the junk store on US 117 because it looks really bad. Ms. Dunn advised the junk business was grandfathered because there was a similar business there before. She advised she has been there a number of times regarding the materials that are stored outside the roof line. She said she has sent letters to the owner regarding the issues. The Board was in agreement that something needs to be done about the issue.

**Commissioner Harrell** said the weeds are getting bad. Mr. Moore advised they have been sprayed this week.

## **CLOSED SESSION 7:02PM**

Commissioner Harrell made a motion to go into closed session Pursuant to GS 143-318.11 (a) (3) Attorney Client Privilege. The motion was seconded by Commissioner George. Motion carried.

## **OPEN SESSION RECONVENED 7:26PM**

Commissioner Harrell made a motion to return to open session. The motion was seconded by Commissioner Robbins. Motion carried.

## **MOTIONS**

Upon reconvening to open session the following motions were made:

Commissioner Harrell made a motion to approve the appropriation of \$2700 from fund balance for survey costs to be reimbursed to WLS Properties, Inc. for the creation of an easement. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

Commissioner Dawson made a motion to approve the proposed settlement for an easement for the Osgood Canal Project. The motion was seconded by Commissioner Harrell and carried by unanimous vote.

## **ADJOURNMENT**

There being no further business, Commissioner Harrell made a motion to adjourn. The motion was seconded by Commissioner Dawson. Motion carried.

**ADJOURNMENT**

Meeting adjourned at 7:40PM.

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Kenneth T. Cowan, Mayor

Attest: \_\_\_\_\_  
Sylvia W. Raynor, Town Clerk