

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

DATE: July 09, 2013
TIME: 4:00 PM
PLACE: Burgaw Municipal Building
BOARD MEMBERS PRESENT: Mayor Kenneth T. Cowan
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
Rebekah Costin, Planning Administrator
Bill Fay, Director of Public Works
Louis Hesse, Building Inspector
Ashley Loftis, Finance Officer
Montrina Sutton, Chief of Police
MEDIA PRESENT: Andy Pettigrew – The Pender Post
Stephanie Bowens - Star News
INVOCATION: Bryant Crosson, Chaplain
PLEDGE OF ALLEGIANCE: All

The meeting was called to order by Mayor Kenneth Cowan at 4:00 PM.

Approval of Agenda

Mayor Cowan asked if there were any requests for amendments to the agenda. There being no requests for amendments, Commissioner Tyson 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 Cowan asked if there were any requests for amendments to the consent agenda. There being no requests for amendments, Commissioner Robbins made a motion to approve the consent agenda as presented. The motion was seconded by Commissioner Dawson and carried by unanimous vote. The consent agenda and the following items were approved:

- Minutes of the June 11, 2013 regular and closed sessions

DEPARTMENT ITEMS

Finance

Resolution 2013-22 Authorizing Use of the Utility Billing Policy

Ashley Loftis, Finance Officer advised On June 20, 2013, the Finance Department met with the Water and Sewer committee to discuss the Utility Billing Policy. She advised this policy was created by our Accounting Technician a few years back and it was never presented formally to the Board of Commissioners. Ms. Loftis said that currently, the Town does not have a formal written utility policy in place. She said staff feels that it is very important for the Town to have a written policy adopted. She advised approval of this policy will formally establish written guidelines for our citizens to follow and illustrate the consequences if not followed.

Mr. McEwen commented that this policy is a compilation of the procedures currently used informally in the utility billing department. Commissioner Rooks commented that he thought there was going to be change in the commercial deposit rate. Mr. McEwen stated that item will come later on the agenda but approval of a fee structure

will simultaneously change the deposit referenced in the utility billing policy. There being no further discussion, Commissioner Robbins made a motion to approve Resolution 2013-22 as presented. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

RESOLUTION 2013-22
A RESOLUTION AUTHORIZING THE USE THE UTILITY BILLING POLICY

WHEREAS, the Town of Burgaw Board of Commissioners wishes to provide the citizens of Burgaw a policy that will be used in governing the procedures used within utility billing; and

WHEREAS, the Utility Billing Policy will govern customer deposits, billing procedures, billing adjustment procedures, delinquency procedures, disconnection of service, and other miscellaneous procedures; and

WHEREAS, the Town Manager is authorized to interpret where necessary all provisions of this policy; and

WHEREAS, all other utility billing policies are repealed in their entirety and replaced with this policy.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN OF BURGAW BOARD OF COMMISSIONERS THAT the Town of Burgaw Board of Commissioners adopts the Utility Billing Policy as included herein governing all utility billing matters and any changes to the fee schedule will be reflected within this policy.

Adopted this 9th day of July 2013.

ITEMS FROM THE ATTORNEY

None.

ITEMS FROM THE MANAGER

Discussion Regarding Proposed Increase in Commercial Utility Deposits

Mr. McEwen advised currently the Town charges a flat rate deposit of \$100.00 for all commercial water customers. The rate is applied across the board to all prospective commercial customers regardless of credit (as used with residential customers in order to determine the level of deposit) and/or volume of monthly usage. The problem this creates arises when accounts are closed or more importantly fall into delinquency and are disconnected by the town and the accrued bill (2 month equivalent) is greater than the \$100 deposit held. On the residential side we have a mechanism to collect these funds through debt setoff. However, this mechanism is not available for commercial accounts since social security numbers are not required in order to establish service.

Mr. McEwen advised our largest water users are commercial with some public entities (prison, hospital, schools, etc.) generating monthly bills as high as \$20,000 and private entities generating bills in excess of \$4000.00. He said when you consider the fact that these accounts would have to be delinquent for two billing cycles prior to being disconnected you can see the amount of exposure the town has given the amount of deposit held on these accounts.

Mr. McEwen advised the Board he has looked at the various means other areas use in determining commercial deposits. He said some use the size of the meter as the basis with a graduated deposit fee structure (i.e. larger meter equals larger deposits). Some use a flat rate structure similar to the one currently used by the Town. He presented a proposed graduated deposit fee structure based on usage for review by the Board (copy on file in clerk's office). Mr. McEwen feels this structure is the most equitable since actual usage is the basis. In addition, this structure is set up so that it will more closely reflect our monthly billing amounts as they relate to the deposits held.

Mr. McEwen advised this proposal would not be applied retroactively but would begin for the date of adoption forward for any new or transferred accounts. He said the recommendation is to hold a public hearing for a budget ordinance amendment to consider increasing the commercial deposits rate structure pursuant to the attached proposal.

Commissioner Rooks made a motion to hold a public hearing regarding a proposed increase in commercial utility deposits at the August Board of Commissioners meeting. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

Discussion Regarding Conversion to 64 Gallon Recycling Bins

Mr. McEwen advised we have received a tentative timeline for the delivery of the new roll carts as well as the first day of service. He presented a draft press release (on file in the clerk's office) that outlines the steps in the transition as well as the reasoning behind the conversion. Once the Board approves this timeline as well as the information in the draft press release it will be provided to the media outlets in our areas as well as posted on the new website. Mr. McEwen advised one key fact to point out is that due to the size of Burgaw and the anticipated increase in the volume of recyclables collected, OCS will have to split the Town at the railroad right of way and stagger the collection days on consecutive Wednesdays. In order to reduce any confusion regarding the collections, OCS will provide door hangers with the delivery of the roll carts which outline the first 6 months of collection days. Al Hill, owner of OCS, stated that if after 2 months, significant difficulty exists with the plan of splitting the Town and collecting on consecutive Wednesday's he will go to a single day collection.

Mr. McEwen advised that initially, only residential customers will participate in the recycling program. He advised that at a later date commercial customers may sign up on a case by case basis after the initial start of the program provided that there is enough space to store the roll carts on private property. He said space is limited in the downtown areas and also at apartment complexes.

Mr. McEwen informed the Board that since the conversion to the recycling roll carts will result in a .75 cent increase in residential recycling fees we will have to hold a public hearing in August to consider a budget ordinance amendment for the fee schedule to reflect the pricing increase. This public hearing will also provide residents with the opportunity to voice any concerns or questions they have with the proposed conversion.

There being no further discussion, Commissioner Robbins made a motion to approve the request to hold a public hearing regarding the fee schedule amendment at the next meeting and to approve the press release as presented. The motion was seconded by Commissioner Rooks and carried by unanimous vote.

Resolution 2013-23 Regarding the Purchase of an Easement from the Burgaw United Methodist Church for the Construction of Phase 1 of the NC Highway 53 Corridor Improvement Plan

Mr. McEwen advised the proposed improvements included as part of Phase 1 of the NC Highway 53 Corridor Improvement Plan require approximately 0.03 acres (1200 sq. ft.) along the property owned by Burgaw Methodist Church's property on the southeast corner of the intersection. The Burgaw UMC Board of Trustees has responded to a letter that was written in February requesting the conveyance of the easement as well as a memo which outlines the rights of a property owner who owns right of way within a project area. In return for the easement Burgaw UMC is requesting the following:

- 1) \$2,500
- 2) Relocation of the existing bus shelter
- 3) A release from any liability associated with the improvements included in Phase 1 of the NC 53 Corridor Improvement Plan

Mr. McEwen said based on an assessed tax value of \$25,451 and an estimated total acreage of approximately .16 acres, it appears that the requested easement of .03 acres has a value (based on assessed tax value not an appraisal) of approximately \$4,772. Given the time and cost that will be saved by not pursuing DOT funding for the acquisition of this easement, Mr. McEwen suggests the town agree to the terms and purchase the easement.

Mr. McEwen informed the Board the funds required to purchase the easement would come from last year's (FY 12-13) non-departmental reserve funds therefore avoiding the need for any fund balance appropriation. He advised we encumbered these funds late last week in order to allow the Board the option to use them rather than current fiscal year funds or making a fund balance appropriation.

Mr. McEwen said he has spoken with Eric Ray in the Right of Way Division with NCDOT about whether the Town purchasing the right of way from the church and then conveying it to NCDOT once the construction is funded presents any issues. According to Mr. Ray there are no issues, so long as the Burgaw Methodist Church signs an acknowledgement agreement stating that they were aware of their right to an appraisal and by accepting the compensation from the Town waive this right. Mr. McEwen advised he has forwarded this stipulation from NCDOT to the church for consideration.

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Mr. McEwen advised the recommendation is to agree to the terms requested by Burgaw United Methodist Church and purchase the easement from funds encumbered in FY 12-13. Commissioner Rooks inquired as to whether or not he should recuse himself from the vote since he is a member of Burgaw Methodist Church which would pose a conflict of interest. Attorney Kenan advised Commissioner Rooks it would be best if he recused himself from the vote since he would have pecuniary interest in the church. Commissioner Tyson also stated that she too is a member of Burgaw Methodist Church and that she would need to recuse herself as well. Commissioners Rooks and Tyson requested to be recused from the vote. Mayor Cowan asked to let the record reflect that Commissioner Rooks and Commissioner Tyson were recused from the vote.

Commissioner Dawson made a motion to approve Resolution 2013-23 as presented. The motion was seconded by Commissioner Robbins. Commissioners Dawson, Robbins and Walker voted in the affirmative. Commissioners Rooks and Tyson were recused. The motion carried with three ayes.

RESOLUTION 2013-23

Resolution Regarding the Purchase of an Easement from the Burgaw United Methodist Church for the Construction of Phase 1 of the NC Highway 53 Corridor Improvement Plan

Whereas, the Town of Burgaw has completed the engineered design of Phase 1 of the NC Highway 53 Corridor Improvement Plan, and

Whereas, the completed design by Kimley Horn and Associates and associated survey by Joyner Keeny, PLLC requires the acquisition of approximately 0.03 acres located on the southeastern corner of the intersection of North Walker Street and East Bridgers Street, and

Whereas, the property is owned by the Burgaw United Methodist Church and serves as a parking area and storage area for the church bus, and

WHEREAS, the Town has sent a written request for the conveyance of the necessary easement to the Burgaw United Methodist Church, and

WHEREAS, the Town has received a response to the requested conveyance from Scott Rivenbark, who serves as the Chairman of the Burgaw United Methodist Church Board of Trustees, and

WHEREAS, in exchange for the required easement the Burgaw United Methodist Church is requesting the following:

- 1) \$2,500
- 2) Relocation of the existing bus shelter
- 3) A release from any liability associated with the improvements included in Phase 1 of the NC 53 Corridor Improvement Plan

WHEREAS, based on an assessed tax value of \$25,451 and an estimate total acreage of approximately .16 acres, it appears that the requested easement of .03 acres has a value of approximately \$4,772, and

WHEREAS, currently the North Carolina Department of Transportation has no right of way acquisition funds available for this project, and

WHEREAS, pursuing right of way acquisition funds will result in significant delays in our efforts to obtain construction funding, and

WHEREAS, the strong likelihood exists that additional cost such as appraisal fees and a higher value being placed on the property than the \$2,500 requested from Burgaw United Methodist Church will arise if right of way funding is provided by the North Carolina Department of Transportation, and

WHEREAS, given the time and cost that will be saved by not pursuing DOT funding for the acquisition of this easement it is suggested that the Town agree to the terms and purchase the easement, and

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

Section 1: The following terms are agreed in exchange for Easement#1 owned by Burgaw United Methodist Church as shown on the plat prepared by Joyner Keeny, PLLC entitled "New Right of Way and Temporary Construction Easements for the Burgaw Roundabout" and dated December 2012;

- 1) \$2,500
- 2) **Relocation of the existing bus shelter**

- 3) A release from any liability associated with the improvements included in Phase 1 of the NC 53 Corridor Improvement Plan

SECTION 2: At the request of the North Carolina Department of Transportation Right of Way Division, the terms above are agreed to upon receipt of written acknowledgement from the Burgaw United Methodist Church that they are waiving their rights to an appraisal in order to determine the value of the subject easement.

SECTION 3: The mayor and/or manager are hereby authorized to execute any easements involving the conveyance of the easement described above.

ADOPTED this the 9th day of July, 2013.

Discussion - Memorandum of Understanding Regarding Old Jail

Mr. McEwen advised the Board has been presented with a Memorandum of Understanding regarding the joint venture between Pender County and the Town of Burgaw to renovate portions of the building for use by the county and town. He advised he has presented the document to the Pender County Commissioners and it was well received. He informed the Board that Butch Watson, Assistant County Manager is present to answer any questions the Board may have. Mr. McEwen said the county has requested use of the old jail for 12 years instead of the 10 years originally discussed. He advised the county plans to use the building for office space and the town will use their space for storage. He said that if the town decides to put offices in the building at a later date the terms of the utilities would be renegotiated. After a brief discussion regarding insurance requirements and proposed use of space Mr. McEwen advised if the Board approves the memorandum, the town will appropriate 100k from fund balance and the county will reimburse 50k of that amount for their part of the renovation expense. Mayor Cowan requested that film revenues be used for this project if possible.

Commissioner Dawson made a motion to approve the Memorandum of Understanding between the Town of Burgaw and Pender County as presented. Commissioner Rooks asked for more discussion. He commented that although this is probably the best public use solution we have come up with to date, he still has reservations about spending \$50,000 basically for storage and \$1200 per year for insurance. He said he has concerns about spending this money on a building in which the County has control of the use. He said he still sees it as what it is. There being no further discussion, the motion was seconded by Commissioner Tyson. Motion carried 4-1 with Commissioners Dawson, Robbins, Tyson and Walker voting "aye" and Commissioner Rooks voting "nay". (Copy of MOU on file in clerk's office.)

ITEMS FROM MAYOR AND BOARD OF COMMISSIONERS

Commissioner Dawson commented that she has had several conversations with postal employees regarding the one-way street by the post office. She said they (postal employees) have observed numerous drivers still going the wrong way on the one way street and they are requesting that the yellow lines be painted over to keep the street from appearing to be a divided street. Several suggestions were made to correct this problem.

Commissioner Tyson asked if Board would consider dropping the hard copies of the weekly updates and receiving it via email only. It was the consensus of the Board to continue receiving hard copies of the weekly updates.

Commissioner Robbins stated that the weeds are about to be totally out of hand at Johnson Park due to the recent rains and he just wanted to bring it to the attention of Public Works.

Commissioner Rooks commented that he has noticed a sofa sitting beside the street at the apartment complex on Drane Street for two weeks. He asked that the apartment complex management be notified that the Town does not pick up furniture at commercial complexes.

Mayor Cowan commented that the streets are in a serious state of deterioration. He said we will have to address these issues in a very serious manner and we need to be thinking about how we will fix the problem. Commissioner Robbins said he sees no problem with using fund balance to do some of the repairs. Commissioner Rooks said the Streets Committee has made a priority list and asked Mr. Fay where we stand. Mr. Fay said he should have bids shortly and will bring back a resolution at the next meeting. Commissioner Rooks advised he is in agreement to use fund balance to get some of these streets repaired.

Mayor Cowan commented that he will be leaving shortly after 5:00PM for another commitment and he will be turning the meeting over to Mayor Pro-tem Walker.

BREAK

There being no further business before the public forum and public hearings, Mayor Cowan called for a break at 4:40PM. The meeting reconvened at 5:00PM.

PUBLIC FORUM

Frank Wittkosky, who resides at 814 N Wright Street, advised he has previously spoken with town staff and NCDOT staff and his complaint about uncut grass and clogged ditches has not been dealt with. He also asked why the crape myrtles were removed from the right of way on North Wright Street. Mr. Wittkosky also made some comments regarding fire trucks illegally running water with fire hoses from hydrants at the sewer plant. After several attempts by Mr. McEwen to explain things to Mr. Wittkosky who was becoming argumentative, Mayor Cowan interrupted and advised that Mr. Wittkosky and Mr. McEwen could set up an appointment at a later date to discuss the numerous issues in depth.

Jeff Fuchs stated he rents the building at 205 W Fremont Street and he would like to install a paint spray booth in his cabinet shop at this location. Rebekah Costin, Planning Administrator advised Mr. Fuchs must apply for a text change amendment because that location has lost its grandfathered status and cabinet making is no longer allowed in that zoning district. After a brief discussion, Mayor Cowan advised Mr. Fuchs that Ms. Costin would assist him with his request for a text change amendment.

Steve Pearce, 9104 Falls of the Neuse Road, Raleigh, NC advised he is present on behalf of the NRP Group to request that the Town take over the lift station at the Cooper's Pointe apartment complex located on Stanford Avenue. He thanked the town for their patience in waiting for them to get the lift station to the point of conveyance and he said they are now ready to close this issue. He is requesting that the Town commit in writing that they will take over the lift station before they spend the money to complete the mandates for conveyance. Mr. McEwen commented that the improvement requirements are divided into two categories, some are state mandated and some are items that Kimley Horn & Associates says needs to be done. Mr. McEwen asked Mr. Pearce if he is asking for a commitment from the Board that if NRP does the full punch list from Chris Ford and Kimley Horn, will they take the lift station over. Mr. Pearce said he wants a commitment from the Board in writing before they (NRP) spend the money for the required improvements. Mr. McEwen said that he can write a simple letter to NRP stating that when the punch list is complete, the Town will take over the lift station. He said he will have the town attorney review the letter before sending it. Mr. McEwen said for record keeping purposes he recommends bringing back a resolution for the consent agenda that formally takes over the lift station. After discussion, Commissioner Rooks made a motion to proceed with writing of the letter of commitment and a formal resolution upon completion of the punch list for the next meeting regarding the conveyance of the lift station at Cooper's Pointe apartment complex. The motion was seconded by Commissioner Dawson and carried by unanimous vote. Mr. Pearce commented the work is scheduled to start on July 18th and he would like to have the letter by then. Mr. Pearce further commented that work should be completed within two weeks of the start date.

Karen Harding, 411 S. Dudley Street asked where we are with cross walks at NC 53 and Wright and Dickerson Streets. She said she thought we would get those with the Safe Routes to Schools grant but we still don't have them. Mr. McEwen commented that those crosswalks were not a part of the Safe Routes to Schools grant. Mr. McEwen also commented that there is funding available in the trail grant to take care of a couple of crosswalks at intersections but the others won't be done until the corridor improvements are funded. Mr. McEwen advised we can get some pricing to work on the cross walks that would be included in the trail grant.

Dave Howard, Stag Park Road, advised he is here to talk about advertising his business. He advised he has put up some signs before and they were removed because they are not allowed. Mr. Howard said he has counted at least thirty signs in the area that are illegal but have not been removed, therefore he doesn't understand why his signs keep being removed or why his business cannot be grandfathered due to the longevity of the business. He said this doesn't seem fair to him. He said he will be waiting to hear from the Board regarding his signs.

John Paul Federonko, Burgaw Dixie Youth representative, advised that five teams from the area have made the State playoffs and he is requesting any donations that the Board might be willing to give to offset the expenses of the travel and lodging for the teams. After a brief discussion, Commissioner Robbins made a motion to give a maximum amount of \$300.00 to Burgaw Dixie Youth to help pay the way for the children going to the State playoffs. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

Passing of the Gavel - Mayor Cowan was excused by the Board and Mayor Pro-tem Walker presided over the remainder of the meeting.

PUBLIC HEARINGS

Public Hearing #1

Mayor Pro-tem Walker declared the Public Hearing open at 5:27PM.

Public Hearing 1 - Consideration of a conditional use permit for an “Accessory Structure larger than 50% of the primary structure” to be located on the W.D. Richardson property on Penderlea Highway

Rebekah Costin, Planning Administrator advised applicant William Delynn Richardson is petitioning the town for a conditional use permit for an accessory structure larger than 50% of the primary structure in the R-12 zoning district. The subject property is located off Penderlea Highway, just east of Basden Rd.

Ms. Costin presented the following background information regarding this conditional use request:

Hearing Agenda.

1. Swearing of all persons wishing to present evidence (required for quasi-judicial hearings)
2. Presentation of general information and staff report by Planning Administrator
3. Presentation of evidence by applicant
4. Presentation of evidence by citizens
5. Comments and questions from Mayor and Board of Commissioners
6. Closing of public hearing
7. Discussion by Mayor and Board of Commissioners
8. Findings of fact for standards for evaluation

GENERAL INFORMATION

Applicant: William Delynn Richardson
3135 Rustic Lane
Castle Hayne, NC 28429

Owner: William Delynn Richardson

Site: property off Penderlea Hwy (PIN 3219-75-1913-0000)

Current Zoning: R-12, Residential

Size: 12.23 acres

Existing Land Use: Vacant

HISTORY/SITE DESCRIPTION/ANALYSIS

Applicant William Delynn Richardson is petitioning the town for a conditional use permit for a garage/workshop that will be 4,800 s.f. and accessory to a not yet built primary residential structure proposed to be 2,000 s.f. Currently, the property is vacant. It was approved for a subdivision several years ago, but that subdivision was never recorded, and Mr. Richardson has decided to build a home on the property instead.

The property is primarily surrounded by residential lots and is zoned R-12, Residential. However, it abuts Pender Correctional Center property to the north, approximately 200+ feet from the proposed accessory structure.

Both the proposed accessory structure and proposed primary structure will be located several hundred feet off Penderlea Hwy and will be wood framed. The house will have wood siding with some brick, and the proposed accessory structure will be ½ enclosed and ½ open. However, with the location shown on the proposed site plan, the entire structure may be enclosed without affecting setback requirements.

STANDARDS FOR EVALUATION

In reviewing the permit application, the Town Board of Commissioners shall find as a specific finding of fact and reflect in their minutes if the permit will comply with the following standards based on the evidence presented at the hearing.

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.

Application Evidence

- Proposed accessory structure will serve as a residential garage/workshop.
- Proposed accessory structure is not located in a floodplain or possible wetland.

Staff Recommendation. Unless additional information is presented at the public hearing, the evidence provided in the application indicates this standard has been met. In order to protect Mr. Richardson’s future use of the property, I do recommend the following condition:

- Enclosure of any portion of the accessory structure is subject to issuance of a regular zoning permit.

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

Application Evidence

- Section 14-20 of the Unified Development Ordinance requires that “proposed accessory structures shall be located to the side or rear of the principal structure.”
- According to the site plan, the proposed structure is located to the rear and side of the proposed primary structure.
- Penderlea Highway is a state maintained road, and an NCDOT driveway permit may be required.

Staff Recommendation. In order to ensure that the requirements of the ordinance are met, I recommend the following conditions:

- A copy of the NCDOT driveway permit or assurance from NCDOT that no permit is required must be received by the planning department prior to issuance of any building permit for the proposed accessory structure or primary structure.

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

Application Evidence

- The use is not a public necessity.
- No evidence indicates the use will adversely affect the use or any physical attribute of adjoining or abutting property.

Staff Recommendation. Unless additional information is presented at the public hearing, the evidence provided in the application indicates this standard has been met.

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 and NC Highway 53 Corridor Study.

Application Evidence. Based on the aerial map, the use is similar in nature to the other residences in the neighborhood. This property is not covered by the NC Highway 53 Corridor Study.

Staff Recommendation. Unless additional information is presented at the public hearing, the evidence provided in the application indicates this standard has been met.

Standard 5. The proposed structure is clearly incidental to the principal use and structure.

Application Evidence

- Mr. Richardson has indicated that a residential dwelling is to be the primary use of the land; however, he intends to build the accessory structure prior to the primary structure.

Staff Recommendation. During staff discussions, building inspector Louis Hesse has indicated that the building permit for the primary structure should be issued prior to the building permit for the accessory structure, including payment of all associated fees, and should be kept active at all times to building inspections minimums. In order to ensure that the proposed accessory structure be incidental to the primary structure, I recommend the following conditions:

- A zoning permit for the primary residential structure associated with this property must be issued prior to August 9, 2013 and must be kept active at all times.
- The primary structure constructed on this site may be no smaller than 2,000 square feet, as shown on the proposed site plan.
- A building permit for the primary structure must be issued prior to issuance of a building permit for the accessory structure and must be kept active at all times to building inspections minimums.

Delynn Richardson (applicant) commented that he plans to build his home on this property and desires to have a large accessory structure to store his mowing tractors and to do his hobby woodworking.

Jennifer James stated that she was present just to find out what was being built there.

Commissioner Robbins commented about the wetlands around the property. Mr. Richardson stated that several years ago when he had the property rezoned for a development, he received all his permits at that time.

There being no further comments, Mayor Pro-tem Walker declared the public hearing closed at 5:37PM.

FINDINGS OF FACT

Mayor Pro-tem Walker stated it is time to complete the “Findings of Fact” sheet. See results below.

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.
Commissioner Robbins – Yes
Commissioner Dawson – Yes
Commissioner Tyson – Yes
Commissioner Rooks - Yes

Additional Conditions:

- a. *Enclosure of any portion of the accessory structure is subject to issuance of a regular zoning permit.*

2. The use meets all required conditions and specifications.

Commissioner Robbins – Yes
Commissioner Dawson – Yes
Commissioner Tyson – Yes
Commissioner Rooks - Yes

Additional Conditions:

- a. *A copy of the NCDOT driveway permit or assurance from NCDOT that no permit is required must be received by the planning department prior to issuance of any building permit for the proposed accessory structure or primary structure.*

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.

Commissioner Robbins – Yes
Commissioner Dawson – Yes
Commissioner Tyson – Yes
Commissioner Rooks - Yes

Additional Conditions: none

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 and NC Highway 53 Corridor Study.

Commissioner Robbins – Yes
Commissioner Dawson – Yes
Commissioner Tyson – Yes
Commissioner Rooks - Yes

Additional Conditions: none

5. The proposed structure is clearly incidental to the principal use and structure.

Commissioner Robbins – Yes
Commissioner Dawson – Yes
Commissioner Tyson – Yes
Commissioner Rooks - Yes

Additional Conditions:

- a. *A zoning permit for the primary residential structure associated with this property must be issued prior to August 9, 2013 and must be kept active at all times.*
- b. *The primary structure constructed on this site may be no smaller than 2,000 square feet, as shown on the proposed site plan.*
- c. *A building permit for the primary structure must be issued prior to issuance of a building permit for the accessory structure and must be kept active at all times to building inspections minimums.*

Upon completion of the Findings of Fact, 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.

Public Hearing 2. Consideration of a text change amendment to Section 4-1, Article 20, Article 5, Section 4-9, and Section 14-7 of the Unified Development Ordinance regarding Planned Unit Development zoning districts.

Mayor Pro-tem Walker declared the Public Hearing open at 5:43PM.

Rebekah Costin, Planning Administrator presented an extensive amount of background material some of which is attached below. All other documentation is on file in the clerk's office.

Background. Over the past year, the planning department has received several calls regarding the possibility of developing PUD-zoned properties east of Hwy 117. Most of these properties were zoned to PUD during the late 1980s to early 2000s, but only a few ever resulted in actual development: Buccaneer Country Club, Village on 18, Country Club Villas, and Cooper's Point.

The current Planned Unit Development procedure in Burgaw has two steps. In the first step, a developer or property owner applies for rezoning to a PUD district. This type of zoning district is "floating," meaning it is "defined and set out in the text of the ordinance but not applied on the ground unless and until a landowner petitions to rezone his or her property to one of these districts" (Owens, David W. Introduction to Zoning, 3rd ed. 2007, p. 25).

In Burgaw, PUDs have historically been considered to also be overlay districts, though this is not spelled out in the ordinance. Overlay districts are "special zones in which requirements are imposed in addition to the basic or underlying zoning district requirements" (Owens, p. 25). Two common forms of overlay districts are historic district overlays, which allow the same uses as the base district but impose additional restrictions on structural changes, and corridor overlays, which impose additional design regulations on properties along highway corridors.

The second step in the PUD process is the approval of a conditional use permit (CUP) for the actual planned development. Many of the PUD zoned properties in Burgaw never got to this step.

Current Issues. The town's current PUD situation, both with the ordinance and on the ground, has the following issues:

- Not all properties in an approved PUD with an approved CUP are under common ownership. When all development approved under the CUP is not completed, this causes issues, especially if required infrastructure, open space, etc. is on a separate parcel than that of the portion of the CUP that has been approved. For instance, the stormwater facilities for both Country Club Villas and Village on 18 are located on properties not legally associated with the completed development.
- It has been several years since these properties were zoned PUD. Since that time, many of the property owners have not moved forward with the process. The UDO has a provision that if a conditional use permit application is not filed with the Planning Board within 12 months of such amendment, the Board of Commissioners shall reserve the right to rezone the property to the original zoning classification; however, such a rezoning has not been done up to this point.
- Currently, the town's PUD districts are conditional use zoning districts, in which the zoning district doesn't have any automatically permitted uses, only uses allowed by the issuance of a conditional use permit. This requires two processes—a legislative rezoning and a quasi-judicial conditional use permit hearing. Because conditional use permits are quasi-judicial, the board is limited to whether the proposed project meets the requirements of the ordinance, requiring the town to either have highly restrictive regulations to ensure high quality projects or to limit the town's ability to suggest or require certain conditions not already included in the UDO or land use plan.

Conditional Zoning. The state of North Carolina only lays out certain ways that property can be zoned—conventional zoning (R-7, R-12, B-1, B-2, etc.), overlay zoning (flood overlays, corridor overlays, historic district overlays, etc.), conditional use zoning (our current PUD process), and conditional zoning. Many communities across the state are moving to conditional zoning, including Wilmington, Leland, Pender County, West Jefferson, Raeford, Davidson, Mooresville, Goldsboro, Apex, Hickory, Kannapolis, Concord, High Point, Durham, Greensboro, and Charlotte. Unlike conditional use zoning, our current method for processing PUDs, conditional zoning is completely legislative. See the attached information from the School of Government for more information on the differences between conditional use zoning and conditional zoning. Basically, a conditional zoning district functions as its own unique district. The plan approved in the rezoning process lays out the lot, yard, and use requirements for the particular PUD, and all future development would be subject to those requirements.

Proposed Text Change Amendment. The proposed amendment first differentiates between the three types of zoning districts used in the Town of Burgaw: conventional zoning districts, overlay districts, and conditional zoning districts. Planned Unit Development Districts are currently the only type of conditional zoning district proposed; however, since the text change amendment sets up the procedures for the conditional zoning process, other types of conditional zoning districts may be easily added in the future. The legislative nature of conditional zoning allows the town and the developer to work together to make sure the final project is as appropriate as possible for the town, fixing one of the major limitations of the current conditional use zoning process. While currently only conditions that bring a project into compliance with the four standards considered in the conditional use permit process can be added by the Board of Commissioners, the conditional zoning process allows flexibility in terms of standards and in the types of conditions that can be applied.

The Planned Unit Development standards are also adjusted to be more in line with the needs of the town. In the past, Burgaw's PUDs have been primarily residential and have relied on their proximity to the golf course to be more than just residential subdivisions. The proposed amendment clarifies that Planned Unit Developments should only be used when existing zoning district regulations would restrict development of a project either due to its mix of uses or to allow clustered non-residential development (residential cluster subdivisions are already allowed for in the ordinance). In order to encourage infill development, the minimum size standard of PUDs are also reduced from 25 acres to 5 acres. As a result, PUDs may or may not involve subdivision of the property. If subdivision is required, after a property is zoned PUD, the developer would go through the regular subdivision process, and preliminary and final plats would be brought back to the Board of Commissioners for approval. If a subdivision is not required, a master development plan, prepared in accordance with the approved PUD zoning district, would be brought to the planning board for approval. Based on the experience of other jurisdictions, the proposed amendments would solve many of the issues with our current PUD ordinances discussed above, allow more flexibility to the developer, provide the town with greater input into the development process, and would decrease the amount of time required for approval.

Planning Board Review. The planning board has been discussing amending the Planned Unit Development regulations in the UDO for almost a year, beginning in September 2012. In March 2013, the planning board approved a text change amendment. Since that time, I have received input from interested parties and have clarified some of the provisions of the text change approved by the planning board. The board has been advised of these changes, and I have heard no objections to bringing the revised text change amendment for public hearing at this time. I have attached a copy of the proposed text change amendment with revisions made after the planning board review shown in red.

Conformity with the Burgaw 2030 Comprehensive Land Use Plan. The proposed text change amendment is in conformity with the following portions of the Burgaw 2030 Comprehensive Land Use Plan:

- Land Use Goal 1: To promote infill development and revitalization of areas with existing infrastructure
 - Explore the addition of conditional zoning to the UDO as a way to provide more flexibility for the land owner/developer and the town to mutually agree upon specific development conditions and requirements
- Land Use Goal 3: To encourage quality and controlled growth that enhances and maintains the community's character
 - Consider the modification of existing zoning districts or addition of new zoning districts to allow for transition zones between residential and commercial areas
- Economic Development Goal 2: To attract businesses and industries that will enhance the economic health and livability of the town
 - Ensure the town's zoning and development codes can accommodate appropriate businesses and industries and a variety of development forms.

Upon completion of a very lengthy presentation, Ms. Costin advised the Board the process being proposed for Planned Unit Development will simplify the process considerably and it closely mirrors the process being used by Pender County.

Attorney Rick Biberstein was present on behalf of his client, Burgaw Development Group, owner of 240 acres which is where the golf course is currently located. He said the property is now zoned Planned Unit Development (PUD). He said the process currently being used needs to be changed. He said it is not practical to go through a detail by detail list for a PUD. According to Mr. Biberstein the PUD process is designed to be a mixed use process whereby there is interaction between the governing or planning board and the developer often resulting in trade-offs by negotiation. Mr. Biberstein stated that he and his client supports the elimination of the conditional use process but their objection is that the proposed process by the town will down-zone his client's property. He said the basic problem is that the developer will have to spend a lot of money only to determine that he cannot do what he wants with his property. He spoke at length regarding one and two step processes.

Mr. Biberstein advised his client feels that elimination of the PUD classification will be a huge hindrance in his ability to sell the property. He commented that any buyer will be purchasing for the purpose of a planned unit development. He said if the potential purchaser is told that the property will have to be rezoned before pursuing their development it will be an obstacle to overcome. Mr. Biberstein requested that the town allow both the one step process and the two step process in order to allow the purchaser to choose the route they would desire to take when purchasing the 240 acre tract. He also commented he and his client do not have a direct problem with adopting the proposed ordinance but they do have a problem with down zoning the PUD. He is requesting retention of the PUD classification and for the planning board to consider adoption of a separate alternative process such as the county has.

Ms. Costin commented that this public hearing is for the text change and she doesn't want to get into the rezoning portion because that is what the next public hearing is for. She asked that only the text change amendment be discussed in this public hearing. Ms. Costin advised that after speaking with Mr. Biberstein she went back and altered the requirements for the zoning process as opposed to the site plan that happens after the rezoning takes

place. She reviewed portions of the proposed text change for reference. She commented the whole purpose of the proposal is to make it easier for a developer to have a good development. Mr. Biberstein said that the preferable process is the one that Pender County uses in which the developer can either get the zoning and the master plan presented at the same time or get the zoning and go back and do the master planning. Ms. Costin commented that is what the proposed plan is. She advised this is basically Pender County's ordinance and she is confused as to how this is not the same process.

After a very lengthy discussion with input from Commissioners and Attorney Kenan as well as Ms. Costin and Mr. Biberstein, Commissioner Rooks stated that he would request that this issue go back before the planning board for further review of the requirements just to get the rezoning and he would also like some clarification of the Step One, Step Two process. Commissioner Rooks said he would like to get away from conditional use permits. Attorney Kenan commented that he feels that the process presented here today is just another form of zoning classification that can be adopted and the Board can either act upon this text amendment or send it back to the Planning Board for more study and review and have it brought back for additional comments and consideration.

Commissioner Tyson made a motion to send this text change amendment, specifically the check list portion, back to the Planning Board for further review. The motion was seconded by Commissioner Rooks and carried by unanimous vote.

Mayor Pro-tem Walker closed the public hearing at 6:30PM.

Commissioner Robbins made a motion to table item 17 which is Ordinance 2013-10 approving the abovementioned text change amendment until the August board meeting. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

Public Hearing 3. Consideration of an amendment to the Town of Burgaw Official Zoning Map that would rezone all Planned Unit Development zoning districts to R-7, R-20, or O&I

Mayor Pro-tem Walker declared the public hearing open at 6:31PM.

Rebekah Costin, Planning Administrator advised as a result of the proposed text change amendments the ordinances regarding the planned unit development (PUD) zoning district and its associated procedures and the nonconformity of existing PUD-zoned properties, planning staff is proposing the rezoning of all existing PUD-zoned properties to R-7, R-20, or O&I. She presented the following background information:

Background. The proposed text change amendment to the ordinance regarding Planned Unit Developments (PUDs) considered at this Board of Commissioners meeting, if approved, would render all property currently zoned PUD noncompliant with the town's ordinances. As a result, rezoning would be necessary. In addition, even if the proposed text change amendment were not approved, current PUD-zoned properties are no longer in conformity with the intent of the PUD process or requirements, indicating rezoning may be desirable to ensure appropriate future development.

Most of these properties were zoned to PUD during the late 1980s to early 2000s, but only a few ever resulted in actual development: Buccaneer Country Club, Village on 18, Country Club Villas, and Cooper's Point. Two other developments, discussed below, have development approvals that will remain vested until January 1, 2014. When rezoned, Planned Unit Developments were defined by the town's ordinances as areas characterized by the integration of residential, open space, and commercial uses. In addition, districts at that time were required to be a minimum of 25 acres in size. While the entire PUD area is over 25 acres in size, no current development or PUD-zoned properties without development approvals meet that requirement on their own. Developers would be reliant on other developments to meet the baseline standards of being a PUD.

In effect, the original PUD rezonings were reliant on the golf course to meet the definition of a PUD. On their own, these properties and existing developments are basically subdivisions and multi-family developments allowed greater density than they would otherwise because of their reliance on other developers' properties. Especially now that the golf course is not in business, these properties are not in strict compliance with the requirements of the ordinance at the time of their original rezoning, much less new ordinances that may have been adopted at this meeting.

The proposed rezoning will ensure compliance with the town's ordinances, will not alter any existing developments, and would not preclude property owners' ability to apply for a PUD-rezoning under the new ordinance, if applicable.

PUD-zoned properties with existing developments. Three PUD developments have been at least partially developed—Village on 18, Country Club Villas, and Cooper's Point apartment complex. The proposed rezoning will not change the use of these properties. Country Club Villas and Cooper's Point are both subject to approved conditional use permits, and no changes to the approved

development could take place without changing these permits. Any property owner would be notified if an application were filed to change them, regardless of their zoning district. In addition, multi-family (both apartments and condominiums) are allowed in both the standard zoning districts proposed. Village on 18 will be rezoned to R-7 because it allows the size residential lots already in the subdivision.

The golf course is also zoned PUD. If the property is rezoned to R-20, it may be redeveloped to allow residential properties with a minimum lot size of 20,000 square feet (about ½ acre); however, its use as a golf course (with associated pro shop, snack bar, etc.) can also be continued. While reinstating its use as a golf course is probably the preference of most town residents, this rezoning would allow appropriate redevelopment if that is not a possibility. Other types of redevelopment would also be possible if the conditional zoning text change amendment is in effect, if appropriate for the area. Even if the property were not rezoned, any changes to the golf course use would require a new conditional use permit and/or other associated fees and would be subject to any applicable deed restrictions.

PUD-zoned properties with permits, approved plats, etc. The only two properties with current active permits, approved plats, etc. are the Wilson Ki properties on the north side of E. Wilmington St. Extension and a portion of the land between E. Wilmington St. Extension and the golf course and the Hardison Builders tract behind White Tractor, off of Highway 117 Bypass.

On March 11, 2008, the Board of Commissioners approved a modification of a conditional use permit for Wilson Ki's development. That was the last official action taken on the project. On May 13, 2008, the Board of Commissioners approved a preliminary plat for the Hardison Builders tract. That was the last official action taken on that project.

Neither project, from the information I can find, was officially established with a vested right in accordance with *Section 14-31: Approval Procedures and Approval Authority* of the UDO. However, the projects do meet the vesting criteria of the General Statutes. Because of the permit extension act of 2010, the running of vested rights and permit approvals was frozen until January 1, 2012. The UDO (*Section 14-33: Duration*) defines the vesting period as 2 years, so these projects will lose their vesting on January 1, 2014 unless further permits are applied for or unless the developer officially petitions the Board of Commissioners for an extension of their vesting.

In both cases, regardless of zoning, as long as these projects remain vested, the developer can continue with the approved project. If the project loses vesting, the property can be developed in accordance with the standards of the new zoning district, or the developer can apply for a PUD rezoning under the new ordinance.

PUD-zoned properties without valid permits, approved plats, etc. Undeveloped PUD properties without vesting would be subject to the standards of the new zoning district, or the developer can apply for a PUD rezoning under the new ordinance. Many of these PUD properties were rezoned initially as part of a large-scale plan for residential development along the golf course. However, as we have discovered in recent years, because the proposed developments were not under common ownership and were not legally tied to the golf course, they are not really PUDs and can leave future property owners with little to no legal recourse if adjacent developments are discontinued. This is one of the reasons town staff initiated the PUD text change amendment and this rezoning.

Proposed zoning districts. All of the properties are proposed to be rezoned to standard residential districts. The R-20 district allows primarily residential uses with a minimum 20,000 square foot lot size. Golf courses are also allowed in this district. The R-7 district allows primarily residential uses with a minimum lot size of 7,000 square feet. Multi-family uses are also allowed with a conditional use permit from the Board of Commissioners. The O&I, Office and Institutional, district allows a mix of uses, including single-family residences, multi-family developments, offices, and schools. This zoning district can be used to transition between commercial areas and residential areas, which is why the properties between the Hwy 117 commercial corridor and the proposed residential zone are being considered for a change to O&I.

Notification of Property Owners. Two sets of letters have been sent out to the 90 properties owners required to be notified. I have received some questions from adjacent property owners about what the rezoning would mean for them and have spoken to both Wilson Ki and Dean Hardison regarding the vesting period for their development approvals. I have also spoken with a representative of the owner of the golf course, who is concerned about limitations on future development of that property. I have also received a letter from an adjacent property owner, which is attached. No property owners attended the May 16, 2013 Planning Board meeting where this rezoning was discussed.

Planning Board Review. At their May 16, 2013 regular meeting, the Town of Burgaw planning board recommended approved of the amendment to the Town of Burgaw Official Zoning Map.

Conformity with the Burgaw 2030 Comprehensive Land Use Plan. The proposed rezonings are in conformance with the recommendations of the Burgaw 2030 Comprehensive Land Use Plan, as the future land uses proposed for the subject area include Mixed Use Transition in the area between the Hwy 117 commercial corridor and the residential areas and Traditional Neighborhood Residential for the remainder of the subject area.

Upon completion of Ms. Costin's presentation, Mr. Biberstein asked to address the issue. He commented that the elimination of the PUD as far as the golf course is concerned is uncertain. He said the zoning that is tied to the PUD is the objectionable part; it's the contract zoning for which you don't get the desired zoning unless you present a master plan that the board approves of. Mr. Biberstein suggested that this item goes back to the Planning Board to review some of the scenarios and come up with a solution.

Commissioner Rooks commented that he has a problem with the "Town" deciding to change zoning. He said if it is not a request from property owners or complaints from adjoining property owners then it should be left as is until such time as there is a request. He stated that in the past there have been zoning changes that were to help with clarification for staff. He said he doesn't like regulations and changes by government just for the sake of changing because we think it is going to be better or simpler. He said he is not in favor of making any zoning changes unless there are property owners that are putting in requests for zoning changes to be made.

Mr. McEwen stated that when a developer comes in to discuss the golf course area, they always say that they are going to use the golf course as their open space requirement. He said with existing properties being part of the PUD that must be factored into the calculation of the useable developable area. He said he sees this as an effort to separate those properties. Ms. Costin commented that (separation) is the intent for those property owners to have certainty about what can be put out there. Ms. Costin stated that property has been transferred since the original PUD approval and has rendered the PUD non-existent legally. Mr. McEwen said his point is that the golf course property is already down zoned by the presence of these other properties being sold but yet tied in with the density and that Ms. Costin's proposal would allow the golf course property to be developed separately. Mr. McEwen said he sees this helping the property owner instead of hindering him. Mr. Biberstein said he sees it as a hindrance to the sale of the property.

After much lengthy discussion, Ms. Costin stated that if the Board does not feel able to make a decision at this point, she would like for the Board to consider continuing the public hearing until the next meeting because the planning department had to notify 92 different property owners regarding this public hearing and notification would be required if this item is tabled and brought back at a later date. She said if the public hearing is continued she would have to advertise but would not have to send out 92 notices again. Commissioner Rooks made a motion to continue this hearing until the September Board of Commissioners meeting and that the planning board to try to get more details on the PUD and the rezoning and that we table the vote on ordinance 2013-11 until the continuation at the September meeting. The motion was seconded by Commissioner Robbins and carried by unanimous vote.

Mayor Pro-tem Walker declared the public hearing closed at 6:57PM.

Adjournment

There being no further business, Commissioner Tyson made a motion to adjourn (there was no second). The meeting adjourned at 7:00PM.

Howard N. Walker, Mayor Pro-tem

Attest: _____
Sylvia W. Raynor, Town Clerk