

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

**DATE:** ~~February 11, 2014~~ (meeting was rescheduled to Feb. 19, 2014 due to inclement weather)  
**TIME:** ~~4:00 PM~~ (11:30AM)  
**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  
Rebekah Roth, Planning Administrator  
Bill Fay, Director of Public Works  
Louis Hesse, Building Inspector  
Ashley Loftis, Finance Officer  
Montrina Sutton, Chief of Police  
Allen Wilson, Fire Administrator  
**MEDIA PRESENT:** Andy Pettigrew – The Pender Post-Voice  
**INVOCATION:** Nick Smith, Chaplain  
**PLEDGE OF ALLEGIANCE:** All

The meeting was called to order by Mayor Eugene Mulligan at 11:30AM.

**Approval of Agenda**

Mayor Mulligan requested approval of the agenda. Commissioner Rooks commented this vote would be for the amended agenda (changed to due to inclement weather). Attorney Kenan commented it will be necessary to hold a closed session at the end of the meeting. There being no further discussion, Commissioner Dawson made a motion to approve the agenda as amended. The motion was seconded by Commissioner Rooks 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 the consent agenda. The motion was seconded by Commissioner Tyson and carried by unanimous vote. The consent agenda and the following items were approved:

**Minutes of January 14, 2014 regular meeting and closed session**

**OLD BUSINESS**

**Continuation of discussion regarding Ordinance 2013-31 “Amending The Town Of Burgaw Code Of Ordinances Regarding The Reorganization Of Committees Of The Board Of Commissioners To Include Creation Of New Committees And Dissolution Of Certain Boards And Committees That Will Become Obsolete Due To The Reorganization”**

Mr. McEwen advised this item is a continuation of a discussion that started at the December 10, 2013 meeting and was also discussed at the January 14, 2014 meeting. Mr. McEwen advised that at Mayor Mulligan’s request, a second option has been developed for this ordinance. He stated that Mayor Mulligan desires to have a separate parks and recreation committee and a depot, community building and events committee without the management of building and grounds being included as a part of the committee. Mayor Mulligan said he feels the building and grounds board is too broad as it is in the current proposed ordinance. Mayor Mulligan desires to create the parks and recreation committee and the depot, community building and events committee from a group of citizens without any

elected officials being appointed to the committee. Mayor Mulligan advised he has passed out approximately twenty applications to citizens that are interested in serving on a committee.

Mr. McEwen advised that option one would be very similar to the current Board committees that will be comprised of only elected officials. He advised option two will be composed of seven member citizen boards on the parks and recreation and depot, community building and events committee that would act in an advisory capacity only.

After a lengthy discussion, Mr. McEwen recommended that the Board consider approving option one as presented and then next month (if they desire) they could approve a second ordinance that would create a Parks and Recreation Committee and a Promotions and Special Events Committee comprised from a group of citizens as requested by Mayor Mulligan.

After much discussion, Commissioner Rooks made a motion to approve Ordinance 2012-31, Option One as presented and that committee members be appointed today and that Option Two adding the Parks and Recreation Committee and Promotions and Special Events Committee be presented at the next regular Board of Commissioners meeting with the ordinance with all the details specified in the ordinance. The motion was seconded by Commissioner Robbins and carried by unanimous vote.

**Break:** Mayor Mulligan called for a five minute break at 11:57AM in order to allow the public to sign up for the public forum and public hearings. The meeting reconvened at 12:05PM.

#### **Ordinance 2013-31 follow up**

Mayor Mulligan advised after having discussion during the break with the Board members he is recommending the following appointments to the Boards approved in Ordinance 2013-31:

Buildings and Grounds Board – Commissioners Dawson and Robbins  
Infrastructure Board – Commissioners Robbins and Rooks  
Policy and Finance Board – Commissioners Tyson and Walker

Commissioner Rooks made a motion to accept Mayor Mulligan’s recommendations for appointment to these boards. The motion was seconded by Commissioner Walker and carried by unanimous vote.

#### **NEW BUSINESS**

##### **PUBLIC FORUM #1 (for general comments)**

There were no speakers for the public forum.

#### **PUBLIC HEARINGS**

##### **Public Hearing #1**

**Consideration of a proposed text change amendment to Section 4-9: Table of Permitted Uses.** Applicant Kyle Breuer, on behalf of Pender County, is requesting an amendment to allow county law enforcement center uses in the I-1 zoning district – *Rebekah C. Roth, Planning Administrator*

Mayor Mulligan opened the public hearing at 12:08AM.

Rebekah Roth, Planning Administrator presented the following background information:

**Background.** Pender County is planning a new law enforcement center within Town of Burgaw’s zoning jurisdiction. The law enforcement center would include jail facilities, sheriff’s offices, the magistrate’s office, and potentially other county offices (E-911, etc.). Currently, both *County Supervisors’ and Executives’ Offices* and *Jails* are allowed in the I-1, Light Industrial, zoning district. *Sheriff’s Offices*, however, are not permitted at all, even though the use is similar in nature to the other office uses, which are permitted as a use-by-right, and compatible with a jail, which is allowed with a conditional use permit.

**Planning Administrator Recommendation.** The uses currently allowed in the I-1 zoning district are not inherently different from that of *Sheriff's Offices*. It is my recommendation that *Sheriff's Offices* be added as a permitted use in the I-1 zoning district. This amendment would allow all uses intended for the county law enforcement center, including the magistrate, E-911, sheriffs' deputies, etc. The jail would only be allowed with a conditional use permit.

**Planning Board Review.** At their January 16, 2014 meeting, the Town of Burgaw Planning and Zoning Board approved the following statements.

**Statement Regarding the Compliance of a Proposed Text Change Amendment to Section 4-9 of the Unified Development Ordinance Regarding Sheriff's Offices in the I-1 Zoning District with the Burgaw 2030 Comprehensive Land Use Plan**

The proposed text change amendment is in general conformity with the Burgaw 2030 Comprehensive Land Use Plan. No portions of this amendment would be in conflict with the plan's goals, policies, or actions.

**Planning Board Recommendation Regarding a Proposed Text Change Amendment to Section 4-9 of the Unified Development Ordinance Regarding Sheriff's Offices in the I-1 Zoning District**

The Town of Burgaw Planning and Zoning Board recommends approval of the proposed text change amendment.

Speakers:

Trey Thurman, Pender County Attorney advised that Dr. Mickey Duvall, County Manager; Butch Watson, Assistant County Manager; Kyle Breuer, Planning Director and Ed McCarthy, Planner are present to answer questions if necessary. Mr. Thurman advised this project is important to Pender County due to the expense involved in housing prisoners in other jails due to the lack of space in the current county jail. He advised this is a jail project/law enforcement center not a court house. He said this project will be good for everyone and save taxpayers money.

Kyle Breuer, Pender County Planner advised he would answer any questions that the Board may have. Mayor Mulligan said the letter specifically points out that court houses are a permitted use by right with certain conditions within the I-1 Industrial Classification. Why was that use singled out? Mr. Breuer advised the uses reference back to the NAICS codes and that item was relevant to that subcategory. Mayor Mulligan asked if they were actually looking at the possibility of a court house in that district. Mr. Breuer advised there is no intention to move the courts there. Ms. Roth interjected that the Town ordinance specifically says that courts are not allowed in the I-1 zoning district regardless of the NAICS they are not allowed in that zoning district.

Commissioner Rooks commented that the only the thing the Board is hearing now is the request to change a text amendment but we are hearing all this other information that is not relevant to this particular public hearing.

Raymond Ballard, Owner of Creekside Subdivision asked if this is just going to be a jail, why does the county need so much land. Mr. Thurman advised there are some wetlands in the tract and the landowner did not desire to sell ten acres on the front. Mr. Thurman advised it was necessary to purchase that amount to get what the county needed. Mr. Ballard then asked if the jail is not built what would that zoning allow to be built there. Mr. Thurman answered this is just a text amendment to allow a sheriff's office. Ms. Roth stated the rezoning of the property will be discussed shortly.

Mayor Mulligan closed the public hearing at 12:20PM.

There was a brief discussion regarding what will be done with the empty buildings that will be left behind when the new jail is completed. At that time the County officials had no definitive answers as to the future of the vacant buildings that will result from the new jail project. Mayor Mulligan encouraged more open discussion and transfer of information between the Town and the County regarding the jail project.

### **Ordinance 2014-03**

Commissioner Dawson made a motion to approve Ordinance 2014-03 as presented. The motion was seconded by Commissioner Rooks. Commissioners Dawson, Rooks, Tyson and Walker voted "aye". Commissioner Robbins voted "nay". Motion carried 4-1.

**ORDINANCE 2014-03**  
**APPROVING A TEXT CHANGE AMENDMENT TO SECTION 4-9: TABLE OF PERMITTED USES OF THE UNIFIED DEVELOPMENT ORDINANCE ALLOWING SHERIFF'S OFFICES AS A PERMITTED USE IN THE I-1 ZONING DISTRICT**

**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 zoning map on December 12, 2000; and

**WHEREAS**, the town's current ordinances do not allow *Sheriff's Offices* in the I-1 zoning district; and

**WHEREAS**, Pender County has requested an amendment to the Unified Development Ordinance to allow *Sheriff's Offices* in the I-1 zoning district; and

**WHEREAS**, both *County Supervisors' and Executives' Offices* and *Jails* are allowed in the I-1 zoning district; and

**WHEREAS**, the Town of Burgaw Planning and Zoning Board has found that the requested text change amendment is consistent with the Burgaw 2030 Comprehensive Land Use Plan; and

**WHEREAS**, at the Town of Burgaw's Planning and Zoning Board meeting on January 16, 2014, the Board voted to recommend approval of the requested text change amendment; and

**WHEREAS**, the town of Burgaw Board of Commissioners finds the proposed text change amendment is consistent with the Burgaw 2030 Comprehensive Land Use Plan;

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

**SECTION 1:** The Unified Development Ordinance is amended to allow *Sheriff's Offices* as a permitted use in the I-1, Light Industrial, Zoning District.

**SECTION 2:** This amendment to the Unified Development Ordinance (UDO) becomes effective immediately upon adoption of this ordinance on this, the **11<sup>th</sup> day of February, 2014**.

## **Public Hearing #2**

**Consideration of an amendment to the official Town of Burgaw Zoning Map.** Applicant Kyle Breuer, on behalf of Pender County, is requesting the rezoning of an approximately 34 acre tract located between Worth Beverage Dr. and US Hwy 117 in the Town of Burgaw extraterritorial jurisdiction from R-20 to I-1 - *Rebekah C. Roth, Planning Administrator*

Mayor Mulligan opened the public hearing at 12:30PM.

Rebekah Roth, Planning Administrator presented the following background information:

**General Information.** Applicant Kyle Breuer, on behalf of Pender County, has requested the rezoning of approximately 34 acres from R-20 (Residential) to I-1 (Light Industrial). The tract fronts both US Hwy 117 and Worth Beverage Dr. Along 117, it is across the street from and immediately adjacent to property zoned R-20. On the Worth Beverage Dr. side, it is adjacent to both I-1 zoned tracts and O&I properties (Creekside subdivision). Currently, the subject tract has one residential structure fronting US Hwy 117.

### **Zoning District Information**

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 I-1, Light Industrial, zoning district is defined by the UDO as "intended to provide for industrial and other uses which would not be inherently obnoxious and yield only very minimal noise, odor, smoke, light, vibration, dusts, or the use of dangerous chemicals and/or materials. Adequate buffering between uses is limited to support the environmental protection of the district and the surrounding areas of Burgaw."

(A list of all uses currently allowed in the R-20 and I-1 districts is attached.)

**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

The subject tract is not located in any floodplain. In addition, the property does not include hydric soils or potential wetlands. Town water and sewer is available off Worth Beverage Drive, and county utilities are accessible along US Hwy 117. Due to these factors, its size, and its location both in the industrial area and along a major corridor, this property is suitable for more intensive development.

### Financial impacts on the town

The rezoning of this property will not require additional infrastructure or services. If any of the uses allowed in the I-1 zoning district are developed, they will be able to either request annexation from the town or pay double water/sewer rates for town utilities. At the Planning Board meeting, County staff indicated that the County intends to request annexation from the town. However, the County only currently plans to purchase a portion of the existing property; the remainder (about 10 acres) will be retained by the current owner, William Harvey McLean, who does not intend to request annexation for that portion.

Potential impacts on adjacent properties

The majority of the adjacent properties are vacant or residential. It is possible that rezoning this tract to I-1 will open up intensive uses near residences, especially along US Hwy 117 and the rear of the Creekside subdivision. The town would require buffering or other ways of mitigating any potential impacts on any conditional uses; however, we do not currently have regulations in place to require buffers for all uses permitted as a use-by-right.

Conformity to the Burgaw 2030 Comprehensive Land Use Plan

I have attached a list of all of the goals, policies, and actions of the comprehensive land use plan pertinent to this proposed rezoning. The recommendations of the land use plan are somewhat contradictory. On the one hand, the plan aims to promote infill development in areas with existing infrastructure; on the other hand, it supports the preservation of existing agricultural lands. The land use category indicated for the property seeks to retain rural character; however, this tract is adjacent to a major highway and does not have environmental concerns, like other properties in the Rural Character land use category.

Spot zoning and other legal issues

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

Other

In the attached narrative provided by Pender County, the applicant requests that the rezoning take effect contingent on a successful voluntary annexation.

**Planning Department Recommendation**

Based on the best use of the property and surrounding uses, an I-1 zoning designation would likely be beneficial to the town as a whole, especially on the portion fronting Worth Beverage Dr. However, because this is not in strict conformance to the Future land Use Map, the Board should consider a potential amendment to the land use plan if this land is rezoned.

**Planning Board Review.** At their January 16, 2014 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 conforms to the following portion of the Burgaw 2030 Comprehensive Land Use Plan:

- Encourage development in areas where the necessary infrastructure—roads, water, sewer, etc.—are available, planned, or can be most cost effectively provided and extended to serve existing and future development (Land Use Goal 1, Policy 1)

However, it is not in conformity with the following portions of the Burgaw 2030 Comprehensive Land Use Plan:

- To preserve existing agricultural and forest lands (Agriculture and Forestry Goal 1)
- Future Land Use Map designation of Rural Character land use category, which only recommends low-density residential, agricultural, forestry, and recreational land uses

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

The Town of Burgaw Planning and Zoning Board recommends approval of the proposed rezoning of property 3228-8801880-0000, excepting the 10 acres retained by Mr. McLean, from R-20 to I-1, contingent on the county providing a survey map of the property they are purchasing to the Board of Commissioners before they hear the request.

Pender County has submitted a surveyed plat depicting the approximately 32 acres they are intending to purchase, as requested by the Planning Board (see attached plat and zoning map showing the Planning Board's recommended rezoning). Only this portion is designated for rezoning in the attached Ordinance.

The County's request to have the rezoning be contingent on the annexation was discussed at the Planning Board meeting. Approval of the rezoning cannot be contingent on a specific condition, but we can delay the date on which the rezoning, if approved, will go into effect. If an annexation is denied, either the property owner or the town would be able to initiate the process to revert the property to the existing zoning, if desired. As a note, town staff does consider it in the town's best interest to keep industrially-zoned tracts within the municipal limits. The Ordinance attached does specify that the rezoning will go into effect on April 8, 2014, the earliest possible date an annexation would go into effect.

**Speakers:**

Kyle Breuer, Pender County Planner stated that at this time the County is not sure of the plans for extension of Worth Beverage Drive. He advised they are going through the process until they can reach the level of developing a plan of what will go on with the property. He also commented that it is the County's desire to extend Worth Beverage Drive to US 117 creating a continuation of the industrial classification that already exists along Worth Beverage Drive.

Mayor Mulligan mentioned that Dr. Duvall had suggested that access to Worth Beverage Drive may be limited to traffic related to transfer of inmates. Mr. Breuer advised there may be restrictions on the road but at this time all of this is in the planning stage.

Commissioner Rooks asked if the County owns the property at this time. Mr. Breuer advised the County is currently under contract with the property owner. Commissioner Rooks commented that he has a problem with rezoning a piece of property that the owner is not presenting for rezoning. Ms. Roth advised that the property owner has signed the application for rezoning. Commissioner Rooks asked if the signature was notarized. Ms. Roth advised "no" but the property owner was present at the planning board meeting and was aware of the request.

Commissioner Rooks commented that we are getting off topic again and that we should be discussing whether this rezoning is good for the town of Burgaw or not. He asked if the County has looked at any other property especially the approximately one hundred acres behind the prison that is currently owned by the state. He advised there would be a jail next to a prison with no effect on any residential development. He reiterated that he would like to stay on topic as to the nature of the public hearing.

Raymond Ballard owner of Creekside Subdivision stated that he wants to go on the record as being opposed to the jail complex believing that it will be a detriment to Creekside and is not compatible to the surrounding neighborhood. He said if they are successful in Creekside it will add about 20 million dollars to the tax base for Burgaw. He said we (the developers) are committed to making Creekside a well-developed neighborhood and we hope the Town Board will deny this rezoning.

Vernon Harrell advised he is present to represent his aunt who is Victoria Teal. He read the following letter from Ms. Teal:

*February 18, 2014*

*As a property owner in the Town of Burgaw, I am concerned about the request by Pender County to allow rezoning and annexation of a sizeable acreage for construction of a jail complex. I do not feel the removal of that acreage from our tax base is prudent.*

*More important to me personally, my property is adjacent to the proposed jail site. With the construction of this large complex and its dominant nature, my property will, without doubt lose value. My son is considering a building a house on that property, but would not want to live next to a large jail complex. I am sure this project would be a detriment to myself and all of the neighbors.*

*Please reconsider this move to facilitate the construction of this jail complex at this location. I am sure there are other areas that would be more suitable for the future of this town.*

*Thank you for your consideration.*

*Victoria Harrell Teal (original letter on file in the Clerk's office)*

Commissioner Tyson said her concern is not so much what the county plans to build there but just that they are going there; could there be a better place to put this.

Jim Fouche said it seems to him that putting a jail complex next to a potential draw to Burgaw (a subdivision) would be in error. He commended Commissioner Rooks for zeroing in on the issue at hand instead of all the peripheral stuff. He said it seems the Board is being asked to rezone something without a clear picture of what they are rezoning to and therefore the unknown consequences of rezoning and he is asking the Board not to approve the rezoning.

Mayor Mulligan closed the public hearing at 1:00PM.

Commissioner Robbins made a motion to recess the public hearing until 5:00PM at the March 11, 2014 regular meeting. The motion was seconded by Commissioner Dawson. Commissioner Rooks asked what we will gain by this recess. Commissioner Robbins said he would like to do due diligence for the citizens of this town and determine if they (the citizens) want this piece of property rezoned for a new jail. Commissioners Dawson, Robbins, Rooks and Walker voted "aye". Commissioner Tyson voted "nay". The motion carried 4-1 to recess this public hearing until March 11, 2014 at 5:00PM.

**Ordinance 2014-04 Approving an amendment to the Town of Burgaw Official Zoning Map rezoning a portion of a property located between Worth Beverage Drive and US Highway 117 (PIN 3228-88-1880-0000) from R-20 to I-1**

Commissioner Robbins made a motion to table Ordinance 2014-04. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

**Public Hearing #3**

**Consideration of a text change amendment to the Town of Burgaw Code of Ordinances Chapter 6, Article II, Sec. 6-32: International Building, Mechanical, Plumbing and Fire Code adopted.** The proposal is adoption of the most current edition of the fire code. – *Allen Wilson, Fire Administrator*

Mayor Mulligan opened the public hearing at 1:03PM.

Allen Wilson, Fire Administrator advised currently the town’s code of ordinances has adopted the “fire code” in very general language. In some areas it has language that states “the most current code”. He advised the North Carolina Department of Insurance (DOI) has recommended that all fire code enforcement agencies specifically adopt the most current fire code by specifying the actual code year. They also require the separate adoption of any appendices that we wish to enforce. The Insurance Services Office (ISO), the organization that establishes the requirements for our ISO Grade or Insurance rate, has established a new section within the ISO rating scheduled that allows for extra points to be earned for fire prevention measures. However, ISO specifically requires that the most current edition of the code be adopted for credit. Mr. Wilson advised he is requesting approval of the code changes as presented as these issues will specifically adopt the North Carolina Building Code: Fire Prevention Code 2012 Edition and Appendices B, C and F.

There were no speakers signed up for this public hearing. There being no further discussion, Mayor Mulligan closed the public hearing at 1:05 PM.

**Ordinance 2014-05 Approval of a text change amendment to the Town of Burgaw Code of Ordinances Chapter 6, Article II, Sec. 6-32: International Building, Mechanical, Plumbing and Fire Code**

Commissioner Tyson made a motion to approve Ordinance 2014-05 as presented. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

**ORDNANCE 2014-05  
APPROVING AMENDMENT TO THE TOWN OF BURGAW CODE OF ORDINANCES  
CHAPTER 6, ARTICLE II, SECTION 6-32**

**WHEREAS**, the current language of Chapter 6, Article II, Section 6-32 of the Town of Burgaw Code of Ordinances has adopted the fire code and appendices in general terms; and

**WHEREAS**, the North Carolina Fire Code, the North Carolina Department of Insurance and the Insurance Services Office has recommended that all code enforcement agencies adopt the most current code and specific appendices, and

**WHEREAS**, the Town wishes to comply with the recommendations of the regulatory agencies listed above and to insure the town consistently applies the most current code within its jurisdiction.

**NOW THEREFORE BE IT ORDAINED BY THE TOWN OF BURGAW BOARD OF COMMISSIONERS THAT THE FOLLOWING AMENDMENT BE ADOPTED:**

**Section 1:** Sec. 6-32. - International Building, Mechanical, Plumbing and Fire Code adopted.

That a certain document, of which are on file in the office of the Building Inspections Department of the Town of Burgaw, being marked and designated as the International Building, Mechanical, Plumbing and North Carolina State Building Code: Fire Prevention Code 2012 Edition and Appendices B, C and F, as published by the International Code Council and the North Carolina Code Council is hereby adopted as the code of the Town of Burgaw for regulating and governing the safeguarding of life, health and property in the occupancy of buildings and premises in the Town of Burgaw and its ETJ and providing for the issuance of permits; and each and all of the regulations, provisions, conditions and terms of such International Building, Mechanical, Plumbing and North Carolina State Building Code: Fire Prevention Code 2012 Edition and Appendices B, C and F Fire Code, published by the International Code Council, on file in the office of the Town of Burgaw Inspections Department are hereby referred to, adopted and made a part hereof as if fully set out in this ordinance.

**Section 2:** The Town of Burgaw Code of Ordinances section above shall become effective immediately upon approval of this ordinance this eleventh day of February 2014.

**Public Hearing #4**

**Consideration of text change amendment to Town of Burgaw Code of Ordinances Chapter 16, Article II, Sections 16-31, 16-32, 16-35, 16-36 and 16-38: Fire Prevention and Protection Code.** The proposal is adoption

of the most current edition of the fire code, text changes to reflect the duties and responsibilities of the Fire Marshal, text change in appeal process and text change to clarify the open burning policy. – *Allen Wilson, Fire Administrator*

Mayor Mulligan opened the public hearing at 1:06PM.

Allen Wilson, Fire Administrator advised in years past when Bill George was in his position he served as the Fire Chief and Fire Administrator/Marshal. These were and are still TWO separate positions. Mr. Wilson said the town code specifically conveys the authority of the fire prevention code enforcement and interpretation to the fire chief. He said this has not been an issue for the past 20 years because the fire chief was also the fire marshal. He advised now that there are two different people holding those positions, the responsibilities outlined in the code of ordinances should align properly with the current personnel. Furthermore, the authority of fire prevention code enforcement and interpretation has traditionally been conveyed to the fire marshal due to the responsibilities of a fire marshal. He informed the Board these changes will align the code with the proper authorities regardless if the positions are kept separate or one day will be joined again.

Mr. Wilson advised the current code allows for fire prevention code appeals. Currently these appeals would go to the Town of Burgaw Board Commissioners. Mr. Wilson said he and the town manager have discussed this issue and feel the appeals process should follow the chain of command as it would in any other organization. He said any decision he makes that is appealed should go before his immediate supervisor and then on up the chain of command. Mr. Wilson advised this change in the code will allow the town manager to preside over any appeal to his code enforcement or interpretation.

Mr. Wilson advised the current code section that addresses open burning requires text changes due to the name change of the North Carolina Department of Environmental Health and Natural Resources to the North Carolina Department of Environment and Natural Resources (NCDNER). He also said more clarification is also needed that addresses the requirements within the open burning regulations of NCDENR.

There were no speakers signed up for this public hearing.

Chad McEwen, Town Manager questioned Mr. Wilson regarding section 16-38 regarding the open burning rules. Mr. Wilson advised open burning is not allowed in a town that provides debris pickup for its citizens. Commissioner Walker then asked if he would be allowed to burn a field in town. Mr. Wilson advised that in accordance with NC Department of Environment and Natural Resources regulations, open field burning would not be allowed in the city limits. He said burning would be allowed in the extraterritorial jurisdiction. There was a very lengthy discussion regarding the fact that burning is not allowed. After discussion Mr. McEwen asked the Board if they are comfortable with going ahead and approving the ordinance with the exception of item 16-38. Attorney Kenan concurred that it would be best to approve the ordinance without item 16-38 and for Mr. Wilson to bring back another ordinance for next month's meeting regarding open burning within the town.

The public hearing was closed at 1:20PM.

There being no further discussion, Commissioner Tyson made a motion to approve Ordinance 2014-06 without including section 16-38. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

**ORDINANCE 2014-06  
APPROVING AMENDED TOWN OF BURGAW CODE OF ORDINANCES**

**WHEREAS**, the current language of Chapter 16, Article II, Section 16-31 of the Town of Burgaw Code of Ordinances has adopted the fire code and appendices in general terms; and

**WHEREAS**, the North Carolina Fire Code, the North Carolina Department of Insurance and the Insurance Services Office has recommended that all code enforcement agencies adopt the most current code and specific appendices, and

**WHEREAS**, the current language of Chapter 16, Article II, Sections 16-33, 16-35 and 16-36 of the Town of Burgaw Code of Ordinances conveys fire code enforcement to the chief of the fire department; and

**WHEREAS**, this authority does not align with the current structure and responsibilities of the town's Fire Administrator/Marshal and the chief of the fire department.



**WHEREAS**, the appeals process outlined in Section 16-36 does not align with the current chain of command, and

**WHEREAS**, the North Carolina Department of Environmental Health and Natural Resources has changed their name to the North Carolina Department of Environment and Natural Resources, and

**WHEREAS**, the Town wishes to comply with the recommendations of the regulatory agencies listed above and provide a more consistent and effective fire prevention staff.

**NOW THEREFORE BE IT ORDAINED BY THE TOWN OF BURGAW BOARD OF COMMISSIONERS THAT THE FOLLOWING AMENDMENTS BE ADOPTED:**

**Section 1:** Sec. 16-31. - Adoption. There is hereby adopted by the Board of Commissioners, for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion, that certain code known as the North Carolina State Building Code: Fire Prevention Code 2012 Edition and Appendices B, C and F, save and except such portions as are deleted, modified or amended by this article. Not less than three copies of such code have been and now are filed in the office of the clerk and such code is hereby adopted and incorporated as fully as if set out at length herein, and the provisions thereof shall be controlling within the limits of the town and its Extraterritorial Jurisdiction (ETJ).

**Section 2:** Sec. 16-32. - Enforcement. The fire prevention code adopted in this article shall be enforced by the Fire Marshal for the Town of Burgaw. Enforcement of the fire prevention code adopted in this article will be completed through periodic inspections as outlined in Section 106 of the adopted fire prevention code.

**Section 3:** Sec. 16-35. - Modifications. The Fire Marshal for the Town of Burgaw shall have the power to modify any of the provisions of the fire prevention code adopted in this article upon application in writing by an owner or lessee, or his duly authorized agent, when there are practical difficulties in the way of carrying out the strict letter of the code; provided, that the spirit of the fire prevention code shall be observed, public safety secured and substantial justice done. The particulars of such modification when granted or allowed and the decision of the Fire Marshal thereon shall be entered upon the records of the department, and a signed copy shall be furnished to the applicant.

**Section 4:** Sec. 16-36. - Appeals. Whenever the Fire Marshal for the Town of Burgaw disapproves an application or refuses to grant a permit applied for, or when it is claimed that the provisions of the fire prevention code adopted in this article do not apply or that the true intent and meaning of such code have been misconstrued or wrongly interpreted, the applicant may appeal from the decision of the Fire Marshal chief of the fire department to the Town Manager within 30 days from the date of the decision appealed.

**Section 5:** The Town of Burgaw Code of Ordinance sections above shall become effective immediately upon approval of this ordinance **this eleventh day of February 2014.**

Mayor Mulligan called for a five minute break at 1:22PM. The meeting reconvened at 1:34PM.

**Public Hearing #5 Consideration of Amendment of FY 2013-2014 Annual Budget.** The proposal is amendment of the FY 2013-2014 fee schedule to include fire inspection and permitting fees – *Allen Wilson, Fire Administrator; Ashley Loftis, Finance Officer*

Mayor Mulligan opened the public hearing at 1:35PM.

Allen Wilson, Fire Administrator advised currently the Town of Burgaw does not require compensation for any type of fire inspection nor do we have any schedule of fees and/or penalties for non-compliance and/or serious life safety violations. He advised the fire code allows each authority having jurisdiction to charge for certain inspections, re-inspections, permits, life safety violations, etc. Mr. Wilson said this fee schedule is not an attempt to recover cost associated with the general/annual fire inspections program, only for non-compliance issues. He briefly reviewed the steps that would be taken to reach the point of charging the proposed fees for violations.

Mr. Wilson advised all fee amounts have been carefully researched and fall either in line with or below what neighboring agencies are charging for the same services.

There were no speakers present for this hearing.

After a brief discussion regarding random questions about the fees, Mayor Mulligan closed the public hearing.

**Ordinance 2014-07 Approval of Amendment of FY 2013-2014 Annual Budget – Fire Inspection and Permitting Fees**

Commissioner Tyson made a motion to approve Ordinance 2014-07 as presented. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

**ORDINANCE 2014-07**  
**AMENDING FISCAL YEAR 2013-2014 ANNUAL BUDGET**  
**Change to Schedule of Fees**

**WHEREAS**, the Town of Burgaw Board of Commissioners passed an ordinance adopting a budget for FY 2013-2014 on June 11, 2013; and

**WHEREAS**, the Schedule of Fees in the budget ordinance does not currently include fees to cover any type of fire prevention inspection or permit; and

**WHEREAS**, the Town of Burgaw will be conducting Fire Prevention Inspections and construction plan review on all commercial buildings within the town limits and it's ETJ on an annual basis; and

**WHEREAS**, the purpose of these periodic inspections is to identify activities and conditions in buildings, structures and premises that pose dangers of fire, explosion or related hazards; and

**WHEREAS**, in order to preserve and protect public health and safety and to satisfy the requirements of North Carolina General Statute 160A-424 the Town of Burgaw will need to add this schedule of fees.

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

Town of Burgaw, Fire Marshal's Office, FY 2013-2014 Schedule of Fees, Attachment IV be added as attached.

**Approved this eleventh day of February, 2014.**

**TOWN OF BURGAW**  
**FIRE MARSHAL'S OFFICE**  
**FY 2013-2014 SCHEDULE OF FEES**  
**ATTACHMENT IV**

**Fire Prevention Inspections and Permits**

In order to preserve and protect public health and safety and to satisfy the requirements of North Carolina General Statute 160A-424, the Town of Burgaw will be conducting Fire Prevention Inspections and construction plan review on all commercial buildings within the town limits and it's ETJ on an annual basis. The purpose of these periodic inspections is to identify activities and conditions in buildings, structures and premises that pose dangers of fire, explosion or related hazards.

**NEW BUSINESS AND MULTI-FAMILY PERMIT AND INSPECTION (Plan Review)**

All commercial and multi-family properties will be permitted and inspected during the plan review and construction phases to verify compliance with the North Carolina Fire Code.

Up to 5,000 square feet	\$25.00
5,001 to 10,000 square feet	\$50.00
10,001 to 25,000 square feet	\$75.00
25,001 and over	\$100.00

**FIRE SUPPRESSION AND NOTIFICATION SYSTEM PERMIT AND INSPECTION**

A permit and inspection is required before any fire suppression and/or notification system is installed, removed, or altered.

Sprinkler System	\$100.00
Fire Alarm / Notification System	\$100.00
Other Suppression System	\$100.00

**SPECIAL/HAZARDOUS USE PERMIT**

Temporary kiosk or display	\$10.00
All tents meeting the permit requirements under Chapter 24 of the North Carolina Fire Code	\$25.00
Special Assembly	\$30.00
Cooking Event	\$30.00
Any Other Required Use Permit Defined in the NC Fire Code	\$30.00

**FLAMMABLE / COMMBUSTIBLE LIQUID STORAGE TANKS (ABOVE AND BELOW GROUND)**

Removal (per tank)	\$50.00
Installation (per tank)	\$50.00

**INSPECTIONS**

Annual Inspection	No-charge
Foster Home Inspections	\$30.00
Day Care Inspection	\$30.00

**RE-INSPECTION FOR NON-COMPLIANCE**

1 <sup>st</sup> Re-inspection	\$30.00
2 <sup>nd</sup> Re-Inspection	\$75.00
3 <sup>rd</sup> Re-inspection	\$150.00 and referral to Town Attorney

**LIFE SAFETY CODE VIOLATIONS (definitions attached)**

Any violation of the following requires an immediate citation

Overcrowding	\$500.00
Blocked Exit	\$200.00
Spraying Operation Not Compliant to Code	\$100.00

Any violation of the following upon re-inspection requires an immediate citation

Fire Alarm System Inspection/Maintenance	\$100.00
Fire Suppression System Inspection/Maintenance	\$100.00
Unauthorized Storage	\$100.00
Emergency Lighting Inspection/Maintenance	\$50.00
Fire Extinguisher Inspection/Maintenance	\$50.00
Use of Non-approved Heating Appliances	\$50.00

**OTHER FIRE CHARGES**

Unauthorized Burning	\$100.00
Key holder’s Failure to Respond on Fire Alarm	\$100.00
Hazardous Event Standby i.e. Pyrotechnics, Open Burning, etc.	\$200.00

**Definitions of Life Safety Violations**

(Violation of any of the following code requirements renders a citation action)

1. Overcrowding - \$500.00 – Occupancy of a building in excess of the posted occupant load as defined in Section 1004 of the NC Fire Code.
2. Block Exit - \$200.00 – Any obstruction in the required width of a means of egress. (A means of egress is the continuous and unobstructed path of vertical and horizontal egress travel from any point in a building or structure to a public way, consisting of three separate and distinct parts: the exit access, the exit, and the exit discharge.)
3. Spraying Operation Not Complying to Code - \$100.00 – Spraying flammable or combustible finishes without a properly installed spray booth or approved spraying area.
4. Fire Alarm System Inspection/Maintenance - \$100.00 – Failure to have the required annual maintenance test conducted of the fire alarm system(s), all deficiencies corrected, and to have required documentation of test(s) available to the fire code official on site.
5. Fire Suppression System Inspection/Maintenance - \$100.00 – Failure to have the required annual maintenance test conducted of all the fire suppression system(s), all deficiencies corrected, and to have required documentation of test(s) available to the fire code official on site.
6. Unauthorized Storage - \$100.00 – The storage of flammable, combustible or hazardous liquids or materials improperly stored and/or without a permit.
7. Emergency Lighting Inspection/Maintenance - \$50.00 – Failure to provide documentation and/or to conduct the required emergency lighting tests set forth in Section 604.6 of the NC Fire Code.
8. Fire Extinguisher Inspection/Maintenance - \$50.00 – Failure to properly maintain and service required portable fire extinguishers.
9. Use of Non-Approved Heating Appliances - \$50.00 – The use of non-listed heating appliances and/or use in an unapproved manner or location.

\* \* \*

**ITEMS FROM ATTORNEY - None**

**ITEMS FROM MANAGER** –*Chad McEwen, Town Manager*

**Ordinance 2014-02 Approving the Purchase of 2.43 Acres of Real Property Located Along North Timberly Lane and East Wallace Street as Recorded in Map Book 51 Page 37 of the Pender County Register of Deeds Office**

Mr. McEwen advised in January the Board of Commissioners approved terms of negotiation for the proposed purchase of 2.43 acres from the Hood Family for land along Osgood Canal between East Wallace Street and North Timberly Lane. Following the meeting, he contacted Mrs. Florence Ann Hood Strickland regarding the Board of Commissioners offer and ultimately the following terms of sale were reached:

1. \$12,000 cash
2. Letter from the Town stating the difference in value between the appraised value of \$25,000 and the \$12,000 paid as consideration be considered a charitable contribution for taxes purposes.

Mr. McEwen stated the reasoning behind purchasing this property is due to its immediate proximity to the canal. Access to this canal is vital in the town's efforts to address flooding issues for the Osgood Canal watershed. Also, the Town has a sewer line running across the property. Currently the Town doesn't have easements that provide for maintenance of either the canal or the sewer line.

Mr. McEwen advised Ordinance 2014-02 outlines that the funds required for this purchase will come from fund balance within the Water and Sewer Fund. He also advised he has spoken to Greg Thompson about using the Water and Sewer Fund as opposed to the General Fund and he agrees that as the purchase relates to our audit this would be acceptable.

Mr. McEwen also advised the Hood Family requested that if there is ever a park built on the property that it be named for their family. He said he advised the family that typically naming rights are reserved for donated parcels instead of sales like this one. He asked the Board what they would like to do and said it would be advisable for their decision to be documented in the official minutes in the event this comes up at a later date. Commissioner Rooks said that because the Hood family is selling the land and receiving a tax credit instead of donating it, he would not grant the request.

Commissioner Dawson made a motion to approve Ordinance 2014-02 as presented without any commitment to naming a park after the Hood family. The motion was seconded by Commissioner Tyson and carried by unanimous vote.

**ORDINANCE 2014-02  
Ordinance Amending the Fiscal Year 2013-2014 Annual Budget**

**WHEREAS**, the Town of Burgaw Board of Commissioners passed an ordinance adopting a budget for FY 2013-14 on June 11, 2013; and

**WHEREAS**, the Board of Commissioners wishes to purchase 2.43 acres located along North Timberly and East Wallace Street as Recorded in Map Book 51 Page 37 of the Pender County Register of Deeds Office with an associated deed recorded in Deed Book 3326 Page 338; and

**WHEREAS**, the appraised value of the property is \$25,000 and all parties have agreed on the following terms of sale:

1. \$12,000 cash
2. Letter from the Town stating the difference in value between the appraised value of \$25,000 and the \$12,000 paid as consideration be considered a charitable contribution for taxes purposes.

**WHEREAS**, in addition the Town has agreed to handling all legal expenses related to the purchase of the property, and

**WHEREAS**, the purchase of the above described property will provide the Town with access to the northern bank of Osgood Canal between North Timberly and East Wallace Street in order to help with the Town's efforts to address flooding issues for the Osgood Canal watershed.

**WHEREAS**, the purchase of the above described property will provide the Town with legal access to an existing sewer force main that was previously installed across the property.

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

**INCREASE BUDGETED REVENUE**

<b>Account Number</b>	<b>Account Description</b>	<b>Amount</b>
31-00-3900-900	Fund Balance Appropriated	\$6,000
32-00-3900-900	Fund Balance Appropriated	\$6,000

**INCREASE BUDGETED EXPENDITURE**

<b>Account Number</b>	<b>Account Description</b>	<b>Amount</b>
31-91-8140-740	Capital Outlay	\$6,000
32-91-8200-740	Capital Outlay	\$6,000

**Adopted this the 11th day of February 2014.**

**Appointment of RTAC Candidate**

Mr. McEwen advised that the RTAC (Rural Transportation Advisory Committee) typically has a mayor's position on the advisory committee. He advised the COG (Council of Governments) and the RPO (Rural Planning Organization) desires to have a representative from Burgaw to serve on the RTAC to represent the areas west of US 17. After a brief discussion, Commissioner Walker made a motion to appoint Commissioner Robbins to serve on the RTAC. The motion was seconded by Commissioner Tyson and carried by unanimous vote.

**ITEMS FROM MAYOR AND BOARD OF COMMISSIONERS**

Mayor Mulligan advised he has met with Mayor Farris at Wallace regarding the sewer project. He asked Attorney Kenan if he has any paperwork prepared regarding this item. Attorney Kenan advised he is working on it and will get it done this week.

Mayor Mulligan advised it appears there will be a large number of public hearings scheduled for the March meeting and asked if the Board desires to schedule a special meeting. After much discussion it was the consensus of the Board to plan a second meeting on March 18 if there is a need to hold several public hearings that would be too lengthy for the March 11 meeting.

**Spring Festival Request – Discussion**

Mayor Mulligan advised the Spring Festival Committee has requested an increase in funding by the Town to defray the costs of printing, mailing, sound equipment and various expenses incurred in producing the festival. He advised they normally get \$500 from the Town but this year due to the dissolution of the Arts Council, from whom they previously received \$500 as well, they are short on funds. Mayor Mulligan advised an additional \$350 plus the \$150 budgeted by the TDA would give them the total amount they are requesting.

There was a very lengthy discussion regarding the fact that the committee wants to use the depot dock and restrooms without paying the required fees. Chief Sutton also commented that last year they requested two extra officers at the last minute which resulted in overtime pay. Commissioner Rooks also asked Attorney Kenan to look into whether or not it is legal for the Town to give donations to these non-profits like the Spring Fest etc. He said he would like some feedback on this issue because he recently read an article that made him question the legality of the situation in order to make a better decision when voting on such requests.

After much discussion, Commissioner Tyson said she feels that the Spring Festival Committee needs to come back and make a more specific presentation on their requests. Mayor Mulligan said we will table this issue until the Spring Festival Committee can make a more specific request and Attorney Kenan can provide an answer to Commissioner Rooks question regarding charitable donations.

Mayor Mulligan called for a recess for lunch at 2:20PM. The meeting reconvened at 2:45PM.

Commissioner Robbins asked if there was anything that could be done about an abandoned car that was parked in front of Cripple Creek dance studio. Chief Sutton said we don't have anything in our Code of Ordinances that allows the Police Department to tow the vehicle. After much discussion, Chief Sutton and Attorney Kenan were instructed to draft an ordinance to regulate long term parking in the town.

Commissioner Tyson asked if there had been any comments since the speed trailer had been put on McNeil Street slow down traffic. Chief Sutton advised she has not heard any comments.

Commissioner Rooks asked the Board to consider sending a letter of appreciation to town staff and town volunteers for their service and commitment to the town during the inclement weather. After a brief discussion, Commissioner Rooks made a motion to have the town manager draft a letter of appreciation to the town staff and volunteers from the Board thanking them for their service to the town during the recent inclement weather. The motion was seconded by Commissioner Robbins and carried by unanimous vote.

Mayor Mulligan recessed the meeting at 2:57PM in order to continue the CIP meeting from earlier in the day. He advised the scheduled closed session would be held immediately following the completion of the CIP meeting. This was done in order to avoid having the department heads relocating before completing the CIP meeting.

The meeting reconvened at 4:18PM.

#### **CLOSED SESSION**

Commissioner Dawson made a motion to go into closed session pursuant to GS 143.318-11 Paragraph (a) item (4) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body. The motion was seconded by Commissioner Robbins and carried by unanimous vote.

#### **OPEN SESSION RECONVENED**

Commissioner Tyson 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**

Commissioner Tyson made a motion to adjourn. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

The meeting adjourned at 4:55PM.

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Eugene Mulligan, Mayor

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