

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

DATE: March 10, 2015
TIME: 4:00 PM
PLACE: Burgaw Municipal Building
BOARD MEMBERS PRESENT: Mayor Eugene Mulligan
Mayor Pro-tem Howard Walker
Commissioners Jan Dawson, Wilfred Robbins, Charles Rooks and Elaine Tyson
STAFF PRESENT: Chad McEwen, Town Manager
Sylvia W. Raynor, Town Clerk
Robert Kenan, Town Attorney
Anthony Colon, Utility & Compliance Specialist/ORC
Bill Fay, Director of Public Works
Louis Hesse, Building Inspector
Ashley Loftis, Finance Officer
Rebekah Roth, Planning Administrator
Montrina Sutton, Chief of Police
Kristin Wells, Deputy Clerk
Allen Wilson, Fire Administrator
MEDIA PRESENT: Bill Walsh, Star News
INVOCATION: Nick Smith, Chaplain
PLEDGE OF ALLEGIANCE: All

The meeting was called to order by Mayor Eugene Mulligan at 4:00PM. Mayor Mulligan congratulated Rebekah Roth, Planning Administrator for being designated the Planner of the Year by the Cape Fear Council of Governments.

Approval of Agenda

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

Approval of Consent Agenda

Mayor Mulligan asked if there were any requests for amendments to the consent agenda. There being no requests, 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:

- A. Approval of minutes of February 10, 2015 regular meeting and closed session**
- B. Ordinance 2015-04 Amending the FY 14-15 Budget to recognize revenues received from CopyPro**

*ORDINANCE 2015-04
AMENDING FISCAL YEAR 2014-2015 ANNUAL BUDGET
Increasing Revenues and Expenditures*

WHEREAS, the Town of Burgaw Board of Commissioners passed an ordinance adopting a budget for FY 2014-2015 on June 10, 2014; and
WHEREAS, the Town of Burgaw approved to enter into a copier contract with CopyPro; and
WHEREAS, CopyPro agreed to buyout our current contract with COECO Financial Systems in the amount of \$1,792.25; and
WHEREAS, the Town is in receipt of this money and would like to appropriate it into the FY 14-15 budget to cover the cost of paying off our current COECO contract.
NOW THEREFORE, BE IT ORDAINED BY THE TOWN OF BURGAW BOARD OF COMMISSIONERS THAT:
Section 1: The FY 2014-2015 budget be altered to reflect the following changes:

<u>INCREASE BUDGETED REVENUE</u>		
Account Number	Account Description	Amount
10-3700-00-800	Miscellaneous Revenue-General Fund	\$1,792.25

<u>INCREASE BUDGETED EXPENDITURE</u>		
Account Number	Account Description	Amount
10-6000-00-455	Copier	\$1,792.25

Adopted March 10, 2015.

C. Ordinance 2015-05 Amending the FY 14-15 Budget to recognize revenues received from FEMA for Winter Storm Pax

***ORDINANCE 2015-05
AMENDING FISCAL YEAR 2014-2015 ANNUAL BUDGET
Increasing Revenues and Expenditures***

WHEREAS, the Town of Burgaw Board of Commissioners passed an ordinance adopting a budget for FY 2014-2015 on June 10, 2014; and
WHEREAS, the Town of Burgaw was approved to receive FEMA reimbursement of \$41,636.70 for related labor and equipment costs; and
WHEREAS, the Town has received insurance settlement proceeds of \$31,296.77 for reimbursement of labor and equipment costs associated with Winter Storm Pax; and
WHEREAS, the Town anticipates receiving the remaining amount of \$10,339.93 in the coming months; and
WHEREAS, the Town of Burgaw would like to appropriate \$6,000 of this settlement to purchase trees for property within the Town, therefore, additional revenue and expenditure must be recognized.

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

Section 1: The FY 2014-2015 budget be altered to reflect the following changes:

<u>INCREASE BUDGETED REVENUE</u>		
Account Number	Account Description	Amount
10-3730-00-800	Insurance Settlements	\$41,636.70

<u>INCREASE BUDGETED EXPENDITURE</u>		
Account Number	Account Description	Amount
10-4900-30-460	Tree Board	\$6,000
10-6000-00-590	Non-Departmental Reserve	\$35,636.70

Adopted March 10, 2015

Arbor Day Proclamation – Mayor Mulligan

Mayor Mulligan presented the following Arbor Day proclamation.

Arbor Day Proclamation

Whereas, In 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees, and

Whereas, the holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and

Whereas, Arbor Day is now observed throughout the nation and the world, and

Whereas, trees can reduce the erosion of our precious topsoil by wind and water, lower our heating and cooling costs, moderate the temperature, clean the air, produce oxygen and provide habitat for wildlife, and

Whereas, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and

Whereas, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community, and

Whereas, trees, wherever they are planted, are a source of joy and spiritual renewal,

NOW, THEREFORE, I, Eugene Mulligan, Mayor of the Town of Burgaw, do hereby proclaim March 20, 2015 as

Arbor Day

in the Town of Burgaw, and I urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands, and

Further, I urge all citizens to plant and care for trees to gladden the heart and promote the well-being of this and future generations.

Dated this tenth day of March in the year 2015,

Eugene Mulligan, Mayor

SPECIAL PRESENTATIONS

Al Sharp and Adrienne Cox - Report on the FOCUS Regional Planning Initiative (Ms. Cox was unable to attend)

Al Sharp appeared before the Board on behalf of the FOCUS Consortium which is an organization with a common memorandum of understanding to discuss, research, and address regional issues made up of 11 member organizations covering Brunswick, New Hanover, and Pender counties. He advised Burgaw joined the consortium in early 2013, and Rebekah Roth has been representing the town at a staff level since then.

Mr. Sharp advised the consortium received a federal grant in 2011 that was intended to allow local jurisdictions to address the unique issues of the region through long-term strategies, use data to set and monitor progress toward performance goals, and engage stakeholders and residents in meaningful decision-making roles. Using these funds, the consortium has held public participation opportunities, conducted numerous studies, and researched potential regional initiatives that could meet identified needs. Mr. Sharp advised this grant process will result in a region-wide plan, the Framework for Our Future that can be used by local and regional entities when updating or creating policies, regulations, plans, and programs; will identify the strengths, weaknesses, and opportunities of the region; and will identify opportunities and strategies to improve the region.

Mr. Sharp gave a lengthy presentation regarding the proposed growth and changes that will affect our area in the future and how we should plan for these changes. Mr. Sharp advised this is a preview of what is to come and that when the plan is complete; Ms. Roth will present the finished product to the Board.

Vickie Foster – Request regarding Pender Historical Society Tour of Trees

Vickie Foster on behalf of the Pender Historical Society requested complimentary use of the community house for the tour of trees on December 5th of this year. Since the depot has been rented for a wedding on that day, the community house is the only option at this time. She advised this event is in conjunction with the tour of homes that will be held on the same day. She advised there will be no money exchanged at the community house for entry, since the tree tour is a part of the home tour ticket which will be prepaid. She also advised she will need the building for four days for set-up, display and break-down time. After a brief discussion, Commissioner Robbins made a motion to allow the Pender County Historical Society complimentary use of the community house December 4th, 5th, 6th and 7th. The motion was seconded by Commissioner Walker and carried by unanimous vote.

Ross Harrell – Spring Festival Request

Ross Harrell was present to address the Board's consideration of the annual Spring Festival requests as follows:

- Public Safety: This includes street closing, traffic control and police assistance on Saturday May 2 during the Festival and Friday evening May 1 during the square dance.

- Trash Collection and Removal: We will need 12 rolling carts from the town's trash contractor, for Saturday May 2 and subsequent dumping of those carts after the Festival.
- Venue and Set Up: We request that the Public Works Department deliver the stage and picnic tables to the Courthouse Square and remove them after the Festival. Last year the town provided our electricity and we request that assistance again. Also, for the Friday night Square Dance, we would like to use the Depot platform in case of rain.
- Grant: The committee requests a grant of \$1,000.00 to help defray the costs of printing, mailing, sound equipment and various expenses incurred in producing the Festival.

Mr. McEwen advised that the town has budgeted \$500.00 for the Spring Festival but the remaining funds will either have to come from non-departmental reserves or Tourism Development Authority. After a brief discussion, Commissioner Robbins made a motion to approve the requests as submitted by Mr. Harrell with \$500 coming from budgeted funds and \$500 coming from non-departmental reserves. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

DEPARTMENTAL ITEMS

Fire Department – Allen Wilson, Fire Administrator

Resolution 2015-11 Authorizing Disposal of Fire Department Exercise Equipment

Mr. Wilson advised the fire department is requesting permission to sell the Body Masters exercise equipment currently being used by the fire department and other town personnel. He said it is the desire of the fire department to utilize alternative funding and/or fund raising money to purchase new equipment for this space. Mr. Wilson said the plan is to purchase a smaller weight or resistant machine and also add some cardio equipment. He advised smaller equipment will provide more space to move around the room, create a more convenient entry into the shower room and allow for storage lockers for staff.

Mr. Wilson advised it is the request of the fire department to surplus this equipment through a private sale.

There being no discussion, Commissioner Dawson made a motion to approve Resolution 2015-11 as presented. The motion was seconded by Commissioner Rooks and carried by unanimous vote.

RESOLUTION 2015-11 AUTHORIZING DISPOSAL OF FIRE DEPARTMENT EXERCISE EQUIPMENT

WHEREAS, the Town of Burgaw, North Carolina is the legal owner of a Body Masters weight and exercise equipment; and

WHEREAS, the current exercise equipment will no longer be used by the Fire Department and should be declared surplus equipment of the Town of Burgaw; and

WHEREAS, North Carolina General Statutes 160A-267 allows municipalities to dispose of property by private sale by adopting a resolution; and

WHEREAS, the following regulations are designed to secure for the Town of Burgaw the fair market value for the tables and chairs, and to accomplish the disposal efficiently and economically.

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

1. *The Board of Commissioners does hereby decommission the Body Masters weight and exercise equipment above issued to the Fire Department and does hereby declare them to be surplus fire equipment;*
2. *Said property shall be sold by private sale in accordance with GS 160A-267. Upon completion of required publication of sale notice, if sale is not consummated within thirty days of advertising, property shall be placed on public auction with www.govdeals.com for sale to the highest bidder in accordance with GS 160A-270.*

ADOPTED: March 10, 2015

Planning Department – Rebekah Roth, Planning Administrator

Discussion - Planning Board Vacancy

Rebekah Roth, Planning Administrator advised there is a vacancy on the Planning Board due to the resignation of Bill George. She advised we have one application on file from a potential ETJ representative, William Smith. Ms. Roth informed the Board that currently, the ETJ seat is occupied by Connie Ives, who owns property within the Town of Burgaw corporate limits and could serve as a regular Planning Board member if the Board desires to fill the vacancy tonight. She requested that the Board fill the vacancy as soon as possible to avoid running into quorum issues at the Planning Board meetings.

Mayor Mulligan stated that he prefers to advertise the position. Commissioner Walker commented that someone called him today to inquire about the position. After a brief discussion, Commissioner Robbins made a motion to direct the clerk to begin advertising the Planning Board vacancy in next week's paper. The motion was seconded by Commissioner Rooks and carried by unanimous vote.

ITEMS FROM ATTORNEY – Robert Kenan

None.

ITEMS FROM MANAGER – Chad McEwen

Discussion – Request for takeover of Rhodes Avenue (tabled from last month)

Mr. McEwen advised per the Board's request he and Mr. Fay met with the property owners of Rhodes Avenue regarding their request for the town to take over their street. Mr. McEwen advised they have come to an agreement with all parties (Mr. Batuyios, Mr. Bell, State Employees Credit Union and SPEC) to make the necessary repairs to bring the street up to standards for the town to take it over. He advised that once all repairs have been made they will once again request the town to accept the street into our system.

Discussion – Follow up on purchase of Digital Sign (tabled from last month)

Mr. McEwen advised the Board that he has done further research regarding the proposed digital sign to be placed on the corner of Walker and Wilmington Streets. He advised he had marked the area where the sign will be placed and also presented pictures to give the Board an idea of where the sign will be. He presented drawings of two more signs from two local companies. He advised at this point the Board needs to decide which sign is preferred, where to put the sign and what kind of mount to put the sign on.

Commissioner Tyson expressed concern over liability for damage to the sign if the town does the installation and something happens during installation. Commissioner Robbins advised he feels the area should be turned into green space and eliminate any parking areas before the sign is placed.

Mr. McEwen advised the Board that when the discussion regarding the sign first started they were told that the sign must be within a line of sight of the computer that will operate it. He said it was originally planned for the Customer Service Representative to be responsible for updating the sign. Mr. McEwen said that putting the sign on the corner will cause a change in plans because there will be no line of sight from the town hall thereby possibly causing a staff person in the planning/inspections office to be responsible for updating the sign.

Commissioner Rooks suggested putting in some attractive landscaping with a decorative block wall to protect the sign but to still maintain the parking area around the sign. There was much discussion about parking options.

Commissioner Rooks stated that he would like to have an estimate on cost of installation if the sign company does it and what it will cost if the town does our own installation. He also requested an estimate on the landscaping of the area.

Commissioner Robbins made a motion to turn this item over to the Building & Grounds Board for further discussion regarding the landscaping and parking issues. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

Request for Police Department to surplus Cushman (tabled from last month)

Mr. McEwen advised the town mechanic has checked out the Cushman and found it to be mechanically sound. He advised Mr. Fay would like to keep the Cushman for six months to determine if it has a useful purpose for public works for maintaining the walking trail and other tasks as needed. He advised if it is not used this item will be brought back to the Board for surplus after a six month trial period. He also advised Chief Sutton has spoken with state surplus and they advised that we could allow the vehicle to be used in another town department but if we surplus the vehicle at a later date the funds must go back to the police department budget.

Commissioner Rooks made a motion to allow Public Works to use the Cushman as requested. The motion was seconded by Commissioner Tyson and carried by unanimous vote.

Other items from Manager

Mr. McEwen advised he received an email from Representative Chris Millis regarding our request to change the Tourism Development Authority to a restricted fund. He said the bill writing department is not receptive to our request for the Tourism Development Authority (TDA) to be considered a restrictive fund under the town’s audit. The Travel and Tourism coalition has developed House and Senate guidelines on these issues; one of the guidelines reads that TDA funds must be kept separate. He said they understand our request from a practical standpoint but Representative Millis believes the House will not approve the bill without the endorsement of the Travel and Tourism committee. Mr. McEwen advised he will call and try to speak with someone on that committee to explain how we plan to keep TDA funds separate.

BREAK

Mayor Mulligan called for a fifteen minute break at 5:15PM. The meeting reconvened at 5:30PM.

PUBLIC FORUM

Sue Cowan advised she recently learned that the Burgaw Fire Department does not have any pet oxygen masks on their fire trucks. Ms. Cowan decided to make her mission to purchase pet oxygen masks for our fire department. Ms. Cowan presented the fire department with three sets of pet oxygen masks to be used on the fire trucks in the event of a fire in which a pet has been exposed to smoke. The gift was accepted on behalf of the Fire Department by Fire Administrator Allen Wilson who expressed appreciation for the donation.

PUBLIC HEARINGS

Public Hearing 1 – Chad McEwen, Town Manager

Combined State of North Carolina CDBG Program and The Town of Burgaw’s Proposed CDBG-Infrastructure Program Application

Mayor Mulligan declared the public hearing open at 5:33PM. Chad McEwen, Town Manager advised the town has applied for a Community Development Block Grant for water improvements in the southwest area of town. He advised Skip Green with Skip Green and Associates is also present to answer any questions that may arise. Mr. McEwen read the following information to the Board of Commissioners.

CDBG-Infrastructure Program Application

State of North Carolina CDBG Program. The State of North Carolina’s current CDBG program amount is \$43,757,560. One hundred percent (100%) of the CDBG funds will be used to benefit low-to-moderate income people. Approximately \$17 million of this amount will be allocated to the Rural Development Division, North Carolina Department of Commerce CDBG-Economic Development Program (CDBG-ED) and approximately \$26 million allocated to the Division of Water Infrastructure, North Carolina Department Environment Natural Resources CDBG-Infrastructure Program (CDBG-I). CDBG-ED applications are accepted on a continuous basis. CDBG-I applications are being accepted in two rounds with approximately \$13 million being offered in the first March round. Non-entitlement municipal and county governments may apply for CDBG program funds

The CDBG-ED Program permits grant funds to be used toward infrastructure or vacant building restoration projects that directly support Economic Development, specifically local government projects that result in the creation or retention of full-time jobs with minimum sixty percent (60%) benefit to low-to-moderate income people. The CDBG-I Program permits grants for water and sewer infrastructure with project mitigating problems causing regulatory actions, and projects addressing environmental and public health threats as most important. CDBG-I projects must have project area with a population that is at least fifty-one percent (51%) low-to-moderate income.

Town of Burgaw's Proposed CDBG-Infrastructure Water Improvements to Reduce THM Levels in Burgaw South West – CDBG Target Area Project Application. The Town of Burgaw proposes to submit a Small Cities Community Development Block Grant (CDBG)-Infrastructure Application to the Division of Water Infrastructure, North Carolina Department of Environment and Natural Resources for 2015 grant consideration. The CDBG-I application will request an approximate \$380,000 grant to make improvements to the Town's existing water system located in the southwest portion of the Town. Proposed improvements within the Target Area consist of the installation of approximately 3,170 linear feet of new 6" water distribution mains to replace existing 1" mains and create hydraulic "loops" within the system. The purpose of the CDBG-I grant is to reduce the concentration of total trihalomethanes (THMs) within the Target Area. The Target Area has been selected as it meets CDBG-I Program low-to-moderate benefit requirements and it contains the Town's highest concentration of low-to-moderate income residents.

In the development of CDBG programs the Town will make every effort to design project activities to minimize displacement and relocation. The Town has adopted a "Residential Anti-displacement and Relocation Assistance Policy" that provides for the use of grant funds to cover the costs of housing in the event a CDBG project results in relocations.

Commissioner Robbins asked if this money can only be used in the southwest portion. Mr. McEwen advised it can only be used in census tract 5.

Mayor Mulligan asked what has changed. Mr. McEwen advised nothing has changed; this is just a requirement of the grant process. Skip Green commented that we submitted last year for 2013-14 federal funds and since we are reapplying for 2014-15 federal funds we must complete the process again since last year's public hearing cannot count for this year's grant request. He advised it is the same project but must be done as a new application because it is a new funding year. He stated that the application must be submitted by the end of the business day March 31, 2015 and that after receiving public comments and closing the public hearing the Town will consider authorizing the submittal of the CDBG-I application.

Mr. McEwen advised there were points that the Town did not receive in last year's request that have been corrected in this year's grant process. He advised there will be surveys done in the area that will help in the process. Mr. McEwen advised that through each process, the town has only missed receiving the grant by one or two slots.

There being no further discussion, Mayor Mulligan declared the public hearing closed 5:42PM.

Mayor Mulligan then called for a vote on Resolution 2015-12 "Resolution by Governing Body of Applicant regarding the Town of Burgaw Southwest Target Area Waterline Improvement Project". Commissioner Rooks made a motion to approve Resolution 2015-12 as presented. The motion was seconded by Commissioner Dawson and carried by unanimous vote. (Resolution below.)

**RESOLUTION 2015-12
RESOLUTION BY GOVERNING BODY OF APPLICANT**

WHEREAS, Title I of the Federal Housing and Community Development Act of 1974, as amended, has established the U.S. Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program, and has authorized the making of grants to aid eligible units of government in funding the cost of construction, replacement, or rehabilitation of water and wastewater infrastructure, and that the North Carolina Department of Environment & Natural Resources (NCDENR) Division of Water Infrastructure (DWI) was delegated the authority by the state legislature to administer the water and wastewater infrastructure portion of the state grant monies received from the U.S. HUD CDBG program by Session Law 2013-360, Section 15.15(a) as amended by Section 5.3 of Session Law 2013-363, and

WHEREAS, The Town of Burgaw has need for and intends to construct a drinking water distribution system project described as the Town of Burgaw Southwest Target Area Waterline Improvement Project, and

WHEREAS, The Town of Burgaw intends to request state grant assistance for the project,

NOW THEREFORE BE IT RESOLVED, BY THE TOWN COUNCIL OF THE TOWN OF BURGAW:

That the Town of Burgaw, the **Applicant**, has adopted and placed into effect a schedule of fees and charges and other available funds which will provide adequate funds for proper operation, maintenance, and administration of the system.

That the **Applicant** will provide for efficient operation and maintenance of the project on completion of construction thereof.

That Eugene Mulligan, Mayor, the **Authorized Official**, and successors so titled, is hereby authorized to execute and file an application on behalf of the **Applicant** with the State of North Carolina for a grant to aid in the construction of the project described above.

That the **Authorized Official** and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project; to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That the **Applicant** has substantially complied or will substantially comply with all Federal, State, and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted this the 10th day of March 2015 at Burgaw, North Carolina.

Public Hearing 2 – Rebekah Roth, Planning Administrator

Consideration of an amendment to the Town of Burgaw Official Zoning Map rezoning a 49.2 acre tract located behind White Tractor Co. off Hwy 117 Bypass from R-20 to CZ-R7 for a single-family residential subdivision.

Mayor Mulligan declared the public hearing open at 5:43PM.

Ms. Roth provided the following background material:

Subject property:

Location

Off US Hwy 117 Bypass
PIN: 3239-01-1907-0000

Current Zoning

R-20, Residential

Proposed Zoning

Conditional R-7, Residential (R7-CZ)

Surrounding Zoning

R-20, O&I, B-2, PUD-1, R-12

Surrounding Land Uses

Vacant, Residential, Commercial

Size

49.42 acres

Public Water & Sewer

Water and sewer along US Hwy 117, would flow to White Tractor Lift Station

Floodplain

None

Staff Recommendation

Approval, with conditions

Planning Board Recommendation

Approval, with conditions

Required Actions

Adoption of Consistency Statement
Motion for or against Ordinance

Summary

Ms. Roth advised this is a request to the subject property from R-20 to R7-CZ for a 137 lot residential subdivision. The property is currently vacant, has access from Hwy 117 Bypass, and is immediately behind White Tractor Company. The plan for the property is similar to the PUD Master Plan approved by the town in 2007. That plan expired at the end of 2013, so the developer has decided to request conditional R-7 zoning to allow residential lots smaller than 12,000 square feet and fewer uses than generally allowed in an R-7 district.

Description of proposed zoning district

The proposed R7-CZ district would cover 49.61 acres. The district would be very similar to the base R-7 zoning district in its dimensional requirements for single family residences, but fewer uses would be permitted. The applicant has stated that they are requesting to only allow single family residential uses, so the permitted uses for the proposed district would include:

- Accessory Structure;
- Accessory Uses;
- Home Occupation, including day cares;

- Dwelling, Single-Family (including group homes as required by state law);
- Public Electrical Utility Station or Substation;
- Recreational Vehicles (for temporary use);
- Stormwater Retention Ponds;
- Yard Sales; and
- Any use required by federal or state law

However, uses that are usually permitted or conditional in an R-7; such as golf courses, accessory apartments, assisted living facilities, churches, multi-family dwellings, and schools; would not be allowed.

The proposed master plan, which would be adopted as part of the approved R7-CZ zoning district, does include open space and walking trails, and sidewalks along all subdivision roads.

The ultimate preliminary subdivision plat brought to the town for approval must comply with the master plan as approved and all conditions placed on the rezoning. The rezoning does not have to address all technical issues that would be addressed at the time of preliminary subdivision review; however, if a technical issue does arise, a condition to the rezoning may be appropriate.

Community Meetings

Two community meetings were held on January 8, 2015 at the Burgaw Branch of the Pender County Library. The attached packet includes all information on notice sent and comments made at the meeting.

Technical Review

On February 2, 2015, a copy of the application packet was sent out to the following town departments and organizations. All comments received are noted.

Town of Burgaw Manager
No response

Town of Burgaw Public Works
No response

Town of Burgaw Fire Marshal
Noted potential issues with roads and hydrant spacing. Roads must be 24' at a minimum to comply with town ordinances. All dead end roads over 150 feet require a cul-de-sac diameter of 96'.

Town of Burgaw Police Department
No response

Pender County Soil and Water
No response

NCDOT Division 3
Right turn lane into property would probably be required. Proposed driveway may be tight to get sight triangles.

Conformity with Burgaw 2030 Comprehensive Land Use Plan and Other Adopted Plans

The only current planning document applicable to this property is the Burgaw 2030 Comprehensive Land Use Plan. The following analysis reviews the goals, policies, and actions of the plan applicable to this proposed rezoning. All policy areas are included except for governance, agriculture and forestry, and equity.

Land Use

Land Use Goal 2, Policy 1: Promote the set-aside of environmentally sensitive areas, including riparian buffers and stream corridors, wetlands, and floodplains, within new developments

This property does include several areas of delineated wetlands, the majority of which are part of the open space areas. Some portions of wetland are shown as included on individual residential lots, however.

Land Use Goal 3: To encourage quality and controlled growth that enhances and maintains the community's character

The proposed conditional zoning district is for a traditional neighborhood subdivision. Lots are larger than the minimum lot size of 7,000 square feet. Most are comparable to the size lot provided in Creekside, although some lots are smaller than its smallest lot of about 8,000 square feet.

Amenities are provided through sidewalks on both sides of the street and walking trails. An existing pond could also be considered an amenity.

Economic Development

Economic Development Goal 1: To support the profitability and sustainability of existing businesses and industries

Economic Development Goal 2: To attract businesses and industries that will enhance the economic health and livability of the town

While the development of residential subdivisions does not directly correspond to any stated policy or action recommended by the Land Use Plan, additional "roof tops" can lead to greater investment in local businesses and may attract new businesses to locate in the town. A development of this size, based on the town's average household size in the 2010 census of 1.267, would mean 174 new residents to the town.

Environmental Protection

Environmental Protection Goal 2, Policy 2: Design road and greenway infrastructure to promote bicycling and walking as two of the primary forms of transportation

Walking is supported by the inclusion of sidewalks along all roadways. No bicycle infrastructure is provided.

Environmental Protection Goal 3: To protect the integrity of wetlands and wildlife habitats

The majority of the delineated wetlands on this tract are contained with the open space areas. Some portions are included on proposed residential lots, however.

Parks and Recreation

Parks and Recreation Goal 1: To encourage and protect citizens' health and well-being through a well-connected system of trails, sidewalks, and neighborhood parks

Sidewalks, walking trails, and open space are all included in the plan. All are shown to be the responsibility of the homeowner's association. The town generally includes sidewalks in the right-of-way dedication to the town for public roads.

Public Health and Safety

Public Health and Safety Goal 1: To promote land use patterns and transportation systems that encourage physical activity, promote healthy living, and reduce the risk for chronic illness

Public Health and Safety Goal 1, Policy 1: Encourage design features that support walkability when reviewing new subdivisions

As noted above, the sidewalks are shown along all streets, the design of which allow cross connection to other neighborhoods. Walking trails are also provided.

Transportation

Transportation Goal 1, Policy 3: Consider long term maintenance costs when reviewing subdivision and other proposals that would involve dedication of roads, sidewalks, trails, etc. to the public

Due to issues in the past with private streets, the town has been requiring developers to dedicate all road infrastructure, including sidewalks, to the town. This would require ongoing maintenance responsibility on behalf of the town.

Transportation Goal 2, Policy 1: Provide an interconnected street and circulation system to support a mix of alternative modes of transportation and provide alternative routes for bicyclists, pedestrians, and drivers

The proposal does include cross connections with four adjacent properties.

Housing

Housing Goal 1: To promote the development and preservation of quality housing that is affordable across the full spectrum of household incomes and meets the needs and preferences of Burgaw's households

The proposal includes smaller lots, which will contribute to the affordability of home, and also reflects the traditional neighborhood design preferred by residents. Both cross-access to other properties and quiet cul-de-sacs are included. Neighborhood amenities support active lifestyles.

Housing Goal 1, Action 2: Allow and encourage a range of housing options in all housing districts for aging-in-place options and to encourage income diversity within neighborhoods

Housing Goal 1, Action 4: Maintain income diversity within neighborhoods by allowing a mix of housing types and tenures, duplexes, attached housing, accessory dwelling units, multi-dwelling housing, and mixed-use development.

The biggest contributor to income diversity in the proposal is the wide range in lot size. Some lots are less than 8,000 sf, while others are as large as 18,000+ sf.

Only single-family dwellings are proposed to be permitted. There are no provisions for accessory apartments or temporary health care structures. Temporary health care structures are not currently included in the town ordinances. However, a recent state law requires we allow them, and our ordinance will need to be modified to include this in the near future, so it may be wise to apply this to the conditional zoning district now.

Future Land Use Map

Except for the portion of the property that would be used for a road, two land use designations were applied to this property on the Future Land Use Map, Mixed-Use Transition and Traditional Neighborhood Residential.

Mixed-Use Transition

This land use designation was applied to the portion of the property right behind the power line easement. These areas are designated for land uses that would buffer residential areas from intensive commercial, industrial, and institutional areas. Recommended uses include: offices, small-scale multi-family residential, small-scale mixed-use developments, educational, neighborhood scale commercial, and non-neighborhood residential.

There are no mixed-use transition land uses proposed as part of this conditional rezoning.

Traditional Neighborhood Residential

The remainder of the property is designated as Traditional Neighborhood Residential, which is characterized by its connectivity, both auto and pedestrian, and primarily single-family housing. The development guidelines for this land use designation include: medium density residential, street grid connectivity or multi-use pathways, pedestrian and bicycle infrastructure, and residential cluster developments when needed.

The proposed R7-CZ district would comply with all requirements for traditional neighborhood residential designation, but it does not provide a mixed-use transition buffer. The primary area where this is problematic is with lots 1-11 backing up directly on the power line easement, meaning their backyards or fencing would be visible from White Tractor. All existing vegetation visible from the road is on the subject tract and could be cleared by the developer or future residents.

Staff Recommendation

Overall, the proposed R7-CZ zoning district is similar to the type of traditionally designed single-family subdivision envisioned for the majority of this property. A similar project was even approved by the Board of Commissioners in 2007. As a result, I do recommend approval of the rezoning with the following conditions:

- *Portions of the wetlands, trails, and drainage infrastructure shown as easements should be removed from the deeded portions of lots and included in the open space to be owned by a Home Owners Association.*
- *The power line easement and a minimum 5 ft. vegetative buffer along the rear of lots 1-11 shall be removed from deeded portions of lots and included in the open space to be owned by a Home Owners Association.*
- *Streets and associated sidewalks shall be dedicated to the public.*
- *All utilities should be located within the proposed street rights-of-way, not in easements along the front property lines.*

- *All streets, and all portions of streets constructed through the proposed phasing, shall comply with all town ordinances and applicable fire codes.*
- *The Phase 1/2 line shall be moved so that one continuous section of trail is included in Phase 1.*
- *Any conflict between the approved plan and federal, state, and local regulations will not require changes to the property zoning and will be resolved during the subdivision review process.*

Planning Board Review and Recommendation

At their February 19, 2015 meeting, the Planning Board voted to recommend approval of the conditional rezoning, subject to all staff-proposed conditions, and the following additional condition:

- *Developer must post a surety performance bond, letter of credit or cash security, or combination thereof equal to 1.5 times the entire cost, as estimated by the sub-divider and approved by the Board of Commissioners, of repairing any subdivision roads dedicated to the town that are proposed to be used by construction vehicles for each phase of development.*

The board did discuss the fire marshal's concerns regarding fire truck turnarounds, potential location for a mailbox kiosk, and the possibility or allow additional uses. It was decided that technical issues could be addressed in the subdivision review process and that no additional uses would be added to the proposed district.

In addition, the board adopted the following consistency statement:

The board finds that the proposed conditional rezoning is consistent with the Burgaw 2030 Comprehensive Land Use Plan because it sets aside environmentally sensitive areas, is designed to accommodate pedestrian traffic and recreation, and complies with the development recommendations of the Traditional Neighborhood Residential land use designation. In addition, the proposed rezoning is reasonable and in the public interest because it contributes to the town's housing stock, provides a traditional residential neighborhood, and attracts new residents who will support and attract local businesses.

Upon completion of the presentation the floor was open for discussion.

Commissioner Robbins asked why daycares are allowed in this proposed zoning district. Ms. Roth replied daycares are an allowed home occupation in this district.

Commissioner Dawson asked what the distance is between the power line and the rear property line. Ms. Roth advised she is not sure what that distance is but according to the plan, part of the power line easement is on the individual property owner's property.

Commissioner Rooks asked how does the five foot buffer fit into the plan; will it be on the power line easement or on the individual lots and who will maintain it? Ms. Roth advised all that area will fall into the HOA's maintenance responsibility.

Commissioner Rooks asked if a five foot buffer is sufficient to separate a residential area from a commercial business. Ms. Roth said it may not be sufficient but the reasoning behind this was to keep the lot sizes in conformity with zoning district requirements. Dean Hardison, developer commented that they could certainly fence or use a vegetative buffer such as myrtle bushes to aid in screening. Commissioner Rooks advised his main concern is that residents may begin to complain about businesses that were established before the housing development was constructed.

Mayor Mulligan asked if the open space is going to be maintained by the HOA. Ms. Roth advised the HOA will maintain that space. He then asked if the drainage for the entire development going to run through that open space. Ms. Roth advised some drainage is going to be on easements through private property. She advised that is why one of the recommendations is that all drainage will be held by the HOA instead of the individual property owners. He asked what will insure that the HOA maintains the drainage. Ms. Roth stated that it would be the same as dealing with an individual property owner except there will be only one HOA contact to work with.

Mayor Mulligan asked those that had signed in if they would like to speak at this time.

Dean Hardison advised he would answer any questions if necessary.

Charles White, owner of White Tractor Company advised he is concerned about children going onto his property and he would like to see a fence put across the rear of the property to keep the children out. Mr. Hardison commented that he has no problem with putting a six foot privacy fence up to screen the properties. There was a lengthy discussion regarding the fencing.

There being no further discussion, Mayor Mulligan declared the public hearing closed at 6:05PM. Commissioner Rooks asked for clarification regarding if action on Resolution 2015-13 had any bearing on the requirements

regarding fencing. Ms. Roth advised this item is just adopting Commissioner Rooks made a motion to approve Resolution 2015-13. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

RESOLUTION 2015-13
ADOPTING A STATEMENT REGARDING THE CONSISTENCY OF THE HARDISON REZONING REQUEST WITH THE BURGAW 2030 COMPREHENSIVE LAND USE PLAN

WHEREAS, applicant Dean Hardison Building Corporation is requesting the rezoning of a 49.2 acre tract (PIN 3239-01-1907-0000) located off Highway 117 Bypass from R-20 to R7-CZ for a 137 lot residential subdivision; and

WHEREAS, Town of Burgaw planning staff have reviewed the proposed rezoning for consistency with the Burgaw 2030 Comprehensive Land Use Plan and presented their findings to the Town of Burgaw Planning Board and Town of Burgaw Board of Commissioners; and

WHEREAS, the Town of Burgaw Planning and Zoning Board voted at their February 19, 2015 meeting to recommend the adoption of a draft consistency statement to the Board of Commissioners; and

WHEREAS, the Town of Burgaw Board of Commissioners reviewed the staff report and draft consistency statement at their March 10, 2015 meeting and find the requested rezoning with proposed conditions to be consistent with the Burgaw 2030 Comprehensive Land Use Plan, reasonable, and in the public interest;

NOW THEREFORE BE IT RESOLVED BY THE TOWN OF BURGAW BOARD OF COMMISSIONERS THAT the proposed conditional rezoning is consistent with the Burgaw 2030 Comprehensive Land Use Plan because it sets aside environmentally sensitive areas, is designed to accommodate pedestrian traffic and recreation, and complies with the development recommendations of the Traditional Neighborhood Residential land use designation. In addition, the proposed rezoning is reasonable and in the public interest because it contributes to the town's housing stock, provides a traditional residential neighborhood, and attracts new residents who will support and attract local businesses.

Adopted this 10th day of March, 2015.

Ordinance 2015-06 Approving an Amendment to the Town Of Burgaw Zoning Map rezoning a 49.2 Acre Tract (Pin 3239-01-1907-0000) located off Highway 117 Bypass from R-20 to R7-CZ

Commissioner Rooks made a motion to approve Ordinance 2015-06 with the following amendment to section 1, bullet 2: *that the power line easement, a 6-foot tall privacy fence made of treated lumber and a minimum 5 ft. vegetative buffer along the rear of lots 1-11 shall be removed from deeded portions of lots and included in the open space to be owned by a Home Owners Association.* The motion was seconded by Commissioner Dawson and carried by unanimous vote.

ORDINANCE 2015-06
APPROVING AN AMENDMENT TO THE TOWN OF BURGAW ZONING MAP REZONING A 49.2 ACRE TRACT (PIN 3239-01-1907-0000) LOCATED OFF HIGHWAY 117 BYPASS FROM R-20 TO R7-CZ

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

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

WHEREAS, applicant Dean Hardison Building Corporation is requesting the rezoning of a 49.2 acre tract (PIN 3239-01-1907-0000) located off Highway 117 Bypass from R-20 to R7-CZ for a 137 lot residential subdivision; and

WHEREAS, the Town of Burgaw Planning and Zoning Board voted at their February 19, 2015 meeting to recommend the requested rezoning subject to certain conditions; and

WHEREAS, the Town of Burgaw Board of Commissioners finds that the rezoning is consistent with the Burgaw 2030 Comprehensive Land Use Plan because it sets aside environmentally sensitive areas, is designed to accommodate pedestrian traffic and recreation, and complies with the development recommendations of the Traditional Neighborhood Residential land use designation; and

WHEREAS, the Town of Burgaw Board of Commissioners finds that the proposed rezoning is reasonable and in the public interest because it contributes to the town's housing stock, provides a traditional residential neighborhood, and attracts new residents who will support and attract local businesses;

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

SECTION 1: The Town of Burgaw Official Zoning Map be amended and the parcel referenced above is hereby rezoned to R7-CZ1 as described in the attached zoning district description and approve site plans and subject to the following conditions:

- Portions of the wetlands, trails, and drainage infrastructure shown as easements should be removed from the deeded portions of lots and included in the open space to be owned by a Home Owners Association.
- The power line easement, 6-foot tall privacy fence made of treated lumber and a minimum 5 ft. vegetative buffer along the rear of lots 1-11 shall be removed from deeded portions of lots and included in the open space to be owned by a Home Owners Association.
- Streets and associated sidewalks shall be dedicated to the public.
- All utilities should be located within the proposed street rights-of-way, not in easements along the front property lines.
- All streets, and all portions of streets constructed through the proposed phasing, shall comply with all town ordinances and applicable fire codes.
- The Phase 1/2 line shall be moved so that one continuous section of trail is included in Phase 1.

- Any conflict between the approved plan and federal, state, and local regulations will not require changes to the property zoning and will be resolved during the subdivision review process.
- Developer must post a surety performance bond, letter of credit or cash security, or combination thereof equal to 1.5 times the entire cost, as estimated by the sub-divider and approved by the Board of Commissioners, of repairing any subdivision roads dedicated to the town that are proposed to be used by construction vehicles for each phase of development.

SECTION 2: This amendment to the Town of Burgaw Official Zoning Map becomes effectively immediately upon adoption of this ordinance on this, the 10th day of March, 2015.

CONDITIONAL R-7 ZONING DISTRICT 1 (R7-CZ1): Hardison Residential Subdivision

Approved on March 10, 2015 (Ordinance 2015-04)

Description of Proposed Zoning District

Subject Property: PIN 3239-01-1907-0000, Deed 3766/323

Permitted Uses:

- Accessory Structure;
- Accessory Uses;
- Home Occupation, including day cares;
- Dwelling, Single-Family (including group homes as required by state law);
- Public Electrical Utility Station or Substation;
- Recreational Vehicles (for temporary use);
- Stormwater Retention Ponds;
- Yard Sales; and
- Any use required by federal or state law

Requirement	R-7	Proposed R7-CZ
Minimum Lot Size	7,000 s.f.	7,000 s.f.
Frontage	60 ft.	n/a
Minimum Width	n/a	60 ft.
Minimum Front Setback	25 ft.	25 ft.
Minimum Side Setback	12 ft. (+ 5 ft. for every story over 2)	15 ft.
Minimum Rear Setback	10 ft.	10 ft.
Minimum Side Setback for Corner Lots	n/a	15

The proposed master plan, which would be adopted as part of the approved R7-CZ zoning district, does include open space and walking trails, and sidewalks along all subdivision roads.

The ultimate preliminary subdivision plat brought to the town for approval must comply with the master plan as approved and all conditions placed on the rezoning. The rezoning does not have to address all technical issues that would be addressed at the time of preliminary zoning; however, if a technical issue does arise, a condition to the rezoning may be appropriate.

Approved Site Plan (on file in clerk’s office)

Public Hearing 3 – Rebekah Roth, Planning Administrator

Consideration of a Conditional Use Permit application for a “Restaurant, Limited Service” use to be located at 831 NC Hwy 53 East. Applicant Bojangles’ Restaurants, Inc. has applied for a conditional use permit for a restaurant with drive-thru to be located on a property (PIN 3229-56-9675-0000) on NC Hwy 53 East within the Town of Burgaw corporate limits.

Mayor Mulligan opened the public hearing at 6:13PM.

The following witnesses submitted testimony to the Board of Commissioners during the course of the hearing:

- Rebekah Roth, Town of Burgaw Planning Administrator
- Garrett Otten, Professional Engineer with Commercial Site Design
- Claude Clark, Director of Engineering and Construction with Bojangles’ Restaurants, Inc.
- Paul Mowry, Pender County Assistant Forest Ranger and Certified Arborist
- Karen Harding, citizen of Town of Burgaw
- Noah Harrell, citizen of Town of Burgaw

Disclosures: Mayor Mulligan and Commissioner Robbins disclosed that they had visited the site.

Ms. Roth advised in making the finds of fact and reaching the conclusions of law below, the board has considered, in addition to arguments offered at the hearing, the following documents, exhibits, and reports:

- (a) The application submitted on February 10, 2015 to the Town of Burgaw Planning Administrator (Exhibit 1);
- (b) The map packet of site plans submitted with application on February 10, 2015 (Exhibit 2);
- (c) A zoning map of the subject and adjacent properties from the Town of Burgaw ArcGIS database (Exhibit 3);
- (d) An aerial photograph of the subject and adjacent properties from the Town of Burgaw ArcGIS database (Exhibit 4);
- (e) A flood map of the subject and adjacent properties from the Town of Burgaw ArcGIS database (Exhibit 5);
- (f) Photographs of the subject property taken by Rebekah Roth on February 16, 2015 (Exhibit 6);
- (g) Ordinance Requirements Report, prepared by Rebekah Roth (Exhibit 7);
- (h) Compliance with Town of Burgaw Adopted Plans document, prepared by Rebekah Roth (Exhibit 8)
- (i) Traffic Impact Analysis prepared by Davenport, dated December 3, 2014 (Exhibit 9);
- (j) Email comments from Robert Vause, NCDOT District Engineer, sent February 9, 2015 (Exhibit 10);
- (k) Email comments from Chad McEwen, Town of Burgaw Manager, sent February 11, 2015 (Exhibit 11);
- (l) Email comments sent from Allen Wilson, Town of Burgaw Fire Marshal, sent February 17, 2015 (Exhibit 12);
- (m) Email comments from Louis Hesse, Town of Burgaw Building Inspector, sent February 17, 2015 (Exhibit 13);
- (n) Email comments from Douglas Racine, NCDOT Engineering Technician, sent March 2, 2015 (Exhibit 14);
- (o) Amended circulation plan prepared by Garrett Otten, presented at meeting (Exhibit 15);
- (p) Photographs of existing trees on subject property, taken by Rebekah Roth on March 9, 2015 (Exhibit 16);
- (q) Letter from Paul Mowrey regarding the condition of the existing trees on the subject property, dated March 4, 2015 (Exhibit 17)

Ms. Roth reviewed the finding of facts as presented below the *discussion section*. Excerpts of comments from presenters are included within the content of the Finding of Facts. Final conditions have also been included in the “Conditions to the Application”.

Discussion: There was much discussion regarding the traffic issues that will impact the area upon opening of the new business. In regards to the traffic pattern around the restaurant, there was much concern about the traffic being able to get off of NC Hwy 53 E without backing up in the travel lane. Ms. Roth advised town staff had requested the applicant provide cross access to reduce the need for vehicles to enter and exit Highway 53 when visiting multiple sites. Claude Clark testified that, due to the cross access easement, customers of other businesses would be allowed to use the proposed Bojangles driveway to access other properties.

There was much discussion about placing a deceleration lane along that stretch of NC Hwy 53. Garrett Otten testified that the northbound right turn lane recommended by the Traffic Impact Analysis would affect a property not owned by Bojangles’ Restaurants and that they (Bojangles’) cannot force neighboring properties to give up their property for a deceleration lane. He advised they could put in a turn lane but it will be of no benefit because it will only run the length of their property. He advised that they would be willing to give NCDOT a right of way when they are ready to put in a turn lane. Mr. Otten commented that they can put a thirty foot radius on the driveways which gives the turning vehicles more room and they can leave the highway quicker to prevent traffic backup.

Commissioner Rooks and Commissioner Tyson both agreed that even though there are traffic issues in the area, if NCDOT doesn’t require the turn lane, it is not fair to require this applicant to put in a turn lane when it was not required for McDonald’s. Commissioner Rooks recommended that some kind of compromise could possibly be met to create an even shorter portion of deceleration lane if NCDOT and the property owner can come together on conditions.

Mayor Mulligan spoke at length regarding all the issues he sees with this project, most especially regarding the lack of a turn lane in front of the property. Mayor Mulligan advised in his opinion we are compounding the issue by not

requiring the current applicant to put in a turn lane even though McDonald's does not have one.

There was also much discussion regarding the trees that will need to be removed from the property as well as what type and size trees will be planted on the site. Karen Harding spoke at length regarding the traffic issues that will be created as well as her opposition of removing the old trees on the lot for new development. She commented that the lot is not large enough for the business. She referred to the fact that Burgaw is a Tree City USA town and that older trees should not be removed for development. Noah Harrell echoed Ms. Harding's comment about the trees. He commented that sentimentality and quality go hand in hand. He said he is not opposed to Bojangles' but we need to think about what we want the face of Burgaw to be; is it parking lots or the natural beauty of the oaks that we have here. Mayor Mulligan also expressed objections to removing the older, larger trees on the property.

Paul Mowery, Asst. Forest Ranger advised that the older trees must be moved and the only tree not in the site area would probably not survive the stress of the impact of construction. When questioned by the Commissioners, Mr. Mowery advised the trees are mature and currently in decline at this point having lived at least half or more of their lives. Commissioner Robbins commented that he agrees with Mr. Mowery and believes the trees may be as much as sixty years old. He recommended that larger trees should be planted when the landscaping is done. He is recommending 15 to 20 foot high shade/canopy species of at least 4-inch caliper as listed on the town's approved vegetation list. Commissioner Dawson also agreed with Commissioner Robbins' recommendation regarding the planting of larger trees indigenous to this area.

Mayor Mulligan asked if there were any further comments that the Board would like to make. There being no comments from the Board, Mayor Mulligan commented that he feels he has made his objections clear at this point.

There being no further discussion, Mayor Mulligan called for a vote on the finding of facts. The result of the vote is noted beside each finding with all conditions both proposed and added to each finding. The specific findings of fact and conclusions of law listed below are final as ordered by the Board of Commissioners.

GENERAL FINDINGS OF FACT

1. The subject property is located at 831 NC Hwy 53 East.
2. The subject property is 1.8 acres and currently the location of a residential dwelling.
3. The subject property is located within the B-2, Highway Business, zoning district.
4. The subject property is located on a state-maintained highway and has one current access driveway.
5. The proposed use is listed as a conditional use in *Section 4-9: Table of Permitted Uses* and is subject to regulations listed in *Section 14-20: Regulations for Conditional Uses* in the Town of Burgaw Unified Development Ordinance, as well as Town of Burgaw parking, landscaping, tree preservation, and solid waste screening regulations for the proposed site design.

SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW

Standard 1. The use will not materially endanger the public health, safety, or general welfare if located where proposed and developed according to the plan as submitted and approved. (All five Commissioners voted "Yes")

1. In order to be granted a conditional use permit, Section 14-19 of the Town of Burgaw Unified Development Ordinance requires that the applicant prove that "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."
2. A Traffic Impact Analysis was prepared by the firm Davenport and recommends "a northbound right turn lane on NC 53 with 100 feet of storage and appropriate deceleration length and taper to accommodate right turns into the site."
3. The Traffic Impact analysis also states that "a queuing analysis was performed to ensure that there was adequate space to accommodate both the queue for the southbound left turning traffic at the Bojangles' access and the northbound left turning traffic at the Walmart full access. The analysis indicates there will be ample space for both left turning movements."

4. NCDOT District Engineer Robert Vause had sent an email on February 9, 2015 stating, “after review, we concur with the recommendations in the TIA and add the following: (1) Either configure the driveway and internal circulation to prohibit entering vehicles from turning to the left upon entering the site [or] provide an internal protect stem.”
5. Rebekah Roth presented that in a phone conversation between her and Douglas Racine of NCDOT on March 2, 2015, Mr. Racine indicated that NCDOT would require the right turn lane into the property recommended by the traffic impact analysis, but that the applicant may be applying for a hardship due to limited road frontage. If the hardship was granted, the right turn lane would not be required by NCDOT.
6. The stormwater system is subject to NCDENR review and permitting.
7. Rebekah Roth presented that in a phone conversation between her and Kelly Johnson of NCDENR on February 17, 2015, Ms. Johnson said that the applicant had submitted the stormwater plan for review and had been told some changes to the pond were necessary, which might necessitate a change to its footprint.
8. Town staff had requested the applicant provide cross access to reduce the need for vehicles to enter and exit Highway 53 when visiting multiple sites.
9. The applicant proposed cross access drives and easements along the front of the property because of the counterclockwise internal circulation of traffic.
10. Town Manager Chad McEwen had sent an email on February 11, 2015 stating, “I don’t think it would be bad to require a rear cross connection as well in the event that access is eventually available to the Walmart stop light.”
11. Garrett Otten, presented an alternative circulation plan for the front cross access drives to address NCDOT’s concerns regarding left turns in front of the building.
12. Garrett Otten testified that the northbound right turn lane recommended by the Traffic Impact Analysis would affect a property not owned by Bojangles’ Restaurants.
13. Claude Clark testified that, due to the cross access easement, customers of other businesses would be allowed to use the proposed Bojangles driveway to access other properties.
14. Garrett Otten testified that the applicant’s representatives had met with NCDENR and changes to the stormwater plan would not result in changes to the submitted site plan.
15. As a result, the Board of Commissioners finds that the proposed application meets the requirements of this standard, provided the following conditions:
 - a. The applicant will dedicate land for future turn lane to NCDOT.
 - b. The applicant will widen the driveway to a minimum 30 foot radius and to the property line if approved by NCDOT.

Standard 2: The use meets all required conditions and specifications. (All five Commissioners voted “Yes”)

1. In order to be granted a conditional use permit, Section 14-19 of the Town of Burgaw Unified Development Ordinance requires that the applicant prove that “the use meets all required conditions and specifications.”
2. According to an email from Allen Wilson, Town of Burgaw Fire Marshal, there are no issues with fire code compliance.
3. Rebekah Roth presented that in a phone conversation with Bill Fay, Town of Burgaw Public Works Director, he had indicated that the utility plans were not sufficient but that the issues would not affect the proposed site plan.
4. According to the Ordinance Requirements Report submitted by Rebekah Roth,
 - a. Specifications for screening were not included on the submitted site plan and a solid waste plan, including dumpster screenings, would have to be approved prior to occupancy;
 - b. 50 total spaces were provided, 48 regular and 2 handicap accessible, with only 13 spaces per 1,000 gross square feet of building space required (40 spaces);
 - c. All parking spaces met dimensional requirements;
 - d. No off-street loading space was specified on site plan;
 - e. The submitted site plans showed the planned removal of six protected trees located around the existing house;
 - f. Staff had not required the protected trees be retained due to their relatively central location on the site that would interfere with the circulation path of the proposed driveway;

- g. Sufficient trees were included in the proposed landscaping plan to meet the requirement for 15 trees per acre;
 - h. A tree permit would be required prior to the removal of any trees;
 - i. The subject site had 164.79 feet of frontage, which would require six 8 foot tall trees or eighteen 5 foot tall trees and thirty shrubs of streetyard landscaping;
 - j. Five 8 foot tall crape myrtles were shown in the streetyard on the landscaping plan and referenced Indian Hawthorns were not shown on the plan;
 - k. The total paved area of the site equaled 33,700 square feet, which would require 2,696 square feet of landscaping, and 4,884 square feet of parking landscaping was provided according to the plan;
 - l. Sufficient trees were provided for parking lot landscaping;
 - m. 'October Glory' Red Maples were proposed for the required shade trees, but that species was not on the approved species list;
 - n. All other parking lot landscaping specifications were met;
 - o. The proposed restaurant would be located next to an existing residential lot that was zoned B-2 and had not been lived in since June 2014;
 - p. The landscaping plan provided for vegetation between the parking area and the residential lot, but it was not tall or dense enough to qualify as a type I buffer, which could be required when a restaurant was adjacent to a residential use; and
 - q. The site plan showed a drive-thru window located on the side of the building that would accommodate over eleven vehicles before parking spaces were blocked.
5. Rebekah Roth testified that she had spoken on the phone to the realtor for the residential property adjacent to the subject site, and the residential property is being marketed for sale as a commercial site.
 6. Paul Mowry testified that based on the current site plan, the only tree possible for retention was located on the northeast corner, and he estimated its chances for survival ten years post construction would be 50%.
 7. Paul Mowry testified that the tree located on the northeast corner was a laurel oak and only lived for 60-100 years.
 8. Karen Harding testified that it was a not appropriate for a Tree City USA designated town to allow the removal of mature trees.
 9. Noah Harrell requested the existing trees be preserved.
 10. As a result, the Board of Commissioners finds that the proposed application meets the requirements of this standard, provided the following conditions:
 - a. The utility plan must be reviewed and approved by the Public Works Director prior to construction.
 - b. A solid waste plan, including specifications for dumpster screenings, must be approved by the Planning Administrator prior to issuance of building permits.
 - c. Six 8 foot tall trees and 30 shrubs must be planted in the street yard.
 - d. Proposed 'October Glory' Red Maples must be replaced with a shade/canopy species of 4" caliper as listed on the town's approved vegetation list and approved by the Planning Administrator in coordination with the Pender County Assistant Forest Ranger.
 - e. A modified landscaping plan must be approved by the Planning Administrator prior to planting.

Standard 3. The use will not adversely affect the use of or any physical attribute of adjoining or abutting property or the use is a public necessity. (All five Commissioners voted "Yes")

1. In order to be granted a conditional use permit, Section 14-19 of the Town of Burgaw Unified Development Ordinance requires that the applicant prove that "the use will not adversely affect the use or any physical attribute of adjoining or abutting property or the use is a public necessity."
2. The use is not a public necessity.
3. Town of Burgaw staff has requested the cross access drives be paved to the property line, but the applicant has proposed stubbing the drives until a later date.
4. Claude Clark testified that cross access drives are generally not paved to the property line so that it would be easier to match grades across different sites. The adjacent sites would just have to obtain a construction easement from Bojangles.
5. As a result, the board of Commissioners finds that the proposed application meets the requirements of this standard, provided the following condition:

- a. Cross access drives must be paved to the property line at the time of construction.

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

1. In order to be granted a conditional use permit, Section 14-19 of the Town of Burgaw Unified Development Ordinance requires that the applicant prove that "the location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the Town of Burgaw Unified Development Ordinance, Burgaw 2030 Comprehensive Land Use Plan, and NC Highway 53 Corridor Study."
2. The proposed site is zoned B-2, Highway Business, is surrounded by other properties zoned B-2, and is across the street from other commercial development.
3. Rebekah Roth presented the following findings as reported in the Compliance with Town of Burgaw Adopted Plans document:
 - a. The proposed restaurant would be a redevelopment of an existing developed tract and existing infrastructure is available, in conformance with the Land Use Plan's Land Use Goal 1's aim to promote infill development and revitalization of areas with existing infrastructure;
 - b. The proposed restaurant would provide jobs and increase the town's tax income, in conformance with the Land Use Plan's Economic Development Goal 2's aim to attract businesses and industries that will enhance the economic health and livability of the town;
 - c. The redevelopment would include the loss of several mature trees and new trees planted would equal fifteen per acre, while the Land Use Plan's Environmental Protection Goal 4 aims to preserve and enhance the town's tree canopy;
 - d. The developer would be installing a sidewalk along the front of the property that connects to the restaurant through additional sidewalks and crosswalks, in conformance with the Land Use Plan's Parks and Recreation Goal 1's aim to encourage and protect citizens' health and well-being through a well-connected system of trails, sidewalks, and neighborhood parks; Public Health and Safety Goal 1's aim to promote land use patterns and transportation systems that encourage physical activity, promote healthy living, and reduce risk for chronic illnesses; and Transportation Goal 2's aim to increase the use and effectiveness of alternative transportation modes, such as walking, biking, etc.
 - e. The Burgaw 2030 Comprehensive Land Use Plan recommends requiring development and redevelopment proposals to accommodate multiple modes of transportation.
 - f. The propose site plan does not include any bicycle infrastructure.
 - g. The Future Land Use Map designates the property as Commercial Growth, and development guidelines for this land use designation include the provision of pedestrian and bicycle connections to parking and other buildings and properties; hiding of larger parking lots; increased landscaping to buffer parking areas, outside storage, display areas, etc.; masonry façades; and monument, ground, or column signs.
 - h. The NC 53 Corridor Study recommends that development along the Highway 53 corridor between Stag Park Rd. and the residential neighborhood on the other side of the Highway 117 intersection be required to have both perimeter and interior parking lot plantings, additional buffer widths between residential and nonresidential uses, require ground signs a maximum of 8 feet in height, require off-street loading to the rear or side of buildings, and provide for non-vehicular access to and from major trip generators along and across the NC 53 Corridor.
4. As a result, the board of Commissioners finds that the proposed application meets the requirements of the standard, provided the following conditions:
 - a. A bicycle rack shall be installed prior to occupancy in a location approved by the Planning Administrator.
 - b. The building façade shall be composed of masonry materials.
 - c. Any freestanding sign must be a monument, ground, or column sign.

THEREFORE, on the basis of the foregoing, IT IS ORDERED that the application for a conditional use permit for a “restaurant, limited service” use to be located at 831 NC Highway 53 East (PIN 3229-56-9675-0000) be GRANTED, subject to the following CONDITIONS TO THE APPLICATION:

1. The applicant will dedicate land for future turn lane to NCDOT.
2. The applicant will widen the driveway to a minimum 30 foot radius and to the property line if approved by NCDOT.
3. The utility plan must be reviewed and approved by the Public Works Director prior to construction.
4. A solid waste plan, including specifications for dumpster screenings, must be approved by the Planning Administrator prior to issuance of building permits.
5. Six 8 foot tall trees and 30 shrubs must be planted in the street yard.
6. Proposed ‘October Glory’ Red Maples must be replaced with a shade/canopy species of 4-inch caliper as listed on the town’s approved vegetation list and approved by the Planning Administrator in coordination with the Pender County Assistant Forest Ranger.
7. A modified landscaping plan must be approved by the Planning Administrator prior to planting.
8. Cross access drives must be paved to the property line at the time of construction.
9. A bicycle rack shall be installed prior to occupancy in a location approved by the Planning Administrator.
10. The building façade shall be composed of masonry materials.
11. Any freestanding sign must be a monument, ground, or column sign.

ORDERED this 10th day of March, 2015 by the Town of Burgaw Board of Commissioners.

Mayor Mulligan declared the public hearing closed at 7:30PM.

Commissioner Robbins made a motion to approve the conditional use permit with all conditions and amendments as presented. The motion was seconded by Commissioner Rooks and carried by unanimous vote.

ITEMS FROM MAYOR AND BOARD OF COMMISSIONERS

Commissioner Dawson said she saw on the news that the City of Wilmington has been granted permission to use a railroad right of way as a greenspace. She asked if we could do the same with our railroad right of way. Mr. McEwen advised we had tried this when we built the walking trail, but there is a general statute that reads that NCDOT can continue to maintain right of way and a right to a right of way so long as they foresee within the next ten to twenty years that they may re-initiate the rail line. He said that process continues such that when the first twenty years is up, NCDOT will do another twenty years. Mr. McEwen said the reason we didn’t pursue that option was because we had the option of using Dickerson Street. He advised the land lease and paper work required by NCDOT was really messy even if in the end they actually allowed us to use the space. He said they can petition the state for use of the property with the stipulation that if the railroad reopens, they will have to vacate the space being used. Commissioner Dawson said she is interested in using the space for a passive park or something similar. There was discussion about the extension of the walking trail to the west side of the tracks by crossing over the railroad tracks at several crossings including Clark Street, Hayes Street, Fremont Street, Wilmington Street, Bridgers Street and Wallace Street. There was much discussion regarding the type of park etc. to put in the right of way.

Commissioner Tyson commented there is a dip in the sidewalk in front of the Methodist Church. Mr. Fay was asked to check on this situation.

Commissioner Tyson inquired as to whether or not there has been any discussion regarding hospital security. Mr. McEwen advised there has been some correspondence but there doesn’t seem to be a plan in the works to fix the problem. Mr. McEwen advised he has requested a meeting with all parties involved but Ms. Glaser has not responded.

CLOSED SESSION

Commissioner Robbins made a motion to go into closed session pursuant to NCGS 143-318.11 paragraph (a) item (3) attorney/client privilege and NCGS 143-318.11 paragraph (a) item (6) personnel. The motion was seconded by Commissioner Tyson and carried by unanimous vote.

Closed session began at 7:46PM.

OPEN SESSION RECONVENED

Commissioner Rooks made a motion to reconvene to open session. The motion was seconded by Commissioner Walker and carried by unanimous vote. Open session reconvened at 9:28PM.

There was no action taken in closed session.

ADJOURNMENT

There being no further business, Commissioner Tyson made a motion to adjourn the meeting. The motion was seconded by Commissioner Rooks and carried by unanimous vote.

The meeting adjourned at 9:30PM.

Eugene Mulligan, Mayor

Attest: _____
Sylvia W. Raynor, Town Clerk