

**TOWN OF BURGAW BOARD OF COMMISSIONERS
SPECIAL MEETING**

DATE: MARCH 18, 2014
TIME: 5:00 PM
PLACE: Frances Dawson Basden Judicial Annex
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
Stephanie Bowens, Star News
INVOCATION: Nick Smith, Chaplain
PLEDGE OF ALLEGIANCE: All

The meeting was called to order at 5:00PM by Mayor Eugene Mulligan. Mayor Mulligan advised there has been a request from the applicant to strike items 5 and 6 from the agenda. After a brief discussion, Commissioner Dawson made a motion to strike items 5 and 6 from the agenda and to move items 10, 11, 12 and 13 to the beginning of the agenda. The motion was seconded by Commissioner Walker and carried by unanimous vote.

Public Hearing – Consideration of a proposed text change amendment to Articles 4 and 20 of the Town of Burgaw Unified Development Ordinance to allow for conditional zoning

Mayor Mulligan declared the public hearing open at 5:02PM.

Rebekah Roth, Planning Administrator presented the following background information:

One of the recommended actions in the Burgaw 2030 Comprehensive Land Use Plan was to explore the addition of conditional zoning to the Unified Development Ordinance to provide more flexibility for the land owner/developer and town to mutually agree upon specific development conditions and requirements. Authorized by the General Assembly in 2005, conditional zoning is a site-specific, legislative process that is used widely across the state to provide an alternative to the one-size-fits-all nature of conventional zoning without the procedural complexities associated with the quasi-judicial hearings for conditional uses.

In conventional zoning, the Town creates an Official Zoning Map that designates each property in its jurisdiction as a particular zoning district. Thereafter, only uses laid out in advance may be conducted on those properties, and structures must comply with pre-set dimensional requirements. In acknowledgement that conventional zoning cannot always adequately address the particularities of a specific site, two mechanisms are built in to allow flexibility to the zoning ordinances: variances and conditional or special use permits. Variances may be issued through a quasi-judicial process to determine if the requirements of the ordinances create an unnecessary burden on a particular property, with certain limitations: variances cannot be applied to use regulations and are not meant to address issues common to the neighborhood or general public. Conditional and special use permits are also issued through a quasi-judicial process, and permits are intended to be approved if they meet all standards of the ordinance. As opposed to variances, conditional uses are issued *only* for uses and do not apply to dimensional requirements.

The quasi-judicial process of variances and conditional use permits, while building flexibility into the ordinance, has drawbacks for both developers and the Town. As mentioned above, variances do not apply to uses, and unless the site specific conditions are peculiar to the property, variances should not be issued by the Board of Adjustment. Conditional use permit applications require highly detailed site design and engineering up-front, which is risky for developers, and since it must only consider the standards of the ordinance, the Town is sometimes obliged to approve development that is not of the quality desired if all general standards are met. In addition, the quasi-judicial process itself is cumbersome. Board members accustomed to acting in a legislative capacity are required to function as judges; as a result, they cannot consider the opinions of their constituents and should not reflect on their personal experience or exhibit bias.

Conditional zoning, however, because it is a legislative process, allows the active participation of board members and neighbors. Site specific issues may be discussed, use of the property may be discussed, and only legislative procedures must be followed.

Proposed Amendment. The proposed amendment allows for two types of conditional zoning districts, parallel districts and a Planned Development district. Parallel districts use the conventional zoning districts as a basis for the conditional district; only certain standards of the district may differ—setbacks, range of uses, etc. This type of district is generally used when a particular use or range of uses is appropriate for a particular site, though not all uses generally allowed in the conventional zoning district. For instance, the Rowe property on Timberly Lane was not rezoned when first requested by the property owner because the full range of uses in an O&I district were not considered at that time to be appropriate for the largely residential area. If conditional zoning had been applied for instead, the property could have been rezoned OI-CZ and only allowed office uses. This may have addressed both the desires of the property owner and the concerns of the neighbors.

The Planned Development district is intended to promote innovative uses and design elements not currently allowed in the ordinance that may be appropriate in certain areas. Over the past few years, the planning department has been approached with a wide variety of development possibilities that our ordinance has not addressed: special event centers, breweries with retail components, etc. While we have tried to integrate some of these issues into our ordinance, if possible, the act of trying to make a particular use appropriate across all of the properties in a particular zoning district requires more stringent regulations than would be necessary for a site-specific project. Basically, this amendment would allow the town to approve site-specific uses and developments that cannot be adequately addressed or anticipated on a town-wide basis.

Upon completion of the presentation Mayor Mulligan advised there are no speakers signed up for this public hearing.

Mayor Mulligan asked if there is any way that the conditional rezoning of a property can be withdrawn if the use of the property ceases for the purpose that it was rezoned in the beginning. Ms. Roth advised the property can always be rezoned back to a conventional zoning district.

Commissioner Robbins asked if the conditional zoning is a quasi-judicial process. Ms. Roth advised conditional zoning is a legislative process that allows the active participation of the Board and the neighbors.

Commissioner Dawson asked if there are other towns in the area that allow conditional zoning. Ms. Roth advised that Pender County as well as Wilmington, Leland and the Town of Wallace has something similar.

There being no further discussion, Mayor Mulligan closed the public hearing at 5:11 PM.

Commissioner Robbins made a motion to approve Ordinance 2014-11 as presented. The motion was seconded by Commissioner Walker and carried by unanimous vote.

**ORDINANCE 2014-11
APPROVING AN AMENDMENT TO ARTICLES 4 AND 20 OF THE TOWN OF BURGAW UNIFIED DEVELOPMENT
ORDINANCE TO ALLOW FOR CONDITIONAL ZONING**

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, in acknowledgement that conventional zoning cannot always adequately address the particularities of a specific site and of the limitations of the UDO's two current tools to provide flexibility, variances and conditional use permits; and

WHEREAS, the North Carolina General Assembly authorized conditional zoning in 2005 to provide a legislative process to accommodate site specific issues and provide a forum for active participation of board members and neighbors; and

WHEREAS, one of the recommended actions of the Burgaw 2030 Comprehensive Land Use Plan was to explore the addition of conditional zoning to the UDO as a way to provide more flexibility for the land owner/developer and the town to mutually agree upon specific development conditions and requirements; and

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

WHEREAS, the Town of Burgaw Planning and Zoning Board voted at their February 20, 2014 meeting to recommend the attached text change amendment; and

WHEREAS, the Town of Burgaw Board of Commissioners finds that the attached text change amendment is in conformity 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 Town of Burgaw Unified Development Ordinance is amended as attached.

SECTION 2: This amendment becomes effective immediately upon adoption of this ordinance on this, **the 18th day of March, 2014.**

ARTICLE 4. ZONING DISTRICTS AND ZONING MAP

PART I. ZONING DISTRICTS

Section 4-1: Establishment of Zoning Districts, and the Purpose Thereof

Floating Zoning Districts

Floating zoning districts are a special kind of zoning district not applied to the zoning map unless requested by the applicant.

- (A) PUD Planned Unit Development District. The PUD Planned Unit Development District is a mixed use district that may only be developed in conformance with an approved Master Development Plan for a specific planned unit development. The purpose of a PUD district is to encourage the orderly integration of residential development, open space land uses, and in some cases commercial non-residential development that conforms to the design requirements contained herein. It permits the planning of a project and a calculation of densities over the entire development rather than on an individual lot-by-lot basis. A PUD district shall not be used as a means of circumventing the town's adopted land development regulations for routine developments. This district may be served by public water and sewer facilities. No PUD district shall be less than twenty-five (25) acres in area.
- (B) Parallel Conditional Zoning (CZ) Districts. These zoning districts provide for those situations where a particular use, properly planned, may be appropriate for a particular site but where the general district has insufficient standards to mitigate the site-specific impact on surrounding areas. Uses that may be considered for a parallel conditional zoning district are restricted to those uses permitted in the corresponding general zoning district. No uses shall be permitted except those authorized by the Conditional Zoning District. All procedures for conditional zoning districts can be found in Article 20, Part II: Conditional Zoning Amendments.

Parallel Conditional Zoning Districts are as follows: RA-CZ, R20-CZ, R12-CZ, R7-CZ, R7MH-CZ, O&I-CZ, B1-CZ, B2-CZ, I1-CZ, I2-CZ

- (C) PD-CZ Planned Development District. The PD-CZ Planned Development District is a conditional zoning district subject to the rezoning procedures outlined in Article 20, Part II: Conditional Zoning Amendments. The purpose of the PD-CZ zoning district is to allow innovative land use and design for unified non-residential developments that would not otherwise be permitted under this Ordinance. This district encourages innovation by allowing flexibility in permitted use, design, and layout requirements in accordance with a Master Development Plan.

PD-CZ districts may include no more than one tract, and recombination of multiple tracts may be required for final zoning approval. Uses that may be considered for a PD-CZ zoning district may not include those listed in Section 4-9, Table of Permitted Uses as being allowed only in the I-1 and/or I-2 zoning districts or Intensive Livestock Production.

ARTICLE 20. AMENDMENTS

Part I. In General

Part II. Conditional Zoning Amendments

Section 20-4: Purpose

Conditional zoning districts are zoning districts in which the development and use of the property is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of the legislative decision creating the district and applying it to the particular property.

A conditional zoning district allows particular uses to be established only in accordance with specific standards and conditions pertaining to each individual development project. Some land uses are of such a nature or scale that they have significant impacts on both the immediately surrounding area and on the entire community, which cannot be predetermined and controlled by general district standards. There are also circumstances in which a general district designation allowing such a use by right would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of these regulations, the adopted land use plan, and adopted district and area plans. The review process established in this section provides for the accommodation of such uses by a reclassification of property into a conditional zoning district, subject to specific conditions, which ensure compatibility of the use with the use and enjoyment of neighboring properties. A conditional zoning district is not intended for securing early or speculative reclassification of property.

Section 20-5: Requirements for Application

- (A) Property may be rezoned to a conditional zoning district only in response to, and consistent with, an application submitted by the owner(s) of all property to be included in the district.
- (B) A petition for conditional zoning must include a preliminary site plan and supporting information and text that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that, in addition to all predetermined ordinance requirements, will govern the development and use of the property. The following information must be provided, if applicable:
- a. A boundary survey and vicinity map showing the property's total acreage, its zoning classification(s), the general location in relation to adjacent properties, major streets, railroads, and/or waterways, the date, and north arrow;
 - b. All existing easements, reservations, and rights-of-way;
 - c. Approximate location on the site of existing and proposed buildings, structures, and other improvements;
 - d. Approximate dimensions, including height of proposed buildings, structures, and other improvements;
 - e. Proposed use of all land and structures, including the number and square footage of all units, residential and nonresidential;
 - f. All yards, buffers, screening, and landscaping required by these regulations or proposed by the petitioner;
 - g. All existing and proposed points of access to public streets;
 - h. Delineation of areas within the regulatory floodplain as shown on the Official Flood Insurance Rate Maps;
 - i. Location of all wetlands (must be confirmed by the Army Corp of Engineers if shown to be a probable wetland by NC Division of Coastal Management);
 - j. Proposed phasing, if any;

- k. *The location of existing and proposed storm drainage patterns and facilities intended to serve the proposed development;*
 - l. *Approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, pedestrian walkways, and open space;*
 - m. *Generalized traffic, parking, and circulation plans. This shall include existing and planned bicycle and pedestrian facilities as well as vehicular facilities;*
 - n. *Proposed screening, buffers, and landscaping over and above that required by these regulations, as well as proposed treatment of any existing natural features;*
 - o. *Existing and general proposed topography, if available, at five-foot contour intervals or less;*
 - p. *The location of existing vegetation and regulated trees;*
 - q. *Scale of buildings relative to abutting property;*
 - r. *Building elevations and exterior features of proposed development;*
 - s. *Master Sign Plan;*
 - t. *An evaluation of traffic impacts prepared in accordance with a scope of work established by NCDOT, if applicable. The evaluation shall be signed by a licensed traffic engineer and based on proposed density and intensity for the acreage;*
 - u. *Inventory of the existing environmental, cultural, historical, and natural site attributes;*
 - v. *A conceptual plan that shows with reasonable certainty the type and intensity of use for the proposal; and*
 - w. *Any other information needed to demonstrate compliance with these regulations.*
- (C) *The site plan and any supporting text shall constitute part of the petition for all purposes under this section. The Land Use Administrator or designee may require the petition to submit as many copies of the petition and site plan as needed to circulate to other government agencies for review and comment.*
- (D) *The Planning Administrator or designee has the authority to waive any application requirement where the type of use or scale of proposal makes providing the information unnecessary or impractical.*
- (E) *In the course of evaluating the application, the Town Manager, Land Use Administrator, Planning Board, or Board of Commissioners may request additional information from the petitioner.*

Section 20-6: Required Community Meeting Before Planning Board Review

Before the Planning Board will review a petition for a conditional zoning district, the applicant must file with the Planning Administrator a written report of a minimum of two (2) community meetings held by the applicant. Notice of such a meeting shall be given to property owners and tenants adjacent to the proposed project and within five hundred (500) feet of the area to be considered. At least one community meeting shall be after 6pm in the evening. Notice of both meetings shall be given two weeks in advance. The report shall include, among other information, a listing of those persons and organizations contacted about the meeting and the manner and date of contact; the date, time, and location of the meeting; a roster of the persons in attendance at each meeting; a summary of issues discussed at the meeting; and description of any changes to the rezoning petition made by the petitioner as a result of the meeting. In the event the petitioner has not held at least one meeting pursuant to this subsection, the petitioner shall file a report documenting efforts that were made to arrange such a meeting and stating the reasons such a meeting was not held. The adequacy of a meeting held or report filed pursuant to this section shall be considered by the Board of Commissioners in the rezoning request but shall not be subject to judicial review.

Section 20-7: Approval of Conditional Zoning District

Conditional zoning district decisions are a legislative process subject to judicial review using the same procedures and standard of review as apply to general zoning decisions. In considering any petition for conditional zoning district, the Board of Commissioners shall act in accordance with Article 20, Part I, as modified by the specific procedures and requirements set for in this ordinance. Conditional zoning district decisions shall be made in consideration of identified relevant adopted land use plans for the area, including, but not limited to comprehensive plans and other land use policy documents

Section 20-8: Conditions to Approval of Petition

- (A) *The conditions and site specific standards in a Conditional Zoning District shall be limited to those addressing the conformance of the development and use of the site to the Development Ordinance, the comprehensive plan or other officially adopted plan, or those that address the impacts reasonably expected to be generated by the development of or use of the site as proposed. Conditions may be more restrictive or less restrictive than the requirements of the Development Ordinance. Less restrictive conditions shall be limited to those affecting dimensional, parking, and landscaping requirements.*
- (B) *Any conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development, street and right-of-way improvements, water and sewer improvements, stormwater drainage, the provision of open space, and other matters that the Board of Commissioners may find appropriate or the petitioner may propose. Such conditions to approval may include, but are not limited to, dedication to the Town, County, or State, as appropriate, of any rights-of-way or easements for streets, water, sewer, or other public utilities necessary to serve the proposed development.*
- (C) *No condition shall be made part of the application, or attached to the approval of a Conditional Zoning District, which: specifies the ownership status, race, religion, or other characteristics of the occupation of housing units; establishes a minimum size of a dwelling unit; establishes a maximum value of buildings or improvements; or is intended to exclude residents based on race, religion, or income. No condition shall be made part of the application that binds or obligates the Town to perform in any manner relative to the approval of the map amendment or development of this property.*
- (D) *The applicant shall have a reasonable opportunity to consider and respond to any conditions suggested by the Town prior to final action by the Board of Commissioners. Only those conditions mutually agreed upon by the applicant and the Town may be incorporated into the approved Conditional Zoning District.*

Section 20-9: Effect of Approval

- (A) *If a petition for conditional zoning is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the district's category, the approved site plan for the district, and any*

additional approved, rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the Zoning Map.

- (B) If a petition is approved, the petitioner shall comply with all requirements established for obtaining all required permits. Only those uses and structures indicated in the approved petition and site plan shall be allowed on the subject property. A change of location of the structures may be authorized pursuant to Section 20-9: Alterations to Approval.*
- (C) Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the Zoning Map by the appropriate district designation with a number specifying the particular conditional zoning district (e.g. RA-CZ1, OI-CZ5).*
- (D) Any violation of the approved site plan or any rules, regulations, or conditions for the district shall be treated the same as any other violation of this chapter and shall be subject to the same remedies and penalties as any such violation.*

Section 20-10: Alterations to Approval

- (A) Except as provided below, changes to an approved petition or to the conditions attached to the approved petition shall be treated the same as amendments to these regulations or to the Zoning Map and shall be processed in accordance with the procedures of Part II of this Article.*
- (B) The Planning Administrator or designee shall have the delegated authority to approve an administrative amendment change to an approved site plan. The standard for approving or denying such a requested change shall be that the change does not significantly alter the site plan or its conditions and that the change does not have a significant impact upon abutting properties. An administrative amendment shall not be subject to a protest petition as outlined in the ordinance. Any decision must be in writing stating the grounds for approval or denial.*
- (C) Any changes that increase the intensity of the development are limited for nonresidential development to 10% of the approved requirement or 1,000 square feet, whichever is less.*
- (D) The Planning Administrator or designee, however, shall always have the discretion to decline to exercise the delegated authority either because of uncertainty about approval of the change pursuant to the standard or because a rezoning petition for a public hearing and Board of Commissioners consideration is deemed appropriate under the circumstances. If the Planning Administrator or designee declines to exercise this authority, then the applicant can only file a rezoning petition for a public hearing and Board of Commissioners decision.*
- (E) Any request for an administrative amendment shall be pursuant to a written letter, signed by the property owner, to the Planning Administrator detailing the requested change. Upon request, the applicant must provide any additional information that is requested. Accompanying the letter shall be the applicable fee for administrative review. Upon an approval of an administrative amendment, the applicant must file a sufficient number of copies of a revised site plan as deemed necessary by the Planning Administrator.*
- (F) If the Planning Administrator or designee denies approval of the requested amendment, then the applicant can appeal that decision to the Board of Adjustment, in accordance with Article 16 of this ordinance, or may file a rezoning petition for an amendment to the site plan to receive further consideration.*
- (G) An adjacent property owner shall be entitled to appeal the approval of an administrative amendment change to the Board of Adjustment within fifteen (15) days of knowledge of the approval, with a maximum of thirty (30) days after the approval of the administrative amendment.*

Section 20-11: Review of Approval of a Conditional Use Permit

It is intended that property shall be reclassified to a conditional zoning district only in the event of firm plans to develop the property. Therefore, no sooner than three (3) years after the date of approval of the petition, the Planning Board may examine the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval. If the Planning Board determines that progress has not been made in accordance with the approved petition and conditions, the Planning Board shall forward to the Board of Commissioners a report, which may recommend that the property be classified in another district.

Public Hearing – Consideration of a budget amendment to the 2013-2014 Town of Burgaw Schedule of Fees to provide for conditional zoning applications

Mayor Mulligan declared the public hearing open at 5:12PM.

Rebekah Roth, Planning Administrator advised planning staff recommends adding specified fees for the conditional zoning process to the 2013-2014 Town of Burgaw Schedule of Fees if the text change amendment is approved. She advised currently, the town charges a base fee of \$250 for rezoning applications and \$300 for conditional use permit applications. Because the amount of review necessary for a conditional zoning application is similar to that for a conditional use permit, staff recommends setting the application fee for \$300, plus \$6.15 for each property owner who is legally required to be notified of public hearings.

There were no speakers signed up for this hearing.

There being no comments from the Board of Commissioners, Mayor Mulligan declared the public hearing closed and called for a vote on Ordinance 2014-12 Amending Fiscal Year 2013-2014 Town of Burgaw Schedule of Fees – Zoning Application Fees.

Commissioner Dawson made a motion to approve Ordinance 2014-12 as presented. The motion was seconded by Commissioner Tyson and carried by unanimous vote.

ORDINANCE 2014-12

**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 currently charges a fee of \$250 for rezoning applications and \$300 for conditional use applications; and

WHEREAS, due to the amount of review that is required for conditional rezoning applications, this process is similar to the conditional use applicants; and

WHEREAS, the Town of Burgaw Planning staff feels that due to this process the fee for conditional rezoning applications should be set at \$300 plus an additional fee of \$6.15 for each property owner who is legally required to be notified of the public hearing.

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

Attachment I: FY 2013-2014 Schedule of Fees be altered to reflect the following changes:

ZONING

Application for Rezoning	\$250
Application for Conditional Rezoning	\$300

*Plus an additional fee of \$6.15 per property owner that is legally required to be notified of public hearing. All fees shall be collected at the time of filing the request.

Approved March 18, 2014.

Public Hearing – Consideration of a major subdivision preliminary plat application for the remainder of tracts 1, 2, and 3 of the Mattie Bloodworth Farm. Applicant David J. Sawyer, on behalf of Walmart Stores East LP, has applied for a major land subdivision for a vacant property (PIN 3229-57-7303-0000) located on NC Highway 53 East within the Town of Burgaw corporate limits.

Mayor Mulligan declared the public hearing open at 5:14PM.

Rebekah Roth, Planning Administrator advised on September 27, 2013, applicant David J. Sawyer, on behalf of Walmart Stores East LP, turned in an application for a major land subdivision. It has been held until the conditional use permit application associated with the subdivision was reviewed, per the applicant's request. She informed the Board the preliminary subdivision plat is being presented tonight for their review.

Ms. Roth stated because of the size of the parent tract and two resulting tracts, this subdivision does not qualify as a minor subdivision according to the requirements of the Town of Burgaw Unified Development Ordinance. However, this subdivision does not involve access easements, roads, etc. The preliminary subdivision plat meets all applicable requirements for preliminary plats and for major subdivisions of the town's ordinances except:

- The preliminary plat does not show the footprint of the existing Pender Landing Shopping Center.
- The preliminary plat shows the natural gas utility easement, but it does not show the location of the natural gas line.

The applicant has also requested that the Board of Commissioners authorize the Planning Administrator, as the town's Map Review Officer, to approve and sign the final subdivision plat, upon their approval of the preliminary plat.

Ms. Roth advised it is her recommendation that the attached preliminary plat be approved with a condition requiring the location of the natural gas line and footprint of the existing Pender Landing Shopping Center be added. Ms. Roth recommended that she be given the authority to sign the final subdivision plat, rather than have it go through the Planning Board and Board of Commissioners for approval.

Ms. Roth advised at their February 20, 2014 meeting, the Town of Burgaw Planning and Zoning Board recommended approval of the attached major subdivision preliminary plat upon the condition that the location of the natural gas line and footprint of the existing Pender Landing Shopping Center be added. They further recommended that the Board of Commissioners authorize the Planning Administrator, as the town's Map Review Officer, to sign the final subdivision plat, upon their approval of the preliminary plat.

Commissioner Rooks asked why the easement for the gas line is not on the preliminary plat. Andrew Moriarty, Engineer for the applicant advised at the time the initial plan was filed that information was not available to be included on the plans, but it has since been mapped and will be included on the final plans.

Commissioner Walker asked where the gas will be located. Ms. Roth advised the line will run through the parking lot parallel with the power line easement.

There being no further discussion, Mayor Mulligan closed the public hearing at 5:17PM.

Commissioner Robbins made a motion to approve the major subdivision preliminary plat application for the remainder of tracts 1, 2 and 3 as presented. The motion was seconded by Commissioner Walker and carried by unanimous vote.

PUBLIC FORUM – Restricted to comments regarding the proposed Walmart

Mayor Mulligan opened the public forum at 5:24PM.

Speakers:

Bonita Benton, 5061 117 S, stated that are a lot of people without jobs. Walmart will help with the economy. She said it seems that Burgaw would like for people of Burgaw to spend their money in Burgaw instead of other counties. She said people on fixed income will be better to afford things at Walmart that they cannot afford otherwise.

Diane Murphy, 401 N McNeil Street voiced her support for Walmart. She said Walmart will bring many needed jobs to the community. She said Walmart will increase our tax base and Walmart will support our community. She we are currently taking our money to Wallace and Wilmington and our money needs to stay in Burgaw.

Carol Tutherow 608 NC 53 E stated she is for Walmart because of the added tax base and creation of jobs. She advised she does hand crafts and no one in Burgaw sells material, notions, etc. She also commented the elderly don't drive at night or are unable to drive very far thus giving them a place to go locally. She also said there will be a benefit to people with no transportation that can walk to Walmart. She said people that shop local will continue to shop local. She said competition is good for business.

Commissioner Fred McKoy, 362 Harrell Road advised he is present to represent Pender County. He said he would like to thank Walmart for investing in Pender County in both Burgaw and Surf City. He advised we need the tax base money here for local needs. He thanked the Walmart representatives for choosing Pender County.

Amanda Farris, 709 E Fremont advised she is against Walmart. She said she feels that the tight community that we see in the downtown area will be disturbed by urban sprawl and will leave a shell of a downtown area that will not be pleasing to the eye. She said the small downtown feel drew them here and she doesn't get that feeling with a Walmart in the area. She said she has many issues with corporate businesses.

Noah Harrell, 315 W Bridgers Street read a lengthy statement which included statistics regarding the negative impact Walmart will have on the Town of Burgaw. Upon completion of his presentation, he advised these were national statistics from a reputable source. He asked the Board to reconsider the facts and please don't let "them" tell us what's good for our community.

Johnny Stringfield, 311 McRae Street, advised he is for Walmart. He said numbers don't lie because Walmart will create jobs. He said for the jobless people in the area it is exciting. He also said that the town planning board recommended bringing Walmart to Burgaw and he asked the Town Board of Commissioners to make history today and follow the planning board's advice. He said he believes Walmart will bring in other businesses.

Katrina Banks advised she is retired from New Hanover County and said we need Walmart for the young people that are walking around without jobs. She said there are too many kids on the streets and having a job would be of benefit. She said she had to travel to New Hanover County to work. She asked the Board to consider Walmart which will give the kids a reason to stay here to work.

Rochelle Whiteside, 315 Bridgers Street, read a lengthy statement filled with statistics regarding the negative impact of Walmart on a community. She asked the Commissioners to look at all the facts and statistics and to carefully weigh the evidence when making a decision with Burgaw's best interest at heart.

Gentry Sessoms, 1796 Penderlea Hwy, said he is opposed to Walmart. He said much has been said and he also read a lengthy list of statistics regarding the negative impact of Walmart. He said in his opinion Walmart is short term and will move out of town after a few years.

John Westbrook, 410 E Fremont Street advised he is present in opposition of Walmart. He said he wanted to focus on the gas station and in particular access to that gas station. He said his main concern is what the NC DOT is recommending for NC Hwy 53. He said they are recommending a suicide lane down the middle for traffic to turn. He presented his concept of how he feels that area should be planned. He said he would like to see a dedicated median with dedicated left turn lanes going in both directions so the mistakes that have already been made will not be made here. He asked the Board to seriously consider the safety issue with the turn lanes.

Ross Harrell advised he is a lifelong resident and has a small business downtown Burgaw. Mr. Harrell advised is not in favor of Walmart in this community. He said everyone in this room has the good of the community in their hearts and he wonders if Walmart has the same motive coming into our community. He said there are mountains of data about what happens in small communities that are targeted by Walmart. He briefly reviewed some of the same statistics that were previously presented information. He asked the Board to not site Walmart in Burgaw.

Pete Cowan, 314 S Bickett advised he grew up here and he loves Burgaw. He advised that in this computer era that whatever you want to find to fit your way of thinking you can find it online. He said if you are without a job \$8 per hour is a great job. He said he has heard many comments about low paying jobs with reduced hours and no benefits. He advised this is the way it is done in corporate America. He said he wants to see downtown Burgaw retain that small town charm. Mr. Cowan quoted some statistics regarding tax values in downtown Burgaw as well as recent improvements that have been made to downtown Burgaw such as sidewalks etc. He said we need the tax dollars in this town to pay for the future needs of the town. After a lengthy presentation, Mr. Cowan commented that he hopes the Board will do the right thing. He said it may take a while to adjust but in the end we'll be good.

The public forum ended at 6:01PM.

Public Hearing - Consideration of a conditional use permit application for a "Planned Building Group—Commercial" and "Gasoline Station with Convenience Store" to be located on NC Hwy 53 East.

Attorney Kenan addressed the attendees to explain the quasi-judicial procedures that will be held tonight.

Rebekah Roth, Planning Administrator presented the necessary documents to the Board of Commissioners.

Mayor Mulligan declared the public hearing open at 6:07PM.

Rebekah Roth, Planning Administrator presented the following information to the Board of Commissioners. She advised applicant David J. Sawyer, on behalf of Walmart Stores East LP, has applied for a conditional use permit for a 69,182 square foot building intended for general merchandise, grocery, garden center, and pharmacy sales with fuel sales and convenience store to be located on a vacant property (PIN 3229-57-7303-0000) located on NC Highway 53 East within the Town of Burgaw corporate limits.

Ms. Roth informed the Board of the procedures of the hearing and also presented general information.

Hearing Agenda

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

GENERAL INFORMATION

Applicant: David J. Sawyer on behalf of Walmart Stores East, LP
2001 SE 10th Street
Bentonville, AR 72716-0550

Property Owner: Stephen Roy Covil et al

Site: along NC Hwy 53 East (PIN 3229-57-7303-0000)

Current Zoning: B-2, Highway Business

Size: major subdivision proposed; if approved, tract is anticipated to be 8.362 acres

Existing Land Use: vacant/agriculture

HISTORY/SITE DESCRIPTION/ANALYSIS

The subject parcel is located along NC Hwy 53 East, directly adjacent to the Pender Landing Shopping Center. Part of the property is currently used for agricultural purposes and the remainder is vacant, except for a power line easement running through a portion. Except for Pender Landing Shopping Center, it is surrounded by vacant land and residential uses.

The applicant originally submitted an application for a conditional use permit on September 27, 2013 and a preliminary review was conducted at the Planning Board's October 17, 2013 meeting. Due to an extended NCDOT review for driveway permits, the technical review of the project was held until the February Planning Board meeting.

The conditional use is for the construction of a "Planned Building Group—Commercial and/or Office/Institutional," a 69,182 square foot building and for "Gasoline Station with Convenience Store."

Ms. Roth advised the Board will be looking at four "standards for review" which must be met by the applicant. Those standards are:

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.

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

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.

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 United Development Ordinance, Burgaw 2030 Comprehensive Land Use Plan, and NC Highway 53 Corridor Study.

Ms. Roth advised the Board will be looking at the site plan only, not the intended use of the structure. She said the Board has been presented with twenty two exhibits that have been offered as evidence including the applicant's site plan, zoning map, staff reports and emails from the applicant, engineering firm and NCDOT.

The following witnesses were sworn in and submitted testimony to the Board of Commissioners during the hearing.

- Rebekah Roth, Planning Administrator
- Amanda Mann, Attorney with Troutman Sanders, LLP & outside counsel for Walmart
- Rynal Stephenson, Traffic Engineer with Ramey Kemp and Associates
- Andrew Moriarty, Engineering Manager at Bohler Engineering
- Chief Montrina Sutton, Town of Burgaw Chief of Police
- Chad McEwen, Town of Burgaw Manager
- John Westbrook, citizen of Burgaw
- Rochelle Whiteside, citizen of Town of Burgaw
- Kenneth Cowan, citizen of Burgaw

*All evidence presented is on file in the office of the Town Clerk

In making the findings of fact and reaching the conclusions of law below, the Board of Commissioners has considered, in addition to arguments offered at the hearing, the following documents, exhibits, and reports:

- (a) The application submitted on September 27, 2013 to the Town of Burgaw Planning Administrator (Exhibit 1);
- (b) The transmittal letter from Peter Bellantoni of Bohler Engineering sent with amended application documents dated January 31, 2014 (Exhibit 2);
- (c) A site plan submitted by Bohler Engineering on January 31, 2014 (Exhibit 3);
- (d) A truck circulation plan submitted by Bohler Engineering on January 31, 2014 (Exhibit 4);
- (e) A landscaping plan submitted by Bohler Engineering on February 7, 2014 (Exhibit 5);
- (f) A landscaping detail sheet submitted on January 31, 2014 (Exhibit 6);
- (g) A rendering of proposed building elevations submitted by Bohler Engineering on September 27, 2013 and October 29, 2013 (Exhibit 7);
- (h) A lighting cut sheet submitted by Bohler Engineering on September 27, 2014 (Exhibit 8);
- (i) An aerial photo of the subject and adjacent properties from the Town of Burgaw ArcGIS database (Exhibit 9);
- (j) A zoning map of the subject and adjacent properties from the Town of Burgaw ArcGIS database (Exhibit 10);
- (k) A flood map of the subject and adjacent properties from the Town of Burgaw ArcGIS database (Exhibit 11);
- (l) A copy of the Future Land Use Map from the Burgaw 2030 Comprehensive Land Use Plan (Exhibit 12);
- (m) Army Corps of Engineers General Permit Verification issued December 19, 2013 (Exhibit 13);
- (n) A copy of the preliminary subdivision plat submitted by Bohler Engineering on September 27, 2013 (Exhibit 14);
- (o) Email from Peter Bellantoni of Bohler Engineering dated September 30, 2013 outlining additional application information (Exhibit 15);
- (p) Email from Peter Bellantoni of Bohler Engineering dated February 7, 2014 outlining additional application information (Exhibit 16);
- (q) Ordinance requirements report prepared by Planning Administrator Rebekah Costin Roth prepared February 2014 (Exhibit 17);
- (r) Letter from Evans Trawick, owner of property across the street, dated October 10, 2013 (Exhibit 18);
- (s) A preliminary utility plan submitted to the Town of Burgaw Building Inspector, Louis Hesse, by Bohler Engineering on February 14, 2014 (Exhibit 19);
- (t) Email from Peter Bellantoni of Bohler Engineering dated February 14, 2014 regarding comments from the traffic engineer and the North Carolina Department of Transportation (Exhibit 20);
- (u) Email from Douglas Racine of the North Carolina Department of Transportation dated February 14, 2014 regarding future driveway permits for the Trawick property (Exhibit 21);
- (v) A soil map of the subject and adjacent properties from the Town of Burgaw ArcGIS database (Exhibit 22);
- (w) A letter from Robert Gillis, an adjacent property owner, dated March 11, 2014 (Exhibit 23);
- (x) A copy of the staff report to the Town of Burgaw Board of Commissioners delivered on February 25, 2014 (Exhibit 24).

and thereby finds the following facts:

GENERAL FINDINGS OF FACT

1. The subject property is located along NC Highway 53 East, directly adjacent to the Pender Landing Shopping Center.
2. The applicant is proposing a major subdivision, which if approved, would result in an 8.362 acre tract.
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 existing land use for the project is partially vacant and partially agricultural.
6. A Duke Energy power line easement and gas line also run through a portion of the subject property.
7. The proposed use is listed as a conditional use in Section 4-9: Table of Permitted Uses and is subject to regulations listed in Article 5 and Section 14-20: Regulations for Conditional Uses in the Town of Burgaw Unified Development Ordinance.

Mayor Mulligan closed the public hearing at 7:48PM.

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.

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. Since the application was originally submitted, the North Carolina Department of Transportation (NCDOT) has reviewed the project several times and determined that the Traffic Impact Analysis prepared by the applicant’s traffic engineer warrants a traffic light. In January, representatives of the applicant’s engineering firm, NCDOT, and the Town of Burgaw met, and NCDOT required the driveway with the required traffic light be moved farther away from the Hwy 117/Hwy 53 intersection. NCDOT has provided preliminary feedback on the revised site plan (as outlined in Exhibit 20). Except for potential changes to the turn lanes and road way, NCDOT indicated no changes to the proposed site plan would be required.
3. As shown on the Flood Map and Major Subdivision Preliminary Plat, the proposed uses will not be located in the floodway or 100-year floodplain.
4. A portion of the proposed structure and parking area is located in wetlands.
5. The applicant met with representatives from the North Carolina Department of Environment and Natural Resources (NCDENR) on February 19, 2014 and has presented testimony that the stormwater plan is sufficient to meet NCDENR requirements.
6. NCDENR has not provided preliminary written comments or permits that were reviewed in this hearing.
7. Amanda Mann presented that the proposed store would be 600 ft. from the closest existing residence and that only 1.5 acres of trees would be disturbed.
8. Rynal Stephenson testified that the number of full access driveways was limited to one, per NCDOT request. A concrete island would be located at the right-/right-out driveway located closest to the Pender Landing Shopping Center that had a wide cut-out to accommodate right-in truck traffic. The middle driveway would be the only full access driveway, and it would have a traffic light. The driveway at the rear of the building would be exit-only and would be used for truck traffic.
9. Mr. Stephenson stated that they planned to extend the center turn lane to accommodate left turn traffic and that, if a median was constructed in place of a center turn lane, it would obstruct access to other properties along Highway 53. He testified that minor changes had been made to the concrete island since plans were submitted to the Town of Burgaw. The node would come out slightly and striping would be slightly different. He testified that both changes had been agreed to by NCDOT.
10. Mr. Stephenson stated that a green arrow turn light would appear for left turns on the traffic signal as needed. A sensor would be installed trigger that light. He also stated that the signal would likely be a mast arm traffic signal, as usually required by NCDOT in this area due to high wind speeds.

11. Andrew Moriarty testified that the Army Corps of Engineers had permitted the fill of the wetlands depicted on the site plan. They were intending to use NCDENR's express permitting process for stormwater and erosion control permits. They had attended a pre-application meeting in February, and the final meeting was anticipated to take place Tuesday, March 25, 2014.
12. Mr. Moriarty testified that the stormwater infrastructure was designed for a ten year storm event as required by NCDENR.
13. Mr. Moriarty stated that in addition to proposed landscaping, natural vegetation would help to screen the loading dock area.
14. As a result, the Board of Commissioners finds that the proposed application meets the requirements of this standard, provided the following conditions:
 - An NCDOT driveway permit shall be required. Any changes to the approved site plan required for NCDOT approval outside of roadway improvements outlined in the February 14, 2014 email included as an exhibit in this case, shall be considered an amendment to the conditional use permit and require approval of the Board of Commissioners.
 - All NCDENR permits shall be required. Any changes to the approved site plan required for NCDENR approval shall be considered an amendment to the conditional use permit and require approval by the Board of Commissioners.
 - The right turn lane to the middle driveway must be extended to accommodate additional right turn traffic.
 - The Board of Commissioners shall be the administrative approval authority on behalf of the town for the NCDOT driveway permit.
 - A traffic count shall be conducted six months after store opening to be sent to NCDOT.

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

1. In order to be granted a conditional use permit, Section 14-9 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 the Ordinance Requirements Report submitted by Rebekah Costin Roth, Town of Burgaw Planning Administrator, all requirements of the Unified Development Ordinance have been met, excepting:
 - a. According to an email dated February 7, 2014, the height clearance of the loading bays is 12 feet, while Section 5-10 of the Unified Development Ordinance requires a height clearance of 14 feet.
 - b. Proposed signage does not meet size requirements of Article 7 of the Unified Development Ordinance. Proposed freestanding sign is 95 square feet, while the maximum area for freestanding signs in the B-2 zoning district is 75 square feet. Proposed attached signs are 95 and 207.76 square feet, while the maximum area for attached signs in the B-2 zoning district is 75 square feet.
 - c. Article 9 of the Unified Development Ordinance requires that when the total number of trees required in the street yard equals 20 or more, no single tree species shall comprise more than 25% of the trees planted on the development site, and in the submitted landscaping plan, all trees shown comprise more than 25%.
 - d. While all parking lot landscaping peninsulas are required to have curbing, one peninsula shown on the proposed landscaping plan that is divided.
3. Fire Marshal Allen Wilson has requested that hydrant issues be addressed during the building review phase of development.
4. During the Planning Board technical review on February 20, 2014, the applicant indicated that the divided landscaping peninsula did not have curbing around the whole peninsulas for drainage.
5. During the Planning Board technical review on February 20, 2014, the Planning Board expressed concern that additional outside storage would be associated with the use during the holiday season and requested that required screening be specified as a condition.
6. As a result, the Board of Commissioners finds that the proposed application meets the requirements of this standard, provided the following conditions:
 - Loading bays must be built with a height clearance of 14 feet, or architect must submit in writing assurances that height clearance as proposed is sufficient for store's needs.
 - Hydrants must be installed per the specifications of the Town of Burgaw fire marshal.

- Signage for the development is not permitted under this conditional use permit. A separate sign permit must be applied for and issued prior to installation of signs, and all signs must meet all ordinance requirements applicable on the date of issuance of the sign permit.
- Additional tree species must be used in the landscaping to ensure that no one tree species comprises more than 25% of the total trees planted. Said tree species must be included on the Town of Burgaw Tree and Vegetation List and must be approved by the Planning Administrator in advance.
- Landscaping peninsulas beside the southernmost stop bar leading to primary entrance must be combined to form one planting area.
- Any exterior storage must be screened in accordance with town ordinances.
- The future cross access easement to Pender Landing Shopping Center shall be paved to the property line at the time of construction.

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

1. In order to be granted a conditional use permit, Section 14-9 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. Based on comments made during the October 2013 planning board preliminary review of this project, a future cross access easement was provided on the eastern side of the property to accommodate future development on the remnant tract created by the proposed major subdivision.
4. A future cross access easement was also provided on the northeastern portion of the property to connect in with the Pender Landing Shopping Center tract in case it is ever redeveloped.
5. The Town Manager Chad McEwen has requested that the cross access easement to Pender Landing Shopping Center be paved during initial construction.
6. Evans Trawick, a property owner immediately across the street from the proposed development, has submitted a letter voicing concerns regarding how the proposed driveways may limit ingress and egress to his property if redeveloped.
7. During the February 20, 2014 Planning Board technical review, Planning Administrator Rebekah Costin Roth testified that she had received an email from Douglas Racine of NCDOT on February 14, 2014 that said NCDOT is unable to provide information on potential impacts on driveways across the street in advance of firm redevelopment plans.
8. During the February 20, 2014 Planning Board Technical Review, Rynal Stephenson, Senior Traffic Engineer with Ramey Kemp & Associates, testified that providing a center turn lane instead of a median on Highway 53, as proposed, would allow better access to properties across the street.
9. As a result, the Board of Commissioners finds that the proposed application meets the requirements of this standard.

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.

1. In order to be granted a conditional use permit, Section 14-9 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 B-2, Highway Business, zoning of this property is intended to accommodate retail or service establishments customarily patronized by transient traffic as well as non-transient traffic.
3. The proposed site has water and sewer access along NC Hwy 53 East in accordance with Burgaw 2030 Comprehensive Land Use Plan Land Use Goal 1, which promotes infill development and revitalization of areas with existing infrastructure and encourages development in areas where the necessary infrastructure

are available, planned, or can be most cost effectively provided and extended to serve existing and future development.

4. Andrew Moriarty, Senior Civil Engineer with Bohler Engineering, has testified that the proposed stormwater BMPs are wet ponds, while Burgaw 2030 Comprehensive Land Use Plan Land Use goal 2 encourages the provision of on-site stormwater systems that mimic natural systems like rain gardens and constructed wetlands.
5. The development is not a mixed-use center and has three driveways, while Burgaw 2030 Comprehensive Land Use Plan Goal 3 encourages mixed-use centers as an alternative to “strip commercial” corridors that would use land inefficiently, generate unnecessary traffic, and create traffic congestion and safety challenges because of frequent driveways and their associated turning movements.
6. Proposed development does include future cross access easements to adjacent properties.
7. While Burgaw 2030 Comprehensive Land Use Plan Agriculture and Forestry Goal 1 is to preserve existing agricultural and forest lands, the subject parcel is prime agricultural land, as shown on the Pender County Soil Survey.
8. During the February 20, 2014 Planning Board technical review, Amanda Mann, an attorney with Troutman Sanders and outside counsel for Walmart, testified that the majority of the project is limited to the area that is already cleared and should have little impact to trees.
9. Burgaw 2030 Comprehensive Land Use Plan Public Health and Safety Goal 1 is to promote land use patterns and transportation systems that encourage physical activity, promote healthy living, and reduce risk for chronic illness.
10. The proposed development includes pedestrian features, such as a sidewalk along Highway 53 and a sidewalk in front of the store leading directly to the entrance.
11. No infrastructure is in place to accommodate pedestrian crossing of driveways.
12. Fire Marshal Allen Wilson has reviewed the plan in consideration of fire protection and prevention, as recommended under Burgaw 2030 Comprehensive Land Use Plan Public Health and Safety Goal 2.
13. Police Chief Montrina Sutton has reviewed the site plan, as recommended under Burgaw 2030 Comprehensive Land Use Plan Public Health and Safety Goal 3, and has expressed concerns regarding the 700 feet of full, unguarded access to the rear of the Pender Landing Shopping Center.
14. At the February 20, 2014 Planning Board technical review, Chief Sutton testified that the police department has had issues with other properties that did not operate on a 24-hour basis.
15. At that meeting, Chris Welborn, Market Manager for Walmart Stores, indicated that the store would maintain surveillance across the entire parking lot.
16. The hours of operation for the Burgaw store have not been determined.
17. Andrew Moriarty testified that a grade change between the subject property and the Pender Landing Shopping Center may reduce the need for fencing.
18. Police Chief Sutton testified that it would be easier for her officers to surveil the property line if a physical boundary other than vegetation were installed. She stated that vegetation would provide a hiding space for potential offenders to evade detection.
19. The subject property is shown as Commercial Growth on the Burgaw 2030 Comprehensive Land Use Plan Future Land Use Map.
20. The development guidelines for this land use category include
 - a. Provision of pedestrian and bicycle connections to parking and other buildings and properties
 - b. Hiding of larger parking lots (more than one double row deep) from thoroughfares with out-lot structures or rear parking lots
 - c. Increased landscaping to buffer parking areas, outside storage, display areas, etc.
 - d. Masonry façades
 - e. Monument, ground, or column signs
 - f. Mitigation of bulk of large buildings through façade detailing and window coverage
 - g. Site design to protect flood hazard or wetland areas
21. Configuration of the site and power line easement do not allow hiding of parking lot.
22. Applicant has added additional signage and architectural details on the side of the building since preliminary review in October 2013 to add visual interest and cut up the bulk of the side face.
23. Applicant has exceeded street yard landscaping requirements.
24. A portion of the proposed building does intrude on wetlands.
25. The subject property is included in the Commercial Transition Zone and recommended Gateway Overlay District of the NC 53 Corridor Study, which recommends:

- a. Ground signs should be the only type of freestanding sign permitted in the Gateway Overlay District at a maximum height of 8 feet
 - b. Restrict blank façades along the NC 53 Corridor
 - c. Off-Street Loading—if loading is performed on the side of the building as viewed from the NC 53 Corridor, then additional screening should be required
 - d. Dumpster and outdoor storage should be screened and not be visible from the NC 53 Corridor.
26. Commissioner Jan Dawson expressed concerns regarding the type of canopy used for the entrance-way, and Ms. Mann and Mr. Moriarty agreed that a different canopy could be provided.
27. As a result, the Board of Commissioners finds that the proposed application meets the requirements of this standard, provided the following conditions:
- a. A fence or other barrier approved by the Planning Administrator in consultation with the Police Chief shall be installed to separate the property from the Pender Landing Shopping Center. Any barrier preventing cross access shall be removed at the time such access is opened for public use.
 - b. Signage, asphalt markings, etc. as approved by NCDOT and the Planning Administrator shall be required to mark designated pedestrian crossings of driveways.
 - c. All necessary legal documentation shall be in place to transfer sidewalk maintenance responsibility of the sidewalk along Highway 53 to the Town of Burgaw prior to construction.
 - d. Only a monument sign, a maximum of 8 feet in height, shall be allowed for the development's freestanding sign.
 - e. The canopy at the front entrance shall be modified to provide additional visual interest to the front façade and must be approved by the Planning Administrator prior to construction.
 - f. Applicant must provide encroachment agreement from Duke Energy and Piedmont Natural Gas to the Planning Department to be kept on file.

THEREFORE, on the basis of the foregoing, IT IS ORDERED that the application for a conditional use permit for a “planned building group—commercial and/or office/institutional” and “gasoline station with convenience store” use to be located at a property on NC Highway 53 East (PIN 3229-57-7303-000) be GRANTED, subject to the following CONDITIONS TO THE APPLICATION:

1. An NCDOT driveway permit shall be required. Any changes to the approved site plan required for NCDOT approval outside of roadway improvements outlined in the February 14, 2014 email included as an exhibit in this case, shall be considered an amendment to the conditional use permit and require approval by the Board of Commissioners.
2. All NCDENR permits shall be required. Any changes to the approved site plan required for NCDENR approval shall be considered an amendment to the conditional use permit and require approval by the Board of Commissioners.
3. The right turn lane to the middle driveway must be extended to accommodate additional right turn traffic.
4. The Board of Commissioners shall be the administrative approval authority on behalf of the town for the NCDOT driveway permit.
5. A traffic count shall be conducted six months after store opening to be sent to NCDOT.
6. Loading bays must be built with a height clearance of 14 feet, or architect must submit in writing assurances that height clearance as proposed is sufficient for store's needs.
7. Hydrants must be installed per the specifications of the Town of Burgaw fire marshal.
8. Signage for the development is not permitted under this conditional use permit. A separate sign permit must be applied for and issued prior to installation of signs, and all signs must meet all ordinance requirements applicable on the date of issuance of the sign permit.
9. Additional tree species must be used in the landscaping to ensure that no one tree species comprises more than 25% of the total trees planted. Said tree species must be included on the Town of Burgaw Tree and Vegetation List and must be approved by the Planning Administrator in advance.
10. Landscaping peninsulas beside the southernmost stop bar leading to primary entrance must be combined to form one planting area.
11. Any exterior storage must be screened in accordance with town ordinances.
12. The future cross access easement to Pender Landing Shopping Center shall be paved to the property line at the time of construction.

13. A fence or other barrier approved by the Planning Administrator in consultation with the Police Chief shall be installed to separate the property from the Pender Landing Shopping Center. Any barrier preventing cross access shall be removed at the time such access is opened for public use.
14. Signage, asphalt markings, etc. as approved by NCDOT and the Planning Administrator shall be required to mark designated pedestrian crossings of driveways.
15. All necessary legal documentation shall be in place to transfer sidewalk maintenance responsibility of sidewalk along Highway 53 to the Town of Burgaw prior to construction.
16. Only a monument sign, a maximum of 8 feet in height, shall be allowed for the development's freestanding sign.
17. The canopy at the front entrance shall be modified to provide additional visual interest to the front façade and must be approved by the Planning Administrator prior to construction.
18. Applicant must provide encroachment agreements from Duke Energy and Piedmont Natural Gas to the Planning Department to be kept on file.

MOTION

Upon completion of the requirements of the quasi-judicial hearing requirements, Commissioner Walker made a motion to approve the conditional use permit for a Planned Building Group – Commercial and Gasoline Station with a Convenience Store to be located on NC Hwy 53 East. The motion was seconded by Commissioner Dawson and carried by unanimous vote. (8:38PM)

DEPARTMENTAL ITEMS

Planning Item - Discussion regarding whether staff should apply for Watch for Me NC grant with NCDOT Bicycle and Pedestrian Division

Rebekah Roth, Planning Administrator advised the Watch for Me NC is a bicycle and pedestrian safety campaign run by the North Carolina Department of Transportation (NCDOT) in partnership with local communities and is aimed at reducing the number of pedestrians and bicyclists hit and injured in crashes with vehicles. She advised the program consists of two primary elements—safety and educational messages directed toward drivers, pedestrians, and bicyclists and enforcement efforts by area police to crack down on some of the violations of traffic safety laws. The Watch for Me NC program has been in operation in Wake, Durham, and Orange counties since 2012 as part of a pilot effort, and other communities around the state are now being offered an opportunity to participate in the program. Applications are due by April 17, 2014 in a competitive process, so Town of Burgaw is not guaranteed a spot by applying.

Ms. Roth advised if we were to become one of the state's Watch for Me communities, we would receive bike and pedestrian safety materials and advertising for a public education campaign, law enforcement training, and technical support. In return, we would be expected to have our law enforcement officers participate in the training, host at least one enforcement event between September and November, use the campaign materials provided, and report on the outcome of our program.

Ms. Roth advised applications to become a community partner will be evaluated on several criteria—regional collaboration, leveraged resources, K-8 school focus, community-focused outreach, and community profile and crash history. In order to be a successful candidate, I would reach out to Pender County government, especially the health department, the local schools, and other agencies. I would also seek to integrate the campaign with the upcoming bicycle and pedestrian planning process. I have spoken to Chief Sutton, and she is supportive of our participation. Many people in this area are not familiar with bicycle and pedestrian traffic laws, and as the town seeks to promote biking and walking as transportation options, knowledge of these laws becomes especially important. We also have many people who already use existing infrastructure, including the Osgood Canal Greenway and Trail, and traffic safety will continue to grow in importance as more citizens use this resource.

Ms. Roth stated that because both applying for the grant and conducting the program if we are selected will take staff time and personnel resources, I would like authorization from the board prior to applying for the grant.

After a brief discussion, it was the consensus of the Board to decline the decline opportunity to apply for the Watch for Me NC grant due to the amount of staff time that would be required to take on this project. No action was taken on this item.

ITEMS FROM THE MANAGER

Discussion – Wright Express Fuel Program

Chad McEwen, Town Manager advised in January 2014, the Town was notified by our current service provider of fuel, Springer Eubanks, they would be closing several fueling sites throughout Pender County and they would be changing their card system. With these changes, the Town would be extremely limited to where fuel could be purchased from.

Mr. McEwen advised with this in mind, we began to explore our options for fueling our fleet. The county has discussed possibly opening their own sites and the Town partnering with them for fuel. However, this option is only a concept and may not come to fruition anytime soon. We then researched other providers similar to Springer Eubanks that offer a fleet fuel program.

Mr. McEwen said we have found that Wright Express that offers a program very similar to Springer Eubanks. With this program, the Town will be issued fuel cards that are assigned to each vehicle and piece of equipment. Any driver can fuel such vehicle or equipment with this card by entering a unique PIN that has been assigned to each driver. With Wright Express, our options for fueling sites are vast, therefore not limiting the Town. Included you will find a list of accepted fueling locations.

Mr. McEwen informed the Board there is no cost to Town for using Wright Express due to the North Carolina State Contract. The benefit to this, is that the Town is able to purchase fuel at a 1.5% discounted rate and net of tax. This is an estimated savings of \$0.40 per gallon of fuel. Wright Express will handle all of the reporting for the fuel tax as well as providing detail reports monthly of fuel transactions. With this program, the Town will also be able to utilize the online portal for Wright Express to manage the Town's fleet data and run special reports if needed. He referred the Board to the information included in their packet explaining what Wright Express offers.

The recommendation is to allow the Town Manager to further pursue an agreement with Wright Express to administer the Town's fleet fuel program under the North Carolina State Contract.

After a brief discussion, Commissioner Tyson made a motion to accept the Wright Express Fuel program as the Town's fueling program. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

ADJOURNMENT

There being no further business, Commissioner Rooks made a motion to adjourn. The motion was seconded by Commissioner Dawson and carried by unanimous vote. The meeting adjourned at 8:43PM.

Eugene Mulligan, Mayor

Attest: _____
Sylvia W. Raynor, Town Clerk