

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

**DATE:** May 10, 2016  
**TIME:** 4:00 PM  
**PLACE:** Burgaw Municipal Building  
**BOARD MEMBERS PRESENT:** Mayor Eugene Mulligan  
Mayor Pro-tem Wilfred Robbins  
Commissioners Jan Dawson, Bill George, Vernon Harrell and James Murphy  
**STAFF PRESENT:** Chad McEwen, Town Manager  
Sylvia W. Raynor, Town Clerk  
Robert Kenan, Town Attorney  
Anthony Colon, Assistant Director of Public Works  
Bill Fay, Director of Public Works  
Louis Hesse, Building Inspector  
Jim Hock, Chief of Police  
Wendy Pope, Finance Officer  
Rebekah Roth, Planning Administrator  
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.

**Approval of Agenda**

Mayor Mulligan advised the agenda must be amended to include Item 6A which is a special request from Tammy Proctor with Pender County Tourism. Commissioner Robbins also requested a closed session at the end of the meeting pursuant to GS 143-318.11 to consult with the Town Attorney regarding a potential liability involving the Town of Burgaw. There being no further amendments, Commissioner Harrell made a motion to approve the agenda as amended. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

**Approval of Consent Agenda**

**A. Approval of Minutes of April 12, 2016 regular session and closed session meeting**

Commissioner Robbins made a motion to approve the minutes of the April 12 regular session and the closed session as presented. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

**B. Resolution 2016-16 Declaring Blueberry Festival Day in North Carolina**

Mayor Mulligan advised there needs to be a slight amendment to Resolution 2016-16. Doug Krynicki, Chairperson of the NC Blueberry Festival advised he is requesting amendment of one of the street closings listed in the resolution. Mr. Krynicki advised that he is recommending that Fremont Street between Wright Street and Dudley Street be closed only half way instead of all the way as previously presented. He advised Fremont Street will be closed as follows: Fremont Street between Wright Street and Dudley Street is closed beginning at 104 West Fremont Street and traveling east towards Wright Street from 6 pm on June 17, 2016 through 12:00 am on June 19, 2016; the remaining half of Fremont Street between Wright Street and Dudley Street traveling west will remain open until 2 am on June 18, 2016 at which time it will close until 12 am on June 19, 2016. Mr. Krynicki advised this request is related to accommodating the businesses on Fremont Street that are typically open after 6PM. There being no further discussion, Commissioner Dawson made a motion to approve Resolution 2016-16 as amended. The motion was seconded by Commissioner Robbins and carried by unanimous vote.

**RESOLUTION 2016-16  
DECLARING NC BLUEBERRY FESTIVAL DAY IN BURGAW**

**WHEREAS,** the first annual N. C. Blueberry Festival was held in Burgaw on June 26<sup>th</sup>, 2004; and  
**WHEREAS,** that festival has become a tradition enjoyed by thousands of people; and

**WHEREAS,** the thirteenth annual N. C. Blueberry Festival is planned for June 17th-18th, 2016 in Burgaw; and

**WHEREAS,** the Board of Commissioners desires to make certain accommodations regarding the festival.

**NOW THEREFORE BE IT RESOLVED** by the Town of Burgaw Board of Commissioners that June 18th, 2016 be declared “North Carolina Blueberry Festival Day” in Burgaw; and

**SECTION 1.** In order to accommodate the needs of the North Carolina Blueberry Festival, the following conditions and road closures are placed in effect:

- All peddlers, and zoning permits for vendors, exhibitors, and participants properly approved by the festival are waived for the day of the festival
- Fremont Street between Walker Street and Cowan Street is closed from 12 am on June 17, 2016 through 12 pm on June 19, 2016
- Fremont Street between Wright Street and Walker Street is closed from 11 am on June 17, 2016 through 12 pm on June 19, 2016
- Fremont Street between Wright Street and Dudley Street is closed beginning at 104 West Fremont Street and traveling east towards Wright Street from 6 pm on June 17, 2016 through 12:00 am on June 19, 2016; the remaining half of Fremont Street between Wright Street and Dudley Street traveling west will remain open until 2 am on June 18, 2016 at which time it will close until 12 am on June 19, 2016.
- Wright Street between Satchwell Street and Wilmington Street is closed from 6 pm on June 17, 2016 through 12:00 pm on June 19, 2016
- Walker Street between Fremont Street and Wilmington Street is closed from 6 pm on June 17, 2016 through 12 am on June 19, 2016
- Dickerson Street between Satchwell and Wilmington Street is closed from 6 pm on June 17, 2016 through 12 pm on June 19, 2016
- Courthouse Avenue between Wright Street and Dickerson Street is closed from 6 pm on June 17, 2016 through 12 pm on June 19, 2016

Witness my hand and the corporate seal of said Town of Burgaw this the tenth day of May, 2016.

**Approved: May 10, 2016**

## **OATH OF OFFICE**

**Commissioner Robbins** -The Oath of Office for Mayor Pro-tem was administered to Commissioner Robbins by Sylvia Raynor, Town Clerk.

## **SPECIAL REQUEST**

### **Pender County Tourism – Tammy Proctor**

Tammy Proctor, Pender County Tourism Director appeared before the Board to ask permission to use the Burgaw Community House at no cost on Saturday, October 22, 2016 from 6PM until 9PM for the purpose of the Ghost Walk. She advised they would like to have the Community House open for participants such as Moore’s Creek National Battle Field, Pender County Arts Council, the Burgaw Chamber and two historical societies could set up informational displays for the visitors to spend their time while waiting for their tour. She advised there will be no ticket sales in the Community House; all ticket sales will be at the Pender County Tourism office. After a brief discussion, Commissioner Harrell made a motion to allow gratis use of the Community House but to include Pender County Tourism paying the \$50.00 cleaning fee. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

## **DEPARTMENTAL ITEMS**

**Planning Department – Rebekah Roth, Planning Administrator**

BOC MINUTES

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**Logo for Town-wide Marketing and Branding Campaign**

Rebekah Roth, Planning Administrator advised several years ago, the Board of Commissioners gave the go-ahead for staff to work on a marketing and branding campaign for the town based on a strategy presented by the planning department. She said the purpose of the campaign was to build a community vision of what current residents love about the town, to attract visitors to the area, and to appeal to potential residents. She advised that last year, the Board budgeted funds for graphic design work that would create a logo and tagline that could be used on marketing materials in the 2016-2017 budget year. In February, the Board chose the tagline “Good Town Year Round,” and it has been incorporated into four different logo design options. She posted the four design options on the monitors for the Board’s review. (Copies are on file in the Clerk’s office.)

Ms. Roth advised members of the Promotions and Special Events Committee have been sending her their recommendations. She advised at the time of the board packet deadline, four of the seven committee members have responded, and all have chosen the option in the upper left hand corner as their recommendation. (Design depicts the court house cupola set inside a blueberry shaped sphere with the wording “BURGAW, NC” - “Good Town Year Round”.)

After much discussion, the board members seemed to favor the design recommended by the Promotions/Special Events Committee but they requested that the design be reviewed for architectural accuracy due to some questions about the framework of the top of the court house. Commissioner Harrell also requested a mock-up of a similar design using the depot instead of the court house. Ms. Roth advised she will get those done and bring them back to the Board at the next meeting.

**ITEMS FROM ATTORNEY – Robert Kenan, Attorney**

None.

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

**Resolution 2016-17 Approving a Contract with Richard Garrigan Related to Interior Painting at the Town Hall and the Police Department**

Mr. McEwen advised many of the hallway walls and offices in Town Hall haven’t been painted in 18 years since the expansion of Town Hall was completed. He presented a map outlining the areas to be painted. Mr. McEwen advised the cost related to the painting would be paid out of current year departmental budgets based on the following distribution:

- 1. Police-80%
- 2. Administration-10%
- 3. Fire-10%

Mr. McEwen advised Mr. Richard Garrigan was the lowest responsive bidder. He advised the recommendation is the approval of the proposal from Richard Garrigan of \$3,480 for interior painting at Town Hall. In addition we recommend a 20% contingency be approved which would bring the total cost to \$4,176.

Commissioner Harrell made a motion to approve Resolution 2016-17 as presented. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

**RESOLUTION 2016-17  
RESOLUTION APPROVING A CONTRACT WITH RICHARD GARRIGAN RELATED TO INTERIOR PAINTING AT  
THE TOWN HALL AND THE POLICE DEPARTMENT**

**WHEREAS**, the Town wishes to contract to have the interior hallways walls and trim as well as several offices in the Police Department painted; and

**WHEREAS**, based on the repairs and improvements listed above, the town requested quotes from the following contractors:

1. Richard Garrigan- \$3480
2. Nolan Painting- \$6,900
3. Phillip Jones- unresponsive
4. Bruce Christian- unresponsive
5. Andrew Pate- unresponsive

**WHEREAS**, based on the responses received from the above listed contractors, Richard Garrigan appears to be the lowest responsive, responsible bidder, and

**WHEREAS**, in addition to the price above, the request is that a 20% contingency be added which would bring the total price to \$4,176.

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

**SECTION 1.** The Town of Burgaw Board of Commissioners hereby approves a contract with Richard Garrigan for \$4,176, which includes a 20% contingency above the quoted price provided.

**SECTION 2.** The related cost shall be divided based on the following distribution:

1. Police-80%
2. Administration-10%
3. Fire-10%

**SECTION 3.** The Town of Burgaw Board of Commissioners hereby authorizes the Mayor or Town Manager to execute the required contract with Richard Garrigan for the painting of interior hallways walls and trim as well as several offices in the Police Department.

**ADOPTED** this the 10<sup>th</sup> day of May, 2016.

**Resolution 2016-18 Approving Purchase of a Web Filter from SHI**

Mr. McEwen advised as part of the Capital Improvement Plan priorities for FY 16-17, the replacement of the current web filter used by the Town is scheduled. In the FY 15-16 departmental budgets there are enough excess funds available to purchase the web filter prior to June 30 in order to help with funding the CIP priorities as part of the FY 16-17 budget. He provided a quote from SHI which outlines the type of web filter Erik Harvey is proposing we purchase.

Mr. McEwen advised the quote received from SHI for the web filter is \$2,500. If approved the cost of the web filter would be split as follows:

1. Fire- 20%
2. Police- 20%
3. Administration- 30%
4. Planning- 10%
5. Inspections-10%

Commissioner Dawson made a motion to approve Resolution 2016-18 as presented. The motion was seconded by Commissioner Robbins and carried by unanimous vote.

**RESOLUTION 2016-18  
RESOLUTION APPROVING THE PURCHASE OF A WEB FILTER FROM SHI**

**WHEREAS**, the Town of Burgaw wishes to purchase a new web filter for all town owned computers; and

**WHEREAS**, Erik Harvey, the town's IT contractor, is recommending we purchase a Barracuda Web Security Gateway 310; and

**WHEREAS**, the Town of Burgaw has received a quote from SHI for a Barracuda Web Security Gateway 310 in the amount of \$2,500.

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

**SECTION 1.** The Town of Burgaw Board of Commissioners hereby approves the purchase of a web filter from SHI in the amount of \$2,500.

**SECTION 2.** The Town of Burgaw Board of Commissioners hereby authorizes the Mayor or Town Manager to execute the required contract with SHI for the web filter.

**ADOPTED** this the 10<sup>th</sup> day of May, 2016.

### **Resolution 2016-19 Approving Purchase of a Finance Server from SHI**

Mr. McEwen advised as part of the Capital Improvement Plan priorities for FY 16-17, the replacement of the current finance server used by the Town is scheduled. In the FY 15-16 departmental budgets there are enough excess funds available to purchase the finance server prior to June 30 in order to help with funding the CIP priorities as part of the FY 16-17 budget. Mr. McEwen provided a quote from SHI which outlines the specifications of the finance server Erik Harvey is proposing we purchase.

Mr. McEwen advised the quote received from SHI for the web filter is \$2,748.01. If approved, the cost of the finance server would be split as follows:

1. Fire- 25%
2. Police- 25%
3. Water- 25%
4. Sewer-25%

Mr. McEwen advised the recommendation is the approval of the purchase of the finance server from SHI in the amount of \$2,748.01.

Commissioner Dawson made a motion to approve Resolution 2016-19 as presented. The motion was seconded by Commissioner Harrell and carried by unanimous vote.

#### **RESOLUTION 2016-19 RESOLUTION APPROVING THE PURCHASE OF A FINANCE SERVER FROM SHI**

**WHEREAS**, the Town of Burgaw wishes to purchase a new finance server; and

**WHEREAS**, Erik Harvey, the town's IT contractor, is recommending we purchase a Lenovo ThinkServer RD350 70D6; and

**WHEREAS**, the Town of Burgaw has received a quote from SHI for a Lenovo ThinkServer RD350 70D6 in the amount of \$2,748.01.

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

**SECTION 1.** The Town of Burgaw Board of Commissioners hereby approves the purchase of a finance server from SHI in the amount of \$2,748.01.

**SECTION 2.** The Town of Burgaw Board of Commissioners hereby authorizes the Mayor or Town Manager to execute the required contract with SHI for the finance server.

**ADOPTED** this the 10<sup>th</sup> day of May, 2016.

### **Resolution 2016-20 Approving a Contract with Tencarva Municipal Related to the Rehabilitation of the Lift Station at the Village on 18**

Mr. McEwen advised this year the rehabilitation of the lift station at the Village on 18 was prioritized as part of the Capital Improvement Plan. Several contractors were contacted including Tencarva Municipal who originally installed the control panel for the lift station. In addition, Tilley Incorporated and TA Loving we invited to bid on the project. Mr. McEwen said given that Tencarva did the original control panel installation and has the engineered schematics they are at a significant advantage over other bidders. He also advised Tilley was not willing to bid the project "turnkey" as requested and TA Loving was going to require an electrical engineer evaluate the control panel in order to develop the necessary schematics to bid the project. The cost of the electrical engineer was going to be \$1,200. Mr. McEwen presented a quote from Tencarva that outlines the scope of work to be completed. The work includes the following:

1. Installation of 3 phase power service to lift station

2. Purchase and Installation of 2 new larger pumps
3. Replacement of guide rails and check valve
4. Purchase and Installation of new control panel

Mr. McEwen said for the work outlined in the quote Tencarva has quoted a price of \$24,355.70. In the FY 15-16 budget \$30,000 was budgeted in the sewer department for the completion of this project.

The recommendation is the award of the contract to Tencarva Municipal in the amount of \$24,355.70.

After a brief discussion, Commissioner Harrell made a motion to approve Resolution 2016-20 as presented. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

**RESOLUTION 2016-20  
Resolution Approving a Contract with Tencarva Municipal Related to the  
Rehabilitation of the Lift Station at the Village on 18**

**WHEREAS**, the Town prioritized and funded the rehabilitation of the Village on 18 lift station as part of the FY 15-16 budget; and

**WHEREAS**, the town solicited bids from competent companies with experience in the rehabilitation and installation of sewer lift stations; and

**WHEREAS**, the following improvements consisted of the major repairs requested by the Town as part of the solicited bids:

1. Installation of 3 phase power service to lift station
2. Purchase and Installation of 2 new larger pumps
3. Replacement of guide rails and check valve
4. Purchase and Installation of new control panel; and

**WHEREAS**, based on the repairs and improvements listed above, the town requested quotes from three contractors. The quotes received were as follows:

- 1) Tencarva Municipal- \$24,355.70
- 2) TA Loving- Unresponsive
- 3) Tilley Incorporated- Unresponsive

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

**SECTION 1.** The Town of Burgaw Board of Commissioners hereby approves a contract with Tencarva Municipal for an amount not to exceed \$24,355.70 related to the rehabilitation of the Village on 18 lift station.

**SECTION 2.** The Town of Burgaw Board of Commissioners hereby authorizes the Mayor or Town Manager to execute the required contract with Tencarva Municipal for the repairs listed above to the Village on 18 lift station.

**ADOPTED** this the 10<sup>th</sup> day of May, 2016.

**Resolution 2016-21 Approving a Contract with Skipper's Well Drilling and Pump Service Related to the Rehabilitation of the Ashe Street, North Smith Street, North Wright Street and South Smith Street Wells**

Mr. McEwen advised as part of the Capital Improvement Plan for FY 16-17, the rehabilitation of the 4 well houses was prioritized. The water reserve account in the FY 15-16 budget has a balance of \$41,806 which could be used towards the estimated \$36,125 quoted for the necessary repairs to the four well houses. Utilizing these reserve funds prior to June 30 will help with funding the CIP priorities as part of the FY 16-17 budget. The following contractors were contacted and invited to bid on the well house rehabilitation project:

- 1) Skipper's Well Drilling and Pump Service- \$36,125
- 2) Applied Resource Management- Unresponsive
- 3) Richard Caitlin and Associates- Unresponsive
- 4) TA Loving- Unresponsive

Mr. McEwen advised in addition to the quoted price we would request the Board add a 15% contingency to the quoted price which would bring the approved amount to \$41,543. He said the recommendation is the award of the contract to Skipper's Well Drilling and Pump Service in the amount of \$36,125. In addition a 15% contingency is recommended for the project which would bring the approved amount to \$41,543. Commissioner Harrell made a motion to approve Resolution 2016-21 as presented. The motion was seconded by Commissioner George and carried by unanimous vote.

**RESOLUTION 2016-21  
RESOLUTION APPROVING A CONTRACT WITH SKIPPER'S WELL DRILLING AND PUMP SERVICE  
RELATED TO THE REHABILITATION OF THE ASHE STREET, NORTH SMITH STREET, NORTH  
WRIGHT STREET, AND SOUTH SMITH STREET WELLS**

**WHEREAS**, the Town prioritized the rehabilitation of the Ashe Street, North Smith Street, North Wright Street, and South Smith Street wells as part of the CIP priorities for FY 16-17; and

**WHEREAS**, the town solicited bids from competent companies with experience in the rehabilitation of municipal wells; and

**WHEREAS**, based on the repairs and improvements listed above, the town requested quotes from three contractors. The quotes received were as follows:

- 1) Skipper's Well Drilling and Pump Service- \$36,125
- 2) Applied Resource Management-
- 3) Richard Caitlin and Associates- Unresponsive
- 4) TA Loving- Unresponsive

**WHEREAS**, in addition to the quoted price it is requested that a 15% contingency to the quoted price in order to provide for addressing any unforeseen issues that might arise as part of the rehabilitation. which would bring the approved amount to \$41,543.

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

**SECTION 1.** The Town of Burgaw Board of Commissioners hereby approves a contract with Skipper's Well Drilling and Pump Service for an amount not to exceed \$41,543 related to the rehabilitation of the Ashe Street, North Smith Street, North Wright Street, and South Smith Street wells.

**Section 2.** The Town of Burgaw Board of Commissioners hereby authorizes the Mayor or Town Manager to execute the required contract with Skipper's Well Drilling and Pump Service.

**ADOPTED** this the 10<sup>th</sup> day of May, 2016.

**Resolution 2016-22 Amending Article III, Section 7; Article VII, Section 3; Article VII, Section 5 of the Town of Burgaw Personnel Policy**

Mr. McEwen advised Resolution 2016-22 is designed to clear up the ambiguity in the personnel policy that has been discussed in recent months. He reviewed the following proposed policy amendments.

Mr. McEwen advised upon review of Article VII, Section 3 and 5 of the Personnel Policy, it has been discovered that there is inconsistent text regarding the number of sick leave hours allowed for transfer to and from other agencies which are members of the State Local Governmental Employee's Retirement system.

Article VII, Section 3, Subsection 1 of the Personnel Policy states as follows:

*The Town of Burgaw will accept sick leave for a new employee who has accrued it with another local government or the State of North Carolina. Acceptance is limited to 400 hours and is pursuant to the Town of Burgaw receiving official documentation from the former employer verifying the availability of sick leave. Such leave can only be used in the calculation of state retirement benefits and may not be used as normal sick leave.*

Article VII, Section 5, Subsection 2 states as follows:

*Any former employee of an agency which is a member of the State Local Governmental Employee's Retirement system or the State Teacher's and State Employees' Retirement System or other systems under the Department of State Treasurer, who is hired by the Town of Burgaw within 12 months of the termination with the former agency shall be eligible to transfer up to 240 hours of sick leave. Employees must make a written request for transfer of sick leave to the Town Manager within 30 days of employment. Proper documentation as determined by the Personnel Department verifying accumulated sick leave hours must be received with the request. Sick leave transferred to the Town of Burgaw in this manner is subject to all of the provisions of Article VII, Section 3.*

It is the opinion of the Town Manager to amend Article VII, Section 3, Subsection 1, to be consistent with Article VII, Section 5, Subsection 2, by changing 400 hours to 240 hours.

At the March 8, 2016 Board of Commissioners meeting, there was discussion regarding salaries and the pay scale. As part of the discussion, the Board requested they be notified by the Town Manager when an employee reaches 2% from being at the top of their pay scale. Below are text change amendments to Article III, Section 7 of the Personnel Policy reflecting this as requested.

#### ARTICLE III, SECTION 7

##### **Section 7 Pay Increases (Merit and/or Reclassification)**

Merit and/or pay increases as a result of pay grade reclassifications/promotions will be made on a percentage basis, as applicable and as recommended by the Town Manager and approved by the Governing Board, subject to the following:

1. That the total amount budgeted for merit increases and/or pay increases as a result of pay grade reclassification, promotions, merit or COLA are based on market studies and is a percent (%) target.
- ~~2. That employees who have served the Town of Burgaw in a permanent position for twelve (12) months or greater shall be eligible to receive not more than a six percent (6%) increase in salary as a result of pay grade reclassification/promotion or be paid at the minimum of the new pay grade, whichever is greater with the recommendation of the Department Head and approval of the Town Manager. Such pay increase shall be made on the first full pay period after reclassification and shall not change the employee's merit pay evaluation date.~~
- ~~3. That employees who have served the Town of Burgaw in a permanent position for less than twelve (12) months shall be eligible to receive not more than a 3 percent (3%) increase in salary as a result of pay grade reclassification/promotion or be paid at the minimum of the new pay grade, whichever is greater with the recommendation of the Department Head and approval of the Town Manager. Such pay increase shall be made on the first full pay period after reclassification and shall change the employee's merit pay evaluation date to twelve (12) months after the first full pay period.~~
2. The maximum combined merit based increase as a result of pay grade reclassification/promotion which any one (1) employee can receive is six percent (6%), or to the minimum of the new pay grade, whichever is greater.
3. The salary line items in each department's individual budget, including salary adjustments, salary adjustment/fringes, and temporary wages, and overtime shall not be supplemented by transfers from other line items during the fiscal year, except with the express written consent and recommendation of the Town Manager.
4. Town Manager shall notify the Town of Burgaw Board of Commissioners prior to the adoption of the annual budget of any employees who are within 2% of the maximum pay within their respective range as defined by **Annex 11 (Position and Pay Classification Plan)**.
5. Merit based increases may be given in the form of a onetime supplement as outlined in Article III, Section 7 (14).
6. When the Board of Commissioners approves a COLA, the minimum and maximum salaries listed in

**Annex 11 (Position and Pay Classification Plan) shall be adjusted accordingly.**

7. In order to be eligible to receive a merit raise, each permanent/permanent employee must first receive an employee evaluation (signed by rated individual) or a supervisory evaluation (signed by rated individual) from their/her immediate supervisor.

The exceptions are:

**Appointed Employees**

Town Manager

Town Attorney

Town Clerk

**Evaluations Conducted By**

Town of Burgaw Governing Board

Town of Burgaw Governing Board

Town of Burgaw Governing Board and Town Manager

8. **Permanent Full Time**-employees who have worked for the Town of Burgaw for at least twelve (12) consecutive months shall receive a performance appraisal on their twelve (12) month anniversary date. The exceptions to the administration of this policy are:
  - (a) Employees who have been promoted, demoted, transferred or otherwise changed employment status during the prior twelve (12) month period and as a consequence, experience a change in their anniversary date will be evaluated on their new anniversary date(s).
  - (b) The Town Manager has developed the evaluation forms and instructions on their use. All must use these forms (**Annex 1**) in order to be eligible to receive a raise. There are numerical grading criteria.
9. All employees may not receive merit raises/supplements. All employees will not receive the same percentage merit increase or supplements. All employees may or may not receive the same total dollar amount of increase.
10. As budget considerations and market dictate, annual COLA and merit increases may be considered by the Governing Board as part of the budget process.
11. At the discretion of either the Department Head (approved by the Town Manager) or Town Manager, an employee's evaluation may be delayed one (1) quarter. This action can only be done for good reason. For example, severe illness of either supervisor or employees or particularly heavy workload might serve to create a postponement situation.
12. No market or merit raise/supplement shall exceed the established upper dollar limit of the respective range as outlined in **Annex 11 (Position and Pay Classification Plan)**.
13. All pay increases/decreases are subject to the approval of the Town Manager and must be within the approved budget of the respective department.
14. In lieu of a merit pay increase the Town Manager may recommend a "one time supplement" for merit. The Governing Board will approve the supplement plan as part of the Budget Ordinance. The Town Manager shall be responsible for developing procedures for implementing the merit supplement plan once the Board of Commissioners approves the budget. Supplement pay is not considered a part of annual pay for reclassification and pay purposes, nor is it to be recorded in personnel records as a part of annual base salary.

Mayor Mulligan desired to further discuss Item 2 in Article III, Section 7 regarding the maximum merit base increase of 6%. He advised he does not recall this item being discussed in a Policy/Finance Board meeting and feels that it should be taken back to Policy/Finance Board for further discussion. Mr. McEwen said he thought it was discussed in context of the ambiguity between the cap between the lower and whichever is greater, six percent or the starting of the range or two pages over where it mentions based on qualifications of the candidate difficulty in finding qualified candidates or unwillingness of a qualified candidate to accept the position at the minimum range the manager can make decisions to hire above. Mayor Mulligan said we had the discussion, but we never came up with a solution and so this must be discussed by the Policy/Finance Board, although this could be the solution, it is

not the solution that has been discussed by the Policy/Finance Board and because it is a major change in policy he would like to see the Policy/Finance Board discuss that before we bring it in front of the Board. Commissioner Dawson said this item is struck through. Mayor Mulligan said it is but that is my point. He said he doesn't think this was ironed out at the Policy/Finance Board level. He said Commissioner Harrell and Commissioner Murphy are on that committee.

Commissioner George asked what happens to an employee that gets to the very top of the range, does he still get a merit raise if he does his work well or does he go into another range. Mr. McEwen said in that instance, he would utilize the merit based supplement that doesn't add to their annual salary. He said he thought that was the whole reason why we discussed this merit based supplement for people who are bumping the top of their range if they do a stellar job that particular year and to have this as a mechanism for them not capping out. Commissioner Harrell said isn't it true that their one time merit based supplement would also count toward their retirement benefits. Mr. McEwen advised it would be part of their compensation but it would not compound the salary forever more. Commissioner George asked if one time means the employee can only get the supplement one time and never more or can they get it in other years of employment if they are doing a great job. Mr. McEwen advised they can get the merit supplement more than once during their employment. Commissioner George said that is what he wanted to hear. Commissioner Dawson advised the six percent maximum is common in personnel policies and is what the county uses.

Mayor Mulligan questioned the six percent rule again. Mr. McEwen said on reclassification or promotion, whichever is greater, six percent or the minimum of the new range; he said the reason this was an issue is because it is contradicted two pages over where it says based on difficulty in finding qualified candidates refusal of a qualified candidate selected to accept the minimum range provides the town manager with the opportunity to go above the minimum or six percent. He said this wording is very specific and very confining. He said there is wider latitude two pages over where it allows for the discretion. Mr. McEwen said he would like to continue to allow the department heads and himself to have that latitude in hiring the most qualified candidate. Mayor Mulligan said he personally feels this should go back to the Policy/Finance Board because there is a larger discussion and it should be taken in the context of the larger discussion. Commissioner Harrell asked Commissioner Murphy if he has any problem with us taking this back to the committee. Commissioner Murphy said "no". Commissioner Harrell said "let's take it back to the committee". Commissioner Harrell made a motion to take this item back to the Policy/Finance Board for another round. The motion was seconded by Commissioner Murphy. Commissioners Harrell, Murphy and Robbins voted "aye". Commissioners Dawson and George voted "nay". Motion carried three to two. The Policy/Finance Board meeting was scheduled for May 24, 2016 at 3:00PM.

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

Mayor Mulligan requested that the following items/issues be referred to the Infrastructure Board for review:

- Parking at crosswalk outside the library (wants street committee to consider making some part of that area no parking zone)
- Propose parallel parking at Sheriff's office
- Reflectors at corner of Campbell and Fremont (are they a temporary solution to a permanent problem; what is the story there)
- Possibility of bicycle corral in town center
- Crosswalk signs and where to put them
- Crosswalks at major intersections

Mayor Mulligan advised he would like for the Policy/Finance Board to have discussion regarding expansion of the elected official's advisory boards to include members of the public.

Commissioner George commented that there are places in neighborhoods that need four way stops due to speeding traffic. He referenced issues on McNeil Street and East Wilmington Street. Mayor Mulligan advised that could go to the Infrastructure Board.

Commissioner Harrell asked what the process is for getting speed humps in town. Commissioner Robbins said he is not aware of a speed hump being put in town since he has been on the Board. Attorney Kenan said it would take a vote of the Board to decide where to put them as long as they are on town streets, not state streets. He also advised it would require a public hearing.

Commissioner Dawson advised some of the pole lights around the court house square are out. Mr. Hesse said he will look into the situation.

Commissioner Robbins said there is an oak tree on the corner of Walker and Wallace and he believes it is on the town right of way that needs to be pruned and limbed up. He asked Mr. Fay to look at it and get it taken care of.

## **BREAK 5:05PM – 5:20PM**

## **DISCUSSION ITEM**

### **Proposed Splash Pad – Meg Smith**

Meg Smith, 119 South Wright Street, advised she and the mom's group have looked at several sites around town for the proposed splash pad. She advised they are recommending Hankins Park as the proposed location for the splash pad. Ms. Smith said some of the major factors in choosing this location includes the fact that the property is owned by the Town, has an existing pavilion and restrooms, availability of water and sewer, ample visibility for safety with two views by patrolling officers and close proximity to the Osgood Canal and Urban Trail.

Commissioner Robbins commented that he supports the splash pad but wanted to inquire about the possibility of including the splash pad as a part of the revitalization of Court House Avenue and perhaps putting it on the vacant lot. He also commented that a few years ago the owners of the medical clinic offered to sell their property that he is speaking of and he just thought that might be an option now. He advised at the time this offer was made the Board had considered purchase of the property and creating a green space on Court House Avenue. Ms. Smith said that the family that owns the property is an advocate of the splash pad project. Commissioner Harrell said he has recently spoken with one of the owners and they are still amenable to reconsidering the sale of the property. Mayor Mulligan said he feels it would be prudent of us to delay this project in order to give the town more opportunity to explore grants and because Commissioner Robbins idea is excellent. He also commented there is currently a committee that is exploring the revitalization of Wright Street and Court House Avenue. After much discussion, Mayor Mulligan recommended further exploration and holding off on any construction plans until all avenues can be explored and the best site can be chosen. Ms. Smith was encouraged to continue her fund raising efforts and to make contact with John Westbrook who is working on the Court House Avenue revitalization plans.

## **PUBLIC FORUM**

### **Speakers:**

**Rochelle Whiteside** – Ms. Whiteside advised she is here on behalf of the Pender Spring Fest to present the Buck Aycock Spirit Award to Mayor Eugene Mulligan for his endeavors to make Burgaw and Pender County a nice place to live and for bringing all kinds of activities and sprucing up our town and making us feel the spirit of a small town caring community. Ms. Whiteside also introduced two of her students from Pender High School, **Lillian Marshall** and **Sarah Casey-Summers** both of whom wrote a poem about Burgaw and shared their poems with those in attendance.

**Robert Kenan Jr.** – Mr. Kenan asked if Mayor Mulligan would contact the Division Engineer for NCDOT to inquire as to why the US 117 improvement is moving as slow as it is. He said it has been about two months since they started tearing up the pavement and they have not adjoined the side streets to the 117 corridor or to the 53 corridor. He also commented that no striping has been done or safety measures have been taken for drivers on the road. He said he would like for a town representative to contact NCDOT to determine why this project is taking so long. Mr. McEwen said ironically enough he spoke with someone from NCDOT today that advised that all that work is managed by private contractor and they are at the mercy of the contractor to get that work done. Mr.

McEwen said the NCDOT representative said they have no explanation as to why the work is not done because it was expected to be complete by now. Mayor Mulligan advised he will get with Mr. McEwen in the morning about this issue.

### **PUBLIC HEARING – *Rebekah Roth, Planning Administrator***

**Consideration of a Conditional Use Permit Application for a “Bed & Breakfast Inn” use including two accessory apartments to be located at 115 N. Cowan St.** Applicant Brenda Allen has applied for a conditional use permit for a bed and breakfast with accessory apartments to be located on a property (PIN 3229-34-7052-0000) at 115 N. Cowan St. within the Town of Burgaw corporate limits.

Mayor Mulligan asked Attorney Kenan to brief the Board and the audience on the procedures for a quasi-judicial hearing. Upon completion of instructions, Attorney Kenan administered the oath to the following persons who would submit testimony to the Board of Commissioners during the hearing: Rebekah Roth, Brenda Allen, Alicia Taylor, Rochelle Whiteside, Bob Murphrey, Raymond Krynicky, Debbie Ruddell, John Sansone, Janet Rivenbark, June Robbins, Marge Moore, Susan Williams, Bryan Dees, Harold Ross Wilcox, Jr. and Allen Wilson.

**Board Disclosures** – Mayor Mulligan stated that he has visited the site because he stopped by to welcome Ms. Allen to Burgaw and they subsequently did some business in regards to some items that Ms. Allen wanted to purchase from him for her house. He said he has heard comments from members of the public but he did not engage in the discussion. He commented that he cannot ignore what a citizen has to say about the situation, but he did not engage in any discussion and any discussion he had was purely under the rules of how this whole thing is working. He said that is his disclosure and he does not know if that makes him ineligible or not. Ms. Roth said to make sure that any evidence that is considered in the decision is presented tonight so that all parties have a chance to hear it.

Commissioner Harrell advised he has visited the site numerous times having grown up here and knowing people that live there. He said he has also spoken with a number of people about this issue but always explained to them that in order to be able to judge fairly the best thing for them to do would be to show up here this evening and it appears they are all present. Attorney Kenan asked Commissioner for the record if he has made any site visits since the applicant applied for the permit. Commissioner Harrell said “no”.

### **OPENING OF HEARING**

Mayor Mulligan declared the public hearing open at 5:45PM.

### **PRESENTATION OF STAFF REPORT**

Rebekah Roth, Planning Administrator provided the following background information.

Ms. Roth advised the subject property is located at 115 N Cowan Street; the owner is Ms. Brenda Allen and she is present here today. She is also the applicant. The property is zoned R-12 Residential and is currently approved as a single family residence with one accessory apartment. Ms. Allen is requesting a bed and breakfast inn and she is asking for nine guest rooms which are all in the primary structure. She would like to be able to use the accessory structure for an office/gift shop, potentially some guest rooms, or up to two accessory apartments. Ms. Allen is requesting permission to have no more than four special events per month and is also interested in having some holiday/seasonal special events for the larger community. She is requesting use of the existing brick fireplace located on the southern property line.

Ms. Roth advised the Board that in consideration of Ms. Allen’s request they may take the application as a whole in their approval or disapproval, but in case there are portions of her request that are problematic they can be taken away from what was approved. She advised the Board can approve or disapprove the request in whole or approve her request in part.

Ms. Roth presented via power point the layout of the proposed bed and breakfast property. She advised the primary structure and the accessory structure are already there. She said Ms. Allen is proposing off street parking. She advised there is enough room for seven spaces. She is also requesting parking spaces on the street in front of the

structure if needed. Ms. Roth advised Ms. Allen requested five spaces on the street but our ordinance only allows four spaces.

Ms. Roth advised all surrounding properties are residential properties. She advised the residence to the south of Ms. Allen's property line is almost on the property line. She advised the vegetation shown in the packet is on the proposed bed and breakfast property line.

Ms. Roth said the Board will be able to decide whether or not the property can be used for a bed and breakfast, the number of guest rooms that will be allowed, whether or not the accessory structure can be used as requested, if the property can be used for special events or if there are any outdoor activities that will be allowed.

Ms. Roth said the ordinance does have specific regulations for bed and breakfasts. She said there are regulations regarding off street parking, the number of spaces that are required, it is required to be in a residential dwelling in this zoning district and there is a maximum of four guestrooms allowed unless the Board approves more rooms because the dwelling was constructed with more rooms originally. Ms. Roth advised there are signage limitations. She said the ordinance requires that the bed and breakfast be operated by a resident manager (cannot require that owner live on site but manager must live on site). Meals can only be served for the guests of the bed and breakfast; they cannot open a restaurant; the meals cannot be served to the general public. The maximum length of a guest stay is thirty days. There cannot be any type of private parties or similar activities unless it is specifically approved as part of the conditional use permit.

Ms. Roth said there are four standards that must be met:

- 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.
- 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;
- 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 Hwy 53 Corridor Study; and
- The use meets all required conditions and specifications.

#### **Standard 1**

Ms. Roth advised the evidence that was included in the packet in regards to the first standard which is 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** is as follows:

- The subject property is not located in a floodplain.
- The proposed use will be required to meet building code, fire code, and food code requirements as enforced by the Town of Burgaw Building Inspector and Fire Marshal and Pender County Health Department.
- Representatives from these organizations have reviewed the proposed application and do not anticipate issues with meeting those requirements.
- Representatives from the North Carolina Department of Transportation have reviewed the plans and have no concerns.
- The applicant has proposed using security lighting at the rear and northern entrances.
- An existing light pole will illuminate the off-street parking area.
- The applicant does propose a grill and fire pit for guest use.

Ms. Roth advised one consideration that was not included in the packet but has been brought to her attention since that time is that the applicant has proposed both driveways being in and out driveways. She advised there are concerns that during special events that there will be difficulties maneuvering and so with special events there could be requirements for a one way circulation pattern if special events are approved.

Ms. Roth advised one recommendation regardless of whether or not the Board decides to allow all of the applications requests is that the location of any grill or fire pit must be approved in advance by the Town of Burgaw Fire Marshall to insure there are no fire issues.

### **Standard 2**

Ms. Roth advised the second standard that must be met is 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.** The following requirements will apply:

- The use is not a public necessity.
- The subject property is directly adjacent to two single-family residential properties and directly across the street from two others.
- The accessory structure is a grandfathered nonconforming structure because it does not meet the 15 feet of required side yard to the south.
- The accessory structure has been used for two accessory apartments in the past and meets all current requirements for accessory apartments except a required side setback of no less than 10 feet.
- In September 2015, the planning administrator made a determination that the two accessory residential units were grandfathered through November 3, 2015, and that if use of both units were not resumed by that date, only one accessory apartment would be permitted thereafter.
- Use of both accessory apartments was not resumed by that date, so approval of the second unit depends on the issuance of a conditional use permit.
- The applicant is proposing using the accessory structure for an office/gift shop, guest rooms, and/or up to two accessory apartments.
- The applicant is requesting to be allowed to have four (4) special events per month, including special holiday events. While the holiday events are intended to be open to the public, the applicant has not specified whether the other special events are limited to guests of the facility or the general public.
- Off-site parking will be arranged for special events.
- The applicant is proposing to use the portion of the street immediately in front of the property for on-street parking. There is sufficient space directly in front of the subject property to accommodate four cars.
- The applicant proposes to use an existing fireplace along the southern property line as a fire pit for guests.
- The existing fireplace is several feet from the southern property line in an existing vegetative buffer.

Ms. Roth advised that some of the considerations that the Board will want to take are whether or not all nine guest rooms would be allowed, whether or not the accessory structure can be used as requested, whether the applicant can have special events either the four events per month for guests or the special community events. Ms. Roth said if an accessory structure is allowed for apartments we recommend a condition in place that two accessory apartments are treated as a conditional use permit regardless of whether or not the primary structure is used as a bed and breakfast or a single family residence. If the Board wants to approve that in part, accessory apartments are actually considered their own conditional use which why it was included in the advertisement, so you can place a stipulation that the accessory apartments can be used even if the primary structure goes back to a single family dwelling. If not everything in the accessory structure is allowed, we recommend a condition that spells out specifically what is allowed in that accessory structure so there are not any future enforcement issues. She advised in terms of special events if there are any limitations to the special events that are allowed she will need a condition that spells out what is allowed and not allowed. Ms. Roth advised regardless of the accessory structure issues and special events issues staff recommends that the vegetative buffer between the subject property and the two adjacent properties must be maintained at all times in order to provide sufficient separation between the bed and breakfast inn and the two adjacent properties; the existing fireplace may not be used as a fire pit by guests; the fire pit is almost in the backyard of the next door neighbor and is in the vegetative buffer so it would not be safe to have fires in that fireplace. She commented that a new outdoor fireplace or fire pit may be installed in the rear yard of the primary structure in a location approved by the Town of Burgaw Fire Marshal and Planning Administrator.

### **Standard 3**

Ms. Roth advised the third standard that must be met is 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 Hwy 53 Corridor Study.** The following requirements will apply:

- The Burgaw 2030 Comprehensive Land Use Plan has established the following goals that are pertinent to the applicant's request:
  - To attract businesses and industries that will enhance the economic health and livability of the town,
  - To foster local entrepreneurship and economic capacity by amending the ordinance to provide opportunities for home based businesses that are compatible with residential neighborhoods and subject to appropriate restrictions,
  - To preserve and enhance the town's tree canopy, and
  - To sustain and enhance existing neighborhoods.
- The site for the proposed bed and breakfast is designated as Traditional Neighborhood Residential on the Town of Burgaw Future Land Use Map.
- The Traditional Neighborhood Residential land use designation is characterized by its connectivity, both auto and pedestrian, and primarily single-family housing. Recommended land uses include single-family residential, two-family residential, and bed and breakfasts.
- The subject property is included in the residential zone of the NC Hwy 53 Corridor Study, which recommends sidewalks, a verge area separating pedestrians from the roadway, and street trees to create a physical canopy and visual separation between the roadway and the houses.
- Unlikely wholly commercial uses, the proposed use is not subject to the town's landscaping requirements, and the applicant or subsequent property owner or bed and breakfast operator may remove and change landscaping unless precluded by the conditional use permit.

Ms. Roth also provided the following staff recommendations for Standard 3:

In order to bring the proposal into compliance with this standard, staff recommends the following condition:

- All existing landscaping on the property shall be maintained or enhanced. Any trees that must be removed shall be subject to a Town of Burgaw tree removal permit and shall be replaced with a tree of the same species, unless approved by the Planning Administrator.
- All replacement trees shall be a minimum of 1" caliper for small flowering trees and 4" caliper for all others.

**Standard 4.**

Ms. Roth advised the fourth standard that must be met is that **the use meets all required conditions and specifications.** The following requirements will apply:

- Doug Racine, Journey Engineering Technician with the North Carolina Department of Transportation, has reviewed the application information and found that no driveway permit is required at this time, but no parking would be allowed within the DOT right-of-way.
- The site plan and aerial photos show that the proposed parking area is located outside of the DOT right-of-way.
- Clay Creswell, Environmental Health Specialist with the Pender County Health Department, has reviewed the application information and specified that the applicant would need to obtain a health department permit prior to operation but did not notice potential issues with compliance.
- The Town of Burgaw Fire Marshal Allen Wilson has discussed the proposed use with the Town of Burgaw Building Inspector and only has concerns regarding the fire alarm and sprinkler requirements.
- Louis Hesse, Town of Burgaw Building Inspector, has met with the applicant and reviewed the application information. Fire suppression will be required and some accessibility issues and minor code compliance items will need to be addressed during the building inspections phase of development.
- The primary structure meets all town dimensional requirements.
- The accessory structure is a grandfathered nonconforming structure because it does not meet the 15 feet of required side yard to the south.

- The accessory structure has been used for two accessory apartments in the past and meets all current requirements for accessory apartments except a required side setback of no less than 10 feet.
- In September 2015, the planning administrator made a determination that the two accessory residential units were grandfathered through November 3, 2015, and that if use of both units were not resumed by that date, only one accessory apartment would be permitted thereafter.
- Use of both accessory apartments was not resumed by that date, so approval of the second unit depends on the issuance of a conditional use permit.
- The proposed off-street parking area meets all requirements for the parking of seven vehicles, including required buffering to the east.
- There is no separation or obstruction between the proposed off-street parking area and the sidewalk along Hwy 53/E. Bridgers St.
- Without separation or obstruction between the parking area and the sidewalk, cars may inadvertently damage the sidewalk, encroach upon the right-of-way, and/or obstruct pedestrian traffic.
- Only 11 parking spaces can be accommodated on-site or immediately in front of it.
- The applicant is proposing nine guest bedrooms, two resident managers, and potentially two apartments, which would require thirteen spaces if each apartment were only required to include one parking space each.
- The proposed signage meets the sign allotment for Bed and Breakfast uses.
- The applicant is proposing solar lights for illumination, which is allowed for non-residential uses in the R-12 zoning district.
- The proposed bed and breakfast was originally constructed as a dwelling/tourist home with ten bedrooms.
- The accessory apartments were built after the original dwelling, in 1950 and 1955.
- The applicant intends to have two on-site resident managers.
- According to the application, breakfast, possibly dinner, and light lunches will be served to guests.
- The applicant is requesting to be allowed to have four (4) special events per month, including special holiday events. While the holiday events are intended to be open to the public, the applicant has not specified whether the other special events are limited to guests of the facility or the general public.
- Off-site parking will be arranged for special events.

Ms. Roth provided the following staff recommendations for Standard 4:

Parking. The board will need to determine whether the applicant should be able to use all 9 bedrooms, plus the two apartments. If no apartments are allowed, there is sufficient parking on-site or immediately in front of it to accommodate the resident managers and nine guest bedrooms. However, staff recommends the following condition to bring the proposal into compliance with the standard:

- A vegetative buffer or protective device approved by the Planning Administrator shall be installed between the off-street parking area and the sidewalk.

Ms. Roth said if the board determines that both apartments can be potentially rented, she recommends the following condition:

- A minimum of two parking spaces should be designated for one apartment, or three for two apartments.

She also said regardless if the apartments are used as rental dwelling units or guest rooms, she recommends the following condition:

- If all guest rooms at the bed and breakfast are to be occupied, the applicant must provide for guest parking at another off-street parking location to accommodate guest or manager parking in excess of eleven spaces.

She advised in addition, the following condition is recommended if special events are allowed:

- Off-site parking shall be required for any special events.

Ms. Roth advised this is the end of her presentation at this time unless there are questions.

Mayor Mulligan advised the Board of Commissioners have been presented with written comments from Kerry and Monique Kirby, Town of Burgaw residents on May 8, 2016. A copy of the letter was provided to the applicant. Attorney Kenan advised this item will be entered into evidence as *exhibit 1*.

#### **PRESENTATION OF EVIDENCE BY APPLICANT AND CROSS EXAMINATION**

**Brenda Allen, Applicant** commented that Ms. Roth has said it all in her comments and that she is excited to be a part of Burgaw, if it happens.

#### **PRESENTATION OF EVIDENCE BY CITIZENS AND CROSS EXAMINATION**

**Alicia Taylor, 712 Whrens Road, Burgaw** stated that she loves Burgaw and she loves neighborhoods; anytime commercial starts encroaching on a neighborhood we lose the character of the town. She said it is great to have a downtown with lots of businesses as well as on the highway that generates money but our neighborhoods need to stay neighborhoods. She commented that her grandmother built the house at 115 N. Cowan Street (the subject of this hearing) as her home. Ms. Taylor said her grandmother was a widow and she needed to make money and there were teachers in town that needed a place to live. She advised her grandmother built the bedrooms to give her income but it was always her home; it was not open for special events; she didn't have a gift shop in her home; she had guests in her home. Ms. Taylor said when this is called a bed and breakfast she thinks it is part of that wide definition of bed and breakfast which includes everything from the home that her grandmother had where she rented bedrooms out some long term, some short term all the way to what we see here called a bed and breakfast and it's really an event center; a commercial store that has events of some size where the public just comes to it and you can say that Santa Claus photos are going to happen with off-site parking; no they're not! She said she drives to the Blueberry Festival and finds a parking place as close to downtown as she can and that's what will happen when parents want to get their picture with Santa. They will find a way to drive into the neighborhood and will directly impact the neighborhood. She said one of the standards said that it is a necessity and she doesn't see that it is a necessity or in harmony with the neighborhood character. She asked the Board to reject this application for a conditional use.

**Rochelle Whiteside, 314 W. Bridgers Street, Burgaw** commented that she loves Burgaw; it is her community and her town, born and raised and always with the idea of what can make it better. She said the only thing that she feels is to ask the Board to please consider everything. People want to do something and be part of the community, that's lovely. How can you best do that in harmony with the neighborhood; how can you assure that it will be off-site parking; do you want to live next door to or down the street from an event center. She said maybe it can be with some creative thinking and some ways to determine what can work and what would be too much but just know that you hold in your hands right now what our town will be like and I see businesses encroaching into neighborhood areas and that's one of the precious things about Burgaw, our neighborhoods. So please when you are making this decision I ask that you think about what we want for our town and how we want our families to be able to live. She said she thinks something can be come up with that helps everyone.

#### **Dayna Corcoran (signed up to speak but not present at hearing time)**

**Bob Murphrey, 200 E. Bridgers Street, Burgaw** thanked the applicant for the improvements made to the property; it's such a beautiful house and property; it's nice to have someone to take care of it and we appreciate that. He said that he and his wife are supportive of a bed and breakfast in its basic form and they support the two accessory apartments. He advised he is not so sure about the commercial uses even the small gift shop; this opens the doors to commercial encroachments and we just want to do that in a neighborhood. He said the most serious consideration is the issue of the events. Mr. Murphrey said the reason for concern about the events is because he loves Burgaw and has lived here for 22 years and this is a noisy town particularly along that NC 53 and Bridgers Street Corridor. He said there is a constant stream of tractor/trailer trucks, emergency vehicles, motorcycles going to the latest Hell's Angels convention, the roar of souped up pickup trucks and so the noise factor of fifty or one hundred people outside of the building celebrating a wedding or special event would be our concern. He said that could possibly be handled by limiting the number to maybe only a couple per month and with a deadline of nine or ten o'clock that the events are over with. He said this is our concerns and we thank you for the opportunity to speak.

**Raymond Krynicki, 295 Tracey Drive**, advised he is here with his mother-in-law Debbie Ruddell whose property is south of the proposed bed and breakfast. Mr. Krynicki commented said he and Ms. Ruddell have some concerns one of which is the accessory apartment that does not meet the guidelines of the ten feet from the property line, it is in close proximity to Ms. Ruddell's property. He said we also have a lot of concerns about the fire pit; the fire pit is even closer than the nine feet to the property line and he thinks the town has an ordinance about burning vegetative debris inside the city limits. He said he feels sure that if they have a burn pit they will be burning some sort of vegetative debris and that will be hurting the neighbors in the community. He said if Ms. Ruddell wanted to burn something she would be moving to the country so she would not infringe on others. Mr. Krynicki said on the proposed plan they wrote in that the accessory apartment may be a rental space for a gift shop and there is really no specific language as to what it will be. He said he feels it would be pretty important to specify what that property will be used for such as a gift shop, rental space or apartment instead of leaving that open. He said they are concerned about the proposed four events and surely they have made plans for off-site parking and what are those plans? He asked if we are going to wait until the day of the event and then Ms. Ruddell cannot get into her driveway to park because her parking spots are full. He asked if those considerations have been done and if so what is the plan for off-site parking in the scope of four events per month? Mr. Krynicki advised the buffer to the south is currently maintained by Ms. Ruddell and it is on her property; if this proposal is approve what will be the buffer that the owners are proposing for this bed and breakfast? What are they going to maintain? He pointed out that the buffer that is noted in the packet belongs to Ms. Ruddell. He asked what they are going to do to keep their activities from infringing on her property.

**Debbie Ruddell, 111 N Cowan Street, Burgaw** said that when Mr. Wilcox introduced himself to her she was under the impression that he was going to be a neighbor not a business. She said she felt that she was going to have a great neighbor moving in and everything was going to be wonderful. She said she appreciates them fixing up everything, it's beautiful because that place has been run down for quite some time and has not been maintained. Ms. Ruddell said we have a historical district here and she would like to keep it a historical district and not to rezone that property to a business. Ms. Ruddell said she has lived there for thirty nine years. She said the shrubbery that her son-in-law mentioned has been maintained by her since Ms. Biberstein died. She stated that azaleas are not made to be buffers but to be beautiful bushes that bloom and not buffers between a commercial zone and a residential zone. She said for that reason there would have to be something done there besides azaleas. She said there is an ugly oak tree there that will definitely have to come down. She advised the fire pit is only about six inches off her property line. She said the shrubbery and those trees do not belong to her but she has maintained them for about twenty five years. She said she wants the board to understand that the azaleas are not a buffer but a beautiful azalea row that can be kept as such. Mrs. Ruddell said she is against the events center being there. She asked what if there is a big wedding going on over there and I decide to mow my grass or have a big yard sale? She said one night she heard motorcycles over there coming right by her bedroom window. She said there is no way that you can make that a quiet zone. Ms. Ruddell said when Ms. Biberstein ran the tourist home there were some older teachers living there and the occasional guest but it was very quiet. She also commented that the apartments had been rented but in the last ten years it has been a disaster. She said that she would appreciate the Board considering all those things.

Mayor Mulligan asked Ms. Ruddell why Mr. Krynicki said the shrubbery is on her side and she said it is not. Ms. Ruddell said Mr. Krynicki did not know until now that the property line is underneath the row of azaleas. Mayor Mulligan said "so it is common between both" and Ms. Ruddell said it is common and she has just taken care of it for years.

**John Sansone, 205 E Bridgers Street** said he has several things that he would like to bring up. He said there are eight bedrooms upstairs and what is the ratio of bathrooms to bedrooms? How many people are going to be staying in those rooms; is it one bed, two beds? He asked if the breakfasts, lunches and dinners will fall under Health Department guidelines; will this place be graded by the Health Department like any restaurant? Mr. Sansone said it bothers him that this is more like a hostel than a bed and breakfast because when they check in they can stay a maximum of thirty days but can they then check out and check back in for another thirty days and do this indefinitely. He mentioned that he does events for a living and is concerned about the small lot and will there be tents, DJ's, bands, lighting, stages, dance floors; what kind of sound levels will be generated from these events and what are the hours of operation. He asked will there be professional event planners, what kind of power source will be used to provide safe lighting and power for these events. He said these are all things that must be taken into consideration when booking an event because it is very important. He asked what libations will be served or will it

be BYOB? What about exuberant guests that can cause damages to people and property? What about trash at these parties; will they toss the beer cans in the bushes? He said when guests drive into the driveway, the headlights will shine into his living room, dining room and kitchen so will he have to put up blinds to block the lights. He asked what happens if the seven parking place are filled by guests and they have visitors, where will they park? He asked what happens if there is a fire and there is only one way down the stairs? Mr. Sansone said these are questions that he is concerned about. He said at first he thought this was just a bed and breakfast and now it has stonewalled into much more. He said this is a historic neighborhood and he doesn't know if this is the place for what is being asked. He said this residential neighborhood doesn't have the space to handle something like this.

**Janet Rivenbark, 307 E Bridgers Street** said the house looks magnificent now. She thanked Ms. Allen for that. She said she came for information tonight because as a person who lives around the corner she should. She said she originally just sort of put this aside because she thought it was just a bed and breakfast and then when the commercial information starting getting into our knowledge base and after listening today she says that is not what she wants to see from my neighbor. She said she loves the neighborhood and she moved to this neighborhood purposely. She said this is a historical neighborhood filled with lovely people who care for each other and see each other on a regular basis. Ms. Rivenbark said she like for the neighborhood to remain as such. She does not want any commercialization going on; she wants it to remain a traditional neighborhood. She the events center is one of the biggest questions that we don't know the answers to. She said sometimes things happen very quickly and they snowball into other things and for that reason she would like for her neighborhood to remain as the quaint neighborhood that it is. She said she welcomes the applicant to be her neighbor.

**June Robbins, 104 N. Cowan Street** said two weeks ago she went to the Planning Department and got a packet and that they also got a letter. She said began to read the packet and the more she read the madder she got. She said Commissioner Harrell heard the heat from the first phone call. Ms. Robbins said twenty six years ago she and her husband moved to Burgaw. She said this was his grandparents' home and he wanted to maintain the home. She said she has learned to love the area and love the neighbors. She said they had daughter and across the street there was another two year old daughter and those two girls grew up hand in hand. She said as three year olds the two girls could cross the street hand in hand while the parents watched from each side. She commented that will not be the case anymore. She said we are fighting tonight because our residential section is being decimated. When you have businesses that move into a community, business number one and then there will be business number two and then business number three. She said if you look at the area where Go-Gas is located and that residential end you will see what I am talking about. This bed and breakfast as quoted does not have any ownership in this community. The owners will not be there, they will be someplace else. There will be general managers, they may love the area or they may not but they will look at it as a job because it is a business. It is a job; it is not necessarily their home. They have no vested interest. She said if you are looking at events and weddings and such this business will have beer and liquor licenses. It will be part of their money making opportunity. We do not want that in our area. She said four events or more is every weekend. She said she doesn't know of anyone that wants to live beside a business that has events every weekend. Ms. Robbins said she is a porch sitter. She said she read that sitting on a porch and communicating with the neighbors is a lost art; it is not a lost art on Cowan Street. She commented that it will be a lost art if this business is allowed to come in. She said there are places that are already designed for events. She said we do not need Santa on the corner of the street; we do not want to eat breakfast with the Easter Bunny; we do not want to have such public events that we have to be nervous about who's in town. She commended the police department for their coverage at Halloween. She said that is a time when people come to town and you don't know what kind of people they are. You don't know if they are going to trash your yard. When you have events as such you have the same situation that this street is going to have. She said fire pits and beer just go together and there is a neighbor that must be at work at 6AM on Saturday morning. She said she would not want to have a fire pit party next to her window. Residential neighborhoods are just as they are residential sections. She said we reside in our buildings, we reside with our neighbors, this is not downtown Wilmington. She said Burgaw will never become a downtown Wilmington. She said being town commissioners, your job (you are public servants to begin with) as I understand is to be as fair as you possibly can; your job, your decisions are not supposed to adversely affect any element of this town. The decision to make a business come in that is completely surrounded by residents is almost like putting a cancer in the middle of this residential section. It will adversely affect our area. Cowan Street has fought several years over many other things to keep it a residential section; we understand that we are a block behind town and we like the fact that we walk but we also like the fact that we can come home. When you put a

business in a residential section it is not home anymore; it is business so I hope that this group of town commissioners will not make a decision that will adversely affect our area.

**Marge Moore, 101 N Cowan Street** advised her house was built by her husband's father and great grandfather in 1885, was remodeled in 1916 and her husband upgraded the house in 1978 and they have lived there since then. She said the house has always been in the Moore family as the other houses have remained in families for many years. She said this is a quiet, residential, historical area. She said there has been a brochure printed promoting a self-guided walking tour and on the inside in red is the historical area which includes all the streets around here. She pointed out that her house is part of that tour. She said she urges all of the board members to consider what would happen. She said we have a very special kind of town, special people and it would be very nice to keep it as so.

**Susan Williams, 302 E Bridgers Street** said she had not seen a packet and has only read the letter and had no idea what we would be talking about tonight other than allowing a bed and breakfast. She also said she agrees with Mr. Murphrey that this area is a very noisy street and she doesn't know how they could make any more noise than the street itself.

She said they have lived in their house for twenty one years and the applicant's house looks great. Ms. Williams said she looks at that property every day and she welcomes a bed and breakfast here. She said she does not want what was there before and it was not nice to look at. She commented that she did not know about the events and the store and such but she feels a bed and breakfast will be fine. She has no problems with it and thinks it will be a lovely addition. She said if it is a bed and breakfast and they run it as a bed and breakfast she would rather see that than what was there before. She said she did not know all the other things because she only received a letter. Ms. Williams said she just wanted to say she is fine with a bed and breakfast.

**Bryan Dees, 109 N Cowan Street** said in 1946 my grandmother (Mrs. Ellis R. Dees Von Biberstein) went across country to California and when she was coming home she intended to build a home at 115 N Cowan Street. He advised on the way to California she stopped at many tourist homes and realized that is what she wanted to build. When she completed her home most of her tenants were teachers. Mr. Dees advised oftentimes his grandmother would ask him to "go tell them to move their cars; you cannot park in front of our neighbors". He commented that he observed his grandmother "dismissing" a couple and he asked her why she did that and she said "because this is my home and I live here and I live with my neighbors". He referenced Ms. Robbins' comments about porch sitting and stated that he is notorious for porch sitting. He said he built a screened in eight window back porch, had it greened out in the back and the town saw fit to come in and cut down my trees and now he is open to razor wire and downtown which is very discouraging. He said we look at the light and this (bed and breakfast) is going to be even worse. He said Mr. Wharton wanted to put a street light right there in front of my house where our bedrooms are and where my beloved porch is. Can you imagine what that would do? He said this is first of all my home; they cannot say that. He said this is a business to make money. He said as a child he carried up ice and glasses to the tenants but they never disrupted the neighbors. He commented about the close proximity between the houses along that block of N Cowan Street. Mr. Dees commented that this is a disaster ready to happen to change this historical street and quiet residential area, please don't do this. He said it is marvelous what they (the applicant) have done to the house, it's wonderful but he thought it would be more like his grandmother's and they were going live there and love it as their home but it's not going to be that way and it's going to ruin everything. He said his house is almost one hundred years old, what am I going to do, move? I might have to if I can't stand the noise; he too hears the trucks and they should have built a bypass around town but we go through this all the time. He commented that this is a true destructive business not a quaint little bed and breakfast but something that will ruin my lifestyle. He said please don't do this to my grandmother's house. He said if it is going to be a quiet little bed and breakfast like she would have approved of that's fine; but if it is going to be nothing but business as usual with managers, that has no place in this historical area. Why destroy it?

**Harold Ross Wilcox, Jr., 2 Lodge Court, Castle Hayne NC,** commented that he does have ties to Burgaw because his grandson lives here and he attends the ball games at the ballpark. Mr. Wilcox said this is to be a bed and breakfast, that's what we choose. He advised he was born in a small town of 57 people in West Virginia and he knows what a small town is. He said he doesn't know where all this business is coming from. He said the gift shop was only to be able to sell a memento and the infamous fire pit was an old barbeque pit. Ms. Allen's plan was for guests to be able to roast marshmallows or cook a hot dog in the evening if they so desired. He said this has

blindsided him because he had talked to many people and they thought it was a wonderful idea before they even decided to make a bed and breakfast in Burgaw. He said they were told they would be more than welcome because there is nothing but one motel in town.

**Brenda Allen, lives in Texas**, said she doesn't know where everybody got their information but we will live in this house. She advised it is currently being repaired so that it is livable. She advised when she comes here she does spend the night in the house. She advised she does not want to mess up anybody's house as far as the apartment or the events. She said if she has a wedding there it will be very quiet, not loud events like some of you think. She said she realizes that none of these people know her but it is not going to be that, it is not going to hurt your neighborhood. She said "I'm here for you, not to hurt you".

There being no further comments from those signed up to speak, Mayor Mulligan asked if any of the board members have any questions of Ms. Allen since she is at the podium and is the applicant.

### **COMMENTS AND QUESTIONS FROM MAYOR AND COMMISSIONERS**

Commissioner Dawson commented that the packet says the bed and breakfast will be run by managers and that's where they got the information. Ms. Roth said from what she understands, Ms. Allen intends be the resident manager however, we are not allowed to specify that the owner of the property will be the resident manager. She also advised that if the permit is transferred because conditional use permits are transferrable then it would fall under whom ever owned the property and they would be held to the same conditions that have been set.

Commissioner George asked Ms. Allen what type of events she plans to hold. Ms. Allen said she has no specific plans in her mind but would like to have small weddings or be able to house a wedding party if they get married somewhere in town. She said she will not have any big, loud, noisy events. She said "I'm not, I'm sorry I am nervous but I am not going to do that; that is not my intention".

Mayor Mulligan commented that he guesses the concern is that once the use is permitted for events then there is no further control on that. Ms. Allen said that's not what she's going to do. She commented there may not be any events. She said she wants to make this a very nice place and bring something to Burgaw, not to hurt Burgaw. June Robbins interjected that once the permit is done and she is gone or if she is there, there is no controlling whether there are fifty people or one hundred fifty people there. Ms. Roth said any foreseeable restrictions should be placed tonight because it is transferable to whoever owns the property. Mayor Mulligan asked if they can put limitations on the number of people that can attend an event. Ms. Roth advised that is correct and that would be in place for Ms. Allen as well as any other owner thereafter.

Attorney Kenan commented that in talking about having events the zoning ordinance based on his review of the Table of Permitted Uses (TPU) does not allow event venues either indoor or outdoor in the R-12 zoning jurisdiction. Mayor Mulligan said "even as a conditional use"? Attorney Kenan said that is what the TPU says but when you get down to the specific use restrictions that deals with a bed and breakfast inn the last one says no receptions, private parties or similar activity shall be permitted unless it is expressly approved as a conditional use permit. Based on that Attorney Kenan said it would be his interpretation that specific provision within that bed and breakfast use is in conflict with what's in the TPU which says no event planning within the R-12 zoning district. He advised therefore we should go to the greater TPU in plotting that because that is what controls this one specific provision in the provisions that deal with a bed and breakfast inn. Based on that he doesn't see how the events that the owner wants to do or provide is allowed. Additionally when it deals with souvenir sales likewise, that is also not permitted in the R-12 zoning jurisdiction based on the TPU. Attorney Kenan said based on those facts, he doesn't think this board can consider events requests as part of the application or the ability to have souvenir sales as an accessory use within that accessory apartment. Mayor Mulligan said basically you are saying that in your legal opinion that is off the table for this conditional use permit. Attorney Kenan advised the only item you can consider as part of this conditional use permit is the bed and breakfast as well as the additional apartment in the back and whether you want to allow it for a residential use. Mayor Mulligan said just to finish that out is there any other logical path for the owner of that property to go back; we have to change an ordinance are you telling us? Do we have to correct that ordinance? Attorney Kenan said the only thing that would need to be changed would be the specific use regulation under bed and breakfast inn that no receptions, private parties or similar activities shall be permitted unless

expressly approved as part of the conditional use permit; that should be stricken because that is a conflict of what the uses are in the TPU.

Mayor Mulligan said to Ms. Allen “you have heard what the attorney has told us so right now your application is purely for a bed and breakfast and for the accessory apartments by our town ordinance”. Ms. Allen said she had these ideas that she wanted to do but not to hurt anybody or not to make everyone angry at her. Mayor Mulligan said he doesn’t think they are angry at her; they are just concerned about the long term effect on their neighborhood.

Mr. Wilcox stated that he and Ms. Allen are planning to marry and live in the house. He said he is searching for a piano so she can open the house during the holidays. He said neither of us plays the piano but she wants a piano because she wants the house to be the way it was in the past. He said she has also purchased enough decorations to decorate every floor and hallway for Christmas. Mr. Wilcox said this is not someone that is planning to go off and manage from miles away.

Commissioner Harrell said there is a concern about the west side neighbor being affected by the on-site parking disrupting his home with headlights shining in the windows at night. Ms. Allen said if that is a problem she will put up a fence. She said it would take away from the property but if it is necessary she will do so. She said she doesn’t know how Ms. Ruddell feels about it and doesn’t know if she would want a fence but she will do whatever she must. She said she just wants to keep the property looking nice. Ms. Allen said that since she first came here and spoke with the neighbors it seems everyone has changed their opinion. Mr. Wilcox said azaleas and shrubs look much prettier than a fence stuck out there.

June Robbins said as a last reminder this is a business. It is a business in the middle of a residential section that whether you put the ugly fence up or whether you have lights shining in someone’s bedroom, it is business in the middle of a residential section. That should not be in Burgaw.

#### **CLOSING OF PUBLIC HEARING**

There being no further discussion, Mayor Mulligan closed the public hearing at 7:00PM.

#### **DISCUSSION BY MAYOR AND COMMISSIONERS**

Commissioner Murphy – no comments

Commissioner Robbins said he has been on Cowan Street and he agrees that Ms. Allen has done an excellent job fixing up the home and in his opinion it should remain a home. He said we put up Christmas trees in our house as well as everyone else on the street, which is great; fix up your home. Every day when town residents wake up, there is a small war going on with commercial development infringing on neighborhoods. He said he thinks the government has always infringed into our neighborhoods. He said the jail was not there until 1977, the library was not there until the 1950’s (there was a stable there). He said if the house was once a tourist home, that’s well and good but there several businesses along Cowan Street including a nursery. He said should that be permitted there now just because it used to be there. There was a dairy farm on N. Cowan Street, should we allow a dairy farm there now or anywhere else in town. Just because something once was doesn’t mean that it should be now. Think about what is going on up the road where GoGas and Walmart is located. Who would have ever thought that Walmart would be there? He said if we start allowing commercial in residential neighborhoods that will lead to the destruction of the entire town because what’s done here is going to be requested on NC 53 next and over on S Walker and on McNeil Street. He said that is the only thing that really bothers him is that it is completely surrounded by two blocks of nothing but residences and a few government entities. He is concerned about commercial development moving into our residential neighborhoods.

Commissioner Dawson – no comments

Commissioner Harrell said when he first heard about a bed and breakfast it sounded good to him because of the quaint notion that he has of the original use of the building. He said he was surprised about the potential for it

turning into business. He said he knows all the people that live in the neighborhood and understands their concerns at the same time he feels like a quaint bed and breakfast would be nice but how does one control Pandora's Box?

Commissioner George said he has lived here longer than Commissioner Robbins and Commissioner Harrell and if you went on Cowan Street you went quietly because it was always a reserved area and I concur with both of them in that I can see it happening in other neighborhoods not just on Cowan Street. He said it once it gets a hold in area then you lose your neighborhood. He said he is torn and his phone has been busy and they live there and they are citizens and I am bound to their wishes as a Commissioner. That's where I stand.

Mayor Mulligan said what he thinks he has heard for the most part is that a bed and breakfast in this location would probably be acceptable or would possibly be acceptable to a majority of people that have spoken. He said he does understand the concerns that people have. He said in our long term plans we discussed how we want Burgaw to develop and in those plans we have a zoning for bed and breakfast. He said we have spent money rebuilding the depot and trying to market ourselves to get people to come to visit our town and a bed and breakfast is part of that development. He said he understands the concerns that everyone has with having this in their neighborhood and he is in complete agreement with regards to the events center and the store, but he believes that a traditional bed and breakfast where you invite guests in the weekend would be a good fit. He said he would not agree with bringing business into a neighborhood like that. He said the type people that visit a bed and breakfast for the most part are affluent and come for a nice place to stay. He said this is the type people that will shop in Burgaw, eat in Burgaw and may be looking for a place to live. He said with regards to a restaurant serving meals, an events center, even the fire pit from his point of view is not something that we can do in a dense residential site. That's my opinion. He said if there is no further discussion, we will move forward with the findings of fact.

Commissioner Robbins asked Attorney Kenan if going through the findings of fact is required. Attorney Kenan advised you must go through each standard and vote on that individually. Commissioner Robbins said his reasoning for asking that question is because the application consists of asking us to do something that is not possible tonight and that's a part of the permit. He said he doesn't see how we can piecemeal things out of that application and vote on the standards. Attorney Kenan said since the events and the gift shop are not legally permissible then you do not take that into consideration as part of your deliberations on each one of those new standards.

## **FINDINGS OF FACT FOR STANDARDS OF EVALUATION**

Mayor Mulligan said he would like to ask Ms. Roth a question. He said we have not differentiated and we have not yet any conclusions or regards to apartments, bed and breakfast then separately, then together. Are we just considering the bed and breakfast and two apartments right now, is that exactly what we are considering here so that the Commissioners understand exactly what they are voting on? Ms. Roth said you may determine in advance what you are voting on so these will be additional findings of fact. She said basically what we are hearing is that the special events and sales that are proposed are not allowed in this zoning district. She said that is one finding of fact. You can go ahead and make the finding as to whether or not an outside grill would be appropriate, whether the accessory apartments would be appropriate and you can decide all these things before you go through the standards.

Commissioner Robbins said he is a little confused because in our zoning ordinance it calls for no more than four rooms when her request in the application is nine rooms. He asked how can we vote and do this when the entire application is not in our ordinance. Mayor Mulligan said he assumes the application is for a conditional use and one of those conditions she is requesting is more bedrooms. He said he understands in regards to the events and the shop but he assumes even if she re-applies she will still re-apply under the ordinance as written with four bedrooms and she would re-apply for the exception that she has nine bedrooms which is part of the conditions. Ms. Roth said it is allowed if the Board specifically allows it. Ms. Roth said going ahead and addressing these before you vote on the standards would be the easiest thing to do because for your findings of fact and conclusions of law document I am going to need to know regardless of whether or not you approve the application; whether or not those are findings that you made that the fire pit is not acceptable in this area because of its detrimental noise and impacts on the area. Commissioner Robbins said we have a town ordinance that does not permit burning outside unless you are cooking. That's why I am confused. Are we going to change our ordinance tonight and allow everybody to burn? Allen Wilson asked if he could address the burning issue. He advised the ordinance is open burning which is piling up a bunch of brush in a pile in the yard and burning it. Burning in a pit or a pit with a chimney is acceptable. Mayor

Mulligan said in this case are you as the fire marshal telling us that existing fire pit is not safe or should not be allowed. Mr. Wilson said that one is located too close to the property line; you still have to meet certain standards regarding being so many feet away from buildings etc. but that particular fire pit would have to be moved to be used in a commercial setting with transient people using it. It's different than individuals using a fire pit in their home. It needs to be away from the property line.

Mayor Mulligan said we have three different components here and how do we do a finding on each of these. Ms. Roth said if there is a conflict the board would need to vote on each item. She advised these items must be determined before you vote on the standards in order to know exactly what you are voting on. She said there are so many gray areas to this application regardless of whether you approve the application or not, she will need this information for the findings of fact and conclusions of law. She said from what has been presented there is a concern that the fire pit is not appropriate for this area, that there are issues with parking so close to Mr. Sansone's property and potential issues with the accessory apartments. She said if you make a determination on those as to your finding as to whether or not this will affect the adjacent property owners then that would be what you would need to know before you actually vote. Mayor Mulligan said this is very confusing and doesn't understand how you can vote on and item to make determination before you vote on the actual finding. Mr. McEwen suggested that they consider breaking out bed and breakfast and accessory apartments and through the standards individually with those items. He said by doing that if they vote in favor of an item they can set conditions regarding that item. Commissioner Harrell said we still have to deal with the number of rooms allowed. Ms. Roth said the findings of fact are different from the standards; she said the findings of fact are conclusions about what is appropriate and what's not appropriate; the standards are something separate that are voted on after you determine what the facts are. After much discussion and direction Mayor Mulligan then continued with the following findings of fact.

**Facts Pertaining to 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.**

- The subject property is not located in a floodplain.
- The proposed use will be required to meet building code, fire code, and food code requirements as enforced by the Town of Burgaw Building Inspector and Fire Marshal and Pender County Health Department.
- Representatives from these organizations have reviewed the proposed application and do not anticipate issues with meeting those requirements.
- Representatives from the North Carolina Department of Transportation have reviewed the plans and have no concerns.
- The applicant has proposed using security lighting at the rear and northern entrances.
- An existing light pole will illuminate the off-street parking area.
- The applicant does propose a grill and fire pit for guest use.
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**Motion:** Commissioner George made a motion to add a finding of fact that a fire pit is not appropriate for this property due to concerns regarding the number of users in proximity to adjacent properties. The motion was seconded by Commissioner Harrell and carried by unanimous vote.

**Facts Pertaining to Standard 2. The use will not adversely affect the use or any physical attribute of adjoining or abutting property or the use is a public necessity.**

- The use is not a public necessity.
- The subject property is directly adjacent to two single-family residential properties and directly across the street from two others.
- The accessory structure is a grandfathered nonconforming structure because it does not meet the 15 feet of required side yard to the south.
- The accessory structure has been used for two accessory apartments in the past and meets all current requirements for accessory apartments except a required side setback of no less than 10 feet.
- In September 2015, the planning administrator made a determination that the two accessory residential units were grandfathered through November 3, 2015, and that if use of both units were not resumed by that date, only one accessory apartment would be permitted thereafter.

- Use of both accessory apartments was not resumed by that date, so approval of the second unit depends on the issuance of a conditional use permit.
- The applicant is proposing to use the portion of the street immediately in front of the property for on-street parking. There is sufficient space directly in front of the subject property to accommodate four cars.
- 

**Motion:** Commissioner Robbins made a motion to add a finding of fact that a vegetative buffer a minimum of fifteen feet in height sufficient to block light from incoming and exiting cars from the property to the west shall be required along the entire property line shared with Mr. Sansone. The motion was seconded by Commissioner George and carried by unanimous vote.

**Motion:** Commissioner Harrell made a motion to allow one accessory apartment. The motion was seconded by Commissioner Murphy and carried by unanimous vote.

**Motion:** Commissioner Robbins made a motion to allow four bedrooms as guest rooms. *Motion failed for lack of a second.*

**Motion:** Commissioner Robbins restated his motion to allow four bedrooms as guest rooms for this application. *Motion failed for lack of a second.*

**Motion withdrawn.** Commissioner Robbins withdrew his motion.

**Motion:** Commissioner Dawson made a motion to allow seven bedrooms as guest rooms. The motion was seconded by Commissioner Harrell. Commissioners Dawson, Harrell and Murphy voted “aye”. Commissioners George and Robbins voted “nay”. The motion carried 3-2 in favor.

**Staff Recommendation** – After much discussion regarding the buffer on the south side of the property it was the consensus of the board to include the following recommendation.

- The existing vegetative buffer between the subject property and the two adjacent properties must be maintained at all times with any improvements to be approved by the planning administrator upon consulting with Ms. Ruddell.

**Facts Pertaining to Standard 3. 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 Hwy 53 Corridor Study.**

- The Burgaw 2030 Comprehensive Land Use Plan has established the following goals that are pertinent to the applicant’s request:
  - To attract businesses and industries that will enhance the economic health and livability of the town,
  - To foster local entrepreneurship and economic capacity by amending the ordinance to provide opportunities for home based businesses that are compatible with residential neighborhoods and subject to appropriate restrictions,
  - To preserve and enhance the town’s tree canopy, and
  - To sustain and enhance existing neighborhoods.
- The site for the proposed bed and breakfast is designated as Traditional Neighborhood Residential on the Town of Burgaw Future Land Use Map.
- The Traditional Neighborhood Residential land use designation is characterized by its connectivity, both auto and pedestrian, and primarily single-family housing. Recommended land uses include single-family residential, two-family residential, and bed and breakfasts.
- The subject property is included in the residential zone of the NC Hwy 53 Corridor Study, which recommends sidewalks, a verge area separating pedestrians from the roadway, and street trees to create a physical canopy and visual separation between the roadway and the houses.
- Unlikely wholly commercial uses, the proposed use is not subject to the town’s landscaping requirements, and the applicant or subsequent property owner or bed and breakfast operator may remove and change landscaping unless precluded by the conditional use permit.

#### **Facts Pertaining to Standard 4. The use meets all required conditions and specifications.**

- Doug Racine, Journey Engineering Technician with the North Carolina Department of Transportation, has reviewed the application information and found that no driveway permit is required at this time, but no parking would be allowed within the DOT right-of-way.
- The site plan and aerial photos show that the proposed parking area is located outside of the DOT right-of-way.
- Clay Creswell, Environmental Health Specialist with the Pender County Health Department, has reviewed the application information and specified that the applicant would need to obtain a health department permit prior to operation but did not notice potential issues with compliance.
- The Town of Burgaw Fire Marshal Allen Wilson has discussed the proposed use with the Town of Burgaw Building Inspector and only has concerns regarding the fire alarm and sprinkler requirements.
- Louis Hesse, Town of Burgaw Building Inspector, has met with the applicant and reviewed the application information. Fire suppression will be required and some accessibility issues and minor code compliance items will need to be addressed during the building inspections phase of development.
- The primary structure meets all town dimensional requirements.
- The accessory structure is a grandfathered nonconforming structure because it does not meet the 15 feet of required side yard to the south.
- The accessory structure has been used for two accessory apartments in the past and meets all current requirements for accessory apartments except a required side setback of no less than 10 feet.
- In September 2015, the planning administrator made a determination that the two accessory residential units were grandfathered through November 3, 2015, and that if use of both units were not resumed by that date, only one accessory apartment would be permitted thereafter.
- Use of both accessory apartments was not resumed by that date, so approval of the second unit depends on the issuance of a conditional use permit.
- The proposed off-street parking area meets all requirements for the parking of seven vehicles, including required buffering to the east.
- There is no separation or obstruction between the proposed off-street parking area and the sidewalk along Hwy 53/E. Bridgers St.
- Without separation or obstruction between the parking area and the sidewalk, cars may inadvertently damage the sidewalk, encroach upon the right-of-way, and/or obstruct pedestrian traffic.
- Only 11 parking spaces can be accommodated on-site or immediately in front of it.
- The applicant is proposing nine guest bedrooms, two resident managers, and potentially two apartments, which would require thirteen spaces if each apartment were only required to include one parking space each.
- The proposed signage meets the sign allotment for Bed and Breakfast uses.
- The applicant is proposing solar lights for illumination, which is allowed for non-residential uses in the R-12 zoning district.
- The proposed bed and breakfast was originally constructed as a dwelling/tourist home with ten bedrooms.
- The accessory apartments were built after the original dwelling, in 1950 and 1955.
- The applicant intends to have two on-site resident managers.
- According to the application, breakfast, possible dinner, and light lunches will be served to guests.

\*Upon completion of the findings of fact, Ms. Roth said at this time the Board can move on to the standards and they will be actually voting on the following: *the bed and breakfast with only seven guest rooms, one accessory apartment, no special events and sales and no fire pit.*

#### **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.**

## Findings of Fact

1. In order to be granted a conditional use permit, Section 3-10 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. The subject property is not located in a floodplain.
3. The proposed use will be required to meet building code, fire code, and food code requirements as enforced by the Town of Burgaw Building Inspector and Fire Marshal and Pender County Health Department.
4. Representatives from these organizations have reviewed the proposed application and do not anticipate issues with meeting those requirements.
5. Representatives from the North Carolina Department of Transportation have reviewed the plans and have no concerns
6. The applicant has proposed using security lighting at the rear and northern entrances and an existing light pole to illuminate the off-street parking area.
7. The proposed grill and fire pit for guest use is not appropriate for this location because of the number of potential users and the proximity to adjacent properties.
8. The applicant is proposing providing seven off-street parking spaces and using the four spaces immediately in front of the property on the street for resident and guest parking. Any addition parking required will be provided off-site.

## Conclusions of Law

As a result of these facts, determined based on the evidence presented at the hearing, the majority of the Town of Burgaw Board of Commissioners finds that even with the following condition, the proposed use does not meet the requirements of this standard:

- The proposed fire pit shall not be allowed.

The Commissioners’ conclusions are as follows:

Commissioner George: “No, because of the safety or welfare of the neighborhood”

Commissioner Harrell: “Yes”

Commissioner Dawson: “Even though the number of bedrooms has been reduced to seven, I am still very concerned about the large amount of parking that will be required. I do not think everything will fit on the actual lot. I vote no.”

Commissioner Robbins: “No. The safety of the people around the property especially the additional parking that will come about will be a safety issue.”

Commissioner Murphy: “Yes”.

## **Standard 2. The use will not adversely affect the use or any physical attribute of adjoining or abutting property or the use is a public necessity.**

## Findings of Fact

1. In order to be granted a conditional use permit, Section 3-10 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. The subject property is directly adjacent to two single-family residential properties and directly across the street from two others.
4. The accessory structure is a grandfathered nonconforming structure because it does not meet the 15 feet of required side yard to the south.
5. The accessory structure has been used for two accessory apartments in the past and meets all current requirements for accessory apartments except a required side setback of no less than 10 feet.

6. In September 2015, the planning administrator made a determination that the two accessory residential units were grandfathered through November 3, 2015, and this if use of both units were not resumed by that date, only one accessory apartment would be permitted thereafter.
7. As use of both accessory apartments was not resumed by that date, approval of the second unit depends on the issuance of a conditional use permit.
8. The applicant is proposing using the accessory structure for an office/gift shop, guest rooms, and/or up to two accessory apartments.
9. The applicant is requesting to be allowed to have four (4) special events per month, including special holiday events.
10. Off-site parking will be arranged for special events.
11. The applicant is proposing to use the portion of the street immediately in front of the property for on-street parking. There is sufficient space directly in front of the subject property to accommodate four cars.
12. The applicant proposes to use an existing fireplace along the southern property line as a fire pit for guests.
13. The existing fireplace is several feet from the southern property line in an existing vegetative buffer.
14. Parking of cars in proposed off-street parking area would cause an issue with headlights shining on the adjacent residential property to the west.
15. One accessory apartment is customary for residential properties.

### **Conclusions of Law**

As a result of these facts, determined based on the evidence presented at the hearing, the majority of the Town of Burgaw Board of Commissioners finds that even with the following conditions, the proposed use does not meet the requirements of this standard:

- A vegetative buffer a minimum of 15' in height sufficient to block light from parking cars shall be required along the entire length of the western property line.
- The existing vegetative buffer between the subject property and the property to the south shall be maintained at all times and must be increased as approved by the planning administrator.
- The exiting fireplace may not be used as a fire pit by guests.

The Commissioners' conclusions are as follows:

Commissioner George: "No. Noise"

Commissioner Harrell: "Yes."

Commissioner Dawson: "No, because it is a traditional neighborhood and it is not a public necessity."

Commissioner Robbins: "No, it is not a public necessity; it is a commercial enterprise bordered on four sides by residential, single family dwellings and it doesn't have enough parking for a commercial enterprise."

Commissioner Murphy: "Yes."

**Standard 3. 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 Hwy 53 Corridor Study.**

### **Findings of Fact**

1. In order to be granted a conditional use permit, Section 3-10 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 Hwy 53 Corridor Study."
2. The site for the proposed bed and breakfast is designated as Traditional Neighborhood Residential on the Town of Burgaw Future Land Use map.
3. The Traditional Neighborhood Residential land use designation is characterized by its connectivity, both auto and pedestrian, and primarily single-family housing. Recommended land uses include single-family residential, two-family residential, and bed and breakfasts.

4. The subject property is included in the residential zone of the NC Hwy 53 Corridor Study, which recommends sidewalks, a verge area separating pedestrians from the roadway, and street trees to create a physical canopy and visual separation between the roadway and the houses.
5. Unlike wholly commercial uses, the proposed use is not subject to the town's landscaping requirements, and the applicant or subsequent property owner or bed and breakfast operator may remove and change landscaping unless precluded by the conditional use permit.

### **Conclusions of Law**

As a result of these facts, determined based on the evidence presented at the hearing, the majority of the Town of Burgaw Board of Commissioners finds that even with the following conditions, the proposed use does not meet the requirements of this standard:

- All existing landscaping on the property shall be maintained or enhanced. Any trees that must be removed shall be subject to a Town of Burgaw tree removal permit and shall be replaced with a tree of the same species, unless approved by the Planning Administrator.
- All replacement trees shall be a minimum of 1" caliper for small flowering trees and 4" caliper for all others.

The Commissioners' conclusions are as follows:

Commissioner George: "No, it's not in harmony with the neighborhood."

Commissioner Harrell: "I guess I have vote no, because obviously the neighborhood is not harmonious about it."

Commissioner Dawson: "No because it is a historical single-family residential area."

Commissioner Robbins: "No, it is not in harmony with other single-family residential dwellings."

Commissioner Murphy: "Yes, it is".

### **Standard 4. The use meets all required conditions and specifications.**

1. In order to be granted a conditional use permit, Section 3-10 of the Town of Burgaw Unified Development Ordinance requires that the applicant prove that "the use meets all required conditions and specification."
2. Doug Racine, Journey Engineering Technician with the North Carolina Department of Transportation, has reviewed the application information and found that no driveway permit is required at this time, but no parking would be allowed within the DOT right-of-way.
3. The site plan and aerial photographs show that the proposed parking area is located outside of the DOT right-of-way.
4. Clay Creswell, Environmental Health Specialist with the Pender County Health Department, has reviewed the application information and specified that the applicant would need to obtain a health department permit prior to operation but did not notice potential issues with compliance.
5. The Town of Burgaw Fire Marshal Allen Wilson has discussed the proposed use with the Town of Burgaw Building Inspector and only has concerns regarding the fire alarm and sprinkler requirements.
6. Louis Hesse, Town of Burgaw Building Inspector, has met with the applicant and reviewed the application information. Fire suppression will be required and some accessibility issues and minor code compliance items will need to be addressed during the building inspection phase of development.
7. The primary structure meets all dimensional requirements.
8. The accessory structure is a grandfathered nonconforming structure because it does not meet the 15 feet of required side yard to the south.
9. The accessory structure has been used for two accessory apartments in the past and meets all current requirements for accessory apartments except a required side setback of no less than 10 feet.
10. In September 2015, the planning administrator made a determination that the two accessory residential units were grandfathered through November 3, 2015, and this if use of both units were not resumed by that date, only one accessory apartment would be permitted thereafter.
11. As use of both accessory apartments was not resumed by that date, approval of the second unit depends on the issuance of a conditional use permit.

12. The proposed off-street parking area meets all requirements for the parking of seven vehicles, including required buffering to the east.
13. There is no separation or obstruction between the proposed off-street parking area and the sidewalk along Hwy 53/E. Bridgers St., so cars may inadvertently damage the sidewalk, encroach upon the right-of-way, and/or obstruct pedestrian traffic.
14. Only 11 parking spaces can be accommodated on-site or immediately in front of it.
15. The applicant is proposing nine guest bedrooms, two resident managers, and potentially two apartments, which would require thirteen spaces if each apartment were only required to include one parking space each.
16. The proposed signage meets the sign allotment for Bed and Breakfast uses.
17. The applicant is proposing solar lights for illumination of the sign, which is allowed for non-residential uses in the R-12 zoning district.
18. The proposed bed and breakfast was originally constructed as a dwelling/tourist home with ten bedrooms.
19. The accessory apartments were built after the original dwelling, in 1950 and 1955.
20. The applicant intends to have two on-site resident managers.
21. According to the application, breakfast, possible dinner, and light lunches will be served to guests.
22. The applicant is requested to be allowed to have four (4) special events per month, including special holiday events.
23. Off-site parking will be arranged for special events.
24. Because a Special Events use is listed separately on the Table of Permitted Uses and is not allowed in the R-12 zoning district, the requested special events are not allowed.
25. Only sufficient parking is available on-site for seven guest rooms.

### **Conclusions of Law**

As a result of these fact, determined based on the evidence presented at the hearing, the majority of the Town of Burgaw Board of Commissioners finds that the proposed use meets this standard, subject to the following conditions:

- A vegetative buffer or protective device approved by the Planning Administrator shall be installed between the off-street parking area and the sidewalk.
- Only seven guest rooms shall be allowed.
- No special events or sales shall be allowed.

The Commissioners' conclusions are as follows:

Commissioner George: "No, because it doesn't meet any of the other qualifications. Mayor Mulligan said "I'm sorry?" Commissioner George said "it does not meet any of the other specifications."

Commissioner Harrell: "Yes"

Commissioner Dawson: "Yes, because they can meet the required conditions."

Commissioner Robbins: "No, I don't think a lot of this is in harmony with what the other dwellings are in that neighborhood and it just is not conducive to that lot." Mayor Mulligan said "standard 4 is the use meets all required conditions and specifications and if you vote no the reason needs to address that standard". Commissioner Robbins said "which standard"? Mayor Mulligan said "the standard that the use meets all required conditions and specifications and I do believe they have agreed to meet these standards. He then said to Commissioner Robbins "is there anything in here that suggests that this use does not meet all required conditions and specifications. Attorney Kenan said "it will need to the meet the specifications set forth in the zoning ordinance". Mayor Mulligan said he just wants to make sure that we have the right reasons down. Commissioner Robbins stated "it has been a long night". Attorney Kenan said basically does the applicant meet all the specifications within the zoning ordinance that deals with the bed and breakfast special requirements in the ordinance? Commissioner Robbins said "in that case, yes".

Commissioner Murphy: "Yes".

## **FINAL VOTE ON ISSUANCE OF PERMIT**

Attorney Kenan advised the Board that they are voting on two separate issues, the accessory apartments and the bed and breakfast.

Commissioner Harrell made a motion to allow one apartment on this site as per conditions. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

Commissioner Robbins made a motion that we deny the request for a bed and breakfast as presented because it is a commercial entity moving into a residential neighborhood. The motion was seconded by Commissioner George. Commissioners Robbins, George and Dawson voted "aye". Commissioners Harrell and Murphy voted "nay".

Mayor Mulligan announced that the application for the approval of one accessory apartment has been approved and the conditional use for the bed and breakfast has been denied.

Mayor Mulligan called for a five minute break at 8:05 PM. The meeting reconvened at 8:10PM.

**CLOSED SESSION** - Commissioner Harrell made a motion to go into closed session pursuant to GS to 143-318.11 paragraph (a) item (3) Attorney/Client Privilege. The motion was seconded by Commissioner George and carried by unanimous vote.

*Upon learning the subject matter regarding a family care home, Mayor Mulligan stopped the discussion and asked Attorney Kenan if this discussion we are having here is covered under Attorney/Client privilege, are we covered here to be in closed session because all he has heard so far is something that we should be discussing in open session. He said he wanted to sure that we are having discussion in closed session that is Attorney/Client privilege. Attorney Kenan said he needs to get some clarification. He asked if the discussion is to talk about that type of facility (family care home) within the town. Commissioner Robbins said he was trying to make everyone aware of what had taken place and whether or not what has been done was legal. Attorney Kenan said that doesn't really involve a liability issue so we really need to discuss that in an open session. Attorney Kenan asked if there are any other attorney/client discussions needed for anything else or any other matters to take care of in closed session. Commissioner Robbins said we are your clients and I wanted you to listen to us and advise us if we have done something illegal and that's why he wanted the staff to tell us what we have done and for you to listen and find out. Attorney Kenan said he doesn't think that the topic that we are talking about is something is an attorney/client privilege matter. He advised we can discuss this matter in open session. He advised we need to go out of closed session and go into open session and talk about it. Mayor Mulligan said "Let's do that".*

## **OPEN SESSION RECONVENED**

Commissioner George made a motion to return to open session. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

*The following discussion includes what was said in closed session as well as open session.*

Commissioner Robbins said he wanted to bring a matter everyone's attention whether you are aware of it or not. He advised he has asked Chief Hock and Ms. Roth to be because they know what's going on. He advised that several of us got blindsided this weekend when we made aware that there is a halfway house located here in a residential and they did not have to get a permit to do so. Commissioner Robbins said that Commissioner Dawson and Mayor Mulligan were aware of the situation and he had not talked to the other commissioners about it yet. He said he asked Chief Hock what he knows about the situation.

Chief Hock said he is not sure when this place opened but there is a licensed family care home at 803 Linda Lane which is just off of US 117S. He advised they are licensed through the state and it is the responsibility of the Department of Social Services to monitor their qualifications and requirements. He advised according to Ms. Meador with DSS the name of the family care home is "Humble Beginnings" and they are licensed to have four occupants. He said he has spoken with Ms. Roth and there are no requirements for the town to permit them. Ms.

Roth said we do require a zoning permit and it was issued about a year ago. She said the general statutes prohibit us from treating group care home for six or fewer residents any differently than any other single family residence. She said we have to allow them in a residential district. Ms. Roth advised we are allowed to have a separation requirement to make sure there is not a glut of them in one particular area. They are required to have licensing from the state per our ordinance.

Commissioner George commented that it doesn't sound like we have a leg to stand on since the state says it okay. Commissioner Dawson asked if we can limit the zoning district in which they can locate. Ms. Roth said any zoning district that allows single family uses must allow this type home by state law. She said after discussion with Chief Hock it does sound like there are issue with the way this home is run that could their licensing potentially in jeopardy because you have been getting a lot of complaints and concern from citizens but nothing has been directed to Chief Hock. For that reason he has been unable to investigate or make reports to DSS. She said we don't have to put up with a facility that is not properly managed because there are rule that they must follow. Chief Hock said they have not had a call there since February 14 of this year. He said this weekend there was a call there that was a subject going into yards of other people in the neighborhood. He said he let Ms. Medors know that as these complaints come in she will be notified and because they have more enforcement in that respect because they are the monitoring party for the state certification.

Commissioner Robbins asked if the Board can be notified when someone receives a zoning permit for one of these homes in Burgaw so we could at least warn the neighborhood. He said he doesn't like this and as far as he concerned we need to take measures and do something about even if the state comes in here and sues us and makes us do it. He said it is not right to put these homes in neighborhoods without the neighbors knowing about it. He said there are families and safety is our number one priority in this town.

Mayor Mulligan asked Commissioner Robbins what kind of action he is suggesting. Commissioner Robbins replied "I don't know". Commissioner Robbins said maybe we could pass an ordinance and let the state come to us and then do something about it. Mayor Mulligan asked Attorney Kenan to comment. Attorney Kenan said he doesn't have enough information about this subject and is hearing this for the first time this evening. Mayor Mulligan asked Commissioner Robbins if he wants this addressed. Commissioner Robbins advised he is fine with taking some action. Mayor Mulligan said to gather some information.

Commissioner Dawson asked Chief Hock to review some of the incidents and issues that he knew about. Chief Hock gave a lengthy review of the issues and processes that are being followed in this particular house. He advised there is a question regarding the supervisors and the lack of authority in establishment.

Mr. McEwen said he is familiar with some case law that involves zoning and that from what he remembers that municipalities are told to stay away from this issue because it is regulated by the state and the state treats these family care homes the same as a residence that houses six or less people. He said he receives some of the same complaints that the board members received. He advised in his opinion that the way to address this is to tell the people to call the police. The only way to address this is through Social Services and their permitting with the state. He said the state will not allow a nuisance property that's a crime haven and a public nuisance to the neighborhood. He said he conveyed the complaints that he received to Chief Hock and Chief Hock did not know anything about until Mr. McEwen told him. He said these people have to call the police so something can be done about.

Commissioner Robbins said we need to tell the residents of this town what the state is doing to our town. Mayor Mulligan asked how we should communicate this to the neighborhood that is affected. Attorney Kenan said you could send a letter to the residents in that neighborhood and tell them that if there are any problems to call the police. Chief Hock asked if it would be better coming from the police department. He said there are about ten homes in that neighborhood that would need to be contacted. Mr. McEwen recommended that Social Services be contacted and informed there are questions regarding the management of the facility and ask them to monitor the situation. He also said surprise inspections would probably be in order for this facility. Chief Hock said he would contact Ms. Medors about this situation. Commissioner Harrell asked that Ms. Roth notify the board if there are other homes permitted in town.

**ADJOURNMENT**

There being no further business, Commissioner Harrell made a motion to adjourn. The motion was seconded by Commissioner George and carried by unanimous vote.

The meeting adjourned at 8:35PM.

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Eugene Mulligan, Mayor

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