

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

DATE: August 09, 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: None
INVOCATION: Nick Smith, Chaplain
PLEDGE OF ALLEGIANCE: All

The meeting was called to order by Mayor Eugene Mulligan at 4:00 PM.

Approval of Agenda

Commissioner Dawson requested to amend the agenda to revisit the information that was previously presented a couple of months ago regarding live streaming of the meetings. She requested that the live streaming be presented as item 6A and item 6 will become 6B. Commissioner Dawson made the motion to amend the agenda, Commissioner Robbins seconded the motion. The motion carried by unanimous vote.

Approval of Consent Agenda

Commissioner Robbins made a motion to approve the consent agenda as presented. The motion was seconded by Commissioner Dawson and carried by unanimous vote. The consent agenda and the following items were approved:

- *Minutes of the July 12, 2016 regular and closed session*

Discussion: Presentation regarding Boardroom Streaming System

Commissioner Dawson advised Erik Harvey, Town of Burgaw Information Technology Administrator and Michael Compton with Landmark Audio/Video are present to re-visit a proposal presented to the Board at an earlier date regarding live streaming of the Board of Commissioner meetings on the town's website. Commissioner Dawson advised there has been interest expressed regarding live streaming from citizens that are unable to attend the meetings.

Mr. Harvey advised he has met with the town manager and the town clerk along with Mr. Compton to discuss the logistics of the board room and the equipment that will be required to live stream the meetings on the town's website in order for the public to be able to view the meetings from home if they are not able to attend. Commissioner Dawson asked if this is the best alternative for the citizens to view the meetings. Mr. Compton said there are alternatives and added that the proposal in front of them does not include a computer which Mr. Harvey would have to purchase for the town in order to install the system. Mr. Compton advised this proposal along with the computer would allow live streaming of the meeting at 4PM on Tuesday. He said at that point we would need a device to

record the video and make it available to be viewed on the website at any time. He said outside of that, this is a complete package. Commissioner Robbins inquired about fees. Mr. Compton said there are no monthly fees with this system. He said the only fees incurred would be if there is a maintenance issue. Commissioner Robbins asked how long the data will be stored on the website. Mr. Harvey advised with the storage we currently have he feels that we could accommodate 1 – 2 years of storage comfortably. He said after that we have the option of purging or off site storage. Commissioner Harrell asked if this will be streamed on our website. Mr. Harvey advised our website vendor would have a plug-in embedded into the website that will stream the video. Commissioner Harrell asked what our website vendor will charge for the cost of the live streaming device. Mr. McEwen said he does not recall the exact cost but it wasn't substantial; it was a monthly fee for hosting the additional link on our page. Mr. Harvey said he will get that information and bring it back to the board as soon as possible.

Commissioner Dawson asked where the funding will come from if we decide to purchase this program. Mr. McEwen advised it is unbudgeted so an appropriation will be required. He said it could be split between general fund and water/sewer fund since these meetings do involve water/sewer activities. Commissioner Dawson said she believes we should seriously consider this system in light of the length of the minutes and if we had the capability of going back and viewing our meetings, it could reduce the amount of time our clerk would have to put into writing the minutes and we would still have everything we need to have for review. Commissioner Harrell stated that if the object of this is to reduce the clerk's work load we should seriously consider voice recognition software; that would help her as well. Mr. Harvey commented that it could give more duties to the clerk due to the requirements of setting up the equipment for the meeting, doing audio and operational checks, etc. He also commented that from a minute's perspective having a live streaming system coupled with an Olympus recorder can be beneficial especially if the recorder fails; there will be a backup system to aid in minutes preparation. Commissioner Harrell said he is not opposed to the live streaming system but that is not really going to reduce the work load. Commissioner Dawson disagreed and commented that anyone that wants to go back and hear verbatim what happened in the meeting can do so, but the minutes do not need to be verbatim in her opinion; they just need to be a summary of what happened in the meeting.

Commissioner Robbins asked if we live stream a meeting is it going to pick up pretty much everything that is said in the room. Mr. Compton advised "yes sir". Commissioner Robbins then asked isn't that the intent of the board to keep on record what has taken place inside this room over the course of the meeting. He said for \$13,000 it is cheaper and more economical and if we go back to the summary of minutes and we would be accomplishing what we are trying to do. Commissioner Dawson said she wants to make sure that the citizens that cannot be present at the meetings have the opportunity to hear the proceedings.

Commissioner Dawson requested that the clerk and the town manager work with Mr. Harvey and Mr. Compton and bring back what they think is the best option.

Discussion: Burgaw Middle School Impact Fees – Attorney Rick Biberstein

Attorney Rick Biberstein appeared before the Board on behalf of the Board of Education to seek the elimination or a reduction of the impact fee of over \$36,000 that was imposed on the expansion and renovation work being done at the Burgaw Middle School. He advised the issue is whether there is to be any increase in the usage or capacity at the Burgaw Middle School as a result of the work being done. Mr. Biberstein advised this issue came up when the contractor applied for the necessary permit and on the permit form the contractor apparently used the wrong figures for the number of students that will fit into the three new buildings being constructed. He said the figures used by the contractor do not conform to any figures that we have for standard classrooms. Mr. Biberstein advised that error resulted in the imposition of the impact fee pursuant to the ordinance in the amount of \$36,827.78.

Mr. Biberstein stated that the town ordinance says that impact fees shall be charged to offset the cost of major repairs necessary; that is that you charge impact fees to add or repair the system and to compensate the town for the burden of the additional usage put on the system. He advised in this case we are not going to have any increase in the capacity of the school. He said the purpose of this construction is to replace substandard classroom space. Mr. Biberstein gave a brief history of the school and an overview of the planned construction and the classroom space that is being replaced. He reiterated there are no additional students and therefore will be no additional capacity required for impact fees. Mr. Biberstein advised consequently we are asking the Board to refund the impact fees that

have been paid in some form or fashion. He said we are asking you to recognize our mistake. He advised the contractor put the information there innocently enough, but incorrectly.

Mr. McEwen was asked by Mayor Mulligan to make comments regarding Mr. Biberstein's request. Mr. McEwen presented several scenarios regarding impact fees and how they work. At the end of his discussion Mr. McEwen advised he understands the school system's position as well as Mr. Biberstein's request but we also have to understand that the town is obligating that capacity for that school based on the necessary capacity for those students whether they are there or not. Mr. Biberstein was adamant that there will be no change in capacity and therefore the impact fees should be refunded.

Attorney Kenan read an excerpt from the code of ordinances that states that impact fees will not be charged on buildings or other improvements constructed or made to repair or replace like buildings or improvements provided however that repair or replacement occurs on the same site. He then asked Mr. Hesse a number of questions regarding how the impact fees were calculated. Mr. Hesse said in regards to the demolished science building, it is on the same site. Attorney Kenan asked Mr. Hesse if the increase in size of the buildings will increase additional students to be on that campus. Mr. Hesse advised capacity wise, it could, yes but actual feet on the ground; I have no way of gauging that. He said that building will hold about 65% more than the building that was demolished. Attorney Kenan said if that is the case then it will increase the capacity by two thirds and it is my position that the impact fees for that two third percent increase should be charged.

Commissioner Dawson made a motion to credit the school system for the square footage that has been calculated at 45.6% and reimburse the schools for that percentage. The motion was seconded by Commissioner Robbins. Mr. Biberstein asked if they are not getting any credit for the now non-used agriculture building and the now non-used shop building which are off the board as far as use is concerned. Commissioner Dawson said they are not gone yet, they are still on the property. Mr. Hesse said he cannot say put a lock on and say we are done; if it was a demolition we could trade it. Commissioners Dawson, Robbins, George and Murphy voted "aye". Commissioner Harrell voted "nay".

DEPARTMENTAL ITEMS

Planning – Rebekah Roth

Discussion regarding proposals for professional engineering services for 2016 sidewalk and intersection capital improvements

Ms. Roth advised earlier this year, the board of Commissioners identified the following four projects as part of the Capital Improvement Plan (CIP) process:

- *A sidewalk extension along Wilmington St. across the railroad right-of-way*
- *Intersection improvements on the west side of the Wilmington & Wright St. intersection*
- *Intersection improvements at the Dickerson St. & Wilmington St. intersection*
- *Extending the sidewalk along E. Wilmington St. from Cripple Creek to Cowan Street*

She said these projects will require engineering and encroachment agreements with NCDOT, so last month, a Request for Proposals was sent out to engineering firms for the following scope of services:

- *Preliminary design services including survey, right-of-way plans, preliminary design and layout, and cost estimates*
- *Final design services including final design plans, right-of-way plans, preparing and submitting necessary permits, and contract documents*
- *Assisting the town with meeting all applicable state and federal requirements and providing all required documentation to NCDOT*

Ms. Roth advised we received two proposals, one from Davenport and the other from Rivers and Associates, both qualified firms with experience with these types of projects. She said the lowest bid we received was for \$34,000. The cost estimates for both proposals was higher than staff had anticipated, so rather than requesting an award decision, staff wanted to present this to the board for discussion. Ms. Roth advised she was trying to get some feedback from the Board before proceeding. Ms. Roth also advised she will be meeting with NCDOT to make sure

that we are on the same page in terms of the scope of the work that would be necessary in terms of the NCDOT approvals.

Mr. McEwen said one thing that needs to be clarified is that we have high bids because these are NCDOT prequalified engineering firms; when you meet with them ask if it must be a prequalified firm. He said since it is not NCDOT's money, it is the town's money so that requirement may not be in place. He said if not, we could use a regular engineer, not a prequalified firm which is a premium cost. Mr. McEwen also recommended that Ms. Roth consider deleting the intersection improvements on the side of the Wilmington and Wright Street intersection because of NCDOT's plan to redesign of the roundabout or a completely new plan; they may include that side of the intersection as part of that plan. He said even if they don't you wouldn't want to put something in place only to be torn out if there is a new plan for that intersection. Mayor Mulligan said to follow Mr. McEwen's line of thinking we should probably be best advised to go back to DOT and find out if they will accept an engineering firm that is not prequalified and revisit this at the next available opportunity. The Board was in agreement to follow Mayor Mulligan's suggestion for Ms. Roth to go back to DOT for further information regarding the engineering requirements before moving any further with this item.

ITEMS FROM ATTORNEY

None.

ITEMS FROM MANAGER

Parking at Sheriff's Department on East Fremont Street

Mr. McEwen advised a few ago months we discussed realignment of the parking on Fremont Street at the Sheriff's Department. He advised based on the recommendations of the board in a recent update we provided two proposals for parking realignment at the Sheriff's Department. Mr. McEwen said at this point we recommend that the Board consider going to parallel parking only along Fremont Street in front of the Sheriff's Department. He advised the Sheriff's office has not been contacted about the proposed change because he wanted to be sure that we are all on the same page before we approach the Sheriff's office with the plan.

Commissioner Harrell made a motion to change our plan to complete parallel parking as opposed to diagonal parking. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

Mr. McEwen said we will have to bring back a change order from the contractor that will do the paving to do the striping. He advised the parking area that is there now will not be repaved because it is still in good shape.

Soil Testing at Dees Property

Mr. McEwen advised \$2,750 has been taken from the non-departmental reserve for the testing related to soils at the Dees property. He said he is required to advise the Board anytime we spend money out of departmental reserve. He said we should have those results back in the near future.

Paving Priorities

Mr. McEwen presented a copy of the paving priority list that was discussed last month. He advised all the streets are ranked and the list includes what needs to be done as well as pricing. He said this is a pretty substantial list but of course all of the streets cannot be paved at once which is why they are ranked by priority of need. Mr. McEwen said he is not looking for a decision today, but would like for the board members to take the list and go out and look at the roads. He said you may not agree with our ranking and may want to make changes. Mayor Mulligan said he would like to add the road by Durham Village. Mr. McEwen advised that is not a town road. Mayor Mulligan suggested that we find out the facts on it and see what can be done because it is in such poor condition. He asked Mr. McEwen to check into it.

Review Panel for Parks/Recreation/Community Development Coordinator Position

Mr. McEwen said there has been discussion about who is going to be on the review panel for the Parks/Recreation/Community Development Coordinator Position interviews. He said we have applications and we are ready to start that process. He said Commissioner Harrell and Mayor Mulligan have requested to be on the panel. He said he wanted to get the Board's input as to who and how many need to be on that panel. Commissioner Robbins said if Mayor Mulligan and Commissioner Harrell want to be on that panel, that is more than enough; he added along with Mr. McEwen and Ms. Wells. Commissioner Harrell said the parks and recreation committee has voiced a desire to have a representative present as well. Mayor Mulligan asked if that is a problem for a member of the public. Mr. McEwen stated that it is a problem in terms of personnel records being shared. He said an application is presented to each member of the panel. Mayor Mulligan asked if any of the board members want to sit in. Mr. McEwen said if that happens you convert a review panel for a position into a board meeting. Mr. McEwen said he would schedule the interviews and coordinate with the review panel.

Information regarding grants

Mr. McEwen said we have recently received some information on grants. He said we have been notified that we have received \$478,000 from Golden Leaf money for the stormwater improvements around the hospital and the replacement of the pipes under Fremont Street and Cowan Street as well as the on-site improvements at the hospital. He also advised we received a DENR Grant for \$347,000. He said the town's share of the project will be about \$47,000.

Mr. McEwen said last week we were informed that we received a \$94,000 grant for downtown revitalization. He said we plan to apply that towards the splash pad project and streetscaping of Court House Avenue.

Commissioner Robbins said that's good work to the staff and all those involved to get that kind of money especially from Golden Leaf Foundation which is so sought after. Mr. McEwen said it took a lot of staff time to get it done. He said he understands this is the first and only stormwater project Golden Leaf has ever funded. He said a lot of credit goes to the fact that it involves the hospital and rural health and their cooperation.

BREAK 5:25PM – 5:40PM

PUBLIC FORUM

Speaker:

Debbie Kesecker, 702 Jasmine Way in Creekside, asked about the increase in the water bills since the new meter was put in. She advised she is aware that she can go to the website to view her usage but she had several questions regarding what she sees on her account as well as if the town has had a lot of complaints.

Mr. McEwen said it would be difficult to answer those questions without seeing the data. He did advise that her question about missing data is related to two of the gateways being out for now. He said those new gateways should be installed by next week and she should be able to view that in the near future. He said there have been complaints at the front window. He advised he has had a few calls but the ladies at the front window have had concerns and complaints. He advised this was an exceptionally long read period with from seven to fifteen days extra on the cycle which made for an increase in the amount of the bills. He said we did this project because we knew we had still meters or meters that don't register accurately so there are two reasons that the bills are higher, one being the longer read period and the other being a possibility of still meters or meters that didn't register accurately. He advised if there are complaints we can sit down with the customer one on one and review their accounts and justify what the bill is. Mr. McEwen, Mr. Fay and Ms. Pope answered a number of questions related to the new water meters.

PUBLIC HEARING – QUASI-JUDICIAL 5:52PM

Reconsideration of a Conditional Use Permit Application for a "Bed & Breakfast Inn" use including two accessory apartments to be located at 115 N. Cowan Street. Applicant Brenda Allen has applied for the

reconsideration of 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.

Swearing in of witnesses

Mayor Mulligan advised due to the large number of witnesses signed up to speak it would be best if everyone stands and takes the oath without coming to the front of the room. Attorney Kenan administered the oath by affirmation to the following persons who would submit testimony to the Board of Commissioners during the hearing: Patricia Jenkins, Elijah Huston, Brenda Allen, Ross Wilcox III, Ross Wilcox Jr., Russell Ramsey, Ann Ramsey, Monique Kirby, Donna Murphrey, Ann Dees, Bryan Dees, Marge Moore, June Robbins, Debbie Ruddell and John Sansone.

Board disclosures

Mayor Mulligan asked for any disclosures by any Board members regarding this hearing. Commissioner Murphy had no disclosures. Commissioner Robbins said he has no disclosures other than the fact that he did know his wife was going to be here and she has signed up to speak. Commissioner Dawson had no disclosures. Commissioner Harrell had no disclosures. Commissioner George had no disclosures.

Attorney Kenan asked Mayor Mulligan if he has any conflicts. Mayor Mulligan said "as the mayor I am around town all the time, I bump into a lot of people and because of all I have heard over the last several weeks, I don't believe I can be impartial on this issue so I am going to request to be recused". He then said "I need a motion for that request". Commissioner Harrell made a motion to recuse Mayor Mulligan from the deliberations. The motion was seconded by Commissioner Dawson. Commissioners Harrell, Dawson, George and Murphy voted "aye". Commissioner Robbins voted "nay". Motion carried.

Mayor Mulligan said he would hand the gavel over to Mayor Pro-tem Robbins. MPT Robbins said "so what would happen if I stood up and said I get around this town a lot, I've seen a lot of people around here ever since this last thing and I don't know if I can run this meeting for you Mr. Mayor, so, I mean, come on, step up". He said "I don't mind running the meeting but come on, this is a small town and we see people all the time and we hear all kinds of things and if you are biased that's one thing". Mayor Mulligan said "that's what I am saying". MPT Robbins said "so you're biased"? Mayor Mulligan replied "yes, so I hand you the gavel". MPT Robbins said "in lieu of things that I have to run this meeting I ask for a fifteen minute break". Attorney Kenan asked MPT Robbins to ask the membership of the Board if they are willing to agree to that. The Board was in agreement to take a fifteen minute break beginning at 5:59PM.

Mayor Pro-tem Robbins reconvened the meeting at 6:16PM.

MPT Robbins advised it has been a while since he has conducted a hearing like this but he will do his best. He advised everyone has an open mind and we will hear from everybody. He asked that speakers try to limit their comments to a reasonable amount of time. He advised he will be calling on the attorney for help with the legalities of conducting this public hearing.

MPT Robbins called on the petitioner to come forward.

Patti Jenkins advised she is an attorney and she is representing Brenda Allen whose address is 115 N Cowan Street. Ms. Jenkins advised there are two items before the board tonight. The first is a petition for reconsideration. She stated to the Board that in your May hearing you denied Ms. Allen's application for conditional use permit. She is petitioning the Board to reconsider that denial. In order to do so, she needs to show the Board two things; that there was new material that was brought to her attention either at the hearing or after the hearing that she could not with diligence have presented. She couldn't respond at the hearing because she either couldn't be prepared with any diligence or she didn't know it at the hearing.

Ms. Jenkins presented notebooks with information for the Board to follow along with her presentation. Attorney Kenan advised the Board that it is okay for them to receive the notebooks but they can only consider exhibits 1, 2 and 3 as part of that notebook for the purpose of the consideration of the petition for reconsideration of the denial of the conditional use permit application. Ms. Jenkins advised that one of the grounds for our petition, some of the new

information that came to Ms. Allen's attention after the hearing, was the relationships and property ownerships that Mr. Robbins has. She advised Ms. Allen would like to address that information as new material in this subsequent hearing. Ms. Jenkins advised for that reason because Mr. Robbins' participation and voting at the prior decision is part of the grounds of this petition, we respectfully object to his participation and voting on this petition and we ask that he kindly recuse himself. In support of that in tab one is the statute that was cited today which is NCGS 160-388(e) which says that an applicant or petitioner in a quasi-judicial proceeding has certain due process rights and they have the right to an impartial decision maker and you all in your quasi-judicial capacity have to exercise your decision making in an impartial way. She said every board member must ask themselves if they are impartial and if not they are under a duty to recuse themselves from participation in voting. She said her first order of business before the Board is our objection and request for recusal.

Commissioner George asked why Ms. Jenkins is saying that MPT Robbins is impartial; how can you prove that? Ms. Jenkins said the role of the applicant is if they believe there may be partiality is to object on the record and then that Board member makes a self-inquiry as to whether or not they are partial and they either recuse themselves or the Board has a vote on that recusal. She said in this one instance the grounds for our petition for consideration is that new material came to light after the hearing. Commissioner George asked what new material. Ms. Jenkins said the new material that came to Ms. Allen's attention was that Mr. Robbins spouse was sworn in to testify and testified very strongly against the application. The other factor is that Mr. Robbins owns property on the street and resides on the street. She said she is not saying that Mr. Robbins is impartial; she is saying that because he did not disclose these relationships and these ownerships like other Board members did at the prior hearing about ex parte communications they had with other people that were strongly opposed or for, Ms. Allen was robbed of the ability at that hearing to object. She said that is why we are asking for this reconsideration. That is one of the items of new material that came to her attention. It is solely for that reason why we are requesting that he recuse himself because if he votes on a petition he is voting on whether or not his participation was new material. She said that just screams of conflict of interest. She advised she has made her objection on the record for request for recusal and unless the Board has other questions for her at this time that preliminary matter is in Mr. Robbins and the Board's hands.

Commissioner George said if it is in his hands he says that Commissioner Robbins does not need to recuse himself. Commissioner Harrell asked if that is a motion. Commissioner George said "I'll make that motion". Attorney Kenan said the procedural way to handle this first of all is "Mr. Robbins, the petitioner has requested that you recuse yourself based on some bias, do you wish to recuse yourself from this proceeding"? MPT Robbins replied "no, you know she is accusing me of not having an open mind and she is accusing me of living where I live; in her reconsideration she said that I live on the same block, I don't live on the same block, I do not live on the same block, I do not have adjacent property, but I do have an open mind". "I had an open mind then and I have an open mind tonight." "I am not recusing myself." He said that it's up to the Board so I entertain a motion at this time whether or not you all would like to recuse me from this public hearing. Attorney Kenan advised before the Board makes that decision the procedural process is that the applicant is requesting one of the members of the governing body to recuse themselves; if they do not wish to recuse themselves it is up to the Board of the governing body to determine whether or not that person is being requested to be recused, whether or not you vote to recuse that person. Commissioner George said he has already made a motion to let him proceed; the motion is on the floor. The motion was seconded by Commissioner Dawson. The motion carried by unanimous vote.

MPT Robbins directed Ms. Jenkins to continue.

Ms. Jenkins referenced Exhibit 3 in the materials presented to the Board. She also advised for the record that Exhibit 2 was her petition for reconsideration that she filed with this board. Ms. Jenkins advised tab 3 is the standard under your ordinance for when a board can grant reconsideration of an application that has been denied. She advised that portion of the ordinance reads that when a board has disapproved a conditional use permit, you can reconsider that application if the applicant demonstrates that new information is available that could not with reasonable diligence have been presented at the previous hearing. She said Ms. Allen contends there were two items that came to her attention with not enough time to for diligence to respond to them. The first is the information regarding Mr. Robbins which actually came to her knowledge after the hearing. She did not know those facts and did not have the opportunity to object on the record to his presence. The second item of information is that at the hearing in May this board adopted for the first time a modification to the ordinance. You adopted an interpretation that was offered by your attorney, Mr. Kenan. She said that section 8.5 of the ordinance reads that a bed and breakfast inn can as a part

of their conditional use permit have receptions, private parties or similar activities as long as you have a permit for that. The interpretation that you all adopted that night was that on section 8.2 the table of permitted uses that table prohibits an event venue in R-12. So what you adopted that night was to say that in essence 8.2 prohibits event venues strikes out and nullifies 8.5 which is where you could have allowed Ms. Allen to apply to host certain functions. In essence what you did that night was amend the ordinance; you either amended section 8.5 to strike out the fact that a bed and breakfast that's in R-12 could apply for a permit for that or else you amended it to amend the definition of event venue. Event venue is defined as a facility for meetings and gatherings. The way you interpret that is almost like amending event venue to be defined as any place where reunions, conventions, private parties or other similar ceremonies happen to take place. That is a fundamental change in the ordinance; that is an amendment in the ordinance for which there wasn't a proper procedure. She said I am not here to argue, not at this time, sir that is a proper interpretation or not, I am just saying that Ms. Allen could not with any diligence have prepared for that to have happened that night. She was not aware that you all were going to do that, she didn't have notice of that; the Planning Administrator didn't prepare for that in her report either. That came brand new before her, she could not with diligence have responded to that new information but what she is asking for tonight is for you to reconsider, to reopen her application so that she can respond and how she plans to respond is to modify her application to address the concerns you all had about whether it is an event venue and what types of functions constitute or fall into event venue. She wants to clarify for the record exactly what her intended uses are and to be able to address that interpretation that you all have pretty much enacted at the May meeting. We are asking that you all consider her petition for reconsideration so that she can address the new information that I have talked to you about earlier tonight. Ms. Jenkins said that's all she has to say but she will take questions if needed.

MPT Robbins said at this time we need to determine if we want to reconsider the petition. Attorney Kenan said with respect to what Ms. Jenkins raised about event venues, it is based on your Unified Development Ordinance 8.2 that specifically defines event venues that are a part of the table of permitted uses or as a conditional use. He said when we had that hearing in May that he did tell the Board that Ms. Allen could not have any events based on that interpretation of 8.2. He said he will caveat that under section 8.5 there are provisions for bed and breakfasts within the R-12 jurisdiction that does allow with the Board's consent to include any events, private parties and any other similar activities so if there was some confusion there I probably caused that to the Board based on my interpretation so I would request the Board out of fairness to the applicant to grant this petition and then proceed if you do so desire to do that and to proceed to a public hearing and reconsider the applicant's original application. He said that is out of fairness and I apologize to the Board for that misinterpretation.

Attorney Kenan asked the Board to review item I on page 31 of the Unified Development Ordinance. There was a brief pause in discussion while the Board reviewed the information. MPT Robbins advised he will entertain a motion as to whether or not this Board reconsiders the petition for the hearing. Commissioner Dawson said she would make that motion. The motion was seconded by Commissioner Harrell. Attorney Kenan requested that before the board rules on that for the member who made that motion to consider modifying that motion to state either under item I or 2 what the new information is. Commissioner Dawson made a motion to accept the petition to reconsider the bed and breakfast. The motion was seconded by Commissioner Harrell. Commissioners Dawson, Harrell and Murphy voted "aye". Commissioner George voted "nay". Motion carried 3-1.

Attorney Kenan advised MPT Robbins based on the vote of the Board to reconsider the denial of the special use permit at this point in time you can proceed with the opening of the public hearing and take public comment regarding the application.

Mayor Pro-tem Robbins opened the public hearing at 6:35PM.

STAFF PRESENTATION

Rebekah Roth, Planning Administrator advised Ms. Brenda Allen has applied for a bed and breakfast inn to be located at her property at 115 N Cowan Street. It is zoned R-12 Residential and it is directly across the street from residential properties. She said it is currently approved for a single family residence and at the last hearing one accessory apartment was approved for this location. She advised this is a reconsideration of the May 10th denial. Ms. Allen has requested to be allowed nine guest rooms in the primary structure and to be able to use the accessory structure for potentially an office/gift shop for the manager, guest rooms or up to two accessory apartments. Ms.

Allen is also requesting to have no more than four special events per month for her guests and holiday or seasonal special events for the larger community. She has also requested use of the existing brick fire place located along the southern property line.

Ms. Roth presented a layout of the property that the applicant has provided showing the primary structure, the existing accessory structure with the two residential units, parking area for seven vehicles in the rear and parking along the curb directly in front of the property. She advised the property is bordered on all sides by residential use properties. Ms. Roth advised the residence to the west is about 10 feet from the property line and the residence to the south is on the shared property line.

Ms. Roth advised the Board will be deciding the use of the subject property as a bed and breakfast inn including the number of guest rooms allowed; the use of the accessory structure for office/gift shop, guest rooms and/or up to two accessory apartments; the use of the property for special events; and any associated outdoor activities specifically the use of a fire pit.

Ms. Roth advised for bed and breakfast inns requirements are that off street parking must be screened from adjacent residential uses. It does provide for one parking space per guest room and two spaces for the resident managers. It does not allow parking in the front yard and it does allow on street parking serve to fulfill some of the parking requirements where it is available. It does specify that the use shall be 02:43:02. It specifies a maximum of four guest rooms unless the Board of Commissioners allows more in structures that were originally built with more bedrooms. Ms. Roth advised signage is limited to one sign no more than ten square feet in area and four feet in height. It must be operated by a resident manager. Meals can only be served for overnight guests and residents of the facility. The maximum length of guest stays is thirty days. No receptions, private parties or similar activities are allowed unless expressly approved as part of the conditional use permit.

Ms. Roth advised for this use the following four standards 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 meets all required conditions and specifications.
- 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 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.

Ms. Roth presented the following information which was provided in the staff application review regarding the standards and staff recommendations.

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 and an existing light pole to illuminate the off-street parking area.*
- *The applicant has proposed a grill and fire pit for guest use.*
- *The Fire Marshal, Allen Wilson, has expressed concern over the location and number of users of the grill/fire pit in a conversation with the Planning Administrator on July 19, 2016.*

Staff Recommendation

After discussions with the fire marshal, staff recommends that the location of any grill and/or fire pit must be approved in advance by the Town of Burgaw Fire Marshal and that any use of the grill and/or fire pit must be supervised by the resident

manager. This would alleviate concerns regarding the potential proximity to flammable structures, reduce the risk caused by multiple users, and allow Ms. Allen the requested amenity.

Standard 2. 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.*

*Ms. Roth advised she has received questions regarding the bathrooms for the guest rooms. She presented two exhibits showing the layout of the guest rooms and their bathrooms and an email from the building inspector indicating that there will need to be upgrades as a result of this but he does not anticipate any issues with the applicant meeting those requirements for upgrades as a result.

- *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 applicant is proposing using the accessory structure for an office/gift shop, guest rooms, and/or up to two accessory apartments.*
- *In order to be approved, accessory apartments must meet the following requirements:*
 - *The maximum size for attached accessory dwellings and detached accessory dwellings is fifty percent (50%) of the principal structure or eight hundred (800) square feet, whichever is less.*
 - *Adequate off-street parking shall be provided for any vehicles owned by occupants of the accessory dwelling or accessor apartment.*
 - *Detached accessory dwelling units should be architecturally compatible to the principal building (in terms of pitch of roof, wall or trim material, architectural style, window details, etc.)*
 - *The accessory dwelling unit shall be subordinate to the primary living quarters.*
 - *As outlined in the Ordinance Requirements Report, the existing accessory structure is 641 square feet, complying with the maximum size requirement of 800 square feet.*
 - *The minimum lot size per dwelling unit in the R-12 zoning district is 12,000 square feet, allowing 1.83 dwelling units for the proposed site.*
 - *A conditional use permit for one accessory apartment was approved at the May 10, 2016 Board of Commissioners meeting after the denial of the bed and breakfast.*
 - *The proposed off-street parking area meets all requirements for the parking of seven vehicles, including required buffering to the west.*
 - *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.*

- *The development ordinance does not outline parking requirements for accessory apartments, and provides that “the Land Use Administrator shall make the final determination as to the number of spaces to be required but shall in all cases give due consideration to the needs therefore.”*
- *Since duplexes require two spaces per dwelling unit and multi-family structures require 1.5 spaces per dwelling unit, the Planning Administrator recommends requiring two parking spaces for one accessory apartment and three spaces for two.*
- *Fourteen parking spaces would be required to accommodate all requested apartments and guest rooms.*
- *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.*
- *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.*
- *The applicant intends for off-site parking to be arranged for special events.*
- *The development ordinance does not allow event venues, defined as “a facility for meetings and gatherings, such as reunions, conventions, private parties, and other similar ceremonies” in the R-12 zoning district.*
- *Private parties and events for the enjoyment of residents are generally customary in residential dwellings, subject to town codes regarding noise, blocking of streets, etc.*
- *No receptions, private parties, or similar activities are permitted at Bed and Breakfast Inns unless expressly approved as part of a conditional use permit.*
- *Retail sales and offices are not allowed in the R-12 zoning district.*
- *The Town of Burgaw Unified Development Ordinance defines accessory use as “a use incidental to and customarily associated with the use-by-right and located on the same lot with the use-by-right, and operated and maintained under the same ownership with the operation of the use-by-right.”*

Staff Recommendation

While the requested two accessory apartments were permitted when originally built in the 1950s, the current zoning ordinance limits the number of dwelling units allowed per site. No more than 1.83 units would be allowed for this site based on that calculation. Two accessory structures in addition to a bed and breakfast is not customary or incidental to that use, so staff recommends no more than one accessory apartment be allowed.

There is insufficient parking on-site for the number of guest rooms and number of accessory apartments requested. Only 11 cars can be accommodated either off-street (seven spaces) or on-street directly in front of the subject property (four spaces). As a result, staff recommends that the number of guest rooms or accessory apartments be limited to one of the following options in order to allow for sufficient parking:

- *One room for resident managers (2 spaces) and all nine requested guest rooms only (9 spaces)*
- *One room for resident managers (2 spaces), one accessory apartment (2 spaces), and seven guest rooms (7 spaces)*
- *One room for resident managers (2 spaces), two accessory apartments (3 spaces), and six guest rooms (6 spaces)*

Because event venues are not permitted in the subject zoning district and on-site parking is limited, staff recommends that the board place limitations on any parties or other special events to ensure that they are similar in nature to the types of parties and events that are customary for residential uses. Such limitations may be on the number of guests, hours of events, number of events, location of guest parking, etc.

Because retail sales and offices are not allowed in residential districts, staff recommends that commemorative items should not be sold on-site to anyone other than bed and breakfast guests, and the office should not be open to the general public. Staff also recommends that a vegetative buffer or protective device approved by the Planning Administrator be installed between the off-street parking area and the sidewalk to ensure that cars do not inadvertently block or damage the sidewalk.

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

- *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 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.*
- *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.*
- *The off-street parking area is immediately adjacent to a single-family residential use.*
- *A narrow existing vegetative buffer on the applicant's property separates the proposed bed and breakfast from the residence to the south, which is located very close to the property line.*

Staff Recommendation

The existing fire pit is located very close to the southern property line in an existing vegetative buffer between the two properties. Use of the fireplace would require removal of vegetation and may encourage encroachment into the neighboring yard by guests. Staff recommends that use of the existing fireplace not be allowed.

The proposed off-street parking area is oriented so cars would be pulling toward the residence to the west. In order to block headlights from late night guests, staff recommends requiring a type II buffer, which requires a 6 ft. fence in addition to vegetation.

Staff also recommends retaining and supplementing the vegetative buffer along the southern driveway due to the large number of potential guests and cars that may be using it.

Again, because on-site parking is limited and due to large numbers of potential guests, staff recommends that the board place limitations on any parties or other special events to ensure that they are similar in nature to the types of parties and events that are customary for residential uses. Such limitations may be on the number of guests, hours of events, number of events, location of guest parking, etc. Since private parties for residents are a customary accessory use in this zoning district, the board would need to determine whether any limitations would apply to parties of the resident managers or apartment residents.

Standard 4. *The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the Town of Burgaw Unified Development Ordinance, Burgaw 2030 Comprehensive Land Use Plan, and NC 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.*

Staff Recommendation

In order to ensure that the property remains in compliance with this standard, staff recommends that the board place conditions regarding the retention and replacement of existing landscaping, including size requirements for replacement trees.

Ms. Roth advised that is all she has to present at this time.

EVIDENCE FROM APPLICANT

Ms. Jenkins thanked the Board for reconsideration of the application because the application was very broadly written and subject to misinterpretation. She said because this was a reconsideration of the same application, Ms. Roth had to work on the same application. She advised we have made lots of modifications and proposed conditions to that to address some of the concerns that Ms. Roth has brought up and what came up in the last hearing.

Ms. Jenkins advised tab 4 in the notebook she presented earlier is what she will be discussing at this time. She said she will summarize the material under tab 4.

Ms. Jenkins advised the purpose of conditional uses is to add flexibility to the zoning ordinance. It is to allow a use that may not normally or traditionally be in a use because it can fit in that use particularly if the Board decides to adopt conditions. Those conditions are designed to minimize any negative effects that use may have upon surrounding properties. That is the purpose of a conditional use permit and that is why we are here tonight to try to show you what the uses are so you can step up with any conditions to help adapt them to the area if you feel that there will be any undue interference. Section 3.8 of the ordinance which talks about quasi-judicial procedures and this application process says that during the course of the hearing in response to comments like Ms. Roth's, the applicant can modify her application and that is what we are seeking to do here tonight. Even though we are starting with that first application we are going to modify it for you; we are going to tell you exactly what Ms. Allen intends to do with her property and what conditions she proposes to put on it to address some of your concerns.

Ms. Jenkins advised Ms. Allen's intended uses for her property are:

- a. Operation of a bed and breakfast consisting of seven double occupancy guest rooms*
- b. Two accessory apartments*
- c. To have a permit to host private, non-commercial functions under specified conditions*

Ms. Jenkins advised Ms. Allen is proposing the following conditions to answer some of the concerns proposed by Ms. Roth's report:

- a. Applicant seeks permit to host functions typically hosted by residential property owners. All events would be private, noncommercial events hosted by Applicant. Any special events such as a holiday open house will be held no more often than 4 times per year, and for no more than 25 guests. For any events exceeding parking limitations on the property, the applicant will secure remote parking from a church or city parking lot. No events will be held after 9:00PM.*
- b. If the 11 on-site and street front parking spaces are not sufficient to accommodate 7 guestrooms, resident or resident manager and two accessory apartments, Ms. Allen proposes a condition of such permitting that in the event of full occupancy, she will access remote parking to accommodate parking in excess of 11 spaces; or reducing the number of permitted guest rooms to six.*
- c. Applicant will not use the existing fire pit.*

Ms. Jenkins advised she would like to talk about the four standards. She advised we contend that her application and the conditions as modified would meet all four standards required for granting a conditional use permit under Section 3-10.

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. *Ms. Roth told you about who she has reached out to secure assurances about that. Ms. Allen has met with the building inspector, fire marshal and the Pender County Health Department all to talk about what are the applicable codes to her property and what she would need to comply with depending on what type you issue her. She is standing there ready to address those and we understand that of course if you grant her permit it will be conditioned on full compliance with all those codes. She understands that and she has already been proactive in trying to seek that.*

Standard 2. The use meets all required conditions and specifications. *Ordinance section 8.2 allows a bed and breakfast if it is in R-12. Under section 8.5 it says the maximum number of guest rooms is four unless the original structure had more bedrooms. The original structure had 10 bedrooms. (She referred to exhibit 7 – photo of original structure) Because the original floor plan was for 10 bedrooms the conditional use permit could be for up to 10 bedrooms if other conditions were met; she is only seeking 7. Again accessory apartments (Section 8.5) are allowed in R-12. Section 8.5 Receptions, private parties or similar activities are an allowed use by a bed and breakfast inn if approved as part of the conditional use permit. She does not propose an event venue which would be prohibited under the ordinance. She has proposed certain parking conditions to allow for a second accessory apartment. We ask that this Board consider the lot usage to conditionally permit for this because she cannot get a variance for this.*

Standard 3. The use will not adversely affect the use or any physical attribute of adjoining or abutting property or the use is a public necessity. *There are some concerns that came out of the last hearing and from Ms. Roth's report and that typically has to do with the neighbor to the west and the neighbor to the south in regards to blocking headlights from shining in their windows. Ms. Allen has reached out to both of those and is willing to work with them to set conditions as far as a vegetative buffer, a type I buffer or a type II buffer, vegetative and fence or some mix of both where we have a vegetative buffer of sufficient size and height to take care of those situations. Again, she proposes that as a condition working with the affected neighbors with the approval of Planning. Ms. Jenkins advised she will be happy to come back and address that regarding what that buffering entails but she would like to come back to that if that's okay with the Board. Finally she will adopt any conditions proposed or imposed by this Board regarding all events and any conditions as far as parking, whether it is to drop down to six bedrooms to allow for the accessory apartment. We believe with the conditions that she has offered there would be no adverse use to any of the intended uses. We believe that she has satisfied that requirement.*

Standard 4. The location and character of the use, if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the Town of Burgaw Unified Development Ordinance, Burgaw 2030 Comprehensive Land Use Plan, and NC Hwy 53 Corridor Study. *We have already talked about how it complies with the ordinance, how all her intended uses with conditions comply with the ordinances. It also complies with the 2030 Comprehensive Land Use Plan and I have included the portion of that as the exhibit that even though she will then be redistricted as a traditional neighborhood residential district that bed and breakfasts are a permitted use in that district. Finally the Hwy 53 corridor and I have included the map in that and I could be totally wrong because I am not an engineer but it looks to me like as part of that they are putting in cross walks right at the end of her block where it hits Hwy 53 and I know there were some concerns about pedestrians crossing North Cowan Street; forgive me if I totally got that wrong.*

Ms. Jenkins said she will now talk about the law regarding what it means to be harmonious with the area. First of all every use is permitted under an ordinance; a bed and breakfast is permitted in R-12 and it is presumed that it is harmonious. We have done our job, it is presumed. In order to overcome that then anyone who objects to it or denies it has to have competent evidence on the record that it is not harmonious. She read from exhibits 13 and 14 that "generalized objections and concerns of neighboring community cannot be the sole basis for finding use is not in harmony. Speculative assertions, mere expression of opinion and generalized fears about the possible effects of granting a permit are insufficient to support the denial of a conditional use permit. Denial may not be based on conclusions which are speculative, sentimental, personal, vague, or merely an excuse to prohibit the requested use. Concerns of local residents do not constitute substantial, material and competent evidence."

A Board cannot deny a permit based on what it considers to be beneficial or harmful to the community without making that competent evidence. Such power would subject the Board to the pressures of individuals or groups who for an infinite variety of reasons, might oppose the permit, and enable it to make a different rule of law in every case. Ms. Jenkins referenced a case in the exhibits regarding a humane society building an animal shelter in a residential area and it was a permitted use. She said the neighbors came forward with complaints regarding noise and smell but the court held that was not competent evidence to show that it was not in harmony with the area. The court said it is a permitted use and it is presumed to be harmonious. You need more competent evidence than this to say that it is really not going to be not in harmony with the neighborhood.

Ms. Jenkins referenced Exhibit 15 which is an aerial view. She said area is not just the houses next to her and across the street from her; behind her is a women's residential shelter, there are many people living in that shelter. There is also a church parking lot, there is a fire station on the next block, and there is a large church on the next block. That is the area that we believe you should be looking at in determining whether or not this use is in harmony; not just her neighbor across the street and to the side of her. She said that is the end of my presentation on this. Just as a procedural matter and I know you objected on the record and it was voted on but I just have to object to the participation of Mr. Robbins at this proceeding. Just get that on the record. Ms. Jenkins said she will take any questions and would like to reserve some time at the end of the hearing for further questions or if Ms. Allen has anything to discuss.

PRESENTATION OF EVIDENCE BY CITIZENS

Brenda Allen, 115 N Cowan Street, Burgaw advised at this point she doesn't know what to say unless someone has a question for her. She said is she is here to make a beautiful bed and breakfast in the town, what she has seen in this town, she likes and she is glad to be a part of it. Ms. Allen said she has talked to her neighbors. The neighbors in the room all spoke at once and advised that she did not talk to them. MPT Robbins quieted the room and advised this is Ms. Allen's time to speak. An argument began between Ms. Allen and the neighbors regarding her comments about having talked with the neighbors. At that time Ms. Jenkins advised the public hearing is for the Board to address not for MPT Robbins interjected that he knows how to run a meeting and told Ms. Jenkins that she has not been called on either. He advised he is trying to get a hold on this meeting. He told Ms. Allen that she has the floor, she can speak and this is not the time for questions. He said everybody will have their turn. Another argument started between Ms. Allen and the neighbors. Attorney Kenan advised Ms. Allen to address her comments to the board and to not have any discussion with the audience. He advised the other members of the audience that they can say whatever they want to when they are at the podium. At that point Ms. Allen asked if anyone has any questions. Commissioner Harrell said "in your revised permit, I have not heard anything about the gift shop or any of that". Ms. Allen said "in regards to the gift shop she was thinking of making a cup that says Bebe's Bed and Breakfast, if the guests would like a souvenir, that's all; there is no big gift shop, there is nothing like that, everything was taken out of context". Commissioner Harrell said "are you saying there is not a gift shop"? Commissioner George said "if I go into your place and I want to buy a cup I cannot buy it?" Commissioner Dawson said "it was my understanding that was just for the guests." Commissioner George asked Ms. Allen to give him an example of an event that she will have. Ms. Allen replied "a small cookout for guests or have my family over; I'm going to treat it like my home. She said she would like to get married there, I have mentioned weddings before and that was blown out of proportion. Commissioner Dawson said she had read something about an event four times a month. Ms. Allen said that has been changed to four times per year. Commissioner George said "So Santa Claus would be an activity?" Ms. Allen said for the guests. Commissioner Harrell "Ms. Jenkins mentioned a holiday open house with up to twenty five people ending at 9:00PM." Ms. Allen said she would like to be a part of the holiday tour of the historical home tour at Christmas. She said no big party, no big event.

Ross Wilcox III, 2020 Pace Drive, Wilmington – declined to speak

Ross Wilcox Jr., 2 Lodge Ct. Castle Hayne – declined to speak

Russell Ramsey, 212 N Cowan Street, Burgaw, said he has known Ross (Wilcox) for twelve years and he believes they will be good neighbors to those folks if they are allowed what is proposed. He said with the power of the Board to put those conditions on it sounds like they are making a good effort to do that. He said he doesn't see this to be any more than him having a block party four times a year at his house. He said this (B&B) would be less intrusive that a block party. He said that's my opinion.

Ann Ramsey, 212 N Cowan Street, Burgaw advised she is as proud of this town and the citizens as anybody could be. She said the neighbors are friendly; it's a great town to live in. She said she thinks it would be so quaint to have a bed and breakfast. She apologized if anyone disagrees with her. She said when her daughter got married they had to go to Wilmington and rented a bed and breakfast for the festivities. She said we were just average normal people like all of you here. She said she wishes we could have something like this. She said she would have used this facility if it had been available. She said it sounds to her that conditions have been met but what she is hearing more of is "not on my street". She spoke at length about the quaintness of Burgaw and the desire to see historic homes restored instead of tearing them down. She said she has never heard of any riffraff staying at a bed and breakfast; it is usually upscale and a little more expensive for your average person to stay. She said she loves this town and we all find a way to fit in somewhere.

Monique Kirby, 114 N Cowan Street, Burgaw advised she and her husband live directly across the street from the proposed bed and breakfast. She said initially she was so excited that someone was going to buy the home and restore it. She said her concern came when she saw what has been proposed and she felt like they had been hoodwinked. She said she felt they weren't really informed and they were trying to slide something in and it caused a little mistrust. She said she has no problem with a scaled down version if it is owner/occupied and if the amount of time at the facility is limited. She said for many years we watched the previous owner allow homeless people,

drunks and thieves to stay there and there were hypodermic needles in the window sashes. She witnessed the police have to come in and kick in the front door and bring someone out in handcuffs in broad daylight. She said that is not why I moved here ten years ago to witness that. She said the previous owner advised these are hard time and I do what I have to do to make money. She said if Burgaw doesn't have as many people as you would like to use your bed and breakfast what are you going to resort to doing to keep your mortgage paid. She said she could possibly see the same thing across the street and that is her concern. She said in her opinion some of this could have been avoided if the new owners had done a little more research and learned what has happened in the neighborhood before jumping to conclusions and trying to shove it down our throats and it is not really how we view our neighborhood. She said if you want to be a good neighbor how does your vision fit in with our neighborhood. She would like for the bed and breakfast to be owner occupied. She said she prefers that each time it is sold that each new owner would have to apply for a permit for it to be a bed and breakfast. Ms. Kirby ended by saying that she doesn't want to see it turn into a five dollar flop house for people that just cannot afford other housing.

Donna Murphrey, 200 E Bridgers Street, Burgaw said she is in favor of the bed and breakfast. She said she was a little disappointed when it did not pass the first time. She said they really didn't visit her either but she visited them when she saw them at the house. She said she asked questions and they were very friendly to her. She said we should be thankful that they want to make an investment here and she hates to see them voted. She said the property was built for this purpose. She said in regards to the final listing price of this house we should thank our lucky stars that she bought it. She said there are some things that zoning cannot control and the neighbors might want to think about that. She said someone could have bought it and just let whoever they want live there. She said that may not be against zoning. She said when Ms. Allen filed an appeal she was entitled to a lawyer and she doesn't think this is about getting lawyered up to get everybody here in an uproar. Ms. Murphrey said in her contact with Ms. Allen she has not felt like they were trying to hide anything. She advised she has stayed in several bed and breakfasts and all were in residential neighborhoods and were very quiet. She spoke at length about the good qualities of a bed and breakfast. She also said that she and her husband lived in one of the apartments for about a year while remodeling their home down the street. She said they had no problems living there. Ms. Murphrey said she thinks a bed and breakfast will bring business to Burgaw and will be an asset.

Bryan Dees, 109 N Cowan Street, Burgaw said as ever body knows his grandmother moved into the house in question in 1948. He said the house was built to be a tourist home. He advised he is impressed with what Ms. Allen has done with the property and how it looks is great. He said if she could pick up 115 N Cowan Street and move it down to S Cowan Street where the mayor lives it might work. He said it is going to be bright; it is going to disturb everyone that is right there. Mr. Dees commented that one of you commissioners talked to me on the phone and we were talking about this as we have done often. He said to the commissioner to think about Ms. Ruddell who is right there and the commissioner said loudly "I don't care about her and I hope it disturbs her". Mr. Dees said that is not representing the interest of this town. He advised another time this particular commissioner was in my kitchen screaming about Mr. Robbins and saying that he needs to recuse himself. Mr. Dees said "if there is anyone in this room on this board that needs to recuse himself; I'm looking at him, Commissioner Harrell". He said there is an oligarchy of elitists in this town who are bringing this in and their key word is "enliven". They want to take Cowan Street and disrupt this quiet street with an activity center. He said you could add in liquor, it could become a lounge; you can have all sorts of things there. He said Ms. Allen is a business woman and he would have loved to have talked to her and show her in his home some of the beautiful things his grandmother collected over the years. He advised Ms. Allen never came down to his house and talked to him; she has from day one ignored us; she does not care what is going to happen to us. He said we are all retired people and we need quiet. He said this is disruption of our lifestyle. He said his grandmother called it her home but he doesn't think Ms. Allen is going to be able to say that. He said there were never parties when his grandmother lived there and the neighbors were not disrupted. He said he supported a bed and breakfast there but not an activity center. He said his house and Ms. Ruddell's house sit on a piece of property that was meant for one house and that they are a foot from the line on either side. What about the noise and disruption from a lady that intends to make money? He said a bed and breakfast would be great, but what he wants to be eliminated is the activity center. He asked what happens going down the road if she wants to have big parties and anybody can park on our street because they are public property. What is this going to do to my quality of life? He said he feels sorry for Ms. Ruddell; there is no way they can change that. He said nobody ever complained when grandmother was there. He made several comments regarding the problems related to the previous owner's tenants and the fact that the police were right there and took care of everything. He said there is an oligarchy of elitists that want to enliven downtown for various antiquated businesses that aren't going to do well. He

said what is the purpose of enlivening downtown if you are going to disrupt a historical district? He commented that Commissioner Harrell is not representing the best interests of the neighborhood because it is not in our best interest to have an activity center; a bed and breakfast yes; activity center, no.

Commissioner Harrell said he disputes three of Mr. Dees' statements. He said he did not say anything about ignoring Debbie Ruddell. Mr. Dees said yes you did and you were yelling into the phone, I had to change the subject remember and went to something else so you would calm down; you were yelling into the phone. Mr. Dees said that is just not true and he will put his hand on a pile of Bibles and look him in the eye and I am telling the truth. Commissioner Harrell said if I had wanted Mr. Robbins recused why did I vote to have him not recused this evening? Mr. Dees said we wonder what kind of games you are playing and if anybody on this board needs to recuse himself it is Commissioner Harrell. (There were no further comments at this time and MPT Robbins moved on the next speaker.)

Ann Dees, 109 N Cowan Street, Burgaw, said she thinks her husband covered everything that we had. She said Ms. Allen's lawyer had brought up being harmonious such as a harmonious neighborhood and harmonious gestures. She said a harmonious gesture would have been for Ms. Allen to come down and introduce herself and meet with us because we would love to have met Ms. Allen. She said we could have shown her some original furnishings and told her about the history of the house. Ms. Dees said if Ms. Allen had come down the street and visited the Robbins house she would have known that he was on the Board on May 10th. She said she doesn't think Ms. Allen is worried about that because she doesn't believe Ms. Allen is planning to live at 115 N Cowan Street. She said the papers read that there will be two resident managers at 115 N Cowan Street. She said we are particularly concerned about parking because it does not say where off-site parking for special events will be. She said four events per month is very concerning and that the packet does not say four events per year. She said they are concerned about the solar lights because they will be bright. Ms. Dees said we ask for Commissioner Harrell to recuse himself from voting; we have had several conversations with him about this event center and we believe he has preconceived fixed opinions and is not an impartial decision maker.

Marge Moore, 101 N Cowan Street, Burgaw stated that her house was built in 1885 and they remodeled it in 1978. She said we came into a very quiet neighborhood where the neighbors look out for each other. She said this is a historical neighborhood with her house being the oldest in town. She said she is very concerned about events when there are other venues in town to hold events such as the depot, community house and court house square. She said the proposals reference resident managers but she wants to know if Ms. Allen herself will be living there or if there will be managers there and if it is not their home then it falls into the category of a commercial enterprise. Ms. Moore said if Ms. Allen is using it for a business that as far as she knows that is not allowed in an R-12 zone. She asked the Board to take that into consideration. Ms. Moore pointed out that if Ms. Allen had read the information carefully the fact that retail sales and offices were not allowed would not have been new information to her because it was printed in the staff recommendations for the May 10th hearing.

Debbie Ruddell, 113 N Cowan Street, Burgaw advised Ms. Allen and Mr. Wilcox did approach her and asked her what would make her happy regarding their plans for the bed and breakfast. Ms. Ruddell said if it is approved she would like to have a fence. She presented exhibit #1 which is preliminary work she has done in planning for a fence. She said she would want something that is easy to maintain for her and for them. She said they were cordial to her and receptive to what she wants as far as making it compliant. She said if this is approved by the board she would like for no more than four rooms to be approved because her concern is the parking. She said she doesn't see where you can get seven cars on that property. She said she is concerned about the noise in the driveway which will affect her ability to sleep at night because the driveway comes by her bedroom. She said she also would like for there to be one apartment because if the apartments are rented to couples there will not be room for four cars and the cars for the guests. She said she wants this to be kept like a neighborhood. She asked that the Board follow the ordinance as it should be. She said Ms. Allen and Mr. Wilcox have been very pleasant and what they have done to the property has far exceeded what was there before. Ms. Ruddell commented that the sign that was made for the bed and breakfast is small and in her opinion a little gaudy and not what she would have chosen for a historical district but she has already had it made. She also requested in regards to events that Ms. Allen would have to apply for permits for the board to decide on as to whether it is a big event or a small event.

John Sansone, 205 E Bridgers Street, Burgaw advised his main concerns are the parking and the effect of light on his house. He said he is concerned about where all the cars will be parked within that limited space. He said he is concerned that when cars pull into the driveway that the lights will come directly into his living room, dining room and kitchen area which means if he wants to have some privacy he will have to shut his blinds. He commented that although foliage has recently been removed that opened up the area even more, but the new owners have done a wonderful job of improving the property as opposed to when the previous owner was living there. He said another concern is the allowance of two apartments which could mean two cars per apartment to be parked there as well as guest parking. Mr. Sansone said Ms. Allen and Mr. Wilcox did come over and introduce themselves to him and explained their plans for a bed and breakfast. He said he has no problem with the bed and breakfast. He commented that he feels the ordinance on the books is sufficient and four spaces plus the one for the apartment can be dealt with. He said hopefully they will screen their renters better than the previous owner because the police had to come on several occasions regarding issues etc. He said is retired and he likes his peace and quiet; he said this is a historic district and would like for it to remain that way. He said he is not opposed to their plans but would like a buffer and to stay within the town ordinance.

MPT Robbins asked Attorney Patricia Jenkins and Attorney Elijah Huston if they desired to speak at this time since their names were on the sign in sheet. Both declined to speak at this time.

MPT Robbins stated that he not going try to get around this; that he is just going to say that the next speaker, June Robbins, is his wife. He said if someone had asked at the last hearing he would have told them that she is his wife. He said this is a small town and I know most everyone including almost everyone who has spoken tonight.

June Robbins, 104 N Cowan Street, Burgaw said it seems that what she is hearing is a huge lack of communication. She said everyone on her street received a planning booklet regarding the reconsideration of the bed and breakfast. She advised the planner's suggestions were the same as the May 10 planning booklets and now Ms. Allen and her lawyer are talking about tweaking those suggestions. Ms. Robbins said if we are to be well informed those requested changes should have been in the planning booklets that the neighbors received. She said there is a level of distrust because what was in the planning booklets is what Ms. Allen wants evidently. Ms. Robbins advised she is totally against any commercial entity in a residential section. She said the events have been tweaked, that was not in the planning booklets. She said retail shops and offices have been tweaked, that was not in the planning booklets. She said if any prospective buyers were to come into our neighborhood, do you really think someone wants to buy a house in a neighborhood in front of a commercial entity that has people in and out all the time. She said she is asking the question again to Ms. Allen. "Is this your residence?" Is this going to be her home? She said she has yet to hear an answer. Ms. Robbins said Ms. Allen did not reach out to the neighbors, she did not seek out, she did not want to seek out because if her intent was to blend in harmoniously with this community that would have been the first thing she would have done. Ms. Robbins advised her last comment is personal. She said "Yes I am biased, it is my house, it is where I live and no I do not want a commercial entity, so yes I am biased, it is my opinion. The sad part is to think that just because you have a couple living in one house and one happens to be on a board of some type, town board, people automatically think that we think alike, that the person cannot be truthful and unbiased in order to make a decision. I take it personally that my husband has been attacked; his integrity has been attacked by some of the Board members as well as the petitioner. The people in this neighborhood that want to be harmonious does not know him as a citizen, does not know him as a man, and does not know him as a politician. I have the feeling tonight with Ms. Allen hiding behind her lawyer that she wanted to intimidate but I can tell her that Mr. Robbins will not be intimidated and he will not deviate from anything that he feels is wrong for his constituents. Mr. Robbins was voted by the people therefore he listens to the people, he respects what they say and he uses their opinions to make their decisions. There is no personal gain here for him and he does not have any hidden agenda. Ms. Allen (and I'll direct this here) has sued the Town to have what she wants on the corner, that's really a fine way to start a relationship."

MPT Robbins advised that concludes comments from the citizens and we will move to comments from the Mayor Pro-tem and the Commissioners.

Attorney Kenan advised there is one procedural matter that the Board needs to deal with before moving on. He advised that because Mr. and Mrs. Dees raised the question of bias by Commissioner Harrell the Board needs to go through the same process that was done earlier meaning that Commissioner Harrell will have to be asked if he has a

bias and if so he will have to recuse himself and depending on his answer the Board may have to vote as to whether or not the Board wants to vote to have him recused or not. Attorney Kenan asked MPT Robbins to inquire of Commissioner Harrell about his position about any particular bias that he may have that Mr. and Mrs. Dees have raised. MPT Robbins said "Mr. Harrell?" Commissioner Harrell said "I do not have bias". MPT Robbins said "Mr. Harrell says he does not have bias. Do I hear a motion that the Board would like to recuse him from participating in this hearing? There was no motion to recuse Commissioner Harrell.

MPT Robbins asked the Board for any comments or questions they may have.

Commissioner Dawson (to Ms. Allen) "Will this be your residence"? Ms. Allen replied "yes". Commissioner Dawson said it looks like some of the residents are willing to work with you and they want this to be a harmonious bed and breakfast in the neighborhood. With that being said several residents did ask to reduce the number of bedrooms to four, to accept the one apartment, there was something about the other apartment possibly being used for an office and in regards to events is that something that you would be willing to compromise on with the community. Attorney Jenkins stated that exhibit 4 is what her intended use. She is requesting six bedrooms with two apartments or seven bedrooms with two apartments and that is based on the parking requirement that came from planning.

Commissioner Dawson said from what she has heard today that the neighbors would be in favor of four bedrooms which complies with our ordinance, one apartment for rental purposes, use the other apartment for an office and limit the events to four times per year which is what Ms. Allen has suggested. Commissioner Dawson said that is my question, is she willing to compromise with that? Attorney Jenkins said that Ms. Allen would have to answer that question, but she reminded the Board that the standards for determining a conditional use permit is not to make the neighbors happy; it is whether competent evidence shows that there is some vast difference between four bedrooms and six bedrooms. It's her personal property use and the conditional use permit should work to provide conditions for in order to make that happen. Ms. Jenkins said the packet that went out to all the neighbors was the original packet because it had to be; this is a reconsideration of the original application. That is why we proactively made modifications to it; we did not submit a modified application and we did that to preserve Ms. Allen's rights so she would have the right to be here today to clear up misconceptions.

Commissioner Harrell said there was mention of solar lights and he would like to know what kind of lights these are. Ms. Allen advised these would be ground lights that light up a walkway. Commissioner Harrell asked Attorney Kenan if this permit is granted will it carry over to the next owner. Attorney Kenan advised the permit will carry over unless there is a cessation of the use for a period of six months. Commissioner Harrell asked Ms. Ruddell if the fence she desires will be six feet or eight feet. Ms. Ruddell advised she is requesting eight feet. Commissioner Harrell asked if we are allowed to approve an eight foot fence. Ms. Roth advised that will be a condition of the permit. Commissioner George asked about setback requirements on the fence. Ms. Roth advised the town does not require a setback, we generally require that it be off the property line so that it can be maintained. She said it can be allowed on the property line unless the Board makes it a condition to be otherwise. Commissioner Harrell asked how the determination for the number of cars that could park in the designated space was determined. Ms. Roth said she measured the space and based on the parking standards that we have there is sufficient space to allow seven cars.

Commissioner Murphy asked Ms. Allen if she is going to be one of the managers or if she is going to hire people to take care of that. Ms. Allen said she is not going to hire anybody that she is going to be there unless she takes a vacation and then she would have to ask someone to cover for her.

There being no further comments, MPT Robbins closed the public hearing at 8:16PM.

MPT Robbins called for a five minute recess. The meeting reconvened at 8:21PM.

Upon reconvening the meeting MPT Robbins asked if anyone has anything they would like to discuss before we go to the Findings of Fact. There being no discussion MPT Robbins advised we will move forward with the Findings of Fact.

Findings of Fact/Conclusions of Law

AMENDMENT TO MINUTES

***NOTE: At the September 13, 2016 meeting, Mayor Mulligan said he would like to make a change to the minutes of the August 9, 2016 BOC minutes. He said with regards to the special use permit the Mayor Pro-tem, Commissioner Robbins as a voting member of the Board does not lose his privilege to have a vote when he takes over chairmanship of the Board. He advised that any votes that were held would have to be recorded as a “yes” for Mayor Pro-tem Robbins. Mayor Mulligan asked for a motion to amend the minutes. Commissioner Dawson said she would make that motion. Commissioner Harrell said he would second the motion. Motion carried by unanimous vote. This amendment would cause all votes listed below in this item to include a “yes” vote by Mayor Pro-tem Robbins.**

MPT Robbins read each standard and asked each Board member to state their vote and to name any conditions they would like to place on each standard.

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.

(Staff recommendations in italics)

Subject to the following condition(s):

- *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.*
- *Use of an outdoor fireplace or fire pit must be supervised by a resident manager.*

Commissioner Murphy: Yes.

Commissioner Dawson: Yes, along with the conditions as placed by our Planning Director.

Commissioner Harrell: Yes also following the recommendations of the Planning Department and to include that the overhead lighting for the parking area should have a screen to shield the nearest neighbors.

Commissioner George: Yes, with the conditions.

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

(Staff recommendations in italics)

Subject to the following conditions:

- *The approved bed and breakfast shall include the use of the accessory structure only for one accessory apartment and an office for the resident manager.*
- *Only seven guest rooms shall be allowed.*
- *No more than _____ special events shall be held each month at the subject property. Except for a maximum of _____ seasonal events open to the general public, all shall be for private parties only.*
- *Commemorative items may not be sold on-site to anyone other than bed and breakfast guests, and the manager’s office shall not be open to the general public.*

Commissioner Murphy: Yes, with all the staff recommendations (above).

Commissioner Dawson: Yes, approve the bed and breakfast with four guest rooms, to allow one accessory apartment with the other apartment to be used as the office and to allow the events as outlined in item 3 (a) under tab 4 in her application for reconsideration (Commissioner Dawson said this was a fairly long paragraph, this item was not read to the public, it is documented below for the record) and that the commemorative items that are sold on site are for the bed and breakfast guests and not for the general public.

**Excerpt from Application for Conditional Use (Reconsideration) Bed & Breakfast for Brenda Allen 115 N Cowan Street
Tab 1. Item 3a. Proposed Conditions for Intended Uses:**

a. Applicant seeks permit to host functions typically hosted by residential property owners. All events would be private, noncommercial events hosted by Applicant. Any special events, such as a holiday open house, will be held no more often than 4

times per year, and for no more than 25 guests. For any events that exceed the parking limitations of the property, Applicant will secure remote parking in advance from a church or city parking lot. No events will be held after 9 o'clock pm.

Commissioner Harrell: Yes, with same conditions as specified along with the recommendations of the Planning Board

Commissioner George: Yes, with the same conditions

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

(Staff recommendations in italics)

Subject to the following conditions:

- *The existing fireplace may not be used as a fire pit by guests*
- *The existing vegetative buffer along the southern property line shall be maintained at all times and must be increased as approved by the Planning Administrator.*
- *A type II buffer approved by the Planning Administrator shall be installed along the western property line.*

Discussion: MPT Robbins asked Ms. Roth to explain what “must be increased” means in the previous statement regarding the vegetative buffer. Ms. Roth advised that means “so that there is more of a buffer”. MPT Robbins asked “does that mean that you allow it to grow”? Ms. Roth said it could mean that new plants may have to be planted. She said what was discussed tonight was a potential fence instead between the property lines. MPT Robbins said “so the fence can be added to the existing buffer as well as increasing the vegetative buffer”. Commissioner Dawson said “instead of increasing the vegetation to include the fence”. Ms. Roth said “that is what was discussed tonight, that is what is proposed. Commissioner Harrell said “so that will be type II”. Commissioner Dawson said “yes, with an eight foot fence”. MPT Robbins said he sees both on the list existing buffer and fence. Ms. Roth advised one was for the southern property line and one was for the western property line, but what was discussed tonight was having a type II buffer for both property lines but allowing that to be increased to eight feet instead of the six feet.

Further Discussion: MPT Robbins started to return to voting on Standard 3 but interjected and asked if everyone is in agreement as to where that fence is supposed to start and stop. Commissioner Dawson said to Ms. Roth “you said that it is required but what are the actual planning requirements to put that buffer; where would the fence go”? Ms. Roth said the one on the western property line was supposed to run just between the proposed parking area and the residence next door; that would be behind the parking area since it was intended to shield it. MPT Robbins asked if the western one will start at the corner of the apartment complex and go to NC 53. Ms. Roth said we just need to make sure that it doesn't infringe on any site triangles but otherwise it would be along the property lines between the apartments and the sidewalk. MPT Robbins asked where the southern fence will start and stop. Ms. Roth said since that wasn't what I originally proposed I would have to look and see what the plans were and I would have to approve in advance on what had been discussed in the past. She said when this question was raised at the last hearing I was instructed to make sure with Ms. Ruddell that everybody was in agreement that this buffer is what would work between the two properties and that would be what was approved. MPT Robbins said we need to talk about this now. Commissioner Dawson said she thinks Ms. Ruddell wants the fence from the actual property corner line to up to where her house is. Ms. Ruddell said she has discussed this with Ms. Allen and Mr. Wilcox and she would like to have the fence from the rear corner of her house to the back property line. MPT Robbins said that we need to discuss the vegetation before we move on. He said there is vegetation from where the fence stops out to the road. Ms. Ruddell said the vegetation beside the house which is the azaleas can stay but from the back corner of the house to the back of the property is where she would like to have the fence. Commissioner Harrell said we need to also stipulate on the vegetation because we are establishing this for the future. Ms. Roth stated that it will be more of a fence than a type II buffer, so a type II buffer will be the vegetation plus the fence with the vegetation on the outside so instead of having a type II buffer on the western property line to shield the parking area you would have an eight foot fence from the rear corner of the house to the south to the western property line and also a vegetative buffer from the end of the fence forward to be retained. Attorney Kenan asked where the fence stops. Ms. Roth advised at the rear corner of Ms. Ruddell's house.

Commissioner Harrell: Yes, with those stipulations.

Commissioner George: Yes, with those stipulations.
Commissioner Dawson: Yes, same thing.
Commissioner Murphy: Yes.

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

(Staff recommendations in italics)

Subject to the following conditions:

- *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.*

Commissioner Dawson: Yes, with the conditions.
Commissioner Murphy: Yes, with the conditions.
Commissioner Harrell: Yes, with the conditions.
Commissioner George: No.

MPT Robbins advised we have gone through the standards and at this time he entertained a motion or final vote on the issuance of the permit. He said the floor will entertain a motion on whether or not to allow the proposed bed and breakfast at 115 N Cowan Street as presented here. Commissioner Dawson said "I make that motion". The motion was seconded by Commissioner Harrell. Commissioners Dawson, Harrell and Murphy voted "aye". Commissioner George voted "nay".

MPT Robbins called for Mayor Mulligan to come back to the table and take over the meeting at 8:45PM.

ITEMS FROM MAYOR AND BOARD OF COMMISSIONERS

Commissioner George stated in regards to the minutes, since we are going to get the live streaming, I make a motion that the minutes be written in summary and the streaming will be convenient for anyone that wants to see the meeting. Mayor Mulligan asked if he wants this approved before the streaming. Commissioner George said "go back to summary minutes as of today". The motion was seconded by Commissioner Robbins. Commissioners George, Robbins, Dawson and Murphy voted "aye". Commissioner Harrell abstained.

Commissioner George made a motion to suspend the meetings of the committees for right now. He said when something comes up the complaint should be brought here for all the commissioners to hear and it will expedite the process. Commissioner Robbins said he agrees with Commissioner George but he would like to think about it for a month. He said he understands where he is coming from. He asked if we could think about it until the next meeting. Commissioner George said that will be fine but I don't want this to die. Commissioner George said issues are sent back and forth between the board and the committees which takes too much time for final decisions to be made. Commissioner Harrell said the last time we had an infrastructure meeting it made for quick and easy facilitation among the board at the regular meeting. Commissioner Robbins said that it seems we have become stagnated by committees; Commissioner George is right in many respects. This is a small town and we all know what is going on. Commissioner Harrell said we are losing input from citizens. We have two committees that are formed primarily of people who are not on the board. By not allowing them to meet we are completely doing away with citizen input. At this point there was a lengthy discussion that ended with Commissioner George withdrawing his motion.

Commissioner Harrell thanked the Board for the commemoration of his father (Charles M. Harrell, Sr. former Commissioner and Mayor of Burgaw) through the bench that is now in front of Harrell's Department Store. He thanked Commissioner Robbins for proposing that and thanked the full board for agreeing to finance that. He said "thank you very much from myself and my brothers".

Commissioner Harrell said he has had a suggestion that he would like to try and accommodate by doing as he has seen some cities do by opening a fire hydrant for the children in some of our housing developments, essentially the apartment complexes. He said it's reasonable as in the weather and we have an available public works person to open the hydrant and a police officer to essentially stand guard so he would like for the board to consider allowing the children to play in the water from the fire hydrant. Commissioner Harrell said he would like to make a motion to facilitate this. Commissioner Robbins said he doesn't have any problem but are there any legal issues. Attorney Kenan said as long as public safety is present he is okay with it. Commissioner Dawson said she feels there is a little more to this than just opening a hydrant. There was a very lengthy discussion regarding safety, liability, staff involvement etc. with much input from the fire chief, police chief and public works director. After hearing the discussion and the issues and challenges this will create, Commissioner Harrell withdrew his motion. He said he wants to pursue this and asked Mr. Fay to look into finding some kind of spray device that can be attached to the hydrant.

Commissioner Harrell asked Mr. Hesse if he has a list of derelict or problem properties. Mr. Hesse advised he is in the process of making a list but it is incomplete at this time. Commissioner Harrell asked how many derelict properties we have. Mr. Hesse replied "about thirty". Commissioner Harrell said he would like to establish an incentive program to deal with this problem. He advised he wants to incentivize the owners and builders to tear down derelict property and build back a new structure that would be worth more tax revenue and incentivize this by giving a grant for property taxes for a period of time; a five year moratorium on property taxes. Attorney Kenan advised that the property taxes cannot be abated but an incentive plan can be funded through public town monies. After discussion, the Board agreed they needed some time to think about this issue.

Commissioner Harrell inquired about the status of the pharmacy at the Piggly Wiggly. Mr. Hesse advised they were given our concerns about the way the drive thru is designed. He advised there were supposed to be changes made and brought back to him but we have heard nothing from them.

Commissioner Harrell said there is water feed line on Bodenheimer Street at Donald White's house that is not sufficient for the job. After much discussion, Mr. Fay advised they had done some work at Donald White's house and found that a valve was not completely open. He said as best as he remembers, Mr. White was satisfied with the water pressure once the valve was opened.

Commissioner Harrell asked if the two gateways that were not working were covered by warranty. Mr. McEwen advised yes, they are covered. He advised the manufacturer that it is highly unlikely that both gateways were struck by lightning especially since one is under the tank. He said there is no evidence to indicate lightning damage.

Commissioner Harrell asked for status on the meter cover refit and the leaking meters. Mr. Fay advised they have just completed seventy work orders for making meter box adjustments and we have investigate forty customers regarding leak issues. He said the majority of the leaks were on the customer's side or a leak was not found.

Commissioner Dawson inquired about the sidewalk on South Walker. She requested that Karen Collette attend the next meeting and explain to us why this process has taken so long. Attorney Kenan recommended that the public member to the NCDOT Board be present as well. Mr. McEwen said he would make contact with the necessary authorities for the September meeting.

Commissioner Robbins advised Mr. Fay that he has had complaints about the lack of mowing. He advised Mr. Fay he is aware of the time restraints but would like to see mowers and weed eaters out there working. Commissioner Harrell commented especially in the cemetery.

Mayor Mulligan said he would like to reiterate what Commissioner Robbins said in complementing Mr. McEwen about the Golden Leaf Grant. He said "good job getting that money".

Mayor Mulligan asked Mr. McEwen to contact the NCDOT or whoever is responsible for the drainage at the bottom of Ashe Street and US 117 because the pipe is half full all the time and needs some attention.

Mayor Mulligan said we have to stop planting trees in May because they are dying. He said we need to make a policy to plant trees when the sap is down in the fall or winter. He said we need to set dates as to when trees should be planted to avoid losing trees to lack of water in the hot weather.

Mayor Mulligan advised based on permits issued in the surrounding areas we are not issuing enough permits and something needs to be done such as the incentive plan that Commissioner Harrell recommended regarding derelict properties.

Mayor Mulligan asked if anything is happening with the property for the proposed splash pad. Attorney Kenan advised he has the contract.

ADJOURNMENT

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

The meeting adjourned at 9:20PM.

Eugene Mulligan, Mayor

Attest: _____
Sylvia W. Raynor, Town Clerk