

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

**DATE:** September 08, 2015  
**TIME:** 4:00 PM  
**PLACE:** Burgaw Municipal Building  
**BOARD MEMBERS PRESENT:** Mayor Eugene Mulligan  
Mayor Pro-tem Howard Walker  
Commissioners Jan Dawson, Wilfred Robbins, Charles Rooks and Elaine Tyson  
**STAFF PRESENT:** Chad McEwen, Town Manager  
Sylvia W. Raynor, Town Clerk  
Robert Kenan, Town Attorney  
Joshua Barton, Public Administration Fellow  
Anthony Colon, Utility & Compliance Specialist/ORC  
Bill Fay, Director of Public Works  
Louis Hesse, Building Inspector  
Ashley Loftis, Finance Officer  
Kim Rivenbark, Permitting Technician  
Rebekah Roth, Planning Administrator  
Jim Hock, Chief of Police  
Kristin Wells, Deputy Clerk  
Allen Wilson, Fire Administrator  
**MEDIA PRESENT:** Bill Walsh, Star News  
**INVOCATION:** Nick Smith, Chaplain  
**PLEDGE OF ALLEGIANCE:** All

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

**Approval of Agenda**

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

**Approval of Consent Agenda**

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

- A. Approval of minutes of the August 11, 2015 regular and closed sessions**
- B. Ordinance 2015-19 Amending the FY 15-16 budget for funding to the Pender Arts Council for building improvements**

**ORDINANCE 2015-19  
AMENDING FISCAL YEAR 2015-2016 ANNUAL BUDGET  
Increasing Revenues and Expenditures**

**WHEREAS**, the Town of Burgaw Board of Commissioners passed an ordinance adopting a budget for FY 2015-2016 on June 9, 2015; and  
**WHEREAS**, the Town of Burgaw agreed to appropriate film revenues generated by filming at the old EMS Building to Pender Arts Council; and  
**WHEREAS**, this money will be used to make improvements to the building for the purpose of handicap accessibility; and  
**WHEREAS**, the Town of Burgaw will require a General Fund fund balance appropriation to cover the expense to complete the building improvements by the Pender Arts Council.  
**NOW THEREFORE, BE IT ORDAINED BY THE TOWN OF BURGAW BOARD OF COMMISSIONERS THAT:**

Section 1: The FY 2015-2016 budget be altered to reflect the following changes:

**INCREASE BUDGETED REVENUE**

<b>Account Number</b>	<b>Account Description</b>	<b>Amount</b>
10-3900-00-900	Fund Balance Appropriated	\$2,000

**INCREASE BUDGETED EXPENDITURE**

<b>Account Number</b>	<b>Account Description</b>	<b>Amount</b>
10-7050-80-150	EMS Building- M&R Building & Grounds	\$2,000

**Approved: September 08, 2015**

**DEPARTMENTAL ITEMS**

**Fire Department - *Allen Wilson, Fire Administrator***

**Request to Purchase Exercise Equipment** – Mr. Wilson advised the fire department is requesting to purchase new exercise equipment to be placed in the exercise room in Town Hall. He reminded the Board that the equipment that was in this space was too large, which limited its use. He advised the equipment was sold earlier this year and the room has been repainted. Mr. Wilson said just like before, the exercise room and equipment will be available for all town employees and elected officials. He advised the plan is to purchase a used (but in great shape) weight rack (Smith Machine), associated weight plates, dumbbell rack, kettle bells and rack, Bo-Flex Max Trainer (hybrid elliptical machine), and light commercial treadmill. Mr. Wilson said the project cost is \$8,000.00. He informed the Board that the Fire Department will use its FY 2014 – 2015 Fund Raising Revenue of \$4,440.00; the remainder will be paid for out of Non-departmental reserves.

After a discussion regarding who would be allowed to use the equipment, Mr. McEwen advised that a policy will be written and approved by the Board to govern the use of the equipment. He advised that for now approval of the funding is what staff needs to move forward with the purchase.

Commissioner Robbins made a motion to approve the request to allow the fire department to move forward with the purchase of the exercise equipment. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

**Finance Department – *Ashley Loftis, Finance Officer***

**Ordinance 2015-20 Fund Balance Appropriation for Fire Department Exercise Equipment**

Ms. Loftis advised approval of this ordinance will appropriate the necessary funding to purchase the exercise equipment discussed in the previous item.

Commissioner Robbins made a motion to approve Ordinance 2015-20 as presented. The motion was seconded by Commissioner Tyson and carried by unanimous vote.

**ORDINANCE 2015-20  
AMENDING FISCAL YEAR 2015-2016 ANNUAL BUDGET  
Increasing Revenues and Expenditures**

**WHEREAS**, the Town of Burgaw Board of Commissioners passed an ordinance adopting a budget for FY 2015-2016 on June 9, 2015; and

**WHEREAS**, the Town of Burgaw Fire Department is requesting funding of new exercise equipment for the Town Hall exercise room; and

**WHEREAS**, this equipment will be available to all Town staff and elected officials and have an estimated cost of \$8,000; and

**WHEREAS**, the Burgaw Fire Department plans to purchase a used (but in great shape) weight rack (Smith Machine), associated weight plates, dumbbell rack, kettle bells and rack, Bo-Flex Max Trainer (hybrid elliptical machine), and light commercial treadmill; and

**WHEREAS**, the Town of Burgaw Fire Department will utilize the fund raising money from raffle tickets in the amount of \$3,940 and the funds received from the sale of the old equipment in the amount of \$500; and

WHEREAS, this will require a general fund fund balance appropriation to utilize the monies received from fundraising and the sale of equipment and the remaining funds of \$3,560 will be paid out of Non-Departmental Reserve.  
NOW THEREFORE, BE IT ORDAINED BY THE TOWN OF BURGAW BOARD OF COMMISSIONERS THAT:

Section 1: The FY 2015-2016 budget be altered to reflect the following changes:

**INCREASE BUDGETED REVENUE**

Account Number	Account Description	Amount
10-3900-00-900	Fund Balance Appropriated	\$4,440

**INCREASE BUDGETED EXPENDITURE**

Account Number	Account Description	Amount
10-6000-00-590	Non-Departmental Reserve	\$4,440

Adopted this the 8<sup>TH</sup> day of September 2015.

Planning Department – *Rebekah Roth, Planning Administrator*

**Discussion Item - Consideration of deer skinning and butchering within the Town of Burgaw corporate limits**

Ms. Roth presented the following background material regarding the skinning and butchering of deer in the town limits:

**Background.** At the August 11, 2015 Board of Commissioners meetings, two residents of the town informed the board during the public forum of an issue they had with their neighbor. The neighbor had built a platform for skinning and butchering deer in his back yard, immediately adjacent to the complainant’s yard.

The town does not currently have any ordinances prohibiting or regulating this type of activity. Our code of ordinances does state that “any accumulation of animal or vegetable matter, rubbish, or discarded items that is offensive by virtue of odors or vapors or by the inhabitation therein of rats, mice, snakes, or vermin of any kind which are or may be dangerous or prejudicial to the public health” is considered a nuisance. If the neighbor’s use of his property for skinning and butchering deer were to cause odors or vermin due to leaving animal remnants, this ordinance could apply. However, it would not prohibit him from the activity.

**Other Jurisdictions.** Staff has reviewed the codes of 90 municipalities across North Carolina and has contacted other jurisdictions through the planning listserv. Only two municipalities were found to have prohibitions or regulations on this type of activity. Laurinburg prohibits any butchering within the city, and Raeford states that “the dressing or butchering of an animal in the view of neighbors with the public at large” is a public nuisance.

Eight jurisdictions either prohibit some slaughtering or require that animal carcasses be disposed of within a certain amount of time. One city, Sanford, specifically allows the slaughter and skinning of deer if it is taken by bow and arrow during an authorized hunting season.

**Town Ordinance Possibilities.** An ordinance prohibiting or limiting this activity could either be made part of the general code, subject to general penalties, or the nuisance ordinance. Violation of the general code is considered a misdemeanor, and violation of the nuisance ordinance requires written notice to the offender, a time period for remedy, and allows the town to abate the nuisance. As a result of these penalties, prohibitions against butchering, limitations of its location of it, or requirements for removing carcasses would be most effective in the general code, not the nuisance ordinance.

**Policy and Finance Recommendation.** The Policy and Finance Board met on Thursday, August 27, 2015 and discussed the issue. After reviewing potential remedies to the situation, they decided to recommend that the Board of Commissioners hold a public hearing on a potential code amendment that would:

- Specifically address the skinning and butchering of game;
- Limit the time that the carcass could be within the town limits to 15 hours;
- Specify that the carcass could not be buried or otherwise disposed of within town limits, including a prohibition of any animal matter being placed in roll carts, dumpsters, or other trash receptacles; and
- Place a \$50 daily fine if someone is found in violation.

Upon completion of the presentation by Ms. Roth, Mayor Mulligan asked the Commissioners for their comments regarding the information that has been provided. Commissioner Robbins requested to hear public comments before the Board makes any comments. Although this was not a public hearing, a number of persons were allowed to speak at length regarding their feelings about the skinning and butchering of deer in town. Mildred and Charles Hughes who initially filed the complaint about the neighbor’s plans to skin deer on his property appealed to the Board to not allow said activity in town. Debbie Yount also spoke in support of the Hughes family’s concerns. Michael Peterson, the neighbor of the Hughes’ family and the person who proposes to skin deer on his property spoke at length in defense of his actions and requested that the Board continue to allow deer skinning in town. Vic French spoke at length in favor of the rights of hunters to be able to continue to skin deer in town and also questioned if there is an ordinance created against said actions, will it also include small game such as fish, turkeys, etc. Mr. French

commented that it is unfair to take action that affects the entire population of the town because of a dispute between two neighbors.

There was a lengthy discussion among the Commissioners regarding how to make this situation more fitting for both parties. All Board members shared sentiments with both sides and agreed that some further regulation is necessary to prevent future issues from arising. The major concerns included the time frame for the remains to be left on the property, a method to catch drainage from the animal and to find a way to screen the deer skinning platform from the neighbor's sight. After much discussion the Board agreed to create an ordinance that addresses visual and health concerns in regards to skinning and butchering deer in the town limits.

Commissioner Rooks made a motion to hold a public hearing at the October meeting to consider an ordinance that would limit the time that a carcass could be within the town limits to 5 hours; specify that the carcass could not be buried or otherwise disposed of within town limits, including a prohibition of any animal matter being placed in roll carts, dumpsters, or other trash receptacles; require a catch mechanism with plastic bags or similar material to be in place during the skinning/butchering of an animal; that a temporary screening method such as a tarp may be used during the skinning/butchering of the animal to shield the view of the neighbors and enforce a \$50 per day fine if someone is found in violation. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

#### **Discussion Item - Abatement of Nuisance at 303 N. Wright Street**

Ms. Roth advised that on July 13, 2015, the planning department received a complaint about an overgrown yard at 303 N. Wright St. Upon investigation, she found that the conditions of the property met the definition of a nuisance, due to "the uncontrolled growth of noxious weeds or grass on a developed lot to a height in excess of 24 inches, causing or threatening to cause a hazard detrimental to the public health or safety." She advised this has been the fifth official complaint regarding a nuisance at this address since 2007, and since 2011, the nuisance has been abated upon notice from the town each time we received a complaint. The property owner lives at a different address in the town and, according to the water department, has always paid his water bill on time. She advised staff is requesting the board consider whether to authorize funding for nuisance abatement of this property.

After much discussion Commissioner Dawson made a motion to approve an expenditure of up to \$250.00 to abate the nuisance at 303 N Wright Street. The motion was seconded by Commissioner Rooks. Commissioners Dawson, Rooks, Robbins and Walker voted "aye"; Commissioner Tyson abstained. Motion carried.

#### **Public Works Department – Bill Fay, Director of Public Works**

##### **Discussion Item – Proposed Amendments to Debris Policy**

Mr. Fay advised the proposed debris policy was discussed at the August Board meeting and the Policy/Finance Board meeting and he is recommending the policy as presented. There was much discussion regarding the changes that have been presented. Concern was expressed about the pickup of amounts larger than allowed by policy. Mr. Fay said the resident could arrange to have oversized loads picked up and pay an extra charge or the load could be split up and picked up over a two week time period.

Ashley Loftis advised that during the Policy/Finance meeting the last paragraph of the proposed debris policy was changed to read "*A minimum of one hour shall be charged for all services provided pursuant to this fee schedule. All associated fees shall be invoiced by the town and must be paid prior to collection.*" (This verbage was not included in the copy that was presented to the Board in the agenda packet.)

After discussion, Commissioner Robbins made a motion to approve the guidelines in the proposed debris policy. The motion was seconded by Commissioner Dawson and carried by unanimous vote. Mr. McEwen reminded the Board that the approval of this policy will require a public hearing at the next Board meeting due to the fee schedule change in the policy. He also advised the policy will be approved by resolution at that time as well.

## **ITEMS FROM ATTORNEY – Robert Kenan**

### **Teal Briar Properties – Letter**

Attorney Kenan advised this item involves ongoing issues at the Teal Briar subdivision. He advised there have been numerous requests from the residents to have improvements made to the streets in the subdivision. He reminded the Board that at the last meeting he was requested to do a title search of the unsold Teal Briar property which is about thirty acres to determine if there are any liens or judgements on the property. He advised he found there are no judgements but there is a lien for a maximum original amount of one million dollars. Attorney Kenan advised that currently Lee Cowper owns the deed of trust on the property.

Attorney Kenan advised that if the town desires to enter into some kind of agreement with the owners to take over certain responsibilities at Teal Briar he would suggest that the town consider approaching Lee Cowper Investments and asking them to subordinate their deed of trust which is the first lien against the property and subordinate it to the second lien position which would allow the town to be in a first lien position in order to enter into any kind of agreements to take over any aspects of improvements. He advised the town would then hold the deed of trust to secure those obligations and if they default it we could foreclose and we could be in first lien position. He said if the town moves forward with the needs assessment and does any improvements, the town could collect a portion of the sale price of the remaining lots, but only if the town is in the first lien position.

Justin Rojas and John Hoyt, residents of Teal Briar spoke at length regarding the issues they are facing with poorly maintained infrastructure within the subdivision and pleaded with the Board to take action to move forward with some effort to make improvements in the neighborhood.

After much discussion, Commissioner Robbins made a motion to authorize Attorney Kenan or the Town Manager to approach Lee Cowper Investments to ask if they would be willing to subordinate the deed of trust to the second lien to allow the town to be in a first lien position. The motion was seconded by Commissioner Tyson and carried by unanimous vote. The Board requested that this item be placed on the October agenda for further discussion. (Items from the Attorney will be continued after the public forum/public hearings.)

## **INTRODUCTION OF NEW STAFF MEMBERS**

Chief Jim Hock introduced three new staff members, Officers Kaitlin McKee and Kevin Robertson and Administrative Assistant Robbie Ballard. Mayor Mulligan also introduced Joshua Barton, Public Administration Fellow from UNCW; he will be helping us as well as gaining experience in working in local government.

**BREAK** – Mayor Mulligan called for a break at 5:40PM. The meeting reconvened at 5:50PM.

## **PUBLIC FORUM**

### **Speakers:**

**Michael Peterson**, 111 West Bridgers Street thanked the Board of Commissioners and Town Manager for their support regarding the deer skinning issue and said let's move forward and get things settled in the public hearing next month.

**Tammy Proctor**, Director of Pender County Tourism advised they have an opportunity to host an events and festivals consortium and she is asking on behalf of Pender County Tourism and the NC Blueberry Festival for complimentary use or a reduced rate for use of the depot for one day. She advised this consortium will bring in people from all over the area that manage festivals and events. She said this event should bring in fifteen to twenty five people. Mayor Mulligan explained that recently there have been several requests for free use of the depot but the rules must be the same for everyone. He asked Kim Rivenbark who coordinates the depot rentals to review the fee schedule. Ms. Rivenbark advised there is a reduced rate for non-profits which would mean the rental fee will be \$250.00 for one day and there is a \$240.00 refundable deposit required as well. After a brief discussion, Ms. Proctor said the abovementioned fees are acceptable and she was advised to speak with Ms. Rivenbark to secure a date.

**Deborah Peterson**, 111 West Bridgers Street thanked the Board for their support regarding the deer skinning issue. She asked if having a petition signed by supporters that are unable to attend the public hearing would help their situation. Mayor Mulligan advised it would not hurt but he said he feels that we have come to a good understanding of the situation, that all parties understand the situation and that the Board has found a good compromise regarding the issue. He advised Ms. Peterson that if she wants to bring by a signed petition for the public hearing in October it will be okay.

## **PUBLIC HEARINGS**

### **Public Hearing # 1 - Consideration of an application for a conditional use permit for an “Automobile Sales, New and Used” use to be located at 200 US Hwy 117 S (PIN 3229-74-3072-0000) within the Town of Burgaw – Kim Rivenbark, Permitting Technician**

Mayor Mulligan declared the public hearing open at 5:57PM. Attorney Kenan administered the oath to Kim Rivenbark and Lewis Dew in order for them to submit evidence during the hearing.

Mayor Mulligan asked for disclosures from the Board. Commissioner Robbins advised he visited the site.

Ms. Rivenbark presented the following evidence:

Applicant Lewis Dew has applied for a conditional use permit for an “Automobile Sales, New and Used” use to be located at 200 US Hwy 117 S (PIN 3229-74-3072-0000) within the Town of Burgaw corporate limits in the vacant building next to Walgreens.

The following evidence was submitted to the Board of Commissioners in the staff report prior to the meeting:

- Exhibit 1: Copy of Application
- Exhibit 2: Site Plan
- Exhibit 3: Landscape Plan
- Exhibit 4: Aerial Photo
- Exhibit 5: Zoning Map
- Exhibit 6: Flood Map
- Exhibit 7: Future Land Use Map
- Exhibit 8: Photo of Existing Site

Discussion:

Lewis Dew thanked the Board for taking the time to hear his request. He advised this will be the fifth location of his automobile sales business and he looks forward to having a successful business.

Commissioner Robbins asked if a bicycle rack will be one of the requirements at this location. He commented that in the past bicycle racks have been required at new businesses. Mr. Dew advised he will be willing to install a bike if that is a requirement.

There being no further discussion, Mayor Mulligan closed the public hearing at 6:01PM.

Mayor Mulligan stated the Board will now review the findings of fact as required.

***All standards were approved by a vote of “yes” by Commissioners Walker, Robbins, Dawson, Tyson and Rooks.***

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.

*As a result, the Board of Commissioners finds that the proposed use meets the requirements of this standard.*

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

*As a result, the Board of Commissioners finds that the proposed use meets the requirements of this standard.*

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.

*As a result, the Board of Commissioners finds that the proposed use meets the requirements of this standard.*

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

*As a result, the Board of Commissioners finds that the proposed application meets the requirements of this standard, provided the following condition:*

- *A bike rack shall be installed as approved by the Planning Administrator*

**THEREFORE**, on the basis of the foregoing, **IT IS ORDERED** that the application for a conditional use permit for a “Auto Sales, New and Used” use to be located at 200 Hwy 117 South (PIN 3229-74-3072-000) be **GRANTED**, subject to the following **CONDITIONS TO THE APPLICATION**:

- *A bike rack shall be installed as approved by the Planning Administrator.*

**ORDERED this 8th day of September, 2015.**

**MOTION:** Upon completion of the findings of fact, Commissioner Robbins made a motion to approve the conditional use permit for “Automobile Sales, New and Used” as presented with conditions as approved above. The motion was seconded by Commissioner Tyson and carried by unanimous vote.

**Public Hearing # 2 - Consideration of a conditional use permit application for a “Restaurant, Limited Service” use to be located at 801 NC Hwy 53 East (PIN 3229-56-8556-0000) within the Town of Burgaw –  
Rebekah Roth, Planning Administrator**

Mayor Mulligan opened the public hearing at 6:05PM. Attorney Kenan administered the oath to Rebekah Roth, Bob Lach, Rhett Pollock and Harold Pollock.

Mayor Mulligan commented that all have probably visited the site when you can’t help but see it as you drive by it.

Ms. Roth advised Hamilton Designs, LLC has petitioned the town for a conditional use permit for a “Restaurant, Limited Service” use in the B-2 zoning district to be located at 801 NC Hwy 53 East within the Town of Burgaw corporate limits.

The following evidence was presented to the Board of Commissioners in a staff report dated August 25, 2015:

- Exhibit 1: Application showing requested use
- Exhibit 2: Map packet showing site plans
- Exhibit 3: A1.0, Floor Plan
- Exhibit 4: A4.0 and A4.1, Exterior Elevations
- Exhibit 5: Architectural Design Elements
- Exhibit 6: Monument Sign Plans
- Exhibit 7: Land Title Survey
- Exhibit 8: Zoning Map
- Exhibit 9: Aerial Map
- Exhibit 10: Flood Map
- Exhibit 11: Site Photographs, taken by Rebekah Roth on July 15, 2015
- Exhibit 12: Ordinance Requirements Report, prepared by Planning Staff
- Exhibit 13: Compliance with Town of Burgaw Adopted Plans Report, prepared by Rebekah Roth
- Exhibit 14: Executive summary of traffic impact analysis

- Exhibit 15: Copy of NCDENR Erosion Control Letter of Approval with Modifications and Performance Reservations, dated June 30, 2015
- Exhibit 16: Aerial photo of McDonald's property
- Exhibit 17: Public Works utility location comments

Ms. Roth reviewed the standards for evaluation as presented in the agenda packets. She advised that all standards have been met as requested by staff. Upon completion of her review the floor was opened for discussion.

Commissioner Robbins asked if the bike rack is in the plans. Ms. Roth advised the bike rack is in the plans.

Commissioner Robbins expressed concern about the requirement for the fire hydrant. Allen Wilson, Fire Administrator advised there needs to be a hydrant between the two exiting hydrants and with the turn lane and the sidewalk there is no place to put it across the street. He also advised in the event of a fire at the restaurant with the hydrant across the street they would have to pull hoses across NC Hwy 53 and block the traffic in both directions.

Commissioner Robbins asked if the location of the fire hydrant will in any way impede the flow of traffic to and from the restaurant. Mr. Wilson advised it should not have any effect on traffic; he also said he has spoken with the engineer and advised him that anywhere they see fit to place a hydrant on the property is okay as long as it is in the public right of way and does not impede traffic.

Rhett Pollock, Attorney for the applicant Hamilton Designs, LLC advised Mr. Lach has a map that addresses the items that have been previously mentioned by Ms. Roth. The map is color coded and shows much detail that clarifies the plans. Mr. Lach presented a copy of the map to each Commissioner. Mr. Pollock and Mr. Lach reviewed the details of the map with the Board.

Mr. Lach addressed the issue with the signage. He advised per the town's guidelines, Taco Bell is allowed the one sign on the front. He said they are requesting two additional signs, one on each side. The reason for this request is that the two signs on the side are part of the national Taco Bell theme and they desire to comply with the national standard. He commented that they have gone over and above the requirements put forth by the Town and would ask that the Town allow them this request for extra signage. Commissioner Rooks said he doesn't have a problem with the extra signs since it is commonly what this restaurant chain requires.

There being no further discussion, Mayor Mulligan closed the public hearing at 6:27PM and called for the review of the finding of facts. The following standards were reviewed.

***All standards were approved by a vote of "yes" by Commissioners Walker, Robbins, Dawson, Tyson and Rooks.***

#### **SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Standard 1. The use will not materially endanger the public health, safety, or general welfare if located where proposed and developed according to the plan as submitted and approved.

*As a result, the Board of Commissioners finds that the proposed use meets the requirements of this standard, provided the following condition:*

- *The land adjacent to the proposed turn lane taper from the McDonald's property line east shall be dedicated to NCDOT for future use for a full-width turn lane.*

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

*As a result, the Board of Commissioners finds that the proposed use meets the requirements of this standard, provided the following conditions:*

- *A fire hydrant, the location of which must be approved by the Town of Burgaw Fire Marshal and Public Works Director, shall be installed on site.*
- *The location of water lines and sewer clean outs must be approved by the Town of Burgaw Public Works Director.*
- *The cross access drive proposed for the western property line shall align with the existing cross access location on the McDonald's site.*

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



*As a result, the Board of Commissioners finds that the proposed use meets the requirements of this standard.*

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

*As a result, the Board of Commissioners finds that the proposed use meets the requirements of this standard.*

*\*Before the final vote, Ms. Roth commented to the Board that she wants to clarify that this is the plan with the removal of the second cross access to Bojangles which was not required by the town's ordinances and not desired by the applicant. She wanted this to be reflected in the minutes.*

**THEREFORE**, on the basis of the foregoing, **IT IS ORDERED** that the application for a conditional use permit for a "restaurant, limited service" use (with an amendment to the site plan removing the southeast cross access) to be located at 801 NC Hwy 53 East (PIN 3229-56-8556-0000) be **GRANTED**, subject to the following **CONDITIONS TO THE APPLICATION**:

- *The land adjacent to the proposed turn lane taper from the McDonald's property line east shall be dedicated to NCDOT for future use for a full-width turn lane.*
- *A fire hydrant, the location of which must be approved by the Town of Burgaw Fire Marshal and Public Works Director, shall be installed on site.*
- *The location of water lines and sewer clean outs must be approved by the Town of Burgaw Public Works Director.*
- *The cross access drive proposed for the western property line shall align with the existing cross access location on the McDonald's site.*

**ORDERED this 8<sup>th</sup> day of September, 2015.**

**MOTION:** Commissioner Dawson made a motion to approve the application for a conditional use permit for a "Restaurant, Limited Service" use as approved with conditions above. The motion was seconded by Commissioner Walker and carried by unanimous vote.

**Public Hearing # 3 - Consideration of Amending the Code of Ordinances regarding reduction of the required number of members on the Town of Burgaw Parks and Recreation Committee from seven members to five members – Chad McEwen, Town Manager**

Mr. McEwen advised over the last several months the Parks and Recreation Committee has experienced issues with obtaining a quorum at their meetings. Currently the seven member board must have at least four members present in order to have a meeting. By changing the number of members from seven to five we will reduce the quorum requirement to three members.

The recommendation is the approval of the attached ordinance reducing the number of members on the Parks and Recreation Board from seven to five members.

Mayor Mulligan commented that part of the reason for the Parks and Recreation committee having quorum problems is due to job responsibilities that take the members out of town for long periods of time and quorum requirements cannot be met. He feels that reduction in numbers will help with this problem.

Commissioner Robbins said that maybe when applicants agree to be on these volunteer committees, they should take job responsibilities into consideration and when the Board of Commissioners is making appointments we should find out if the applicant will be able to put in the time to serve on the committees. He commented that they are all good people and he appreciates them but we need commitment to serve on the committees.

There being no further discussion, Commissioner Robbins made a motion to approve Ordinance 2015-21 as presented. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

**ORDINANCE 2015-21**

**Ordinance APPROVING the Amendment of the Town of Burgaw Code of Ordinances Chapter 2, Article IV Boards, Commissions & Committees, Division 2- parks and Recreation Committee**

**WHEREAS**, the Town wishes to amend the Code of Ordinances as it relates to the number of members the Parks and Recreation Committee shall have; and

**WHEREAS**, the amendment is requested by the Board of Commissioners in order to help address past quorum issues the Parks and Recreation Committee have experienced.

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

**SECTION 1.** In regards to the Parks and Recreation Committee, Division 2 Sections 2-212 of the Town of Burgaw Code of Ordinances is hereby amended as follows:

**Section 2-212. Composition, terms, vacancies, and compensation.**

*The Parks and Recreation Committee shall be composed of a five (5) member body consisting of residents of the Corporate Limits of the Town of Burgaw.*

**ADOPTED** this the 8<sup>th</sup> day of September, 2015.

## **ITEMS FROM ATTORNEY CONTINUED – Robert Kenan**

### **Discussion - Public Address draft ordinance**

Attorney Kenan reminded the Board that at last month's meeting there was discussion regarding an individual that has notified an attorney that his free speech rights were violated when he was voicing his religious opinions to the public in attendance at the Blueberry Festival. Attorney Kenan advised the Board referred this issue to the Policy/Finance Board which had requested a draft ordinance to set a designated place for an individual to express his freedom of speech rights during a festival event in which certain areas downtown have been set aside by permit for festivals and events. Attorney Kenan said he has drafted an ordinance that sets aside a designated area on the west side of the railroad bed near the Family Dollar for expressing free speech during times that the court house square is reserved for festivals and special events. (Draft ordinance printed below)

**(DRAFT)**

**ORDINANCE 2015-**

**ORDINANCE TO AMEND TOWN OF BURGAW CODE OF ORDINANCES TO DESIGNATE ALTERNATE PUBLIC FORUM TO EXERCISE FREE SPEECH DURING FESTIVALS LOCATED WITHIN THE CORPORATE LIMITS OF THE TOWN**

*WHEREAS, the Pender County Courthouse Square is a traditional public forum, which is open to the general public to exercise each individual's right of free speech pursuant to the First Amendment to the United States Constitution; and*

*WHEREAS, at certain limited times during a calendar year, festivals are held on the grounds of the Pender County Courthouse Square and the sidewalks and streets located within the immediate area to the Pender County Courthouse Square; and*

*WHEREAS, during these festivals, the festival committee who is sponsoring the festival shall have received prior authorization from the Town of Burgaw and the County of Pender to utilize the Pender County Courthouse Square and the adjacent sidewalks and streets for the utilization of these public areas during designated times for the purpose of having and conducting their festival activities; and*

*WHEREAS, in order to eliminate any conflicts as to the priority over the use of the public areas utilized during a festival and to avoid any infringement on an individual's right to exercise their right of free speech during a festival, the Town of Burgaw believes that it is in the best interest of the public that an alternate public forum be designated during a festival for a person to go to and exercise their right of free speech;*

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

**I. Amend the Town of Burgaw Code of Ordinances to add Section 24-30 as follows:**

*Sec. 24-30. – Designation of Alternate Public Forum to Exercise Free Speech*

*During any festival where the Pender County Courthouse Square is utilized for festival activities, the western portion of the block located between West Bridgers Street and West Wilmington Street and immediately adjacent to North Dudley Street shall be designated as the alternate public forum for any individual who desires to exercise their right of free speech pursuant to the First Amendment to the United States Constitution from 7:00 a.m. on the day before the commencement of the festival until 7:00 p.m. on the day after the commencement of the festival. The designation of this alternate public forum shall be effective only when the Pender County Courthouse Square and the sidewalks and streets located within the immediate area to the Pender County Courthouse Square have been authorized by the Town of Burgaw's governing body to be utilized for festival activities pursuant to a request by an organized festival committee. Unless otherwise preempted by an ordinance of the County of Pender, a resolution of the governing body of the County of Pender, federal or North Carolina law, the Pender County Courthouse Square is acknowledged as a public forum where members of the public can exercise their right to free speech.*

**II. That this ordinance shall become effective at 12:01 a.m., on \_\_\_\_\_ 2015.**

After a lengthy discussion regarding freedom of speech rights and actions that can or cannot be taken in the situation at hand, Commissioner Rooks made a motion to hold a public hearing for the purpose of approving the draft ordinance as presented. The motion was seconded by Commissioner Tyson and carried by unanimous vote.

**BREAK** – Mayor Mulligan called for a five minute break at 6:55PM. The meeting reconvened at 7:00PM.

**ITEMS FROM MANAGER – Chad McEwen**

**Resolution 2015-31 Consideration of Approving a Contract with W. K. Dickson for the Development of a Water Resources Development Project Grant Application for Fremont Street and Pender Memorial Hospital Stormwater Improvements near Osgood Canal**

Mr. McEwen advised a few years back the Town received a grant to do a stormwater conditions assessment of Osgood Canal and Burgaw Creek. He said the study was completed by W.K. Dickson in May 2015 and adopted by the Board at the June Board of Commissioners meeting. The study identified and prioritized the replacement of the pipes underneath Fremont Street as the most imminent improvement needed. The Water Resources Development grant requires a 50-50 match from the local government and the project has an estimated cost of \$576,000. This project would address the needed stormwater improvements around the hospital as well as replacing the pipes under Fremont Street. In order to offset expense to the town, Mr. McEwen advised he asked Pender Memorial to be a co-applicant in the application which will result in additional points for the application. He said Ruth Glaser, Administrator at Pender Memorial feels that the hospital will be able to provide financial assistance for the project if the grant application is awarded funding. Mr. McEwen said he informed Mrs. Glaser that without the hospital's financial assistance it was unlikely that any improvements could be done around the hospital. Mr. McEwen advised that in the event that we receive the grant and the hospital fails to agree to provide financial assistance we would likely limit the improvements to the Fremont Street pipes only.

Mr. McEwen said in addition, he has spoken with Skip Green to see if any of the NC Department of Commerce economic development grants could be used to offset our share of the costs. Mr. McEwen advised the recommendation is the approval of the proposal from W.K. Dickson for \$5,000 for the Water Resources Development Grant Application.

After a brief discussion, Commissioner Robbins made a motion to approve Resolution 2015-31. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

**RESOLUTION 2015-31**

**Resolution Approving a Contract with W.K. Dickson & Co., Inc., for the Development and Submittal of a construction grant application to the Division of Water Infrastructure**

**WHEREAS**, the Town has identified the need to evaluate certain areas within the Osgood Canal and Burgaw Creek watersheds to determine the factors that lead to flooding during high rainfall events, and

**WHEREAS**, in May of 2015, W.K. Dickson, completed a Stormwater Master Plan for several known flooding and drainage areas within Burgaw, and

**WHEREAS**, in an effort to address the factors that lead to the flooding, the Town wishes to apply for a construction grant to address two of the most imminent areas of flooding in Burgaw, and

**WHEREAS**, given the historical knowledge W.K. Dickson has regarding the Stormwater Master Plan and the flooding issues in Burgaw, we have requested they provide the Town with a proposal regarding the development and submittal of an application to the Division of Water Resources; and

**WHEREAS**, W.K. Dickson has submitted a proposal in the amount of \$5,000 to develop and submit the required information for the Division of Water Resources grant application.

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

**SECTION 1.** The contract submitted by W.K. Dickson, Co., Inc., in the amount of \$5,000 is hereby approved based on the submitted scope of services.

**SECTION 2.** The Town of Burgaw Board of Commissioners hereby authorizes the Mayor or Town Manager to execute the required contract with W.K. Dickson, Co., Inc., for the stormwater master plan.

**Witness my hand and the corporate seal of said Town of Burgaw this the eighth day of September, 2015.**

### **Discussion Item – Proposed Changes to the Town’s Utility Policy**

Mr. McEwen advised the Policy and Finance Committee has reviewed the proposed revisions to the Utility Policy which outline the procedures that are to be followed in regard to water and sewer services for our customers. He said the revised policy includes several amended sections as well as several new sections that establish procedures for how the following issues will be addressed:

- 1) Procedures for closing accounts in deceased individuals names
- 2) Filling of swimming pools
- 3) Leak adjustments
- 4) Meter errors
- 5) Hydrant and tank fillings

Mr. McEwen said that initially the intention was to only add the procedures regarding how the Town would handle closing accounts in deceased individual’s names. However, upon reviewing the Utility Policy to determine where the new section should be added it was realized that several sections warranted amending.

Mr. McEwen informed the Board that if the new Utility Policy is acceptable we will prepare a resolution for consideration of approval at the October meeting. He also said a public hearing will be required at the October meeting to approve the rate change proposals within the policy. (Due to the length of the policy, it is on file in the clerk’s office.)

There was much discussion regarding the method of commercial trucks using the hydrants for fill points, clarification of the disconnection procedures, increase in payment of deposits without a credit check, deposits for cleaning and repair was printed as \$100 and should have been \$125, methods to inform customers of the changes in the policy and billing times and procedures. After clarification of the abovementioned issues, Commissioner Rooks made a motion to place the ordinance changes in the utility policy on the October agenda as a public hearing item. The motion was seconded by Commissioner Tyson and carried by unanimous vote.

### **Discussion Item – Purchase of New Time Card System**

Mr. McEwen advised due to issues with the current time card system utilized by the police, fire and public works departments we are planning on purchasing a new digital time card system that would include a module for the police and fire departments to share as well as one for the public works department. The TimeTrak System is easily integrated into the finance software currently utilized by the Town and uses a biometric system (fingerprint) to register employee clock in and clock out. Mr. McEwen advised the proposal is to purchase the time card system with non-departmental reserve funds.

There was much discussion including pros and cons regarding the proposed time card system. After a lengthy review of this item, Commissioner Rooks made a motion to approve funding in the amount of \$3,245 from non-departmental reserves for the purchase of a time card system. The motion was seconded by Commissioner Tyson and carried by unanimous vote.

### **Discussion Item – Sidewalk Repairs along Wright Street at Little Town Learning Center and Cowan Street at Pender County Library**

Mr. McEwen advised the Town has received two requests regarding sidewalk repairs at the two locations referenced above. He advised both issues have been reviewed by the Policy/Finance Board and their recommendations are as follows:

***Little Town Learning Center Request*** - Mr. McEwen said the Little Town Learning Center request involves the end result of the removal of a cedar tree that had been planted several years ago within the Wright Street right of way as part of a buffer between the Little Town property and the property to the south. He said the cedar tree’s limbs were growing over into the sidewalk and the roots were lifting the sidewalk adjacent to the driveway for Little Town. The condition of the sidewalk does present a trip hazard. Little Town has complained several times about the issue.

Mr. McEwen advised the decision was made by the Infrastructure Board to recommend the replacement of 25 feet of sidewalk near the area of the Little Town driveway. In addition the stump will be removed and dug out. Bill Fay is working on estimates for the work. It is anticipated that the work will not exceed \$3,500.

**Pender County Library Request** - Mr. McEwen advised that recently, the Town received two requests for sidewalk repairs/additions near the Pender County Library. He advised the first request was from the Pender County Library requesting repairs to the sidewalk along the Cowan Street sidewalk in front of the library. He said there does appear to be several uneven panels which trap water during rain events as well as sediment that washes down off the library property. The panels do not present a trip hazard but since they hold water they do impair the public ability to use them. It is estimated that approximately 120 ft. of sidewalk is unlevel. Compounding the problem with the sediment is the fact that the trees adjacent to the sidewalk appear to be shading out the grass and exposing the bare dirt. During a rain event this dirt washes down onto the sidewalk.

Mr. McEwen advised the Library is also requesting the extension of the sidewalk along Cripple Creek to the intersection of Cowan and Wilmington Streets. He said this request involves the addition of approximately 250 feet of sidewalk (from Cripple Creek to Cowan Street). The extension of this sidewalk presents several challenges. First, due to the width of Wilmington Street, the right of way is very narrow behind the curb on the south side of the street. It is possible that additional right of way would be needed from the Library in order to accommodate the proposed sidewalk. In addition several existing utility structures and established trees are in area of the proposed sidewalk. These conflicts would have to be addressed prior to the construction of the sidewalk. Mr. McEwen advised addressing these issues could be expensive.

*Mr. McEwen said based on the information provided above, the following recommendations were made by the Infrastructure Board:*

### **Cowan Street**

1. The Infrastructure Board decided to recommend the replacement of the sidewalk along Cowan Street (approximately 120') but asked that the county install some monkey grass or other ground cover as well as some pine straw adjacent to the sidewalk to help stabilize the sloped area between the two large oak trees.

### **Wilmington Street**

The Infrastructure Board determined as for the request to add a sidewalk along Wilmington Street several concerns and challenges were raised. First, the edge of the right of way is only a few feet off the back of the curb along that stretch of Wilmington Street. In addition, several trees and power poles present obstacles to the installation of the sidewalk. The committee stated they would consider adding the sidewalk under the following terms:

1. The County must have the area along the south side of Wilmington Street from the back of Cripple Creek to the corner of Cowan surveyed and convey a 15'-20' easement to the Town in order to accommodate the installation of the sidewalk. This 15'-20' area will provide the flexibility needed to adjust the path of the sidewalk in order to accommodate the presence of the existing trees and power poles.
2. The County must provide 50% of the funding needed to construct the sidewalk along Wilmington Street.

Mr. McEwen advised the recommendation is the replacement of the sidewalk area along Wright Street adjacent to the Little Town Learning Center Driveway as well as the sidewalk along Cowan Street adjacent to the Pender County Library.

There was a lengthy discussion regarding the repair of the sidewalk along Cowan Street adjacent to the library. Commissioner Rooks expressed concern about the erosion and discussed ways to repair it in order to prevent the problem in the future.

After much discussion, Commissioner Rooks made a motion to approve the recommendation to replace the area of sidewalk along S Wright Street adjacent to Little Town as recommended above and to approve the repair of the sidewalk along Cowan Street in front of the Pender County Library contingent upon Pender County taking care of the erosion problem. The motion was seconded by Commissioner Robbins and carried by unanimous vote.

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

**Mayor Mulligan** advised a team comprised of members of various advisory boards of the town will be playing in the annual Rotary Golf Tournament and there is a \$400.00 registration fee. He asked since the team will be representatives of the town if the town could sponsor the team. After a brief discussion regarding funding, Commissioner Robbins made a motion to appropriate \$400.00 from fund balance to cover the registration fee for the

golf team playing in the Rotary golf tournament. The motion was seconded by Commissioner Walker and carried by unanimous vote.

**Commissioner Robbins** asked if an inquiry has been made regarding the “bump” in the intersection of NC Hwy 53 and US 117. Mr. McEwen advised that he sent an email to Robert Butler with NCDOT but has not had any response.

**Commissioner Robbins** also asked about the status of his request from last month’s meeting regarding the placement of a stop light at the intersection of Wright and Wilmington Streets. Mr. McEwen advised Robert Vause suggested that we send a formal request to Katie Hite, Division Traffic Signal Engineer who would start the process of studying the situation to see if the numbers reflect a need for a light.

**Commissioner Robbins** asked if there is any news regarding the sidewalk to the senior center. Mr. McEwen advised he recently spoke with the contract manager and reminded him that we still need to get that amended contract from NCDOT.

**Commissioner Robbins** commented the Pender Early College rated at 192 in its class nationwide. He advised there has been much media attention and he feels that some kind of appreciation needs to be presented to the school on behalf of the Town at the next meeting. Mayor Mulligan asked Commissioner Robbins to meet with Mr. McEwen to determine an appropriate recognition for Pender Early College’s accomplishment.

**Commissioner Dawson** congratulated Allen Wilson on his recent designation as a Chief Fire Officer by the Center for Public Safety Excellence.

**Commissioner Tyson** inquired about the status of the plaque for Mr. James’ family and the tree to be planted in honor of Wayne Briley. Mr. McEwen advised the plaque is in the clerk’s office and that Mrs. James was out of town this week so we will put that item on agenda for the October meeting. He advised he has spoken with Mr. Kilroy who informed him that the County is going to be doing some major landscaping improvements on the court house square in the fall and Mr. Kilroy requested that the tree planting be incorporated into that event.

**Commissioner Tyson** asked about the repairs on the pavement on Bridgers Street in front of the churches. Mr. McEwen said he was informed by Norris Construction that they will come back in September to make the repairs. Mr. McEwen advised the understanding he has with Norris Construction is that they will take out the westbound lane and the east bound on either side of the intersection and do a full patch. He also said he informed Norris they need to smooth out the transition on Wright Street heading north. He advised Norris has repaired the place on Smith Street but they did not repair the place on the Penderlea Hwy and they will be required to take care of that one as well.

**Commissioner Rooks** commented that recently he needed to go to the Time Warner store in Wilmington and when he searched for the address on Google maps he was directed to three former addresses of locations that are now closed but the current Mayfair address did not come up on Google maps. Commissioner Rooks requested that since Time Warner services this area that someone contact them and ask them to get this addressing issue straightened out in order to prevent this type of inconvenience for other customers.

**Commissioner Rooks** asked if NCDOT plans to come back to mark the parking places on the sides of the new pavement on East Wilmington Street. Mr. McEwen said that they plan to have all the striping done when their larger striping jobs are done in the area. Mr. McEwen said he will touch base with NCDOT again regarding this issue.

**Mayor Mulligan** requested that next time the Infrastructure Board meets that they discuss plans to prioritize the placement of sidewalks across the railroad right of way.

**CLOSED SESSION – 8:04PM**

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

**OPEN SESSION RECONVENED – 8:11PM**

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

**Settlement Agreement with A C Schultes**

Upon returning to open session, Commissioner Rooks made a motion to approve the settlement agreement with A. C. Schultes as presented. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

**Discussion – Vehicle purchase for Fire Department**

Mr. McEwen advised the truck that Allen Wilson drives for the Fire Department is not in use at this time because it requires major repair. He advised there have been a number of major repairs made on the truck over the last couple of years and it appears that the best option may be replacement of the truck. Mr. McEwen said they have explored financing options with Four County EMC but he is waiting for a final answer. He advised they have been looking at vehicles with several dealers. Mr. McEwen said he would like to wait to see if Jimmy Smith comes up with something and if not he will bring it back to the Board possibly in a special meeting if needed to determine financing for a new truck. There was much discussion regarding this issue. Mr. McEwen advised this is mainly an informational item at this time and he will keep the Board informed of the progress on this issue. The Board recommended in the meantime that Mr. Wilson drive the Mercury Mountaineer which is currently not being used by any department.

**ADJOURNMENT**

There being no further business, Commissioner Rooks made a motion to adjourn. The motion was seconded by Commissioner Tyson and carried by unanimous vote. The meeting adjourned at 8:22PM.

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Eugene Mulligan, Mayor

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