

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

DATE: October 08, 2013
TIME: 4:00 PM
PLACE: Burgaw Municipal Building
BOARD MEMBERS PRESENT: Mayor Kenneth T. Cowan
Commissioners Jan Dawson, Wilfred Robbins, Charles Rooks and Elaine Tyson
BOARD MEMBERS ABSENT: Mayor Pro-tem Howard Walker
STAFF PRESENT: Chad McEwen, Town Manager
Sylvia W. Raynor, Town Clerk
Robert Kenan, Town Attorney
Rebekah Costin, Planning Administrator
Bill Fay, Director of Public Works
Louis Hesse, Building Inspector
Ashley Loftis, Finance Officer
Kim Rivenbark, Permitting Technician
Montrina Sutton, Chief of Police
Allen Wilson, Fire Administrator
MEDIA PRESENT: Stephanie Bowens, Star News
INVOCATION: Bryant Crosson, Chaplain
PLEDGE OF ALLEGIANCE: All

The meeting was called to order by Mayor Kenneth Cowan at 4:00 PM.

APPROVAL OF AGENDA

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

APPROVAL OF CONSENT AGENDA

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

- Minutes of the September 10, 2013 regular meeting and closed session
- Ordinance 2013-21 Amending FY 2013-2014 Budget – Citizen Injury at Community House

***ORDINANCE 2013-21
AMENDING FISCAL YEAR 2013-2014 ANNUAL BUDGET***

WHEREAS, the Town of Burgaw Board of Commissioners passed an ordinance adopting a budget for FY 2013-2014 on June 11, 2013; and

WHEREAS, on Saturday, June 15, 2013, a citizen incurred an injury while at the Community House; and

WHEREAS, the Town has agreed to reimburse the citizen for the out of pocket expenses; and

WHEREAS, a reallocation of funds from General Fund fund balance is required to allocate funds in the appropriate line items.

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

Section 1: The FY 2013-2014 budget be altered to reflect the following changes:

DECREASE BUDGETED EXPENDITURE

Account Number	Account Description	Amount
10-00-3900-900	Fund Balance Appropriated	\$1,397.15

INCREASE BUDGETED EXPENDITURE

Account Number	Account Description	Amount
10-80-7000-590	Reserve	\$1,397.15

SPECIAL PRESENTATIONS

Mayor Cowan presented a proclamation regarding “Brain Aneurysm Awareness Month” to Tammy Parris. Ms. Parris spoke regarding her quest to create more awareness regarding brain aneurysm victims and hopefully to get enough proclamations for Governor McCrory to declare each September “Brain Aneurysm Awareness Month”.

Mayor Cowan presented plaques of appreciation to retiring planning board members Robert Boulis and Marvin Moss. Frank Crisafulli and Clifton Moore were unable to attend to receive their plaques.

SPECIAL REQUEST

Mike Hewett with Locations Plus was present to ask permission to use the cemetery for filming of a movie. He reviewed his plans for use of the cemetery as well as planning several shots in other areas around town. After a very lengthy discussion, Commissioner Rooks made a motion to deny use of the cemetery for filming of the movie. After more discussion, Commissioner Robbins seconded the motion. The motion carried unanimously. Mr. Hewett then asked if they could use Wallace Street and film with the cemetery in the background. Commissioner Rooks asked Mr. Hewett to not include the cemetery in the film at all.

DEPARTMENTAL ITEMS

Certification of Petition for Annexation by Middle District Baptist Association

Sylvia Raynor, Town Clerk presented a petition for annexation from Middle District Baptist Association (MDBA). Ms. Raynor advised she has reviewed the petition and has determined all paperwork is sufficient in accordance with the NC General Statutes requirements for sufficiency of annexation petitions. William Smith spoke briefly regarding their (MDBA) request to annex the property. After a brief discussion by the Board, Commissioner Rooks made a motion to approve the certification and to set a public hearing for the annexation request at the November 12, 2013 meeting. The motion was seconded by Commissioner Dawson and carried by unanimous vote. Attorney Kenan requested Mr. Smith to insure that MDBA submits the proper number and types of survey maps for the public hearing.

Resolution 2013-32 Adopting Amendments to Municipal Records Retention Policy

Sylvia Raynor, Town Clerk presented a request for amendments to the Municipal Records Retention Policy. She advised that occasionally the Division of Archives and Records will find it necessary to make amendments to the municipal records retention policy. After a brief review of the requested amendments, Commissioner Rooks made a motion to approve Resolution 2013-32 as presented. The motion was seconded by Commissioner Tyson and carried by unanimous vote.

**RESOLUTION 2013-32
AMENDING THE MUNICIPAL RECORDS RETENTION AND DISPOSITION SCHEDULE
PUBLISHED SEPTEMBER 10, 2012 AND ADOPTED BY THE BOARD ON NOVEMBER 13, 2012**

WHEREAS, the Town of Burgaw Board of Commissioners did approve Resolution 2012-44 “Adopting the Newly Revised Municipal Records Retention and Disposition Schedule” on November 13, 2012; and

WHEREAS, from time to time the North Carolina Department of Cultural Resources, Division of Archives and Records will deem it necessary to cause said retention schedule to be amended; and

WHEREAS, said Department is recommending amendments to the Municipal Schedule that will affect the following items:

- Adds Accreditation Records to the schedule
- Clarifies language for retention period of employee eligibility records to match U.S. Code
- Consolidates three different types of leave records

NOW THEREFORE BE IT RESOLVED BY THE TOWN OF BURGAW BOARD OF COMMISSIONERS THAT the Municipal Records Retention and Disposition Schedule is hereby amended as follows:

SECTION 1. Standard 4. Budget, Fiscal and Payroll Records – Amending Item 32 Escheat and Unclaimed Property File as shown on substitute page 29 (attached)

SECTION 2. Standard 12. Personnel Records – Adding Item 1-A Accreditation Records as shown on substitute page 101 (attached), Amending Item 19 Employee Eligibility Records as shown on substitute page 105 (attached), Amending items 36 Family Medical Leave Act (FMLA) Records, 42 Leave File and 43 Leave Without Pay File as shown on substitute pages 110-111 (attached).

Approved this eighth day of October, 2013.

Resolution 2013-33 Amending Utility Billing Policy (Amendment #2)

Ashley Loftis, Finance Officer advised at the August 13th Board of Commissioners meeting, the Commissioners adopted into the Town's Fee Schedule a graduated deposit fee structure for business utility accounts. With this new rate structure, the deposit will be based on usage of the business or a similar business. This new rate structure needs to be implemented to our Utility Billing Policy showing the various deposits for a business utility account.

Ms. Loftis advised that within this policy, we would like clarify what fees need to be paid prior to disconnection of utility service as well as when bills are due if the due date falls on a weekend. In the past, there has been some confusion with the public in relation to these items. She advised we would like to remedy this by changing the wording within this policy to state that ALL fees must be paid to avoid disconnection and if the due date falls on a weekend, the account must be paid in full by 5:00 on the prior business day.

There being no discussion, Commissioner Dawson made a motion to approve Resolution 2013-33 as presented. The motion was seconded by Commissioner Robbins and carried by unanimous vote.

RESOLUTION 2013-33 AMENDING THE CURRENT UTILITY BILLING POLICY

WHEREAS, the Town of Burgaw Board of Commissioners approved the use of the Utility Billing Policy on July 9, 2013; and

WHEREAS, since this adoption the Board of Commissioners approved a revised business utility deposit structure; and

WHEREAS, clarification needs to be made in relation to what fees are due to avoid disconnection and when these fees are due if the due date falls on a weekend; and

WHEREAS, this change will correctly reflect the business utility security deposit in accordance with Budget Ordinance 2013-16 and eliminate any misunderstanding as to when balances are due.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN OF BURGAW BOARD OF COMMISSIONERS THAT the Town of Burgaw Board of Commissioners hereby amends the Utility Billing Policy to reflect the changes attached. (Due to length of documents, attachments are on file in the clerk's office.)

Adopted this 8th day of October 2013.

Resolution 2013-34 Amending Fire Fighter Job Description

Allen Wilson, Fire Administrator advised that due to some redundancy in the job descriptions for Part Time Apparatus Operator and Firefighter we are recommending combination of the two job descriptions into one which will cover all aspects of the two jobs. After a brief review of the changes, Commissioner Robbins made a motion to approve Resolution 2013-34 as presented. The motion was seconded by Commissioner Rooks and carried by unanimous vote.

**RESOLUTION 2013-34
APPROVING AMENDED PART-TIME FIREFIGHTER JOB DESCRIPTION**

WHEREAS, on September 11, 2012, the Town of Burgaw Board of Commissioners approved a personnel policy which contained job descriptions for Part-Time Apparatus Operator and Firefighter; and

WHEREAS, the two job descriptions listed within the personnel policy are redundant and only offer subtle differences in qualifications and requirements; and

WHEREAS, the Fire Administrator/Marshal job description delegates the supervision of the fire department paid staff to the Fire Administrator; and

WHEREAS, the Town wishes to provide consistent daytime coverage for fire protection, it is beneficial to merge the two job descriptions into one.

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

Section 1: The current job descriptions for Part-Time Apparatus Operator and Part-Time Firefighter are hereby replaced with the attached job description for the Part-Time Firefighter Position and shall be placed in the current Town of Burgaw Personnel Policy

Section 2: Part-time firefighter job description shall become effective immediately upon approval of this resolution this eighth day of October, 2013. (Due to length of documents, attachments are on file in the clerk's office.)

Resolution 2013-35 Appointing members of the Town of Burgaw Planning and Zoning Board to serve as regular and alternate members on the Board of Adjustment

Rebekah Costin, Planning Administrator advised that while the Planning Board members, according to our ordinance, also serve on the Board of Adjustment, they must be appointed for three-year terms in compliance with the General Statutes. She advised all of the Board of Adjustment terms are currently expired, so Planning Board members need to be re-appointed in order to have the board in a position to hear any petitions for variances and appeals. Our ordinance specifies that the Chair and Vice-Chair of the planning board hold those positions on the Board of Adjustment, and ETJ representation is required, so three of the five Board of Adjustment seats must be held by the Chair, Vice-Chair, and ETJ representative. Two other current Planning Board members have volunteered to serve as regular members; the remaining two Planning Board members will act as alternates.

There being no discussion, Commissioner Dawson made a motion to approve Resolution 2013-35 as presented. The motion was seconded by Commissioner Tyson and carried by unanimous vote.

**RESOLUTION 2013-35
APPOINTING MEMBERS OF THE PLANNING BOARD TO THE BOARD OF ADJUSTMENT**

WHEREAS, the Town of Burgaw Board of Adjustment currently has seven vacant seats due to expired terms; and

WHEREAS, the Town of Burgaw Unified Development Ordinance specifies that the members of the Town of Burgaw Planning and Zoning Board shall also serve as members on the Board of Adjustment; and

WHEREAS, the Town of Burgaw Unified Development Ordinance also requires that the Chairperson and Vice-Chairperson of the Board of Adjustment shall be the same as for the Planning Board; and

WHEREAS, the Town of Burgaw desires for the Board of Adjustment to include regular representations from a resident of the town's extraterritorial jurisdiction;

NOW THEREFORE, BE IT RESOLVED THAT:

1. The Town of Burgaw Board of Commissioners appoints the following Planning Board members to the Board of Adjustment in these designated positions: Barry Klingel, Jennifer Hansen, Connie Ives, Louis Davis, Meg Franklin, William George III (alternate), and Jeff Rooks (alternate).
2. The terms for these positions shall commence upon their swearing-in by the Town Clerk, Deputy Clerk, or Mayor and shall run for a three-year term unless new appointments must be made by the Board of Commissioners to reflect new members or positions on the Planning Board.

ADOPTED BY THE TOWN OF BURGAW BOARD OF COMMISSIONERS THIS 8TH DAY OF OCTOBER, 2013.

ITEMS FROM ATTORNEY

None.

ITEMS FROM MANAGER

Resolution 2013-36 Amending Building Inspector’s Job Description and the Organizational Chart

Chad McEwen, Town Manager advised with the recent hiring of a new Fire Administrator/Marshal it is no longer necessary to assign the supervision of the paid part-time fire department employees to the Building Code Administrator. The Fire Administrator/Marshal currently oversees all paid fire department personnel. Due to this change it is no longer necessary for the Building Code Administrator to simultaneously hold the title of Assistant Fire Administrator. He advised the recommendation is the approval of the proposed revisions to the personnel policy as well as the Town’s organizational chart.

There being no discussion, Commissioner Robbins made a motion to approve Resolution 2013-36 as presented. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

**RESOLUTION 2013-36
AMENDING THE TOWN OF BURGAW’S PERSONNEL POLICY
BUILDING CODE ADMINISTRATOR’S JOB DESCRIPTION AND THE ORGANIZATIONAL CHART**

WHEREAS, the Town of Burgaw Board of Commissioners expresses its intent to provide Town of Burgaw Employees with a personnel policy for the purpose of facilitating the performance and operation of personnel and administrative functions within the Town of Burgaw; and

WHEREAS, the Town of Burgaw Board of Commissioners does not intend, by its adoption of these Personnel and Administrative Policies, to create any property interest in continued employment or to provide for any exceptions to at-will employment principles; and

WHEREAS, the Town of Burgaw Board of Commissioners wishes to have Personnel Policies govern the recruitment, appointment, classification, salary, promotion, demotion, discipline, dismissal and other terms and conditions of employment of employees of Town of Burgaw, North Carolina; and

WHEREAS, the Town of Burgaw Board of Commissioners hereby confirms that Town of Burgaw is an Equal Opportunity Employer, and that it hires only United States citizens and lawfully authorized alien workers; and

WHEREAS, the Town Manager is authorized to interpret where necessary all provisions of this policy; and

WHEREAS, all other personnel and administrative policies are repealed in their entirety and replaced with this policy; and

WHEREAS, periodically it becomes necessary to amend the personnel policy when changes in job descriptions are necessitated; and

WHEREAS, in the event that these changes reflect a change in which employees supervise certain employees these changes must be reflected in the town’s organizational chart.

NOW THEREFORE, BE IT RESOLVED that the Town of Burgaw Board of Commissioners hereby amends the Building Code Administrator’s job description as include in the attachment. In addition the town’s organizational chart, which consists of Section XIV of the Town of Burgaw Personnel Policy, is hereby amended to reflect these changes as well. (Attachments on file in the Clerk’s office)

Adopted this the eighth day of October, 2013 to be effective immediately.

DISCUSSION – Fire Department John Taylor Fund

Mr. McEwen advised he has met with the Fire Department and discussed many concerns that have been presented. Mr. McEwen advised that the John Taylor Fund which has been traditionally maintained by the volunteer fire department members needs to be discussed with the Board. Mr. McEwen said in reading the Pender Central Contract and requirements by the Local Government Commission (LGC), NC General Statutes and advisement of the School of Government that the John Taylor fund needs to come under the control of the town finance office. He advised he has spoken with William George and Allen Wilson regarding the issue. Mr. McEwen stated there are concerns regarding how the funds will be spent. He advised there is a capital reserve restricted funds line item for the fire

department and he is recommending that the proceeds from the John Taylor Fund be transferred into to that line item. He said this line item will be used to assist with paying for capital purchases within the fire department. After a brief discussion, Commissioner Tyson made a motion to request that the Fire Department close the John Taylor Fund and transfer the funds into the town's capital reserve account for the fire department. The motion was seconded by Commissioner Dawson and carried by unanimous vote.

DATE FOR CHRISTMAS DINNER – Mr. McEwen advised the recommended date for the annual Christmas dinner is Friday, December 20, 2013 at 12:00 noon at the Community House. The dinner will be for employees and elected officials. Commissioner Rooks made a motion to approve the abovementioned date and time for the annual Christmas dinner. The motion was seconded by Commissioner Robbins and carried by unanimous vote.

WEIR AT TEAL BRIAR – Mr. McEwen advised Commissioner Rooks has recently inquired about the weir at Teal Briar. He asked Mr. Fay to speak regarding this matter. Mr. Fay advised he has spoken with Ray Knowles with NCDOT. He said Mr. Knowles advised the developer of Teal Briar had agreed to maintain the weir but as we know the developer is not maintaining the sub-division let alone the weir. Mr. Knowles advised Mr. Fay that he sees no imminent danger of flooding in that area of the ditch along Henry Brown Road. Mr. McEwen advised that is a blue line stream and it does not fall in the jurisdiction of NCDOT. Attorney Kenan commented that if NCDOT is not assuming jurisdiction of that area then it would fall under the jurisdiction of NCDENR regarding the stormwater permit. Mr. McEwen advised the town receives inspection reports for the area from NCDENR and according to them there have been no compliance issues. Commissioner Rooks advised he would like to meet someone at the site to discuss the issues. Mr. McEwen was requested to try to set up a meeting at the site with someone in authority regarding the issue at the weir on Henry Brown Road.

RECESS: Mayor Cowan declared a recess at 4:55 PM.

MEETING RECONVENED: 5:08PM

PUBLIC FORUM

Sara Brown, Vice President of Burgaw Elementary PTO, appeared before the Board to ask for consideration of a donation to assist with purchase of prizes and games for the Burgaw Elementary School Fall Festival. She advised the festival is open to the community and all proceeds go into the PTO program to assist with teacher grants, field trips, etc. Upon completion of Ms. Brown's presentation, Commissioner Robbins made a motion to appropriate a \$100.00 donation to the Burgaw Elementary Fall Festival. The motion was seconded by Commissioner Tyson and carried by unanimous vote.

Gentry Sessoms, 1796 Penderlea Hwy, Burgaw, NC stated that since the town is looking at downtown revitalization and a Walmart he wanted to make some comments regarding that issue. Mr. Sessoms read several excerpts from articles regarding the negative effects of shopping centers and Walmart on downtown businesses. He said he does not want to see Walmart destroy Burgaw like it destroyed Wallace.

Herb Harrell stated that Mayor Cowan invited him to come and speak regarding improvements for downtown Burgaw. Mr. Harrell advised he made a list of the things he wants to see in regards to downtown Burgaw. He stated that at the top of his list is that he would like to see the Mayor and all the Board members stand up and say "we do not want Walmart in Burgaw". He said he wants them to stand up and say how they feel regardless of which side they are on. He agreed with Mr. Sessoms' comments. Mr. Harrell said that Walmart will forever change downtown Burgaw. Mr. Harrell also said he would like to do away with impact fees for existing businesses, create a more pedestrian friendly downtown, beautification of Court House Avenue and the alleys, do more business with local businesses, work with downtown to accommodate more housing above existing buildings, utilities placed underground, film companies need to better compensate businesses for loss of customers while filming, more entertainment downtown and he feels the roundabout is a crazy idea.

Melinda Eakins (on behalf of Elmer Homes who was present but did not speak) advised she would like to find out if the Town is willing to sell the property located at 210 S Durham Street in Burgaw. Mr. McEwen explained the property is the result of a tax foreclosure in which the town and county became the owners of the property. Mr. McEwen advised the house on the property burned several years ago and the town paid to have the house

demolished. Mr. McEwen advised that since there is joint ownership of the property, the Town and County Boards would have to agree to surplus the property and the proper way to handle the sale would be with sealed bids. Mayor Cowan advised Ms. Eakins she will have to go to the Pender County Board and make the same request to them. Commissioner Robbins suggested that Mr. McEwen set up a meeting with the County to determine if they desire to surplus the property.

Eugene Mulligan, 214 South Dickerson Street advised he agrees with everything Herb Harrell said and reiterated that impact fees are the issue.

Karen Harding, 214 South Dickerson Street advised she recently read an article from the Star News printed in 2007 and we were discussing this same issue, impact fees and nothing has changed. She also said that we need upstairs residential dwellings and restaurants in the downtown area.

John Westbrook, 410 East Fremont Street said he is scared in regards to seeing all the vacancies downtown and hearing about Walmart and Walgreens and hearing about the jail and the judicial system moving from downtown. He said we need a “big” idea to save Burgaw. He said we don’t need plans, we need action and asked the Board to help the downtown area.

DISCUSSION – Municipal Service District and other downtown issues

Mr. McEwen said he has been researching municipal service districts (MSD). He said in regards to the creation of a different class by removing impact fees from a certain district (which is not allowed) the School of Government (SOG) advises the only mechanism we have is to create a municipal service district. He reviewed extensive information regarding municipal service districts. He advised there is only one MSD in North Carolina which is in the Town of Cary. He advised the Town of Cary provides grants for impact fees based on performance agreements. He gave a lengthy review of how MSD’s work. Mr. McEwen said this item is only for discussion, not for a decision. There was lengthy discussion with input from several members of the audience.

Mr. McEwen asked the Board if they want to look at municipal service districts for the future. Several Board members said that they would be interested in looking into the issue further. Barry Klingel commented that he would like to see a board created with an elected official and some business owners to review this issue. Mayor Cowan commented that Commissioners Robbins and Tyson have been working on a review of downtown issues and he would like to hear from them.

Commissioner Robbins said he and Commissioner Tyson have met briefly regarding downtown issues and they have some of the same concerns as the downtown property owners. He advised impact fees are at the top of the list as are other fees such as the privilege license. Commissioner Robbins said they have also discussed several other issues including an interest in bringing more people downtown by having more events in the downtown area on a regular basis. There was much more discussion regarding impact fees and municipal service districts. Louis Hesse briefly discussed building codes and rehabilitation codes in the downtown area.

Commissioner Tyson advised that she and Commissioner Robbins discussed impact fees at length. She said they plan to continue to work on this issue and come up with a solution.

Mayor Cowan asked Commissioners Robbins and Tyson to coordinate a meeting with the Downtown Business Association and bring back information at the next meeting.

ITEMS FROM MAYOR AND BOARD OF COMMISSIONERS

None other than abovementioned items.

PUBLIC HEARINGS – Rebekah Costin, Planning Administrator

Public Hearing #1

Consideration of a proposed text changed amendment to Article 19 Nonconforming Situations to modify the guidelines for grandfathered nonconforming uses

Mayor Cowan declared the public hearing open at 6:04PM.

Ms. Costin presented the following background information:

Applicant Susie Loftis is requesting an amendment to the grandfathering provisions of the ordinance to allow a greater variety of uses than just the last nonconforming grandfathered use permitted.

Background. On August 27, 2013, Susie Loftis filed a petition for text change amendment to *Article 19. Nonconforming Situations* of the Unified Development Ordinance to “allow the grandfathering of the last permitted use and also allow a wide variety of additional uses.” Currently, the UDO’s regulations regarding nonconforming uses are intended to limit existing nonconforming uses and not encourage substantial investments in nonconformities. As a result, only the last legally permitted use is considered to be grandfathered.

Ms. Loftis’s property on Penderlea Highway is the site of a long-standing automobile service shop in the R-12 zoning district. The last zoning permit for the property was issued in 2007 for Automobile Oil Change and Lubrication Shop uses and Tire Repair Shop (excluding recapping) uses. Since the last tenant left, Ms. Loftis has been unable to find another business with that exact use interested in using the property. However, she has found potential tenants who would likely have less potential noise and traffic than the grandfathered uses. According to the current regulations, these uses would not be allowed.

Survey of Other Jurisdictions. I reviewed the regulations of 44 other municipalities across the state, some larger cities and some small towns. The majority of these municipalities have exceptions to their nonconforming regulations that would allow a grandfathered nonconforming use to be replaced with a less intensive nonconforming use. This would bring properties into compliance with new zoning regulations gradually. On the positive side, the properties would be less nonconforming than with the previous use, and it would be easier for property owners to find new tenants. On the negative side, properties may remain nonconforming for longer periods of time.

I have attached a table showing the requirements of these other municipalities. (On file in clerk’s office)

Planning Administrator Recommendation. It is my recommendation that the ordinances be amended to allow replacement of a nonconforming use with a less intensive nonconforming use. Due to the economic recession, property owners are having a difficult time finding appropriate tenants, and allowing uses that are more appropriate to an area than the original grandfathered use can be a benefit to both the property owner and the neighbors. Because these uses may be conditional uses even in districts where they are allowed, I recommend this be treated as a type of conditional use permit.

Planning Board Recommendation. At the September 19, 2013 Town of Burgaw Planning and Zoning Board meeting, the board approved the following statements (signed copies on file at the Planning Department):

Statement Regarding the Compliance of a Proposed Text Change Amendment to Article 19. Nonconforming Situations Regarding Changes to Nonconforming Uses with the Burgaw 2030 Comprehensive Land Use Plan

The proposed text change amendment is in conformity with the following portions of the Burgaw 2030 Comprehensive Land Use Plan:

- Economic Development Goal 4: To ensure clear and efficient procedures, policies, and ordinances that will attract and retain the type of enterprises necessary to achieve the town’s vision
 - Review, and amend as necessary, the town’s ordinances to remove unnecessary barriers to retention and expansion of existing businesses and recruitment of new businesses and industries

However, this proposed text change amendment may also not be in conformity with the following portions of the 2030 Comprehensive Land Use Plan:

- Land Use Goal 4: To implement the policies and actions of the comprehensive land use plan
 - Oppose land use, development, and zoning decisions that are not consistent with the comprehensive plan

Planning Board Recommendation Regarding a Proposed Text Change Amendment to Article 19. Nonconforming Situations of the Unified Development Ordinance Regarding Changes to Nonconforming Uses

The Town of Burgaw Planning and Zoning Board recommends approval of the proposed text change amendment regarding changes to nonconforming uses with the following changes:

- In subsection (C), correct the typo and change *substation* to *substitution*.
- In subsection (C) 2, add the word *nonconforming* before *use* and the phrase *or are similar to* after *than*.
- Strike subsection (D), which reads “Once a nonconforming use has been substituted with a new nonconforming use, the property may not revert to the original use.”

Susie Loftis, applicant, advised she has been trying to rent her property but is not allowed to rent it for anything other than the last use. She has had several inquiries from potential renters that want to use the property for other purposes. She advised the vacant property is a detriment to the neighborhood. She thanked the Board for their time and efforts and said she would like to see the ordinance approved so she can rent the building.

Mayor Cowan declared the public hearing closed at 6:10PM.

Commissioner Robbins made a motion to approve Ordinance 2013-22 as presented. The motion was seconded by Commissioner Rooks and carried by unanimous vote.

ORDINANCE 2013-22
APPROVING A TEXT CHANGE AMENDMENT TO ARTICLE 19 NONCONFORMING SITUATIONS OF THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CHANGES TO NONCONFORMING USES

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

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

WHEREAS, the town's current ordinances regarding nonconforming uses only allows grandfathering of the last legally permitted use; and

WHEREAS, the Town of Burgaw desires to benefit property owners and protect adjacent property owners by allowing less intensive nonconforming uses; and

WHEREAS, the attached text change amendment allows the substitution of less intensive of nonconforming uses with a conditional use permit issued by the Town of Burgaw Board of Commissioners; and

WHEREAS, the Town of Burgaw Planning and Zoning Board has found that the attached text change amendment is consistent with the economic development goals of the Burgaw 2030 Comprehensive Land Use Plan, while recognizing it may allow land uses and development that may not be consistent with the Future Land Use Map; and

WHEREAS, at the Town of Burgaw's Planning and Zoning Board meeting on September 19, 2013, the Board voted to recommend approval of the attached text change amendment; and

WHEREAS, the Town of Burgaw Board of Commissioners finds that the proposed text change amendment is consistent with the economic development goals of the Burgaw 2030 Comprehensive Land Use Plan, while recognizing it may allow land uses and development that may not be consistent with the Future Land Use Map;

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

SECTION 1: The Unified Development Ordinance is amended as follows:

Section 19-1: Purpose and Intent

Within the provisions established by this Ordinance, there exist uses of land, structures, and lots that were lawfully established before this Ordinance was adopted or amended that now do not conform to the terms and requirements of this Ordinance. The purpose and intent of this article is to regulate and limit the continued existence of those uses, structures, and lots that do not conform to the provisions of this Ordinance or any amendments thereto.

Section 19-5: Change in Kind of Nonconforming Use

- (A) A nonconforming use may be changed to a conforming use. Thereafter, the property may not revert to a nonconforming use.
- (B) A nonconforming use may not be changed to another nonconforming use be changed to another nonconforming use only with a conditional use permit issued by the Board of Commissioners.
- (C) In order for a nonconforming use substitution to be approved, the Board of Commissioners must find that the application meet all general conditional use standards, all conditional use standards required for that use in any district, and the following:
 - (1) The proposed new nonconforming use, if a new nonconforming use is proposed, is more compatible with the development pattern of the surrounding area than the previous nonconforming use; and
 - (2) The proposed nonconforming use is expected to result in impacts which are less than or are similar to those associated with the existing use.

SECTION 2. This amendment to the Unified Development Ordinance (UDO) becomes effective immediately upon adoption of this ordinance on this, the 8th day of October, 2013.

Public Hearing #2

Consideration of a proposed text change amendment to Section 4-9: Table of Permitted Uses to allow cabinetmaking in the B-1 zoning district as a conditional use.

Mayor Cowan declared the public hearing open at 6:11PM.

Ms. Costin presented the following background information:

Background. On August 28, 2013, Jeff Fuchs of FFT Cabinetry submitted a petition for text change amendment to *Section 4-9: Table of Permitted Uses* of the Unified Development Ordinance to “allow spray booths in the B-1 zoning district.” Mr. Fuchs currently operates his business at 205 W. Fremont St. under a zoning permit for Food, Beverage, and Craft Processing and Production with Retail Sales for his custom-made cabinets. Several months ago, he expressed interest in installing a commercial paint spray booth at his operation. Because of the added intensity and the fact that Cabinetmaking is not a permitted or conditional use in the B-1 zoning district, I made a zoning interpretation that the commercial spray booth would not be allowed under current regulations.

Survey of Other Jurisdictions. I reviewed the regulations of 39 other municipalities across the state. While the majority of these municipalities do not allow cabinetmaking or light industrial uses in their downtown areas, ten do allow this type of use. I have spoken to the town’s building inspector and fire marshal and representatives of NCDENR’s Division of Air Quality. I have also asked for input from the North Carolina planning listserv. All parties indicated that commercial paint spray booths may not be an immediate health and safety hazard but cautioned about potential issues. While at least one automotive body shop in the town has had complaints due to paint spray damaging adjacent property, if the operator maintains the spray booth properly, this should not be an issue. However, there is the possibility of paint odors as a result of the booth, and if 5 tons or more of VOCs are released, an air quality permit would be required. The town of St. Pauls allows these spray booths as accessory to automotive body shops and garages, which require conditional use permits, and one source I was able to find from the Department of the Environment of Belize states that it is ill-advised to locate automotive spray booths near stores or restaurants because of the odors and that they shouldn’t be any closer than 150 meters (about 500 feet) to residential areas.

Planning Administrator Recommendation. Because I do not consider Mr. Fuchs’ business to qualify under its existing use category if it adds a spray booth, I have modified the proposed text change to add Cabinetmaking as a use in the B-1 district. At the very least, this type of use should be conditional and should require a retail component (which would also require a text change to Section 4-10).

Planning Board Recommendation. At the September 19, 2013 Town of Burgaw Planning and Zoning Board meeting, the board approved the following statements (signed copies on file at the Planning Department):

Statement Regarding the Compliance of a Proposed Text Change Amendment to Section 4-9 and 4-10 of the Unified Development Ordinance Regarding Commercial Booths in the B-1 Zoning District with the Burgaw 2030 Comprehensive Land Use Plan

The proposed text change amendment is in conformity with the following portions of the Burgaw 2030 Comprehensive Land Use Plan:

- Economic Development Goal 1: To support the profitability and sustainability of existing businesses and industries (in general)

However, this proposed text change amendment may also not be in conformity with the following portions of the 2030 Comprehensive Land Use Plan:

- Economic Development Goal 1: To support the profitability and sustainability of existing businesses and industries
 - Promote the downtown as a place for community gatherings and the focal point of the tourism industry

Planning Board Recommendation Regarding a Proposed Text Change Amendment to Section 4-9 and 4-10 of the Unified Development Ordinance Regarding Commercial Spray Booths in the B-1 Zoning District

The Town of Burgaw Planning and Zoning Board recommends approval of the proposed text change amendment regarding commercial spray booths in the B-1 zoning district.

Jeff Fuchs, owner commented that he needs to expand his business by installing a spray paint booth. He advised there was a spray paint booth in the building several years ago. He advised he needs to spray paint to finish his cabinets. He said he is currently moving to another location to spray paint his cabinets, which is not cost effective. He stated that if he is not allowed to have the spray paint booth he will be forced to relocate his business to another location. Mr. Fuchs also commented that he would only have to use the spray paint booth a couple of hours a week.

Mayor Cowan declared the public hearing closed at 6:14PM.

Commissioner Dawson made a motion to approve Ordinance 2013-23 as presented. The motion was seconded by Commissioner Rooks and carried by unanimous vote.

**ORDINANCE 2013-23
APPROVING A TEXT CHANGE AMENDMENT TO SECTIONS 4-9 AND 4-10 OF THE UNIFIED DEVELOPMENT
ORDINANCE REGARDING CABINETMAKING IN THE B-1 ZONING DISTRICT**

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

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

WHEREAS, the town’s current ordinances do not allow Cabinetmaking as a permitted or conditional use in the B-1 zoning district; and

WHEREAS, the Town of Burgaw desires support activities that would increase the likelihood of a thriving downtown; and

WHEREAS, the attached text change amendment allows Cabinetmaking in the B-1 zoning district, subject to a conditional use permit issued by the Town of Burgaw Board of Commissioners; and

WHEREAS, the Town of Burgaw Planning and Zoning Board has found that the proposed text change amendment is consistent with the economic development goals of the Burgaw 2030 Comprehensive Land Use Plan, while recognizing it does not assist in promoting the downtown as a tourist destination; and

WHEREAS, at the Town of Burgaw’s Planning and Zoning Board meeting on September 19, 2013, the Board voted to recommend approval of the attached text change amendment; and

WHEREAS, the Town of Burgaw Board of Commissioners finds that the proposed text change amendment is consistent with the economic development goals of the Burgaw 2030 Comprehensive Land Use Plan, while recognizing it does not assist in promoting the downtown as a tourist destination;

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

SECTION 1: The Unified Development Ordinance is amended as follows:

Section 4-9: Table of Permitted Uses

TABLE OF PERMITTED USES													
	NAICS ¹	RA	R-20	R-12	R-7	R-7MH	PUD ²	O&I	B-1	B-2	I-1	I-2	C/P
CABINET MAKING AND COUNTER TOP MFG. (interior work and storage only)	337110								C ²⁸	C	X	X	

Section 4-10: Notes to the Table of Permitted Uses

²⁸Cabinetmaking and Countertop Manufacturing operations in the B-1 zoning district must include a retail component.

SECTION 2. This amendment to the Unified Development Ordinance (UDO) becomes effective immediately upon adoption of this ordinance on this, the 8th day of October, 2013.

Public Hearing #3

Consideration of a proposed text change amendment to Articles 3, 16, and 17 regarding the Board of Adjustment and quasi-judicial hearings to bring the Unified Development Ordinance in conformance with Session Law 2013-126

Mayor Cowan declared the public hearing open at 6:15PM.

Rebekah Costin, Planning Administrator presented the following background information:

Recently, the NC General Assembly passed legislation to clarify and streamline regulations regarding the Board of Adjustment and quasi-judicial hearings. Changes were primarily made to notice and voting requirements. Since this legislation went into effect October 1, 2013, the following text change amendment is proposed in order to reflect these new laws.

Planning Board Review. At the September 19, 2013 Town of Burgaw Planning and Zoning Board meeting, the board approved the following statements (signed copies on file at the Planning Department):

Statement Regarding the Compliance of a Proposed Text Change Amendment to Articles 3, 16, and 17 Regarding the Board of Adjustment and Quasi-Judicial Hearings with the Burgaw 2030 Comprehensive Land Use Plan.

The proposed text change amendment is in general conformity with the Burgaw 2030 Comprehensive Land Use Plan. No portions of this amendment would be in conflict with the plan’s goals, policies, or actions.

Planning Board Recommendation Regarding a Proposed Text Change Amendment to Articles 3, 16, and 17 Regarding the Board of Adjustment and Quasi-Judicial Hearings

The Town of Burgaw Planning and Zoning Board recommends approval of the proposed text change amendment regarding the Board of Adjustment and quasi-judicial hearings.

Mayor Cowan declared the public hearing closed at 6:17PM.

Commissioner Tyson made a motion to approve Ordinance 2013-24 as presented. The motion was seconded by Commissioner Robbins and carried by unanimous vote.

**ORDINANCE 2013-24
APPROVING A TEXT CHANGE AMENDMENT TO ARTICLES 3, 16, AND 17 OF THE UNIFIED DEVELOPMENT
ORDINANCE REGARDING THE BOARD OF ADJUSTMENT AND QUASI-JUDICIAL HEARINGS**

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

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

WHEREAS, the North Carolina General Assembly recently passed legislation to clarify and streamline regulations regarding the Board of Adjustment and quasi-judicial hearings; and

WHEREAS, this legislation went into effect on October 1, 2013; and

WHEREAS, the attached text change amendment brings the Unified Development Ordinance into conformity with state law; and

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

WHEREAS, at the Town of Burgaw's Planning and Zoning Board meeting on September 19, 2013, the Board voted to recommend approval of the attached text change amendment; and

WHEREAS, the Town of Burgaw Board of Commissioners finds that the attached text change amendment is consistent with the goals of the Burgaw 2030 Comprehensive Land Use Plan;

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

SECTION 1: The Unified Development Ordinance is amended as attached; and

SECTION 2. This amendment to the Unified Development Ordinance (UDO) becomes effective immediately upon adoption of this ordinance on this, the 8th day of October, 2013. (Attachments on file in the clerk's office)

OTHER ITEMS

Commissioner Robbins asked Mr. McEwen about the downtown planters and what was being done about them. Mr. McEwen advised he has contacted Cooperative Extension regarding soil sampling in planting areas. He said they have looked at foster hollies or single stem crape myrtles to be placed in the areas. He asked the board if they have a preference or if they want to send it back to the tree board. Commissioner Robbins asked Ms. Costin to call the City of New Bern to find out what kind of trees they have downtown because someone commented that they are very attractive.

Mayor Cowan commented that he plans to make a recommendation regarding boards and committees later in the year assuming he is still the mayor. He advised he has some suggestions regarding what he feels will be positive changes.

Mayor Cowan also commented there are several out of town real estate folks looking around town for large plots of land. He stated he is glad to see that interest in our community.

ADJOURNMENT

There being no further business, Commissioner Rooks made a motion to adjourn. The motion was seconded by Commissioner Dawson and carried by unanimous vote. The meeting adjourned at 6:25PM.

Attest: _____
Sylvia W. Raynor, Town Clerk

Kenneth T. Cowan, Mayor