



## REQUEST FOR BOARD ACTION

ITEM NO. 16.

**DATE OF REQUEST:** August 17, 2009

**REQUESTED BY:** Patrick T. Davenport, Director of Planning and Community Development

**SHORT TITLE:** Appeal of Denial of Preliminary Plat Approval for Schoolview Subdivision from the Planning Board Meeting from July 7, 2009.

**BACKGROUND:** The applicant, Charles T. Busby on behalf of owner TIOGA, LLC, is requesting the Pender County Board of Commissioners to hear an appeal pursuant to Section 3.5 C of the Pender County Zoning Ordinance. The Pender County Planning Board at the July 7, 2009 denied the revisions to the Preliminary Plat for Schoolview Subdivision. The proposal consists of 21 lots ranging in area from 20,000 to approximately 24,000 square feet to be developed on 15.68 acres. This proposal is considered an amendment to the previously approved Preliminary Plat for Scott Gerow Subdivision now known as Schoolview Subdivision. The proposed subdivision is located off of NC Highway 133, across from Cape Fear Elementary School, in Rocky Point. Please find attached the Planning board staff report, approved minutes, location maps and preliminary plat copies.

The Planning Board previously approved a subdivision layout with the sewage disposal located on each individual lot. The amendment to the approved Preliminary Plat for Schoolview Subdivision, proposes the placement of the septic systems in the common are/open space. The revised preliminary plan is proposing the area (approximately 0.71 acre) between the drain fields (encumbered open space) to count towards provided open space. This proposal denied by the Planning Board. After the encumbered open space proposal was denied, the attorney for the developer proposed a fee in lieu of open space to the Planning Board. Although the subdivision ordinance contains a definition of "Fee in Lieu of" definition, the Planning Board did not accept that proposal due to an inadequate amount of time to review the documents because it was not included in the agenda.

The Pender County Planning Board voted unanimously to deny the revision request of the Preliminary Plat approval for Schoolview Subdivision. The applicant appealed this decision to the Board of Commissioners pursuant to Section 3.5 C of the Pender County Zoning Ordinance.

**SPECIFIC ACTION REQUESTED:** To hear an appeal of the Planning Board's decision to deny the subdivision request pursuant to Section 3.5C. The BOCC may: 1) uphold the decision of the Planning Board; 2) reverse the decision of the Planning Board by accepting the .71 acre between the septic drain fields as qualifying open space; 3) remand the issue back to the Planning Board for consideration of accepting a fee in lieu of accepting the .71 acre as qualifying open space dedication; 4) Accept the fee in lieu of open space shortage offered by the applicant in a letter dated August 5, 2009; 5) Determine an acceptable fee in lieu of amount if the applicant's offering is not appropriate.

**RESOLUTION**

**NOW, THEREFORE BE IT RESOLVED** by the Pender County Board of Commissioners that on August 17, 2009, the decision regarding the issue herein described made by the Planning Board during its July 7, 2009 meeting is \_\_\_\_\_ (upheld/overturned).  
Furthermore, the Commissioners hereby:

(insert follow up decision or instructions) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**AMENDMENTS:**

MOVED \_\_\_\_\_ SECONDED \_\_\_\_\_

APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ UNANIMOUS

YEA VOTES: Tate \_\_\_ Brown \_\_\_ Blanchard \_\_\_ Rivenbark \_\_\_ Williams \_\_\_

\_\_\_\_\_  
Jimmy T. Tate, Chairman      August 17, 2009  
Date

\_\_\_\_\_  
ATTEST      Date

## SUBDIVISION ORDINANCE CITATIONS

### Page 9

**Open Space** – an area that is left in its natural state or maintained for passive or active recreation activities, is typically void of buildings other than recreation related buildings and is dedicated to public use, owned by a homeowners association or specifically and clearly reserved for the benefit of residents of the subdivision or immediate area.

**Open Space Fund** – a fund established by Pender County for the purpose of receipt of payments for acquisition of open space/recreation areas when such payments are made in lieu of dedication of required open space recreation areas, the proceeds of which cannot be used other than for acquisition of property for open space and recreation facilities to serve the area where the funds originated.

### Page 29

#### **Other Required Improvements**

5. Open space and/or recreation areas equaling 15 percent of the total development area shall be required to be reserved for any minor or major subdivision with any lots of less than three fourths acre (32,500 sq. ft.) or any major subdivision with lots less than one acre in size. Such areas shall be shown on the preliminary and final plats as “ reserved open space/recreation, not for building development” with an indication of ownership. The open space areas shall be accessible by a dedicated access easement at least 30’ in width. Wetlands, Hydric Soils and SFHAs areas may be included in the required open space. Ownership of the open space areas shall be transferred to the development homeowners association or to a public entity or non profit conservation entity for the benefit of the subdivisions property owners. When ownership is not indicated to the homeowners association, evidence of acceptance by the public entity or non profit conservation entity shall be provided with the final plat.



# APPLICATIONS COVER SHEET

Date Application Filed: \_\_\_\_\_

**I. REQUIRED NAMES:**

Applicant	<u>TIOGA, LLC</u>	Owner	<u>TIOGA, LLC</u>
Address	<u>c/o Charles T. Busby</u> <u>PO Box 818</u> <u>Hampstead, NC 28443</u>	Address	<u>same</u> <u>same</u>
Phone	<u>270-8830</u>	Fax	<u>270-8831</u>
Phone	<u>same</u>	Fax	<u>same</u>
Email	<u>charles@gasparoviclaw.com</u>	Email	_____

Legal Relationship of Applicant to Property Owner: Owner

Consultant Name/Company Charles T. Busby, Attorney

Address same as above

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

**II. AFFIDAVIT REGARDING OWNER – APPLICANT RELATIONSHIP:**

Charles T. Busby,  
 I Atty for Owner (owner) and \_\_\_\_\_ (applicant) hereby affirm that an appropriate contractual relationship permitted by the appropriate NC State Codes exists between said Owner and Applicant. Owner and Applicant also affirm that if the owner requests that the application be terminated, staff with comply with Owner's request.

*Charles T. Busby* \_\_\_\_\_  
 (Signature of Applicant) (Signature of Owner)

**III. TYPE OF APPLICATION:** (Please check one)

Board of Adjustment:	Zoning:	Plans:
<input type="checkbox"/> Variance	<input type="checkbox"/> Text Amendment	<input type="checkbox"/> Planned Development Master Plan
<input type="checkbox"/> Appeal	<input type="checkbox"/> Map Amendment	<input type="checkbox"/> Subdivision Preliminary Plat
	<input type="checkbox"/> Home Occupation	<input type="checkbox"/> Final Plat
Board of Commissioners:	<input type="checkbox"/> Special Use Permit	
<input checked="" type="checkbox"/> Appeal	<input type="checkbox"/> Vested Rights Determination	

**GASPAROVIC & BUSBY, PA**  
ATTORNEYS AT LAW

- Offices in Wilmington & Hampstead, NC

Ladd S. Gasparovic  
Charles T. Busby

[charles@gasparoviclaw.com](mailto:charles@gasparoviclaw.com)

14865 US Highway 17 N  
P.O. Box 818  
Hampstead, NC 28443  
Phone: 910-270-8830  
Fax: 910-270-8831

July 14, 2009

Pender County Planning Department  
Attn: Ashley Frank  
PO Box 1519  
Burgaw, NC 28425

Re: Schoolview Subdivision – Denial of Plat Approval  
Appeal to Commissioners

Dear Ashley:

Enclosed you will find a Notice of Appeal on behalf of TIOGA, LLC, owner of the Schoolview Subdivision property from the action taken by the Planning Board on July 7. Also enclosed are your Applications Cover Sheet and a check to Pender County in the amount of \$250.00 for the appeal fee. Please let me know if anything further is needed at this time to perfect this appeal.

Thanks.

Sincerely,



Charles T. Busby

Enclosures

NORTH CAROLINA

PENDER COUNTY

BEFORE THE PENDER COUNTY  
PLANNING BOARD

IN THE MATTER OF THE APPLICATION  
FOR APPROVAL OF THE PROPOSED  
PRELIMINARY PLAT FOR SCHOOLVIEW  
SUBDIVISION

**NOTICE OF  
APPEAL TO THE BOARD  
COUNTY COMMISSIONERS**

TIOGA, LLC, owner of the property referenced above, hereby gives notice of appeal to the Board of Commissioners of Pender County from the action taken by the Pender County Planning Board on July 7, 2009 denying approval of the above-referenced preliminary plat.

The grounds for the appeal are as follows:

1. In denying approval of the preliminary plat, the Board did not follow the applicable provisions of the Pender County Zoning Ordinance, in that it imposed a definition of 'open space' which is not supported by the wording of the Ordinance.
2. In determining whether to approve or deny the plat, the Board failed to follow the Ordinance in that it failed to properly consider the option of 'payment in lieu' as a substitute for the open space required by the Ordinance.
3. In determining whether to approve or deny the plat, the Board considered matters not presented at the hearing.

This 14<sup>th</sup> day of July, 2009.



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Charles T. Busby  
State Bar # 8207  
Attorney for TIOGA, LLC  
P.O. Box 818  
Hampstead, NC 28443  
Phone: 910-270-8830  
Fax: 910-270-8831

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August 5, 2009

Pender County Board of Commissioners  
c/o Pender County Planning Department

Re: Schoolview Subdivision – Payment in Lieu of Open Space

Dear Sirs:

This matter is before the Board on appeal from a ruling by the Planning Board. The Board denied a request by TIOGA, LLC [the developer], for approval of an amended plat of the Schoolview Subdivision. The amended plat provided for less than the required quantity of open space, and the developer proposed that it be allowed to make a payment in lieu of open space. The Board denied the request for acceptance of a payment in lieu. This letter is to state the position of the developer with respect to the calculation of the amount of a payment in lieu of open space.

The Pender County Subdivision Ordinance provides that a certain area of open space must be included in each residential subdivision plan. In this case, the planning staff has calculated that the open space deficit is approximately 30,900 square feet, or roughly 0.71 acre. In cases where there is a deficit, the ordinance includes a provision that a payment may be made in lieu of dedication of the open space. Although the ordinance speaks to the question of what the payment in lieu funds may be used for, it does not address the manner of calculating the amount to be 'paid in lieu'. This leaves the issue open to determination by the best and most reasonable methods available.

Underlying the concept of payments in lieu is the idea that the developer, having designated portions of the property for other uses, has left itself with insufficient land to dedicate to open space. In such cases, the deficit should be addressed by an amount of money which has some reasonable relationship to the cost of providing substitute open space or substitute facilities, as well as some relation to the value of the land which has been designated for other uses. Consequently, the value for purposes of 'payments in lieu' will vary from one development to the next.

Various subdivision ordinances from other counties and municipalities address the amount question in various ways. Most, however, seem to center on the amount of area involved in the deficit, and the reasonable value of that area.

The area in question in this case [approximately 0.71 acre] would be roughly enough to add an additional lot, after allowing sufficient area for a road extension to the added lot.

One approach to valuation would be to calculate the value in terms of the values assigned by the county tax assessor: that is, to use the 'tax value'. The Wake County ordinance uses this approach. 'Tax value' is the value established by the County for taxation purposed pursuant to G.S. 105-283. This statute requires each county to appraise and assess its property at its true value. This statute in effect establishes that, where the county is concerned, the tax value is the true value. The current tax value for this development as determined by Pender County is \$72,016.00 for a total of 16.05 acres, or \$4,487.00 per acre. Using this method, the 'payment in lieu' value of the 0.71 acre in question is \$3,186.00.

Another approach would be to determine the actual value of the 'taking' involved when a developer is required to set aside a portion of the property for open space. The analysis is similar to that used when a public or private utility wishes to acquire an easement over a property, not taking the title to the property, but limiting it to certain uses. The standard seems to be around 40% of the actual value of the land. The dedication of the land to open space would be a taking worth roughly 40% of the value of the land itself. In this case, the developer paid a total of \$399,000.00 for the entire property, which yielded 21 lots, indicating a value of \$19,000.00 per lot. Using the 40% figure, the value of the 'taking' of one lot would be \$7,600.00 dollars.

The New Hanover County ordinance calls for a payment in lieu figure computed from valuation data supplied by the developer and the county tax assessor, including the tax value. Presumably, this approach would yield a result somewhere between the figures suggested above.

Based on all of the information available, and with no other standard set out in the Pender County Ordinance, TIOGA, LLC would contend that the proper amount for the payment in lieu of open space in this case would be between \$3,186.00 and \$7,600.00.

Sincerely,  
  
Charles T. Busby

residents. In determining the size of a subdivision for the purposes of this subsection, the board shall consider the entire project developed on a single tract or contiguous multiple tracts under common ownership, regardless of whether the subdivision is constructed in phases or stages. The developer of any subdivision that is exempt from providing on-site recreation or open space shall pay a fee to the City in lieu thereof, to be used by the City to acquire recreation areas serving the development within the immediate area of the subdivision. Such fee shall be determined and paid as provided in the "Payments in Lieu of Dedication" provisions of this section; or

- c. The subdivision review board may allow the development to provide a combination of some open space and pay a fee to the City in lieu thereof when conditions exist where providing the entire amount of required open space is not reasonable and the recreational needs of the development can be adequately met. The maximum amount of open space that can be considered for payment in lieu is twenty thousand (20,000) square feet. The developer of any subdivision permitted to develop under this option shall pay a fee in lieu thereof, to be used by the City to acquire recreation areas serving the development within the immediate area of the subdivision. Such fee shall be determined and paid as provided in the "Payments in Lieu of Dedication" provisions of this section.

(d) *Standards for park, recreation and open space areas.* Except as otherwise approved by the appropriate governing body, all park, recreation and open space areas shall meet the following criteria:

- (1) *Unity.* The dedicated land shall form a single parcel of land, whether or not the subdivision is developed in phases or sections, except where it is determined by the board, that two (2) or more parcels would be in the best interests of the residents of the subdivision and the public; and in such case, the board, may require that such parcels be connected.
- (2) *Usability.* At least one-half of the total land dedicated must be (1) outside of wetland areas under the jurisdiction of the Federal and State regulatory agencies and (2) usable for active recreation. Areas set aside to meet the requirements of the Conservation Overlay District can only be credited for one-half of the area required for Passive Recreation. Tidal marshes cannot be counted to satisfy the Recreational Space Requirements.
- (3) *Shape.* The portion of dedicated land to be used for active recreation shall be of such a shape to be usable for active recreational facilities including but not limited to tennis courts, racquetball courts, swimming pools, exercise rooms, clubhouses, athletic fields, basketball courts, swings, slides and play apparatus.
- (4) *Greenways.* If open space is a greenway, the land shall be a continuous linear parcel through the subdivision of at least 30 feet in width.

recommendations concerning the request to the board at its next scheduled meeting.

- (3) *Amount of payment.* If the board approves a payment in lieu of dedication, the amount of such payment shall be the product of the number of acres to be dedicated as outlined in subsection (b) above, and the average fair market value of the land being subdivided at the time of the submission of the preliminary subdivision plan. The board shall determine the average fair market value of the land based on the value of the land for property tax purposes, the information submitted by the subdivider and other relevant information.
  - (4) *Use of payments in lieu of dedication.* All monies received by the City pursuant to this section shall be used only for the acquisition or development of recreation, park, or open space areas that will benefit the new subdivision residents.
  - (5) *Required payment in lieu of dedication.* In the event the board finds that a land dedication does not meet the long range plans of the City it shall require payment in lieu of a dedication.
  - (6) *Time of payment.* If a payment in lieu of dedication is authorized, such payment shall be made before recording the final plat for the subdivision. If a subdivision is developed in phases, a payment relating to each phase must be made prior to the recording of a final plat for each phase.
- (g) *Flexibility in administration authorized.*
- (1) The requirements set forth in this subsection concerning the amount, size, location and nature of park, recreation and open space areas to be provided in connection with residential developments are established by the City Council as standards that preemptively will result in the provision of that amount of recreational facilities and open space that is consistent with officially adopted City or county plans. The City Council recognizes, however, that due to the particular nature of a tract of land, or the nature of the facilities proposed for installation, or other factors, the underlying objectives of this section may be achieved even though the standards are not adhered to with mathematical precision. Therefore, the board is authorized to permit minor deviations from these standards whenever it determines that:
    - a. the objectives underlying these standards can be met without strict adherence to them;
    - b. because of peculiarities in the developer's tract of land or the facilities proposed it would be unreasonable to require strict adherence to these standards.

- (2) Whenever the board authorizes some deviation from the standards set forth in this section, the official record of action taken on the development application shall contain a statement of the reasons for allowing the deviation.

**Sec. 18-384. Property owner associations.**

(a) Final plans shall not be approved until the subdivision review board or chairman of the subdivision review board has determined that adequate provisions have been made through legal covenants and restrictions which shall govern a property owners' association, or through other legal agreements, that the responsibility for maintenance of streets, utilities, storm water management facilities, drainage ditches or swales, or other area designated as private areas.

(b) Required conditions of property owners associations. Property owners associations or similar legal entities that shall own and maintain park, recreation and open space areas, streets, utilities, storm water management facilities, drainage ditches or swales, or other areas designated as private areas or as common areas shall be established in such a manner that:

- (1) Provision for the establishment of the association or similar entity shall be made before any lot in the development is sold or any building occupied.
- (2) Membership must be mandatory for each property owner within the subdivision.
- (3) The association shall be responsible for the liability insurance, property taxes and the maintenance of the areas.
- (4) Any sums levied by the association that remain unpaid shall become a lien on the individual property owner's property.
- (5) If all or any portion of the property, held by the association is being disposed of, or if the association is dissolved, the passive and active recreation and open space shall be first offered for dedication to the City.
- (6) The right of use of the passive and active recreation or open space and all private improvements shall be guaranteed to each resident of the subdivision.

The declaration of covenants and restrictions that will govern the association shall be submitted for review by the city attorney and recorded prior to the recording of any final plats for the subdivision and reference to the deed book and page provided on the plat.

(c) Property owners' associations shall be responsible for continuing upkeep and proper maintenance of all private infrastructure facilities and common areas within the respective subdivision.

**Sec. 18-385. Reservation of public sites.**

It is recommended that subdividers reserve sites for public facilities, such as schools and fire stations, and to provide the City an opportunity to buy such sites at the fair market value for a period of six (6) months from the date of approval of the Preliminary Plat.

**Sec. 18-386. through Sec. 18-396. Reserved.**

**DIVISION III. MINIMUM STANDARDS OF DESIGN**

**Sec. 18-397. Generally.**

- (a) The design standards for improvements made in a subdivision shall conform to:
- (1) The minimum design standard contained within this article and any amendments made thereto.
  - (2) The "*Technical Standards and Specifications Manual, City of Wilmington*," then in effect.
  - (3) Any additional requirements made by an authoritative public agency that can substantiate its request; or
  - (4) Any combination of the above references that will provide for and maintain the quality of development which ensures good engineering practices.
- (b) Whenever topographic or other physical conditions of the site require more stringent engineering practices or standards, such standards and practices shall be utilized and followed in the design of a subdivision. The subdivision review board may waive those standards that place a physical, but not an economic, hardship on the subdivider due to existing topographic or other physical conditions of the site.
- (c) No final plat shall be submitted until all required improvements have been completed by the subdivider and approved by the City engineer or unless a surety is offered in accordance with Sec. 18-366. Standards; surety.

**Sec. 18-398. Applicability of minimum design standards.**

The *Technical Standards and Specifications Manual* shall be the prime source of design standards for improvements made to subdivisions. The following listing gives the major topics covered by the manual:

- (a) Asphalt paving.
- (b) Bikeways.

- (c) Concrete.
- (d) Construction materials.
- (e) Curb and gutter.
- (f) Erosion and sedimentation control.
- (g) Excavation, grading and backfill.
- (h) Public rights-of-way and easements.
- (i) Public transportation.
- (j) Refuse collection.
- (k) Sanitary sewer collection system.
- (l) Sidewalks.
- (m) Storm drainage.
- (n) Streets.
- (o) Traffic engineering.
- (p) Water distribution systems.

**Sec. 18-399. Alternate design and construction methods, use and materials.**

The design and construction standards, as specified herein and in the *Technical Standards and Specifications Manual*, shall be the minimum requirements. These minimum requirements are not intended to prevent alternate design, construction methods, or construction materials not specifically prescribed herein, provided any such alternate has been approved and its use authorized by the city engineer. The city engineer shall approve any such alternate, provided he finds the proposed design is satisfactory and complies with the minimum requirements as specified herein and that the material, method, or work offered is, for the purpose intended, at least the equivalent of the minimum requirements as specified herein. The city engineer shall require that sufficient evidence or proof is submitted to substantiate any claim that may be made regarding an alternate method, use or material. If, in the opinion of the city engineer, the evidence and proof are not sufficient to justify approval, the alternate shall be denied.

**Sec. 18-400. Subdivider's responsibility.**

While the *Technical Standards and Specifications Manual* has been compiled and published for the convenience of the public, the subdivider shall retain the responsibility to design and



# New Hanover County Subdivision Ordinance



Adopted by the New Hanover Board of  
County Commissioners on October 18, 1965  
Reprinted and Updated November 2008

(5) Procedure for Dedication of Land:

(a) Designation of Land to Be Dedicated

Subdividers shall designate on the preliminary subdivision plan, the area or areas to be dedicated pursuant to this section.

(b) Review of Land to Be Dedicated

Upon receipt of the preliminary subdivision plan, the planning department shall submit a copy thereof to the appropriate governing agency for review. The appropriate governing agency shall submit any and all recommendations concerning the land to be dedicated to the Technical Review Committee at its next scheduled meeting.

(c) Ownership

The type of ownership of land dedicated for park, recreation or open space purposes shall be selected by the owner, developer, or subdivider, subject to the approval of the appropriate governing agency. Provided, however, any of such areas included in the master parks plan shall be dedicated to the city or county. The type of ownership may include, but is not necessarily limited to, the following:

1. The city or county, subject to the acceptance by the Governing Body;
2. Other public jurisdiction or agencies, subject to their acceptance;
3. Property owner, condominium or cooperative associations or organizations; or
4. Shared, undivided interest by all property owners in the subdivision.

(6) Payments in Lieu of Dedication:

(a) General Provisions

When the appropriate governing agency determines (upon the recommendation of the Planning Department) that the park, recreation and open space needs of a subdivision can also be adequately met by capital facilities constructed or to be constructed on county-owned property or property to be acquired by the county within a reasonable time that is located close enough to such subdivision to reasonably serve its residents, the appropriate governing agency may authorize the subdivider to make a payment to the county in lieu of dedication. The appropriate governing agency may also authorize a combination dedication and partial payment in lieu of dedication when such is determined to be in the best interest of the citizens of the area to be served. Any public dedication is subject to review and acceptance by the appropriate governing body.

(b) Procedure

The subdivider shall include with the application for preliminary plan approval, a letter requesting approval to make a payment in lieu of dedication. The letter shall include the proposed per acre value and the basis for the determination of such value. Upon receipt of the preliminary subdivision plan, the planning department shall submit a copy thereof with the letter requesting a payment in lieu of dedication to the appropriate governing agency. The staff shall submit any recommendations concerning the request to the Technical Review Committee at its next scheduled meeting.

(c) Amount of Payment

If the County approves a payment in lieu of dedication, the amount of such payment shall be the product of the number of acres to be dedicated as outlined in subsection (b) above, and the average fair market value of the land being subdivided at the time of the submission of the preliminary subdivision plan. The Tax Department shall determine the average fair market value of the land

~~based on the value of the land for property tax purposes, the information submitted by the subdivider and other relevant information.~~

(d) Use of Payments in Lieu of Dedication

All monies received by the county pursuant to this section shall be used only for the acquisition or development of recreation, park, or open space areas that will benefit the new subdivision residents.

(e) Required Payment in Lieu of Dedication

In the event the County finds that a land dedication does not meet the long range plans of the city or county it shall require payment in lieu of a dedication.

(f) Time of Payment

If a payment in lieu of dedication is authorized, such payment shall be made before recording the final plat for the subdivision. If a subdivision is developed in phases, a payment relating to each phase must be made prior to the recording of a final plat for each phase.

(7) Flexibility in Administration Authorized:

(a) The requirements set forth in this subsection concerning the amount, size, location and nature of park, recreation and open space areas to be provided in connection with residential developments are established by the County as standards that preemptively will result in the provision of that amount of recreational facilities and open space that is consistent with officially adopted city or county plans. The County recognizes, however, that due to the particular nature of a tract of land, or the nature of the facilities proposed for installation, or other factors, the underlying objectives of this article may be achieved even though the standards are not adhered to with mathematical precision. Therefore, the Technical Review Committee is authorized to permit minor deviations from these standards whenever it determines that: (i) the objectives underlying these standards can be met without strict adherence to them; and (ii) because of peculiarities in the developer's tract of land or the facilities proposed it would be unreasonable to require strict adherence to these standards.

(b) Whenever the County authorizes some deviation from the standards set forth in this section, the official record of action taken on the development application shall contain a statement of the reasons for allowing the deviation. (3/03)

52-8 Fire Hydrants

The sub-divider shall be responsible for providing adequate fire protection for the subdivision through the provision of fire hydrants. These fire hydrants shall be constructed to specifications established by the county Fire Marshall, based on NFPA standards. Hydrants shall be required as follows:

(1) Subdivision with central water system:

For any major subdivision served by central water system meeting State requirements (Section .2101 Title 10 - Chapter 10D NCAC) for fire hydrants, the sub-divider shall be required to install a fire hydrant at the entrance to the subdivision and additional hydrants equal either to the total linear feet of roadway divided by 1000 or the total number of lots/units divided by 40, whichever is greater. These additional hydrants shall be spaced evenly through the subdivision in order to provide maximum fire protection coverage, as determined by the county Fire Marshall. In no case shall a lot/unit be located more than 500 feet from a hydrant. (3/03)

**Article 8 Subdivision Design and Improvements**  
8-38 Recreation Area Land Contributions

**8-38 Recreation Area Land Contributions**

**8-38-1 Purpose**

Residential development generates demand for recreation space and facilities, just as it generates demands for roads, utilities, and other community facilities. Whereas the county bears the responsibility for meeting most of the demand for regional recreation space and facilities, residential developments should themselves help meet at least the need for neighborhood recreation generated by residents of the development. This section is intended to ensure that each subdivision helps meet the recreation area demands associated the subject development.

**8-38-2 Amount and Form of Contribution**

- (A) A subdivision must contribute to providing a recreation area to meet the neighborhood recreational needs of its future residents. The minimum amount of recreation area deemed sufficient to meet the neighborhood recreational needs of a subdivision's residents, and thus required to meet this contribution requirement, is 1/35 acre (1,245 square feet) of land per lot.
- (B) The Planning Director and Planning Board are authorized to specify which of the following forms of contribution will be required of the subdivider:
- (1) dedication of the required land area for public recreational use;
  - (2) reservation of the required land area for recreational use by subdivision residents;
  - (3) payment to the county of funds equal to the value of the required acreage (to be used to acquire land for public recreational use); or
  - (4) a combination of dedication, reservation, and/or payment.
- (C) The form of contribution required must be in accordance with the requirements and limitations of subsection 8-38-3.

**8-38-3 Criteria for Determining Form of Contribution**

**(A) Dedication of Land**

- (1) When the subdivision site contains land that could be used to establish, expand, or extend a public park, greenway, or other recreation area identified in an adopted county or municipal plan, the subdivision must include dedication of such land for public recreational use, at least to the extent necessary to meet the minimum recreation area contribution requirement set forth in subsection 8-38-2.
- (2) Subdividers are encouraged to use the cluster and open space subdivision regulations (See Sec. 5-12) to dedicate any additional land on a site planned for public recreational use.
- (3) Dedication of off-site land planned as public recreation area may also be used to meet the minimum contribution requirement, provided such land is located to be conveniently accessible to subdivision residents and has not been reserved to meet the recreation area contribution requirement for another subdivision.

**Article 8 Subdivision Design and Improvements**  
8-38 Recreation Area Land Contributions

**(B) Payment of Funds to County**

- (1) To the extent that the minimum recreation area contribution requirement set forth in 8-38-2 will not be met through required dedication of land in accordance with paragraph 8-38-3(A), the county may require that a subdivision satisfy the land contribution requirement, in whole or in part, by paying funds to the county for its use in acquiring public recreation area that can meet the neighborhood recreational needs of subdivision residents.
- (2) The amount of the payment must be equal to the value of the required land area contribution (as set forth in 8-38-2) that is proposed to be contributed via a payment, based on the average per-acre assessed land value of the parcel being subdivided (from the county tax rolls).
- (3) The subdivider must make the payment before approval of a record plat for the subdivision, provided that payments may be phased in accordance with the approved phasing of the subdivision.

**(C) Reservation of Land**

To the extent that the minimum recreation area contribution requirement set forth in 8-38-2 is not required to be met through dedication of land or payment of funds in accordance with paragraph 8-38-3(A) and paragraph 8-38-3(B), the county may allow the subdivision to meet the land contribution requirement, in whole or in part, by reserving land within the subdivision for recreational use by subdivision residents. This option may be allowed only if, and to the extent that, the county determines that doing so would contribute more to meeting the neighborhood recreational needs of subdivision residents than the county's use of funds paid in accordance with paragraph 8-38-3(B). Such determination must be based on the following factors:

- (1) the types of recreation facilities subdivision residents will need, considered in the context of what public recreation areas and facilities exist or are planned in the vicinity;
- (2) whether there is a planned or existing public recreation area in the vicinity that could be established, expanded, or extended to provide a site for the types of recreation facilities needed by subdivision residents;
- (3) how convenient and accessible any such planned or existing public recreation areas are to the subdivision;
- (4) whether the proposed reserved recreation area would be suitable (in size, shape, and physical characteristics) as a site for the types of recreation facilities needed by subdivision residents; and
- (5) the extent to which the subdivision proposes to improve the proposed reserved recreation area with the types of recreation facilities needed by subdivision residents.

**8-38-4 County Use of Recreation Area Funds**

- (A) The county must ensure that any funds paid to the county to satisfy the recreation area contribution of this section will be used only to acquire land for the establishment, expansion, or extension of public parks, greenways, or other recreation areas that will serve the neighborhood recreational needs of residents of the subdivision. It must do so by

**PLANNING STAFF REPORT**  
**Schoolview Major Subdivision** (formerly Scott Gerow Subdivision)  
**Planning Board Hearing**

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**SUMMARY:**

**Hearing Date:** July 7, 2009  
**Applicant:** Southwind Engineering  
**Property Owner:** Scott Gerow  
**Case Number:** PP 09-05-05-01R Southwind

**Development Proposal:** Revision of a Planning Board approved major subdivision. The proposal consists of 21 lots to be on 15.68 acres. This proposal is considered an amendment to the previously approved Preliminary Plat for Scott Gerow Subdivision now known as Schoolview Subdivision. This item was tabled at the May 5, 2009 Planning Board.

**Location and Land Use:** The proposed subdivision is located off of NC Highway 133, across from Cape Fear Elementary School, in Rocky Point, NC. The surrounding area is low density residential.

**Zoning District of Property:** The property is currently zoned R-20, Residential District.

**Staff Recommendation:** Conditional approval status may be appropriate based on submission of mandatory items for final preliminary plat approval.

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**Project History:**

Southwind Surveying and Engineering originally submitted the application for Scott Gerow Subdivision on May 1, 2007. The Planning Board tabled the item to the June 5, 2007 meeting for further review. At the June 5<sup>th</sup>, 2007 Planning Board meeting, the 21 lot subdivision was approved. The details submitted in that meeting were as follows (see attached staff report and minutes from prior meeting):

1. All utilities would be underground
2. All lots would utilize individual septic systems
3. The street system (two cul-de-sacs) would stub-out for the purpose of future interconnectivity
4. Only one (1) driveway permit at the entrance
5. Open space would equal 3.53 acres

This revision was tabled at the May 5, 2009 Planning Board Meeting, in order to solicit further information from applicable departments on the legality and function of the open space and drain field/easement combination.

**Detailed Proposal Discussion:**

The applicant is requesting to amend the previously approved plan to include off-site septic systems instead of the individual septic systems as approved. Sixteen (16) of the off-site septic fields would be located along the western boundary of the subdivision accessible by a 30 foot access easement. The remaining off-site septic fields would be located adjacent Lot 21 and Lot 1. Lot 21 and Lot 1 would have on-site septic. The off-site septic for Lots 2, 19 and 20 would be separate special purpose lots, meeting the Pender County Subdivision Ordinance requirements for Special Purpose Lots.

The minimum proposed residential lot size is 20,000 square feet meeting the district requirement of 20,000 square feet per lot in the R-20, Residential district. 2.35 acres of open space is required to meet the Pender County Subdivision Ordinance (15%) Open Space requirement. The applicant is proposing that 1.64 acres of unencumbered open space and .87 acres (or approximately 30,927.6 square feet) of encumbered open space (please see Open Space Delineation Map), totaling of the 2.51 acres of open space. The open space will be accessible via Recess Lane.

All lots are proposed to be served by County water and individual off-site septic systems, subject to review and approval from Pender County Utilities and Environmental Health, respectively. All utility services will be underground.

The roads serving the subdivision will be dedicated public and the North Carolina Department of Transportation has approved the road plan. Recess Lane and Schoolview Drive will stub-out providing connectivity for future development.

A Homeowners Association will be established for maintenance of common areas, and to aid in administrative issues as applicable, along with Sewer Maintenance Agreement (Tri-Party Agreement) and Declaration and Grant of Sewer Easement. All applicable state and federal agency permits including stormwater, sediment and erosion control, and wetlands will need to be amended to the new plan. If no amendment is required, verification from the appropriate agency regarding such will be required.

#### **Staff Recommendation:**

Planning Staff is submitting the Preliminary Plat layout for Planning Board review. The submission as presented tonight is sufficient for Planning Board disposition.

Final Preliminary Approval will not be effective until all requirements of preliminary submission as prescribed in the subdivision ordinance are complete, the submission shows compliance with all subdivision and zoning requirements and the Director has signed a copy of the Preliminary Plat. **The approval is also subject to the following conditions, as applicable:**

#### **Mandatory Items For Final Preliminary Plat Approval:**

1. All requirements of the Pender County Subdivision Ordinance for Preliminary Plats, including items 1 thru 13 pages 22, 23 & 24 have been submitted to and approved by the Director.
2. The submission and plat complies with all requirements of the Pender County Subdivision Ordinance, Zoning Ordinance, other Pender County Ordinances and State Regulations.
3. Total and usable lot areas and required set back lines must be shown for each lot.
4. Public Water Systems
  1. Construction plans sealed by a registered engineer, as approved by DENR and Pender County Utilities Department;
  2. Acceptance of operation and maintenance of the system by Pender County;
  3. Certification that the system will be dedicated to Pender County.
5. Covenants and Restrictions that ensure ownership, operation, maintenance and replacement of drain fields and system lines located on common open space held in trust by the duly established Homeowner's Association as established under the provisions of this ordinance.
6. Location of existing monuments and control points must be shown on the property.
7. The plat should clearly designate **Wetlands, Areas of Environmental Concern, CAMA Setbacks, Flood Prone Areas** (as shown on current FEMA maps), marshes, swamps, ponds, lakes, streams,

- and any other natural features on or affecting the site. If no Wetlands, AEC's or Flood Prone Areas exist on the site a note to that affect shall appear on the plat.
8. The plat must clearly designate Hydric Soils (Bohicket Silty Clay Loam, Carteret Fine Sand, Chewacla Loam, Croatan Muck, Dorovan Muck and Muckalee Loam) as shown on the NRCS county soil survey maps or from a Soil Suitability Analysis (required and received) prepared by a licensed Soil Scientist. If no hydric soils exist on the site a note to that affect shall appear on the plat.
  9. Storm water management features must show all proposed storm water retention facilities including drainage easements, piping, culverts, swales, ditches, etc.
  10. The plat must indicate the location and dimensions of existing and proposed right-of-ways & easements for utility, drainage or other facilities or structures. Easements with a width of 20' from center or 10' from the edge of all drainage facilities included on required drainage plans shall be shown for any such facilities not in public street right-of-way.
  11. When any development proposes private streets a description of the method to provide Pender County Emergency Service personnel and vehicles immediate access shall be submitted.
  12. An approved NCDOT driveway permit for connection to Washington Acres Road (SR 1582) shall be submitted to Planning.
  13. A drainage plan that will include all portions of the development shall be submitted. This plan shall be prepared and sealed by a registered surveyor or engineer. The plan and facilities shall provide for a drainage system for these areas that will accommodate the ten-year storm event without flooding or substantial ponding of water in the areas included in the plan. The plan must also accommodate any discharge from properties in upland portions of the drainage basin that flows through the property for the same storm event for the type development for which that property is zoned. The boundary of any drainage area on a portion of the site and/or upland from the site and drainage areas between storm water discharge points from the site to the recipient perennial stream shall be shown on a map (copy of 7.5 min. USGS Quad or similar map). Any drainage facility receiving storm water discharge from the development shall have the capacity to carry the anticipated storm water flow from areas that discharge through them for the 10 year storm event from the point of discharge at the development to the recipient perennial stream without overflowing their banks. The location, size and/or capacity of all structures included in the drainage system and receiving discharge from the development to the recipient perennial stream shall be shown on the plan and calculations used in designing the drainage system shall be submitted in a legible format. This plan may be included in the street and drainage plan, storm water management plan or on the preliminary plat, as long as the design professional certifies that the specific drainage plan submitted complies with these requirements and the information required is shown or submitted as noted.
  14. Sediment & Erosion Control Plans as approved by Land Quality (with letter of approval) with a copy to Pender County planning.
  15. Storm water management plan as approved by the Water Quality Division with a letter of approval sent to Pender County Planning.
  16. Approval of Wetlands Delineation by USACE with a copy provided to Pender County Planning as required.
  17. Wetlands fill authorization or permit if construction or fill in wetlands is involved with a copy to Pender County Planning as required.
  18. Subdivision roads will be named and approved by an EMC representative within 30 days of Planning Board approval and prior to Planning department approval of the Preliminary Plan.
  19. A draft copy of the restrictive or protective covenants applicable to the Planned Development shall be submitted to the Planning Board before final plat approval.
  20. Unless waived by the Planning Board, the developer shall submit the proposed plans for vegetation preservation and land clearance in the Planned Development.

21. A restrictive easement with a note for individual maintenance of buffers shall be provided on the plat and recorded in the homeowners' association documents.
22. The revised plat for this development should be resubmitted within 30 days of approval by the Planning Board with all map and plan changes for approval by the Director
23. Upon approval of the Final Preliminary Plat, the development may obtain a zoning determination in order to conduct environmental testing and to obtain Environmental Improvement/Construction Permits.
24. Except for clearing and grubbing associated with surveying and testing required to obtain Preliminary Plat approval, site disturbance and construction can not begin prior to obtaining Final Preliminary Plat approval.
25. Upon approval of the Final Preliminary Plat, the development may obtain a zoning determination in order to conduct environmental testing and to obtain Environmental Improvement/Construction Permits.
26. Except for clearing and grubbing associated with surveying and testing required to obtain Preliminary Plat approval, site disturbance and construction can not begin prior to obtaining Final Preliminary Plat approval.
27. Lots (if any) found to be unsuitable for septic systems will be labeled as unbuildable in accordance with Pender County subdivision requirements on the Final Plat.

**Additional Items Recommended For Inclusion By The Planning Board:**

1. When any portion of the development is in a Special Flood Hazard Area, as defined in the Pender County Flood Ordinance, as amended, and set out in the FEMA Rate Index Maps, one (1) permanent monument in each subdivision is required to have its elevation recorded on the final plat. **\*\*PLEASE NOTE\*\*** - New Pender County FIRMS are now available for review and are required to be used as best available data.
2. Base Flood Elevation(s) shall be determined and shown along with the SFHA boundary on the plat. **\*\*PLEASE NOTE\*\*** - New Pender County FIRMS are now available for review and are required to be used as best available data.
3. The subdivision shall not block or obstruct the natural drainage of any adjoining area.
4. Permanent dead end streets (cul-de-sacs) or temporary dead end (stub) streets shall be no longer than 1,000 ft. unless it is demonstrated by the developer that the configuration of the property prevents its development without longer streets to provide access to the lots and common area to be subdivided. Temporary dead end or stub streets shall provide turn around capabilities to meet NCDOT requirements. The Cul-de-sac end shall be a bulb type with minimum radii as follows: RW = 50', Pavement = 37' to pavement edge.
5. Sight easements as required in the NCDOT Secondary Roads Standards shall be provided at all street intersections.
6. All utility lines located in a public or private street shall meet NCDOT requirements for encroachment of such lines.
7. All utility lines including water and sewer lines that are located in any public or private street shall be owned, operated and maintained by a public utility or a public entity.

**Informational Notes for Developer:**

1. A copy of the preliminary plat signed by EMC representative approving the street names will be required to be submitted within 30 days of preliminary plat approval by the Planning Board and before final Preliminary Plan approval by Planning Department.
2. Any reduction in open space, if applicable to this subdivision, will require planning board approval.

3. The applicant should be fully aware of the certification and guarantee requirements for roads, drainage plans, facilities and other improvements in the development. The certification forms are found on the Pender County Website. All documented certifications must be delivered to Planning Department prior to Final Plat Approval.
4. Any changes in the development name or road names after approval by the planning board will require an additional review fee with lot assessments to be paid in full.

#### **Mandatory Items For Final Plat Approval**

- 1) For the public road, one of the following items shall be submitted:
  - a) Verification of acceptance to the NCDOT maintained state road system or;
  - b) A current certification by the NCDOT District Engineer that said subdivision road system has been completed, inspected, is in compliance with relevant NCDOT residential road standard requirements and will be accepted as a state maintained road under specified qualifying conditions acceptable to Pender County or;
  - c) The following shall be submitted:
    1. A certified estimate of the cost to construct the entire road system as well as a certified estimate of the cost to complete construction of the streets to NCDOT standards, prepared, signed and sealed by a licensed engineer,
    2. Performance guarantee (performance bond, letter of credit or all cash escrow) for the cost of completion of all streets not certified as complete and acceptable as state maintained roads by the NCDOT District Engineer.
- 2) A Defects Guarantee (performance bond, letter of credit or all cash escrow) will be provided for all streets in the entire development that have not been accepted for maintenance by NCDOT. The Defects Guarantee will be in the form of the same instruments as permitted for the Performance Guarantee and will be provided in an amount equal to at least 50% of the original construction cost estimate for the streets in question. The Guarantee shall provide a written warranty against defects in the streets until such time they are accepted for maintenance by NDOT.
- 3) The Defects Guarantee shall be in affect until all streets meet NCDOT's residency requirements and have been accepted for maintenance by NCDOT.
- 4) All requirements of the Pender County Subdivision Ordinance for Preliminary Plats, including items 1 thru 13 pages 22, 23 & 24 have been submitted to and approved by the Director.
- 5) The submission and plat complies with all requirements of the Pender County Subdivision Ordinance, Zoning Ordinance, other Pender County Ordinances and State Regulations.
- 6) Improvement Permits must be issued for each lot to be developed with a traditional onsite septic as shown on the applicant's soil suitability analysis/improvement permit.
- 7) Off-site septic drain fields require construction plans sealed by a registered engineer, as approved by DENR. A detailed description of any proposed off-site septic drainage fields and system operation, maintenance and replacement procedures and processes to serve all lots that are not suitable for traditional on site drain fields, along with a map showing the proposed location of the off site components of the system, including lines must be submitted.
- 8) Water System Requirements:
  1. Construction plans sealed by a registered engineer, as approved by DENR,

2. Approval and acceptance of construction, operation and maintenance of the system by Pender County,
3. Certification that the system will be owned by Pender County with conditional acceptance of ownership.

9) Sewer System Requirements:

1. No final preliminary plat will be approved unless waste water treatment is sufficient in size and capacity to service every approved site and use.
2. Construction plans sealed by a registered engineer, as approved by DENR, for a system that provides tertiary treatment with advanced treatment capabilities that can be integrated into a regional wastewater treatment system in the future,
3. Approval by Pender County Utilities and Environmental Health,
4. Acceptance of operation and maintenance of the system by a licensed Public Utility,
5. Certification that the system will be owned by a Public Utility with conditional acceptance of ownership.

10) The location of street signs should be provided for all proposed streets.

11) Certifications and guarantees for roads, drainage plans, facilities and other improvements in the development are requirements of Final Plat approval. Planning staff will assist in this process. All documented certifications and guarantees must be delivered to Planning Department prior to Final Plat Approval.

12) No Final Plat will be approved unless and until all infrastructure and site improvements are constructed and installed in a workmanlike manner consistent with generally accepted industry standards and perform the function for which they were permitted, designed and constructed.

**GASPAROVIC & BUSBY, PA**  
ATTORNEYS AT LAW

- Offices in Wilmington & Hampstead, NC

Charles T. Busby

[charles@gasparoviclaw.com](mailto:charles@gasparoviclaw.com)

14865 US Highway 17 N  
P.O. Box 818  
Hampstead, NC 28443  
Phone: 910-270-8830  
Fax: 910-270-8831

June 29, 2009

Pender County Planning Department

Re: Schoolview Subdivision – Open Space

Dear Sirs:

This letter will address the question of the open space requirements for the above-referenced subdivision. The matter of approval of the subdivision will be on the agenda for the Planning Board at its July 7 meeting. This letter will set forth the position of the developer, TIOGA, LLC.

This is a subdivision encompassing a gross area of 16.083 acres. Under the provisions of the Pender County Subdivision Ordinance, 15% of this area must be set aside for "open space". In this particular instance, the open space allocation would need to be at least 2.412 acres. According to the current preliminary plat, a total of 3.52 acres has been set aside for open space, indicating a surplus of 1.11 acres. A portion of the open space [1.12 acres] has been designated for use as off-site wastewater drain fields for 16 of the lots in the subdivision. If the portion used as drain fields is subtracted from the total open space, the remainder is within 1/100<sup>th</sup> of an acre of the amount required by the ordinance, which would constitute substantial compliance with the ordinance.

Because of the configuration of the proposed drain fields, a question has arisen as to whether the spaces between the designated drain fields can be included in the calculation of open space available to meet the requirements of the ordinance. The drain fields are roughly 65x53 feet each [0.07 acre], but are separated by buffer areas roughly 20 feet wide which are needed in order to meet the requirements for separation of the fields. The question is whether these spaces count as 'open space' under the ordinance.

The definition of 'open space' as set out in the ordinance is as follows:

*Open Space – an area that is left in its natural state or maintained for passive or active recreation activities, is typically void of buildings other than recreation related buildings and is dedicated to public use, owned by a homeowner's association or specifically and clearly reserved for the benefit of the residents of the subdivision.*

Prior to addressing the other aspects of the questions, it should be noted that the developer will deed the area in question to the homeowners association for the use of the residents. The question at hand relates to the other requirements for open space, and specifically whether the areas between the drain fields are open space.

The definition states in relevant part that the open space is an area left in its natural state or maintained for passive or active recreation activities. The position of TIOGA, LLC is that the areas in question will be left in their natural state [subject to requirements that they be mowed], that they will be void of buildings, and that they will be available for use by the residents. Consequently, unless something is added to the ordinance as written, the areas in question meet the definition and should be included in the calculation of open space allocation. There are no dimensional requirements stated in the definition, all of the areas are contiguous to other areas of open space, and, although there is no definition of the term 'passive recreational use', there is nothing planned for the adjoining drain field areas which would prevent the use of these spaces for active or passive recreational use. Consequently, it is the position of the developer that the proposed space meets both of the alternative requirements of open space. The concern seems to be that, because of the fact that the open spaces in question are between drain fields, they should not qualify as 'open space' under the ordinance. The wording of the ordinance itself, however, does not suggest or support these concerns.

As a practical matter, although the physical location of the drain fields will probably be designated by ground level markers [similar to surface level yardage markers on the fairways of golf courses], there will be nothing on the ground which would prevent the use of these drain fields, along with the other adjoining areas of open space, for any number of active or passive recreational activities. Any physical differentiation between the areas within the drain fields and the areas between the drain fields will be almost entirely subsurface, giving little means of distinguishing one from the other. Since subsurface structures would not in themselves interfere with the ordinance's definition of open space or with the use of the area for recreation, any open, adjacent areas should clearly fall within the definition.

In summary, it is the position of TIOGA, LLC that the areas between the proposed wastewater drain fields as shown on the preliminary plat meet all of the requirements of 'open space' as that term is defined in the ordinance, and that these areas can be used in connection with or in addition to the drain field areas themselves to provide space for many and varied active and passive recreational uses. Contrary contentions or additional requirements, which would have to be based on standards not set forth in the ordinance, should not be imposed on the developer.

Sincerely,

*Charles T. Busby*

Charles T. Busby

**GASPAROVIC & BUSBY, PA**  
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Fax: 910-270-8831

June 29, 2009

Pender County Planning Department

Re: Schoolview Subdivision – Payment inLieu

Dear Sirs:

This letter will address the possibility that a payment in lieu of open space may be required for the above-referenced subdivision. The position of the developer, TIOGA, LLC, is that the open space requirements have been met and that no payment in lieu is appropriate. However, in the event that the question arises, the developer would like to state its position on the calculation of the amount of such a payment if it becomes necessary.

Although the open space allocated to this subdivision [3.52 acres] exceeds the amount required [2.412 acres] by 1.11 acres, the portion of the open space [1.12 acres] designated for use as off-site wastewater drain fields exhausts this surplus. If the portion used as buffer areas between the drain fields is subtracted from the total open space [a position which the developer has contested in my prior letter], staff has calculated that the open space deficit will be 30,900 square feet, or roughly 0.71 acre.

The subdivision ordinance provides that, in cases where a deficit exists, a payment may be made in lieu of dedication. Although the ordinance speaks to the question of what the payment in lieu funds may be used for, it does not address the manner of calculating the amount to be 'paid in lieu'. This leaves the issue open to negotiation.

Underlying the concept of payments in lieu is the idea that the developer, having designated portions of the property for other uses, has left itself with insufficient land to dedicate to open space. In such cases, the deficit should be addressed by an amount of money which has some reasonable relationship to the value of the land designated for other uses. Consequently, the value for purposes of 'payments in lieu' will vary from

one development to the next, depending on the amount of the deficit, the configuration of the development, and the use being made of the land for which the payment in lieu is made.

In this particular instance, the developer has maximized the amount of land available for residential development by configuring the lots with offsite wastewater disposal system drain fields located in the rear of the development [within the open space], and by minimizing the amount of road footage required to access the lots. By placing the off site drain fields within the open space, the plan maximizes the amount of totally contiguous open and unobstructed area. The excess in the amount of open space allocated has been taken up by the drain fields, so that, due to the dictates of economy and necessity, all of the property has been put to its highest and best use. The question then becomes, when used as such, how much is the open space worth.

One approach might be to treat the open space as potential additional lots. The area in question would theoretically be enough for one and one-half lots. One half of a lot is not marketable, so the area would in effect yield one additional lot. However, because of the configuration of this development, [assuming the lots are not made smaller which would result in a devaluation of all lots], the use of the open space to add a lot would necessitate extending the existing road so as to reach the rear of the property. Any extension of the road would require the conversion of a portion of the property now designated as lots to roadways, so that the addition of one more lot in the current open space would require the elimination of at least one lot as shown on the existing plat, resulting in a net gain of zero. Furthermore, the addition of even one lot would cause the open space allocation to be further deficient due to the fact that a new drain field would need to be added [assuming the soil to be suitable for such], so that the addition of lots would compound the problem. The zero net gain would be without consideration of the additional costs of the road extension.

In light of these facts, it is difficult to substantiate any analysis of the value of the land for which payment in lieu might be due in terms of the possible use of that land as an additional lot, since there is no clear indication that the addition of a lot would add to the total market value of the development. This being so, the analysis of the value of the open space in terms of market value is not appropriate. The open space, having been set aside to serve the existing lots, is already being put to its best use.

The only other approaches to value would seem to be tied to the developer's cost and to the tax value. For the reasons stated above, the open space, being a necessary adjunct to the lots themselves, has no real

value separate from the lots, such that the adding or subtracting of open space has no effect on value except to the extent that it affects the number of lots which can be produced. Because, as set out above, the addition of 30,900 square feet of open space does not affect the number of lots, its value cannot be calculated in terms of the market value of the actual space, and that analysis is not appropriate.

Assuming there is some reasonable method of calculation of value for this space, the only approach remaining is tax value. Tax value is the value established by the County for taxation purposed pursuant to G.S. 105-283. This statute requires each county to appraise and assess its property at its true value. This statute in effect establishes that, where the county is concerned, the tax value is the true value.

The current tax value for this development as determined by Pender County is \$72,016.00 for a total of 16.05 acres, or \$4,487.00 per acre. The value of the 0.71 acre in question is \$3,186.00 according to the county's value. There being no other reasonable approach to value analysis, TIOGA, LLC contends that the tax value of the area in question, \$3,186.00, would be the reasonable and appropriate amount of the payment in lieu for this particular situation if it is determined that a payment in lieu is required.

Sincerely,

*Charles T. Busby*

Charles T. Busby

# PLANNING AND COMMUNITY DEVELOPMENT

PLANNING • CODE ENFORCEMENT • BUILDING INSPECTIONS • CENTRAL PERMITTING



## SUBDIVISION APPLICATION

Date 04-06-09 Application Fee n/a App# : PP 09-05-05.01R

### I. PROPERTY INFORMATION:

Record #: n/a Lot #: n/a  
Parcel ID #: 3223-59-6678-0000 Zoning District: R-20  
Property Location/Address: 1855 NC Hwy 133  
Subdivision Name: SCHOOLVIEW Phase: 0  
Review Type (check one):  Major  Minor

II. A complete submission must be in the Planning and Community Development Department office 45 days prior to the scheduled Planning Board public hearing date. All of the information listed below must be included for the submission to be considered complete:

- Application Fee
- 18 (11x17) map copies for the Planning Board
- 2 full size map copies
- CD containing maps and/or document files in .pdf format

\*Please refer to Preliminary Plat Checklist for further requirements.

### III. SIGNATURE OF OWNER/APPLICANT:

[Signature], PLS, AGENT  
FOR SCOTT GERON, OWNER



**STROUD ENGINEERING, P.A.**

CONSULTING ENGINEERS  
102-D CINEMA DRIVE  
WILMINGTON, NORTH CAROLINA 28403  
(910) 815-0775

June 11, 2009

Pender County Planning Department  
805 South Walker Street  
Burgaw, NC 28425  
Attn: Ashley Frank

Re: Schoolview Subdivision

Dear Ashley,

I am including an exhibit drawing that shows a delineation of open space for the subject development. The open space requirement has been reported to be 2.35 acres. The delineation is represented by the cross hatched area which totals 1.64 acres. There is an additional 0.87 acres of area that exists between the septic drain field plots. The resultant Open Space dedication on the revised Preliminary Plan is 2.51 acres. In addition to this Open Space dedication there is the drain field plots themselves which will be afforded easement for the common benefit of the subdivision residents. The entire area of 3.63 acres will be grassed and maintained by a contractor to the property association. The drain field plots include a ten feet property line setback for the active and repair areas contained within the boundary lines. The drain fields are below grade and have no obstacles protruding above the ground. No credit for the drain field areas is considered in the accounting of the required open space that is provided. There is no geometrical requirement, other than area, in the subdivision ordinance for open space. The drain field areas have to be where the best soils exist. These were not known definitively at the time the original Preliminary Plan was reviewed. Adequate land area was set aside for the open space and the drain fields to coexist in the area originally proposed as Open Space. Since the Preliminary Plan was originally approved, the consultant, Applied Resource Management, has worked diligently with the Pender County Health Department to locate the fields on the best soils and topography. It is presumed, based on the lack of a geometrical specification, that the balance of the land around the drain fields will suffice to meet the required Open Space.

The attached Preliminary Plan now shows the drain fields for lot 2 and 21 to be connected and a part of those lots. The offsite areas for lots 19 and 20 are shown to be on a special purpose lot not a part of lot 21. Please consider these attachments for review at the next available Planning Board meeting.

Thank you,

James H. Fentress, Jr. PE, PLS

Attachments  
JHF/jf

107 COMMERCE ST.  
SUITE B  
GREENVILLE, NC 27858  
(252) 756-9352

102-D CINEMA DRIVE  
WILMINGTON, NC 28403  
(910) 815-0775

HESTRON PLAZA TWO  
151-A HWY. 24  
MOREHEAD CITY, NC 28557  
(252) 247-7479



**MINUTES**

**Pender County Planning Board Meeting**

**July 7, 2009**

**7:00 p.m.**

**Pender County Public Meeting Room  
805 S. Walker Street, Burgaw, North Carolina**

**Call to Order:** Chairman Reynolds

**Roll Call:** Chairman Reynolds

Pender County Planning Board Members:

Reynolds \_\_\_ Garrett \_\_\_ Boney \_\_\_ Marshburn \_\_\_ Millette \_\_\_ Smith \_\_\_ Williams \_\_\_ Newman \_\_\_

**1. Approval of Minutes:**

Motion: Rick Garrett made the motion to approve the June 2, 2009 Minutes.

Seconded: Christopher Smith seconded the motion to approve.

Vote: The vote was 6-0.

*Subdivision Review*

**Planning Director Patrick Davenport** presented Schoolview Subdivision revision to board.

- 2. Schoolview Major Subdivision, Preliminary Plat Review (Revision)** – Tabled from the May 5, 2009 Planning Board. Southwind Surveying and engineering applicant, on behalf of Scott Gerow, owner, is requesting revision of the Preliminary Plat approval for Schoolview Subdivision (formally, known as Scott Gerow Subdivision). The revision would include off-site septic systems to be installed within the area approved as open space. The property is zoned R-20 Residential District and the subdivision is located off of NC Highway 133, across from Cape Fear Elementary School in Rocky Point, NC.

Director Patrick Davenport explained that the final disposition of this request is; can the area between the drain fields be counted as provided open space? The area in question is approximately 7/10 of an acre. Director Davenport commented that the current Zoning Ordinance does not directly address this particular request, but made mention that the intent of open space is to be left in its natural state. Director Davenport explained that if the request is approved, this would fulfill the requirement for open space related to this subdivision.

Discussion about drain field locations, what defines a “special purpose lot”, ingress and egress to drain fields took place between Board and Director Davenport.

Mr. Charles Busby, attorney for applicant addressed the Board regarding how “open space” is defined in the Zoning Ordinance. Attorney Busby explained that the language defined in the Zoning Ordinance gives

direction on the usability of the areas defined as “open space”. Attorney Busby shared examples of “active and passive” recreational activities.

Chairman Reynolds commented that the Board does not want to set precedence for this type of request for the use of “open space”. Chairman Reynolds explained that the Board had previously addressed this issue and it was understood by the surveyor and developer of the subdivision what was expected in the revision. Chairman Reynolds acknowledged that the area at the front of the subdivision was resolved by “special purpose lots”, but the area at the back of the subdivision was still an issue.

Discussion between the Board and Attorney Busby continued about how “open space” could be utilized was addressed. Attorney Trey Thurman reminded the Board and Attorney Busby that both opinions on how “open space” may be utilized differs, but the issue at hand still needs to be resolved.

Discussion of what is allowed in the “open space” took place between Board members and Attorney Busby.

Attorney Busby addressed the idea of “payment in lieu” as a means to mitigate the requirement of open space. Attorney Thurman suggested addressing this request at this time, rather than later.

Director Davenport defined “payment in lieu” and explained that there were several counties in the state that used this methodology as an effort to satisfy requirements within a subdivision that cannot meet “open space” requirements. Director Davenport gave various examples of how this payment is calculated. Attorney Thurman discussed with Board members how “payment in lieu” is generally calculated and what happens to the funds when “payment in lieu” is exercised.

Burt Millette commented that he didn’t feel qualified to make a decision regarding the request for “payment in lieu” without adequate time to study the concept.

Christopher Smith provided an alternative suggestion to help meet the requirement for “open space”.

Discussions about the concept of “payment in lieu” were commented on by Board members and attorneys.

Chairman Reynolds and Board members were in agreement that “payment in lieu” would not be considered as an alternative to satisfy “open space” requirement for this subdivision.

Motion made to deny revised configuration of subdivision as shown on plat. Motion approved by Malcolm Boney and seconded by Burt Millette. Vote unanimously passed 6-0.

***\*Public Hearing***

**Senior Planner Ken Vafier** presented Avendale Subdivision revision to board.

- 3. PD Master Plan Revision, Avendale Subdivision-** Stroud Engineering, P.A., applicant, on behalf of Avendale Development, owner, is requesting a revision to the approved master plan for Avendale Subdivision. The revision consists of replacing multi-family home sites with single-family home sites along with other lot reconfiguration. The property is located along NC Hwy 210, between Harrison’s Creek & S.R. 1002, and is zoned PD, Planned Development. The property may be identified as PIN #'s 3273-16-3336-0000, 3273-14-5830-0000.

Chairman Reynolds questioned the amount of “open space” lost due to the increase in the amount of the lots

being proposed. Chairman Reynolds wanted to know the difference in the lot size being proposed and the lots that were previously approved.

Senior Planner Vafier commented that even with the increase in the number of lots being proposed, the required "open space" dedication is still being met. Senior Planner Vafier deferred the questions regarding proposed lot sizes differentiation to the applicant.

Jimmy Fentress (Stroud Engineering, P.A.) commented that the previous lots widths were 70' wide and the minimum under the present proposal would be 54' wide. Mr. Fentress reviewed some potential assets that the current proposal would bring to the subdivision.

Chairman Reynolds addressed potential concerns that may occur with smaller lots sizes i.e. driveway, house aesthetics, etc...

Discussion of lot sizes, "open space" requirements and number of units continued between Board members and Mr. Fentress.

Mr. Fentress provided a photograph of the potential house style being proposed for these lots. Mr. Fentress reviewed the cost of single family units being proposed versus the townhomes that were originally proposed. Mr. Fentress explained that there would not be a difference in cost. Mr. Fentress addressed the ability to isolate the area being changed from the existing development and reviewed the capacity of the main collector road, wastewater treatment facility and the storm water management system originally permitted with regards to the proposed revisions. Mr. Fentress commented that the covenants would have to be revised to ensure a maximum impervious is allotted to each lot that is in keeping with what is already permitted to the ponds in place. Mr. Fentress continued to review assets that the proposed revision would bring to the community.

Public comments were given by several citizens expressing their disapproval of the proposed revision. Citizens were concerned about how the number of potential houses would impact traffic on Highway 210, the potential for devaluation in tax value due to the influx in smaller homes and current drainage issues that are currently present.

Rick Garrett questioned the smallest lot size of what was originally approved.

Mr. Fentress addressed the proposed lot sizes, wastewater run-off, perceived aesthetics of the proposed homes and the ability to install a "no-peek" buffer to isolate the revised development from the existing development.

Public comments continued regarding the inability to correct current problems that exist in the subdivision and lack of communication with the developer.

Burt Millette addressed his concerns about "changing the game" on an approved subdivision.

Christopher Smith suggested that the developer and current residences of subdivision meet to address concerns.

Chairman Reynolds suggested lot sizes remain the same.

Malcolm Boney suggested that the request be tabled until the developer and the homeowners could meet to see if a compromise could be agreed upon.

Board members continued to discuss the agenda item being proposed.

Attorney Thurman remind the Board that action regarding this revision would have to be settled regardless if the item is tabled.

Burt Millette made the motion to deny the revision and seconded by Rick Garrett. Vote passed 6-0.

**4. Discussion Items:**

- Review of *Draft* County-wide Land Use Plan Map
- Review of *Draft* Small Area Land Use Plans and Policies
  - Coastal Pender
  - Rocky Point
  - 421 Corridor
- Discussion of issues/consensus building on future UDO zoning districts

Director Davenport presented and discussed with Board members the aforementioned items in extensive details.

Board members discussed density, cluster development, table of permitted uses and "open space" requirements as it pertained to the new Unified Development Ordinance. Board members expressed concerns regarding "by right" development in particular zoning districts. Board members suggested "special use" permits come through the Planning Board before being presented to the Board of County Commissioners.

- **Planning Board Members**
- **Public Comment**

**5. Adjournment**

**Board Action for July 7, 2009 Minutes:**

Motion:     Millette     Seconded     Williams    

Approved:   x   Denied:                      Unanimous   x  

  X   Reynolds        Garrett        Boney   X   Marshburn   X   Millette   X   Smith   X   Williams

# **PLANNING AND COMMUNITY DEVELOPMENT**

PLANNING • CODE ENFORCEMENT • BUILDING INSPECTIONS • CENTRAL PERMITTING



## **MINUTES**

**Pender County Planning Board Meeting**

**May 5, 2009**

**7:00 p.m.**

**Pender County Public Meeting Room  
805 S. Walker Street, Burgaw, North Carolina**

**Call to Order:** Chairman Reynolds

**Roll Call:** Chairman Reynolds

Pender County Planning Board Members:

Reynolds\_\_Garrett\_\_Boney\_\_Marshburn\_\_Millette\_\_Smith\_\_Williams\_\_Newman\_\_X

1. **Approval of Minutes:** April 7, 2009
  - a. **Motion to approve:** Hiram Williams
  - b. **Seconded:** William Marshburn
  - c. **Vote:** 7-0
  
2. **Presentation of DRAFT recommendations for the Topsail Area Comprehensive Transportation Plan**

Tyler Bray with the North Carolina Department of Transportation - Planning Branch gave a presentation of the next thirty years in the Topsail area, taking care of all the transportation efficiencies throughout the area with this plan, including highway, pedestrian, and bicycle. There is a pedestrian element from Surf City included in the plan. He briefly presented some of the major recommendations. The major facilities are going to be US 17, NC 210, NC 172, and NC 50. Tonight he is just looking for the okay so this can be taken before the Board of Commissioners. Once okayed by them it can then go to the public. There will be four involvement sessions, one in each of the four municipalities on June 10 & 11 in their specific towns. There has to be a freeway from North Carolina to South Carolina along US Hwy 17. There are restrictions as it travels through the Holly Ridge area. The CTP visited nine different alternatives for what could be done for Hwy 17. Impacts have been minimized as much as possible. There are two interchanges that will need to be built. One at existing Hwy 210; the interchange will not adversely affect the existing development that is there. It will be moved to a new location to be determined at a later date. On the northern side where NC 210 comes back into US 17, where the school exists there would be another interchange eventually put there. As Onslow County starts and continues their development with their CTP they will be doing recommendations for that area. It is recommended that NC 210 from existing US 17 down to where the bridge starts will be improved be a four lane divided facility. There will be a change once you get into Surf City. Hwy 210 turns to the left and follows North New River Drive. As a part of this plan the proposal is to take Hwy 210 along Roland Avenue to where it intersects

with New Topsail Drive and at the existing intersection, replace the existing traffic signal with a roundabout and then reroute NC 210 along Topsail Drive where Topsail Drive and North New River intersect; put another roundabout and continue NC 210 on towards North Topsail Beach. Surf City is in favor of this proposed plan.

Hiram Williams asked if the roundabout in Surf City was going to be a major undertaking.

Mr. Bray stated with these recommendations as they are now will not take any buildings but will fit in the existing right-of-way. Ocean Isle Beach has replaced the same road alignment.

Rick Garrett stated that the Holly Ridge bypass is not given much room for expansion and why wasn't it carried out further on Hwy 17.

Mr. Bray stated that what is not shown on the maps is the Holly Shelter Game Lands. There are two training air strips that are north of Holly Ridge that Camp Lejeune uses for parachuting and aircraft carrier training. They would not support any recommendations that would go north or between the two strips. Holly Ridge would not support anything to the south. This is where all of their planned growth is directed.

He stated that because there is no more public access on Hwy 172 as it goes into Camp Lejeune, DOT has stopped providing those maps until they come up with a recommendation to change or make the route official again, its off the books. The plan has extended the section that goes through Sneeds Ferry and continues along NC 210 and will make any necessary improvements. Major recommendation for the bike map, has started in Pender County and Surf City of protecting the right-of-way along the power line easement. This goes through the entire planning area. This is an eight(8) foot wide paved path for anything that is off road and only used for bikes or pedestrians.

Malcolm Boney asked if any environmental concerns came to his attention during his study.

He answered that the only thing looked at specifically on a new location was the US 17 bypass. Any other widenings that were proposed on this plan, environmental impacts were not looked at.

There was unanimous approval from the Planning Board to take the presentation to the Commissioners.

### ***Subdivision Review***

Planner Kyle Breuer presented the case to the Planning Board.

- 3. Schoolview Major Subdivision, Preliminary Plat Review (Revision)** - Southwind Surveying and Engineering applicant, on behalf of Scott Gerow, owner, is requesting revision of the Preliminary Plat approval for Schoolview Subdivision (formally known as Scott Gerow Subdivision). The revision would include off-site septic systems to be installed within the area approved as open space. The property is zoned R-20 Residential District and the subdivision is located off of NC Highway 133, across from Cape Fear Elementary School, in Rocky Point, NC.

During the Preliminary approval phase done in June 2007 there was an approval for 21 lots. Some of the conditions attached by the Planning Board were (1) that all utilities would be underground, (2) all lots

would utilize individual septic systems, (3) streets would stub out for future interconnectivity; (4) one driveway permit would be issued for the entrance and open space would equal 3.53 acres. The amended plan is for off-site septic systems. Recess Lane and Schoolview Drive will stub out to provide future connectivity. The subdivision ordinance does not specify off-site fields which would encompass the open space.

Hiram Williams wanted to know why the change and why it is coming back to the Planning Board.

In June 2007 the Planning Board approved on-site septic. When the Staff evaluated the plan it was discovered that the off-site septic was being used and a STOP WORK order was issued. The application is being presented tonight to get approval for the off-site system.

Linwood Jones, Southwind Surveying and Engineering, spokesperson for the project stated that the open space requirement has been met. The soils have been tested and the septic system design has been submitted to the Health Department.

Rick Garrett asked if there was not an issue that when the board originally looked at the plan the sites were going to be on-site and now they are off-site.

Mr. Jones stated that it depends on the terminology. In his opinion based on his experience it still is on-site. **It is** on the subdivision site.

Chairman Reynolds stated that when the project first came to the board the plan was to have a septic system on each lot.

Mr. Jones stated that he presented to the board a subdivision with twenty-one (21) lots.

Chairman Reynolds replied that it was reported that each lot would have on-site septic system which to him means that the system is built on the lot that the house is built on. If this was the intent from the beginning it should have been on the original submission rather than call it open space.

Linwood Jones stated that the soil was not tested before the Preliminary Plat was presented.

Chairman Reynolds said that his concerns were for lots 1 and 21 that someone will be buying a house that has three septic tanks fields located on it because at some point they will have to be serviced. He asked if the drain fields would be deeded with the lots or be owned by the HOA.

Mr. Jones answered that all the drain fields would be owned by the HOA. The easement will be assigned to another lot but will be owned by HOA.

Burt Millette asked if the lines from each lot are going to run to the open space, are they going to cross other lots.

He replied that the lines are running in an easement to the back of the lot along the property line, the western and eastern line. The pipes are in a common ditch with one (1) foot separation between them with magnet tape to make it easy to locate.

Chairman Reynolds told Linwood Jones that this was his Final Preliminary Plat and if there are easements or anything that is going to belong to the HOA and how they are going to be tracked to the open space to do the drain fields it should have been on the plat. Some sort of easement is going to have to be placed on the plat. He cannot personally approve the plat without all the information on it for the board to make sure that the board is not doing something it is not suppose to do. The overall design is poor.

Hiram Williams stated that there was no lot size designation on the plat. He would feel more comfortable knowing that there is adequate easement space for a machine to enter and turnaround for repair.

Rick Garrett stated that the map from June 2007 had the information.

Malcolm Boney said that he did not see the Built Upon Area percentage. The concentration of the drain fields are considered like concrete. He would like to know what the percentage for the houses, streets and others combined is. The higher the density the more the concentration of contaminates and pollutions.

Brief discussion among the board to decide on the additional information needed.

Rick Garrett stated that the alternatives were to: 1) approve the plat. 2) table it (give the applicant clear instructions as to what the board wants to see); or 3) deny it.

Chairman Reynolds asked if the board wanted to table the request or give him some direction.

Burt Millette stated that he would like for the developer to be given instruction through the Staff. The Staff can work with Mr. Jones and bring it back in thirty or sixty days.

Chairman stated that he would be willing to meet with the developer and staff to bring the concerns and try to find a solution. He asked Planner Breuer to invite Harry Lewis Environmental Health to the meeting to get more clarification.

Rick Garrett wants to make sure everyone is in agreement with the items of concern so when the developer returns it will be clear. If Environmental Health is pushing this, why? Some of the density can be reduced and therefore reduce some of the spacing as well. If the density was the front, it would be better.

Planner Breuer explained what the situation was. He said that after the Planning Board approval, all the permits have to be submitted, submit the revised plan, and then the Planning Staff signs off. In this case the developer received permits and did not return to the Planning Department to get the plat signed off. It was noticed that construction was taking place without a signed preliminary plat. They had been working with Environmental Health and not the Planning Department which lead to no communication between the departments. Planning did not know this was going on.

Burt Millette made the motion to table the request until the July 2009 Meeting, seconded by Rick Garrett. The vote was unanimous 7-0.

## *Public Hearing*

Planner Kyle Breuer presented the next case to the Planning Board. The proposal will take place on 14.71 acres which will hold coastal events such as but not limited to concerts, rodeos, carnival rides, skilled challenges, children's play area, concessions and vendors. The hours of operations will be limited to dusk and held twice monthly.

4. **PD Master Plan/Change of Use** – John Grim, applicant and owner, is requesting a change of use from Garden & Landscape Plants & Supplies to Indoor & Outdoor Recreation Establishments, Privately Operated. The property is located along the west side of U.S. Hwy 17, approximately 1/8 mile south of the Belvedere Plantation Subdivision entrance or Long Leaf Drive (S.R. 1675), Hampstead, North Carolina. The property is currently zoned PD, Planned Development and may be identified as PIN # 4204-21-9305-0000.

Malcolm Boney asked Kyle Breuer to reiterate for him again concerning the traffic on some of the things that will be done potentially that will limit the amount of increased congregation on Hwy 17.

The process will require an engineered plan which will show capacity and vehicles and basically this plan will be sent to the NCDOT for their engineering expertise and review. A driveway permit will be issued according to the submitted plan. The county will not give a final approval until Staff has a State Permit in hand.

With the services and used are temporary. The porta-potties will need to be removed at the end of the events. Any construction of stage and booths will need to be removed also. A scaled site-plan will need to be reviewed.

John Grim, applicant and owner of property classifies the project as an event facility or park. It has been a nursery for years and once all the nursery accoutrements are out it will be graded off and eleven(11) acres of grass will be planted and there is an existing road going through the property. This event will be seasonal, during the warmer months. Noise from concerts will be directed away from the neighbors of Belvedere and families across the street.

In summary several citizens spoke on the same concerns of:

- (1) ingress, egress,
- (2) traffic, traffic, traffic's major problems,
- (3) the alcohol beverages with there being schools and churches near by;
- (4) there is already a paint ball park in Hampstead;
- (5) noise;
- (6) issue of litter;
- (7) overflow of parking;
- (8) will be hard to stop activities at dusk(7:00 p.m.)
- (9) none of the three(3) developers live in the Hampstead area;

Chairman Reynolds stated that this does not meet the requirements of a Master Plan submission. It's a concept drawn on a piece of paper. There are applicants that spend thousands of dollars to bring in professional map for submissions of Master Plans Review. There is not drainage shown, no mention of how to get in or out, the parking is inadequate, bathroom, beer tent and stage problems. The type of establishment that he wants to have is not suitable for Hampstead. There are other places in Hampstead

where events can be held. The school is open to certain events.

Burt Millette stated that the board is not sure of what they are being asked to approve because the applicant is not sure how many times he will hold the events, whether twice monthly, once weekly, Saturdays or Sundays, there are a list of items but are not limited to. Not clearly defined enough. Would not approve as submitted there are too many questions.

Mr. Grim stated that it would be hard for him to depict what each event is going to do. Each event will have its own footprint so it will have to be arranged accordingly. Everything would be mobile and would change with each event.

There was a lengthy discussion from the board concerning the concept of the applicant's request of not having the details that are required.

Burt Millette made the motion to deny the application, seconded by William Marshburn. The vote: Millette, Marshburn, Reynolds, Garrett, and Boney in favor of denial; Williams and Smith against.

## 5. Discussion Items

- **Planning Staff**

- Comprehensive Land Use Plan

- Review of outline for Policies

- *two items to consider in order to forward to BOC (and outline format of Land Use Plan Policies, broken down into ten(10) broad issues which will be broken down into more detailed sections.)*

- *Committee has a positive recommendation on format and outline*

- *Meeting on May 19, 2009*

- *Want approval on format from the Planning Board*

- *Infrastructure and community services will include any services that the county offers.*

- *On track to get the CLU-Plan adopted in January 2010*

- Road Show Schedule

- *Community meetings to gather public input*

- *Statements to have citizens make comments on*

- *Need to get approval from the BOC on road schedule on 5-18-09*

- *Will not have the same display at every meeting.*

- *Dates are not set in stone*

- *Open house in October*

- *Planning Board Member to attend meeting in their area*

- *Drop Penderlea and add Rocky Point to the schedule – these will be evening meetings.*

- Unified Development Ordinance

- Review of Articles 1, 2, 11 and 12

- *subdivision audit under way*

- subdivision revisions come back to Planning Board
- add subdivisions/Major
- sample of completed Master Plan with all details in June
- Application and Development review flow chart
  - description on how the flow chart will work
  - Planning Board would like to see **Final Draft**
- Table of Uses-Existing ordinances using NAICS
  - sample table of Permitted Uses in NAICS format
  - broken down in sectors
- Planning Board meeting locations
  - - Meeting should remain at the county seat (Burgaw)
  - Conditional zoning will be held in district of request
- Comp Plan and UDO Committees-attendance update
  - Sam Harrell has to resign from committee
  - Next meeting May 19, 2009
- **No Planning Board Members**
- **No Public Comment**

**6. Adjournment**

**Board Action for May 5, 2009 Minutes:**

Motion: \_\_\_\_\_ Millette \_\_\_\_\_ Seconded \_\_\_\_\_ Smith \_\_\_\_\_

Approved: \_\_\_\_\_ Denied: \_\_\_\_\_ Unanimous   x  

Reynolds:   X   Garrett:   X   Boney:   X   Marshburn:   X   Millette:   X   Smith:   X   Williams:   X