



REQUEST FOR BOARD ACTION

ITEM NO. 9.

DATE OF MEETING: November 15, 2010

REQUESTED BY: Rick Benton, County Manager

SHORT TITLE: Resolution Approving Amendment to Pender Commerce Park Restrictive Covenants

BACKGROUND: Restrictive covenants governing the development of Pender Commerce Park were recorded on June 12, 2009. The covenants set forth guidelines governing such issues as parking, landscaping, setbacks, grading, lighting, and so forth. On June 4, 2010 the State of North Carolina Department of Environmental and Natural Resources granted State Stormwater Management Permit Number SW8 090801 for Pender Commerce Park. The permit requires certain covenants pertaining to stormwater management be recorded as deed restrictions, thus the Restrictive Covenants for the Park are being recommended for amendment to include the covenants required by the Permit.

The changes to the restrictive covenants include amending Paragraph 9.2, adding Paragraph 9.7, deleting Paragraph 10.1.2, and amending Exhibit C Paragraph 2. A copy of the proposed amendment is attached.

SPECIFIC ACTION REQUESTED: To consider a resolution approving the Amendment to Restrictive Covenants for Pender Commerce Park as attached hereto.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.

RB
Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the Board hereby approves the Amendment to Restrictive Covenants for Pender Commerce Park as attached hereto. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Tate ___ Blanchard ___ Brown ___ Rivenbark ___ Williams ___

Jimmy T. Tate, Chairman 11/15/10
Date

ATTEST 11/15/10
Date

NORTH CAROLINA

PENDER COUNTY

**AMENDMENT TO RESTRICTIVE COVENANTS FOR
PENDER COMMERCE PARK**

This Amendment to Restrictive Covenants for Pender Commerce Park is made this _____ day of _____, 2010, by THE COUNTY OF PENDER, Party of the First Part, for the benefit of the owners of the Park.

Basis for the Amendment:

1. Party of the First Part executed Restrictive Covenants for Pender Commerce Park dated June 1, 2009 which is now of record in Book 3639 Page 059, Pender County Register of Deeds.
2. Party of the First Part now wishes to amend said Covenants to amend Paragraph 9. Grading and Drainage, Paragraph 10. Setbacks, and Exhibit C. Landscape Treatment.

WHEREUPON, Party of the First Part hereby amends the Covenants referred to above by amending Paragraph 9. Grading and Drainage, Paragraph 10. Setbacks, and Exhibit C. Landscape treatment as follows:

Paragraph 9. Grading and Drainage, subparagraph 9.2 is hereby amended to read as follows:

- 9.2 All surface drainage, including parking lots and roof drainage of buildings, shall be designed to conform to the overall drainage plan of the Park. This includes the built-upon limits established within the State Stormwater Permit where built-upon limits are established for each lot. However, the Board may redistribute additional built-upon area to individual lots if there is surplus or unused allocated built-upon area within the lots drainage basin. In such case, the lot owner shall be responsible for the State Stormwater Permit Modification and the State Off-Site Stormwater Permit.

Paragraph 9. Grading and Drainage is amended to add subparagraph 9.7 as follows:

- 9.7 The following covenants are intended to ensure ongoing compliance with State Stormwater Management Permit Number **SW8090801**, as issued by the Division of Water Quality under NCAC 2H.1000, which governs this Park.
- 9.7.1 The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the stormwater management permit.
- 9.7.2 These covenants are to run with the land and be binding on all persons and parties claiming under them.
- 9.7.3 The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality.
- 9.7.4 Alteration of the drainage as shown on the approved plan may not take place

without the concurrence of the Division of Water Quality.

- 9.7.5 The maximum allowable built-upon area per lot is 60% of the lot's total area. This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built-upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools.
- 9.7.6 All runoff from the built-upon areas on the lot must drain into the permitted system. This may be accomplished through providing roof drain gutters which drain to the street, grading the lot to drain toward the street, or grading perimeter swales and directing them into the pond or street. Lots that will naturally drain into the system are not required to provide these additional measures.
- 9.7.7 Each lot within the subdivision, including lots less than one acre in size, whose ownership is not retained by the permittee, must submit a separate Stormwater Management Permit application package to the Division of Water Quality and receive a permit prior to construction on the lot.
- 9.7.8 Built-upon area in excess of the permitted amount will require a permit modification.
- 9.7.9 A 50' wide vegetated buffer must be provided and maintained adjacent all surface waters including impounded structures, streams, rivers and tidal waters on each lot. No built-upon area is allowed within this buffer.

Paragraph 10. Setbacks is amended as follows:

- 10.1.2 This subsection is hereby deleted.

Exhibit C. Landscape Treatment, Paragraph 4 is amended to read as follows:

- 2. **Landscaped Area:** Landscape planting, as a minimum, shall occur in an area forward of the building and adjacent to the street rights-of-way. If on a corner lot, landscape planting shall occur on both sides fronting streets. Lot owners shall plant only grassed lawns a distance of 51' inward from the street rights-of-way line, and shall be responsible for maintaining those lawns. The Property Owner's Review Board shall reserve the right to install the drainage swales, street trees and street lights within this area immediately adjacent to the roadway.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

PENDER COUNTY, NORTH CAROLINA

By: Jimmy J. Tate
Chairman, Board of Commissioners

ATTEST:

Rae Denton
Clerk to the Board

STATE OF NORTH CAROLINA; PENDER COUNTY

I, _____, a Notary Public of Said State and County, do hereby certify that _____ and _____ personally came before me this day and acknowledged that they are the Chairman and Clerk, respectively, of the Board of County Commissioners of Pender County, North Carolina, and that by authority duly given and as the act of Pender County, North Carolina, the foregoing instrument was signed in the County's name by the Chairman of its Board of Commissioners, sealed with its corporate seal and attested by such Clerk.

Witness my hand and official seal this _____ day of _____, 2010.

Notary Public

My Commission expires: _____