

MONDAY, FEBRUARY 2, 2009

THE BOARD RECONVENED THE JANUARY 21, 2009 MEETING AT 7:00 P.M.

**PUBLIC HEARINGS: RESOLUTIONS/ZONING AMENDMENT/TEXT AMENDMENT/SPECIAL USE PERMIT REQUESTS/SPECIAL USE PERMIT AMENDMENT: 100 Min. Total**

**14. Public Hearing & Text Amendment Proposal: Penny L. Olson, Applicant: Request to Amend the Current Pender County Zoning Ordinance §8.9 Table of Permitted Uses to Allow WHOLESALING in the RA, Rural Agricultural District.**

Planner Ashley Frank explained that this text amendment proposal was first presented to the Board on November 17, 2008 and two separate motions taking action on the request did not pass, but the public hearing was closed; that staff is requesting that the Board take action at this time, and if not, the Ordinance will remain as is; that the Pender County Planning Board recommended denial of the request at its October 7, 2008 meeting; and that the Board needs to either approve or deny it. The public hearing opened at 7:05 p.m. Mr. Williams asked if this is passed, will the applicant still have to come back with a special use permit request before he can do anything and Mr. Thurman responded affirmatively. Williams and Mr. Blanchard said they agree with what staff is recommending. Mr. Brown asked for more clarification. Mr. Olson explained the property is about 6 ½ miles up Highway 117 and ½ mile off the main road. He said he is only trying to move his business out of Wilmington to their family property to save money. Mr. Tate cautioned the Board that if this request is passed, entire county's zoning will be changed, not just this particular applicant's. Mr. Olson said he wasn't trying to change the whole county and he didn't know this would affect the whole county. Mr. Brown said he is concerned about the integrity of the RA District and said we have already lost so much RA zoning. There was no public input. The public hearing closed at 7:15 p.m. Mr. Williams made a motion to approve the text amendment proposal, Mr. Blanchard seconded the motion and it was approved by a 4-1 vote with Mr. Williams, Mr. Blanchard, Mr. Tate and Mr. Rivenbark voting in favor of it, and Mr. Brown voting against it.

**15. Public Hearing & Special Use Permit: Willie Mae Perry, Applicant & Owner: Request for a Family Cemetery, Located at 27846 Little Kelly Road, Rocky Point, NC.**

The public hearing opened at 7:16 p.m. Mr. Thurman swore in the witnesses. Ms. Frank explained that currently, the Pender County Zoning Ordinance requires a special use permit for all types of cemeteries to be located in the Rural Agricultural, RA District; that the applicant is proposing a 10,890 square foot (approximately ¼ an acre) family cemetery; that the current CAMA Land Use Plan classifies the property as Urban Growth Areas; that currently there was not a well located less than approximately 1,100 feet and the well setback is at least 100 feet; and that the conditions are: 1) all conditions of final zoning set forth by the Pender Ordinance must be met prior to issuance of final zoning permit; and 2) certification of the amount of land to be disturbed shall be provided. Mr. Brown asked how far the site is from the boundary of the property and Ms. Frank responded it is right on the back boundary. Ms. Jaki Pace of the Planning Department was present to represent the applicant and answer any questions. Mr. Thurman asked Ms. Pace if everything in the application was true to the best of her knowledge and belief and Ms. Pace responded affirmatively. The public hearing closed at 7:21 p.m. Mr. Brown made a motion to approve the special use permit request, Mr. Blanchard seconded the motion and it was unanimously approved.

**16. Public Hearing & Special Use Permit: Stroud Engineering, P.A., Applicant: Request to Construct a Wastewater Treatment Facility, Located South of Ashton Road and West of Ford Lane, Rocky Point, NC.**

The public hearing opened at 7:22 p.m. Planner Kyle Breuer explained the following: the proposed wastewater treatment site is a 184 acre tract; that the proposed disposal method will have a state classification as a High Rate Infiltration System; a maximum of two feet of tank will be visible above ground; the property contains two separate land use classifications: Urban Growth and Rural Areas and staff feels that this classification was

given due to the mostly undeveloped land north of NC 210 in this vicinity; the overall classifications surrounding this site are either Urban Growth or Transition Areas; and there is a  $\pm 170'$  rail right-of-way that is located along the eastern border of the project site. Mr. Thurman noted the applicant, Jimmy Fentress of Stroud Engineering, is present to answer any questions. Mr. Thurman asked Mr. Fentress if the information in the application was true to the best of his knowledge and belief and Mr. Fentress responded affirmatively. Mr. Brown said there had been talk about bringing the railroad back and he was concerned about what effect the railroad would have on the project if it was brought back. Ms. Betty Fennell, a citizen of the area, was opposed to the project. She asked what will it serve, and if it was for residential or development. Mr. Breuer said the Planning Department has not received any specific development plans; Ms. Fennell said you should be opposed to something when you don't know what it is for. Mr. Fentress said in order to consider a development, he would have to consider having sewer ahead of time. Mr. Williams asked Mr. Thurman to explain the small part the County plays in this versus the State. Mr. Thurman said the State sets the standards for this and will make a determination about the railroad. Mr. Fentress said they have to get this step in place before they can consider moving anything else. Mr. Thurman said if the developer wanted to get anything else, they would have to go through the Public Utilities Commission. Ms. Fennell said it is ludicrous to give approval for a special use permit for something you don't know what is going to be there. She said it is like "putting the horse before the cart." Mr. Thurman explained to Ms. Fennell that in order for the Board to deny a special use permit, they would have to have a specific reason. Mr. Thurman gave Ms. Fennell the list of reasons the Board could use as a guideline for denial of a special use permit. Mr. Brown asked what kind of hazard could be derived from vibrations from the railroad. Mr. Fentress said the proposed plant is a reinforced concrete plant, and said it will be scrutinized by state agencies. Mr. Williams said the Board implemented the special use permit process 14 months ago and no permitting process ever came through the Board. Mr. Thurman said we could continue this item and have someone find out what impact any vibrations from the railroad would have on the project. Mr. Davenport said the proposal was sent to DOT for technical review but they made no comment about the railroad. Mr. Brown made a motion to table the request, Mr. Williams seconded the motion and it was approved by a 4-1 vote with Mr. Blanchard voting in opposition.

**17. Public Hearing & Special Use Permit: James R. Faircloth, Applicant & Owner: Request to Temporarily Store and Collect Scrap Metal for Processing, Located at 16222 U.S. Hwy 421 N., Burgaw, NC.**

The public hearing opened at 7:45 p.m. Mr. Thurman swore in the witnesses. Attorney Rick Biberstein explained that the applicant was denied a special use permit on March 17, 2008 based on three findings: that there would be loud and piercing noise generated, that there were traffic concerns due to the fact the heavy trucks would cause a safety issue for the community, and that the buffers would be inadequate to prevent sight pollution inconsistent with the rural residential nature of the community and adjoining property owners. He said the applicant has since made some revisions concerning the operation of the processing facility to address the concerns of the previous denial and the concerns of the community – the buffers surrounding the work site have been increased and improved and the special use permit area has been decreased, the applicant supplemented his submission with a noise study done by Spangler Environmental, the applicant will not be receiving any metal for processing from outside parties so the traffic generated from the operation has been reduced, and the applicant submitted evidence in the form of aerial photography to show the access conditions and affecting traffic. Mr. Biberstein question James Spangler, President of Spangler Environmental, concerning the noise. Mr. Spangler said he conducted a study on the property owned by Mr. Faircloth and adjacent properties surrounding Mr. Faircloth's property, and his tests results concluded that there would be significantly less sound from the operation of heavy equipment at the Faircloth facility when comparing to traffic noise during peak traffic. Mr. Biberstein asked about decibel levels and Mr. Spangler explained the decibel level comparison chart attached to the agenda materials. Mr. Spangler said conversational levels are the same as Mr. Faircloth's machines. Mr. Biberstein offered the reports to Mr. Thurman as evidence. Mr. Biberstein said Horace Thompson, a Professional Land Surveyor, did measurements of Mr. Faircloth's driveway and questioned Mr. Thompson concerning it. Mr. Thompson said from the driveway you can only see a profile because the road has a hill in it. Mr. Biberstein asked if he observed a vegetative buffer and Mr. Thompson responded affirmatively. He said he could not see the site from Highway 421 and said the site is filled with bean sticks. Mr. Biberstein entered a DOT map and site survey into evidence. Mr. Biberstein asked if Mr. Thompson has heard heavy noise and Mr.

Thompson said he could only hear sounds. Mr. Biberstein asked Reverend Phil Eakins, a State Certified General Appraiser, if he was requested to do a report on the site. Reverend Eakins said he was asked to render an opinion if the operation would have a detrimental impact on the surrounding property and his opinion was that it would not. He said it is a small operation, it is not visible from the highway, the sounds are minimal, and he concurs with Mr. Thompson that it is filled with bean sticks. Mr. Biberstein asked Jennings Humphrey, a Pender County Farmer, if he is familiar with Mr. Faircloth's location. Mr. Humphrey said he goes by Mr. Faircloth's place two or three days a week; that he wouldn't want to see anything adverse in the County, but Mr. Faircloth's business is strictly recycling; and that Mr. Faircloth is not setting up a junkyard. Mr. Humphrey asked the Board to approve the special use permit. Mr. Tate asked how far Mr. Humphrey lives from Mr. Faircloth's property and Mr. Humphrey said approximately 2.8 miles. Mr. Humphrey said it is something Mr. Faircloth can make a living from and said it can also benefit the County. Mr. Biberstein asked Mr. Faircloth if everything in his application is true to the best of his knowledge and belief and Mr. Faircloth responded affirmatively. Mr. Biberstein asked if Mr. Faircloth would have any hazardous materials and Mr. Faircloth responded negatively. Ms. Jaki Pace spoke in opposition to the special use permit. She said Mr. Faircloth is a kind person but what he is proposing is not conducive to the area; that the Sheriff's Office had been called twice for noise and she has a police report; that Mr. Faircloth is in violation because his noise is a nuisance; that he ran equipment the day of her Aunt's funeral and was making noise; that noise is the key issue; and that she has traffic concerns because of the "dead man's curve" at the site. Mr. Biberstein asked if Ms. Pace agrees with Mr. Thompson and she responded "no." He asked if she said there is a dead man curve and she responded "yes." Mr. Tate asked what was the determination of the Sheriff's Department and Ms. Pace said Mr. Faircloth was in violation of the County Noise Ordinance. Ms. Pace provided a one-page police report. Mr. Biberstein provided a two-page police report and asked Ms. Pace to read it. The Sheriff report said the Deputy said he couldn't hear any noise even with 100' of the excavation. Ms. Mary Malloy spoke in opposition of the project. She said she was the one to call the Sheriff's Department and she wanted to clarify that they have nothing personal against Mr. Faircloth and that she wouldn't have called the Sheriff's Department if she wasn't being disturbed. Ms. Malloy began to repeat what the Deputy had told her and Mr. Biberstein objected saying it was hearsay. Mr. Tate asked Ms. Malloy if she was aware of what the report said before Ms. Pace read it and Ms. Malloy said "no." Ms. Malloy said she is concerned about the noise - metal clashing against metal. Mr. Biberstein asked about the logging that was being done close to Ms. Malloy and Ms. Malloy said it is not as noisy as the metal and that there are flat bed trucks coming from the site with crushed cars. Mr. Williams mentioned the fact that the applicant had waited six months to re-apply after the request was denied and Mr. Thurman said a special use permit can be re-applied for the next day after denial. Ms. Armentha Bryant spoke in opposition of the project and said her main concern is with chemicals and water pollution. She said the last time Mr. Faircloth was here and they asked about what had been in the drums before he received them, he said he didn't know, and she is concerned about what goes in the earth will come out in the water. Ms. Bryant said also, when she was visiting a sick friend, the friend couldn't rest during the daytime because of the noise. Mr. Biberstein asked Ms. Bryant if she knows if any chemicals had been in the drums and Ms. Bryant said "no." Mr. Biberstein asked her if she is saying she doesn't know what was in the drum and Ms. Bryant said "yes." Mr. Brown asked Mr. Spangler if he said the noise of the equipment was less than that from traffic and Mr. Spangler said "yes, the noise decibel level is lower." Mr. Tate asked if noise was a problem for the community before Mr. Faircloth's operation and Mr. Spangler said they are experiencing noise from the traffic instead of the operation. Mr. Biberstein asked Mr. Spangler to explain what a decibel is, and he did. Mr. Tim Jordan said he has property across the road from Mr. Faircloth and wanted to know if Mr. Faircloth sells his property, will the permit go with it. He said if the Board gives Mr. Faircloth the permit, they should limit it to Mr. Faircloth's use and not attached to the land. Mr. Biberstein asked if Mr. Jordan is objects to Mr. Faircloth's operation the way it is now and Mr. Jordan said "no." Mr. Thurman said it could be approved for a set period of time, tied to Mr. Faircloth only, or tied to the land. Mr. Tate asked if there is a minimal amount of time for a special use permit and Mr. Thurman said "no." Mr. Biberstein recalled Mr. Faircloth and asked about the drums and if he ever had any chemicals. Mr. Faircloth said no, that the people he gets the drums from want let anything come out. Mr. Biberstein asked if he had received any citation or anything from the Sheriff's Department and Mr. Faircloth said "no." Mr. Faircloth spoke about the noise from the logging being done in the area. Mr. Biberstein said he and Mr. Faircloth had talked about the special use permit being limited to him, his wife, his daughter and son. Mr. Tate asked if Mr. Faircloth had met with members of the community to see what their concerns were. Mr. Faircloth said he had,

and when he first approached Ms. Pace's brother, he told him he didn't have any problems with it. Mr. Biberstein's closing summary was that Mr. Faircloth had addressed the concerns the Board had – noise pollution, site pollution and traffic control; and that Mr. Faircloth is not interested in having the special use permit attached to the land. The public hearing closed at 8:55 p.m. Mr. Williams made a motion to approve the special use permit request, with the stipulation that it be limited to use by Mr. Faircloth and his immediate family only, and that if he wanted to change anything, it would have to come back before the Board. Mr. Blanchard seconded the motion and it was approved by a 4-1 vote, with Mr. Tate voting in opposition.

**18. Public Hearing & Special Use Permit: J. F. Larsen, Applicant: Request to Operate a Boat Repair Service in an Existing Commercial Structure, Located at 21417 U.S. Hwy 17 N, Hampstead, NC.**

The public hearing opened at 9:05 p.m. Mr. Thurman swore in the witness. Mr. Breuer explained that there is currently a vacant commercial structure located towards the rear which would be utilized for the boat repair operation, with no new construction to take place. He said the applicant plans to utilize the working "garage" portion of the structure for boat repairs while using the office portion for daily business and the sales of supplementary boating items. Mr. Williams asked if the applicant is going to actually operate the business, said there are boats up there and asked if there are any violations. Mr. Larsen said the tenant is trying to get it up and running. Mr. Williams said he is asking questions because there is a history to this site and he wants to know who is responsible. The public hearing closed at 9:10 p.m. Mr. Blanchard made a motion to approve the request, Mr. Brown seconded the motion and it was unanimously approved.

**19. Public Hearing & Zoning Text Amendment, Planning Staff: Request to Revise §15.4C General Provisions Concerning Special Use Permits-Expirations.**

Mr. Davenport explained the following: It was brought to staff's attention that certain applicants for special user permits are having difficulty in obtaining final zoning permits; currently, special use permits approvals expire after one year and two possible administrative extensions of three months; this expiration period does not allow enough time for an applicant/developer to obtain complex State permits, such as wastewater treatment plants and their associated infrastructure, storm water facilities and State road entrance permits on certain projects; and staff is proposing the zoning text revision allow the extension period from two three-month extensions to two six-month extensions, provided the applicant can prove they are diligently searching for a permit. The public hearing opened at 9:11 p.m. Mr. Rivenbark asked if this is something of long-standing that needs to be corrected and Mr. Davenport responded "yes, it is imposing unnecessary restrictions." Mr. Blanchard asked if it is going to hurt anyone and Mr. Davenport responded "no." Mr. Brown asked if by having it the way it currently is, do we have conflicting zoning and Mr. Davenport responded "yes." The public hearing closed at 9:15 p.m. Mr. Rivenbark made a motion to approve the zoning text amendment, Mr. Brown seconded the motion and it was unanimously approved.

**20. Public Hearing & County-Wide Zoning Map Revision and Zoning Text Amendment: Deleting Flood Hazard Area and Flood Hazard Dash Zoning Districts, Rezoning Certain Parcels According to a Prescribed Method and Create a Flood Hazard Overlay District.**

The public hearing opened at 9:15 p.m. Mr. Davenport said this is a three-part request to be approved as one resolution: 1) County-wide zoning map revision and zoning text amendment; 2) delete Flood Hazard Area and Flood Hazard Dash Zoning Districts; and 3) create a Flood Hazard Overlay District. Mr. Davenport explained the following: in 2003, the Flood Hazard Area (FA) and Flood Hazard Area Dash (FA Dash) District were created to mirror the boundaries of the 100-year flood zone as established by FEMA; since then, in 2007, the 100-year flood zone has been revised but the zoning district remained unchanged; the FA and FA Dash zoning districts have their own zoning uses, area and bulk requirements; in some instances property owners have been stuck with FA Zoning District regulations on a property that is no longer in the flood zone and in other instances, FA zones are present with one or two other zoning ordinance/districts and is unnecessarily restricting property owners' potential uses; during the October 7, 2008 Planning Board meeting and the October 20, 2008 Board of Commissioners meeting, a unanimous consensus was achieved to perform the aforementioned map amendments and text revisions; on December 2, 2008 the Planning Board held a public hearing on the map amendments and text revisions and forwarded a unanimous recommendation of approval to the Board of Commissioners; advertisements were placed, individual letters sent to out-of-county property owners, flyers

were placed at several businesses, and information posted on the County's website for both the Planning Board and Board of Commissioner's meetings; most of the property will be rezoned to RA or R20; and some of the properties will still be in the flood zone and there will be extra requirements when they are seeking permits. The public hearing opened at 9:15 and the following citizens spoke:

Milford Farrow – Said he was concerned about his property, but he doesn't see any problem if everything Mr. Davenport said was true.

William Fagan – Asked if this will affect property taxes. Mr. Davenport said Reassessments will most likely affect property taxes but not because of this zoning revision. The actual use of the property will determine the assessment, as opposed to the zoning district.

Leroy Stallings – Said his main concern was flood insurance going up. Mr. Davenport said as far as he knows, if someone was taken out of the 100-year flood zone, they wouldn't need flood insurance.

Aldon Ray Thompson – Said he is concerned about an increase in taxes – when taxes go up, income doesn't go up.

Cecil Wooten – Said he was concerned that if we're taken off the insurance and it flooded, would FEMA help, and asked how it works with the rezoning. Mr. Davenport said the NICP doesn't consider what local zoning is and said this wouldn't affect whether or not FEMA would help someone.

Mr. Brown said folks are concerned this will affect them getting flood insurance if they had to get it before, or not being able to get it if they hadn't gotten it before.

Greta Hand – Said she doesn't live in the County and she never got a letter saying the public hearing date had been changed said she was concerned about insurance and ownership change. Mr. Davenport said there would be no ownership change; that if you were taken out of the 100-year flood zone in 2007, you are no longer required to have flood insurance – only your lender might require you to have it; and that they sent out 2,053 letters to out-of-county residents, were informed the meeting had been moved to Surf City, and then changed back tonight. He said they met State codes for advertising.

Mr. Tate said this plan may enable the Maple Hill community more growth and Mr. Davenport said he thinks so. Mr. Tate said Ms. Hand had a good point and we will look into better advertising. He said he is responsible for changing the meeting because he didn't want people to be put in danger traveling on icy roads.

Cindy Moore – Commended the board for offering them the opportunity to speak on this; said she was concerned about seniors who couldn't come to meetings; was concerned if businesses will continued to be allowed there; and was concerned about insurance and zoning determinations. She also asked of the 8,600 parcels affected, how many is in Maple Hill. Mr. Davenport said the rezoning won't affect business, RT and B2 zoning won't be affected by the changes, and this is a positive for providing economic development.

Malcom Boney – Said he had environmental concerns about a creek near his house and asked if the staff could ask a surveyor to send a letter saying it's not in the flood zone. Mr. Davenport said if Mr. Boney feels like he is not in a flood zone, he can get a surveyor to send a letter but as far as the County incurring the expenses, it is up to the Board of Commissioners. He said if a property is part in and part out of a flood zone, they can get a termination by Jaki Pace in the Planning Department.

The public hearing closed at 10:14 p.m. Mr. Blanchard made a motion to approve the County-wide zoning map revision and zoning text amendment; deletion of the Flood Hazard Area and Flood Hazard Dash Zoning Districts; and creation of a Flood Hazard Overlay District. Mr. Williams seconded the motion and it was unanimously approved.

Mr. Tate thanked Planning staff for the hard work they did on this item and thanked all who came out to speak, including the Maple Hill Community.

#### DISCUSSION

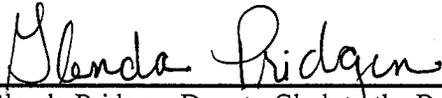
21. **Update, Discussion and Direction of Highway 17 Overlay Committee's Results.**

Mr. Davenport explained the following: on December 16, 2008, the Highway 17 Overlay Committee reviewed the report and draft ordinance prepared by the consultant and the Committee recommended the adoption of the ordinances; the Planning Board discussed the Committee's results and recommended that the package be forwarded to the Comprehensive Plan and Unified Development Ordinance Committees for their consideration and for the review to occur in the context of the ongoing Projects; the Board of Commissioners is being asked to provide staff with a consensus of direction regarding the draft ordinances the Overlay Committee has forwarded; and two possible options are 1) for staff to process these ordinance revisions independently of the Comprehensive Plan and UDO Projects, or 2) to refer the documents to the consultant (Wooten) and the appropriate committees for consideration in the context of the ongoing Projects. The Board expressed unanimous consensus for staff to pursue option 2.

#### ADJOURNMENT

There being no further business, Mr. Blanchard made a motion to adjourn the January 21, 2009 meeting adjourned at 10:20 p.m.

Respectfully Submitted,



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Glenda Pridgen, Deputy Clerk to the Board

Reviewed By:



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Planning Staff