

MONDAY, AUGUST 18, 2008

The Pender County Board of Commissioners met in regular session on Monday, August 18, 2008 at the Pender County Public Assembly Room, 805 South Walker Street, Burgaw, North Carolina.

MEMBERS PRESENT: Chairman David Williams, presiding; Vice Chairman Jimmy Tate; and Commissioners Norwood Blanchard, George Brown and F.D. Rivenbark.

MEMBERS ABSENT: None.

OTHERS PRESENT: Rick Benton, County Manager and Clerk to the Board; Paul Parker, Assistant County Manager; Trey Thurman, County Attorney; Glenda Pridgen, Deputy Clerk to the Board; other staff and members of the Press and public.

CALL TO ORDER

Chairman Williams called the meeting to order at 4:00 p.m. and welcomed all to the meeting.

INVOCATION

Chairman Williams offered the Invocation.

PLEDGE OF ALLEGIANCE

Commissioner Brown led the Pledge of Allegiance.

PUBLIC INFORMATION

1. **Update on the Progress and Status of Highway 17: Marc Finlayson: Highway 17 Association in North Carolina.**

Mr. Finlayson gave the Board a "Goals and Progress Report" which included: an Impact Study prepared by ECU concerning DOT items – they hope to work on a more detailed study from ECU or UNCW; the General Assembly began phasing out transfer from the Highway Trust Fund to the General Fund; 2009 will be the most important year to the Highway 17 project since 1989 for transportation projects – there will be substantial DOT reform; more local authority is given for public transit; Congress and Senator Dole are working with Highway 17 project – the Federal Budget is trying to "turn over every stone" they can. As part of a discussion of the status of the Highway 17 By-Pass, Mr. Finlayson indicated that a wetland study had been completed, a website has been developed, and they met with Commissioners Williams and Blanchard. Mr. Williams said he is pleased about the website as it is a very important tool to disseminate information. Mr. Finlayson thanked Pender County for its support.

CONSENT AGENDA

Chairman Williams presented the three items on the Consent Agenda and asked for any questions or discussion. There being none, Mr. Rivenbark made a motion to approve the Consent Agenda as presented, Mr. Brown seconded the motion and the Board voted unanimously to approve the Consent Agenda as follows:

2. Approval of Minutes for the August 4, 2008 Regular & Closed Session Board Meeting.
3. Resolution Accepting Petition to Add Annie West Rd. in Willard to the State Maintained System & Authorizing the County Manager to Submit the Petition to N.C. Department of Transportation.
4. Proclamation by the Pender County Board of Commissioners: Designate the Month of September as 2008 National Alcohol & Drug Addiction Recovery Month.

RESOLUTIONS

Chairman Williams asked that Items Number 7 & 8 be considered first, due to the fact that DSS Director Dr. Shiver had some other obligations.

7. Resolution for Pender to Remain a Standard County for the Work First Program for 2010-2011.

Dr. Shiver explained that the Pender County Board of Social Services voted unanimously to request that Pender remain a Standard County versus Electing for the Work First Program for 2010-2011. She said the difference is that with a Standard County, the State of North Carolina writes the rules, and with an Electing County, the Board of Commissioners determines the rules and DSS implements the Program accordingly. Mr. Rivenbark made a motion to approve the resolution, Mr. Blanchard seconded the motion and it was unanimously approved.

8. Resolution Authorizing Contracts and Authorizing Purchase Orders for Fiscal Year 2008-2009: Mega Force: \$60,000; Attorney Tonya Lacewell Turner: \$69,000.

Dr. Shiver explained that it is mandatory under Title VI of the Civil Rights Act of 1964 that all agencies receiving federal funds have services that are accessible by all eligible clients seeking those services. Staff must be able to communicate with clients who speak little or no English. Title VI mandates that DSS have a Limited English Plan (LEP) in place that explains who will communicate with Hispanic/Latino clients who speak Spanish. DSS contracts with Mega Force Staffing Group, Inc. to employ staff who speaks Spanish fluently. She explained that Attorney Tonya Lacewell-Turner was hired in May, 2008 to replace Attorney Regina Floyd-Davis who had served as DSS Attorney since 1998. Because the number of cases requiring legal counseling have increased tremendously in recent years, DSS needs a full-time attorney so as not to have to utilize services of County Attorney Trey Thurman, who in recent months has assisted the agency with the overflow of cases. Mr. Thurman said that he had worked with Ms. Lacewell-Turner and that he wholeheartedly endorses her. Mr. Blanchard made a motion to approve the resolution, Mr. Tate seconded the motion and it was unanimously approved.

5. Resolution to Award Design of Building 803 on S. Walker St. to Warren Wilson Architect, in the Amount of \$34,900.

Health Director Dr. Jack Griffith explained that this resolution will provide for services to improve the effectiveness and efficiency of dental care because the dental clinic presently has a patient base of more than 5,800 patients and treatment is provided in very limited space. Dr. Griffith introduced the Chairman of the Health Board, Ms. Roberta Bost, and the Dentist, Dr. Holmes. Ms. Bost said she is the nurse representative on the Health Board and also the Chairperson. Ms. Bost said that in order for the dental office to continue efficiency and productivity, they need more space. Dr. Holmes spoke of the need for more space because she can't give care to as many patients as she would like because of the limited size – her patient load is currently approximately 5,800 and they are now booking through the fall with people trying to make appointments. Dr. Holmes gave a detailed report which included: the background of dentistry in North Carolina, including the fact that there are four counties in North Carolina with no active dentists, three of which have not had an active dentist in over fifteen years; new dentists are not graduating at a rate fast enough to replace the retiring ones; statistics on the number of dentists in metropolitan and rural counties; statistics on the services Pender County's dental office provides in addition to basic needs; they serve mostly low income patients – more than 50% of their work is written off based on the patient's inability to pay, including several patients that qualify at the 0% pay level; Pender County Health Department recognized as one of the public health care facilities in the state that works directly with expectant mothers to promote good dental health; the entire office has learned and become fairly fluent in Spanish; they are serving some of the counties adjacent to Pender; according to the US Dept. of Health website for all of North Carolina dental health professional shortage areas, there are only seven counties in the state with more need than Pender; and that based on the US Dept. of Health and Human Services, Health Resources and Services Admin., Pender would need three more dentists before it was even considered for removal from the underserved list. Mr. Tate said Dr. Holmes gave good statistics and asked if her report includes anything that would tell them anything special, such as percentage of people to space. Dr. Griffith said there is nothing in the ADA saying anything such as how many people there should be per square feet. Mr. Blanchard asked why they hired Warren Wilson as the Architect and he turned around and hired someone else. It was explained that MCBH Engineers is the subcontractor – they do the mechanical, electrical and plumbing engineering. Mr. Tate said he has been impressed with Dr. Holmes in her old space and he can only imagine what she'll do in new space. Mr. Blanchard made a motion to approve the resolution, Mr. Brown seconded the motion and it was unanimously approved.

6. Resolution for the Downtown Burgaw Association, Inc. to Deed over the Old Jail Property to the Town of Burgaw.

Mr. Herb Harrell of the Downtown Burgaw Association, Inc. explained that in the past, the Town of Burgaw wasn't interested in pursuing ownership of the Old Jail but now they are, and that the Town has more resources for repairs than the Downtown Association. Mr. Brown asked if the Town plans to restore the Old Jail and Mr. Harrell said the

Town Board had passed a resolution stating their intent to renovate and continue use of the Old jail for community purposes, with a committee of interested citizens and Town Board members guiding the process. Mr. Parker added that it is a stipulation of the deed that the Association cannot deed the property to the Town without the permission of the Pender County Board of Commissioners. Mr. Blanchard made a motion to approve the resolution, Mr. Rivenbark seconded the motion and it was unanimously approved.

9. Resolution Authorizing the Issuance of a Purchase Order to Open Software Solutions (OSSI) for Renewal Annual Maintenance: \$42,641.36.

Sheriff Carson Smith explained that this resolution is for the renewal of annual maintenance fees and that it is a "few dollars higher" than last year. He said this is the last year we'll use OSSI since soon we'll be going to the new system. Mr. Rivenbark asked if it is budgeted for and Sheriff Smith responded "yes." Mr. Rivenbark made a motion to approve the resolution, Mr. Tate seconded the motion and it was unanimously approved.

10. Resolution Authorizing One New Detective Position and Two New Deputy Positions in the Sheriff's Office for The Formation Of A Gang Resistance Unit.

Sheriff Smith noted that Ms. Julie Askew, Director of Student Support Services for Pender County Schools was present. Sheriff Smith said that Pender County Schools applied for and received a Safe Schools/Healthy Students Grant that included the formation of a County Gang Resistance Unit through the Pender County Sheriff's Office; that the unit will be made up of three sworn law enforcement officers (one detective and two deputies) who will be employees of the Sheriff's Office, and one case worker who will be hired by the Schools; that the objectives of the Gang Resistance Unit will be to monitor, respond to and combat gang activity in the Schools and County, with a large emphasis on training and education; that the deputies will implement the GREAT (Gang Resistance Education and Training) program which, because it teaches life skills and does contain information on the hazards of illegal drugs, will replace the DARE training currently taught in the Schools; that grant funds will be used to fund the salaries of these three new positions for a period of four years; and that operating expenses will come from the existing Sheriff's Office budget. Mr. Rivenbark was concerned about the law enforcement being in direct contact with the students and asked what standards will be required of them and if they will be certified teachers. Sheriff Smith said they will be like the DARE Officers – some of them are not certified teachers. Mr. Tate asked if they will be looking for people with training and certification and Sheriff Smith said that as far as teaching methodology, "no" but they will be trained in objectives. There was more discussion about law enforcement training and becoming certified teachers. Ms. Askew noted that the classroom teacher will still be in the classroom during the officers' teaching and said it is a team effort by the officer and the teachers. Ms. Askew distributed a report on Safe Schools Healthy Students and gave some of the highlights of the report which is on file with the permanent records in the County Manager's Office. Mr. Tate made a motion to approve the resolution, Mr. Rivenbark seconded the motion and it was unanimously approved.

11. Resolution Authorizing Pender County to Lease to the State of North Carolina Tower Space on the New Emergency Communications Tower.

Sheriff Smith explained that the new County Emergency Communication Tower has been erected and will soon be operational; that the tower was funded through federal funds as a part of the Pender County Emergency Communication Interoperability Project and the initial agreement was that the State would handle construction of the tower, the County would retain ownership, and the State would install and maintain equipment necessary to complete the VIPER radio network in Pender County; that the County will lease tower space to the State for this purpose for an initial term of ten years renewable for another ten years; and that the rent will be one dollar for the term. Mr. Rivenbark made a motion to approve the resolution, Mr. Brown seconded the motion and it was unanimously approved.

12. Resolution Authorizing a Purchase Order to Tim's Heating & Air Conditioning, Inc. to Replace One 5-Ton Trane RTU Heat Pump at the Howard Holly Building: \$11,146.

Mr. Parker explained that \$50,000 is budgeted each year for air conditioning repairs; that numerous repairs have been made to this existing unit; that after evaluation it was determined that the existing unit needs replacement due to mechanical problems with the compressor; and that the existing unit had been more expensive to repair because the contractor has to hire a crane to get on the roof of the building where the unit is located. Mr. Blanchard asked what year the existing unit was installed and Mr. Parker said 1977. Mr. Rivenbark said we will save down the road by putting a unit on the ground instead of on the roof. Mr. Blanchard made a motion to approve the resolution, Mr. Tate seconded the motion and it was unanimously approved.

13. Resolution Authorizing a Purchase Order to Fairway Ford for Vehicle Purchase: \$17,300.

Mr. Parker explained that one vehicle purchase is needed for the Tax Department since the existing vehicle has high mileage and mechanical failure; that it is recommended to purchase a program vehicle in order to meet the needs of the Tax Department on a daily basis and the territory being covered; and that the price given includes a three-year or 36,000 mile bumper-to-bumper warranty and the remainder of 60,000 factory powertrain warranty; and that quotes were obtained from Capital Ford, Benson Ford and Fairway Ford of Burgaw. Mr. Blanchard made a motion to approve the resolution, Mr. Brown seconded the motion and it was unanimously approved.

14. ITEMS FROM THE COUNTY MANAGER

Mr. Benton presented the following items which were included in the agenda packets:

(1.) Town of Burgaw funding request for Historic Depot.

Mr. Tate noted that the Mayor is present. The item wasn't discussed at this time.

(2.) Ordinance Prohibiting Registered Sex Offenders from Entering Public Parks.

Mr. Williams had requested that this issue be placed on the agenda for discussion. A copy of an ordinance recently adopted by another jurisdiction was included in the agenda packets. It was noted that a citizen wished to speak on the subject and Mr. Blanchard said if a citizen wants to speak, he should be allowed to. Mr. Marty Boyko, a retired police officer of Atkinson, said he read the article in the paper about the proposed ordinance and said he felt like Mr. Williams took this subject personally. Mr. Boyko said that all sex offenders shouldn't be lumped together; that he's seen many lives ruined by "teens in love" who were targeted as one-time sex offenders; and that one-time sex offenders who are now responsible adults wanting to attend parks with their children shouldn't be banned from parks. Mr. Brown asked Sheriff Smith how he could segregate the one-time offenders from true sexual predators and Sheriff Smith responded that if the ordinance was set up that way, it would be harder to enforce. Mr. Williams said that he feels like it is also up to folks in parks to familiarize themselves with who the registered offenders are by looking them up on the Sheriff's Department Web site. It was mentioned that this could be imposed at churches and other places. Mr. Brown said parks are where we have our children and we need to protect them; he said church is not the same. Mr. Tate said he was under the impression that everyone supports this but Mr. Boyko raises a valid point; he then inquired about ball games at the schools. Mr. Williams said that there will always be someone who will disagree, but this issue at discussion regards only County parks. Mr. Tate said he didn't say his opinion changed, he just said the gentleman brought up points he hadn't thought of before. Mr. Rivenbark said that personally, he thinks it is wrong to push it through. Mr. Williams said he did take it personally and said we just have to "draw a line in the sand" and that personally, this is a decision that he'll be glad to take the heat over; he said he's willing to lose the next election over this and that he's willing to be a leader and make a move on it. Mr. Williams said this is something that the Town of Surf City is also looking at. Mr. Thurman distributed the draft ordinance and said the Board can always bring it back with tweaking and try to make it better. He said there were questions about whether a public hearing was required but this type of ordinance doesn't require a public hearing and it is up to the Board whether they want to have one. Mr. Thurman asked the Sheriff to look at the ordinance since it will be under his jurisdiction and said it will be either a civil or criminal matter. Mr. Brown made a motion to approve the ordinance but there was no second. Mr. Tate asked if there are concerns among the other Commissioners that no one will second the motion; he said all of them have been on the Board longer than him. Mr. Blanchard said in determining the distinction between the real sex offenders and others, there are things that Congress or legislation should do, that the Commissioners can't make judgment on this. He added "but, it's the best we can do" so he will second it based on this. The Board voted unanimously to approve the Ordinance Prohibiting Registered Sex Offenders from Entering Public Parks. They agreed the ordinance could be changed later if necessary.

(3.) Schools Fund Availability.

Mr. Williams gave a brief history of the Schools' request for funding and of the funding for Cape Fear Community College and said Mr. Brown wanted to give the Schools additional funding, as well as Mr. Tate. Mr. Tate said he had been losing sleep over the fact that West Pender doesn't have a full-time Art Teacher and he hates to see the children go back to school sharing the Art Teacher with Burgaw Middle School. He said Art provides children another venue for learning. Mr. Williams agreed saying the very children who may not have transportation available for taking advantage of extra-curricular activities could benefit from Art opportunities. Mr. Brown asked Ms. Sholar what other positions had been requested during the budget process and Ms. Sholar said clerical positions are needed

for guidance counselors to give the counselors more time with the children, as well as maintenance personnel. Mr. Williams said we can't do the whole list and asked Ms. Sholar if she had to choose, who she would choose. Ms. Sholar said it is difficult to choose because all the positions are needed, but said she would choose clerical help for the counselors to free them up to spend more one-on-one time with students in drop-out prevention, and that the Art Teacher would be her number one choice. School Board Chairman Tom Roper said it's not that we need maintenance less, but we have 400 kids per counselor and one of the Schools' goals is to get them college bound. Mr. Blanchard asked how much a full-time Art Teacher would cost and Ms. Sholar said \$38,000. Mr. Tate made a motion, Mr. Brown seconded the motion and the Board unanimously agreed to fund one full-time Art Teacher for West Pender School and three clerical positions for the three High School Guidance Counselors, at a total cost of \$113,000 – the Art Teacher funded at \$38,000. (Burgaw Middle School will keep the current Art Teacher full-time). Mr. Roper thanked the Board for its support and invited the Board to attend the Schools' Convocation to be held on Friday. Mr. Tate thanked Mr. Roper for his persistence. Ms. Sholar also thanked the Board for its support.

(4.) Former Topsail High School Property.

Mr. Williams had requested the issue of moving forward with disposing of this property be placed on the agenda for discussion. Mr. Williams asked if the Board is ready to start the upset bid process. Mr. Thurman explained the difference in the upset bid process and selling outright. Mr. Tate inquired about the status of the appraisal. It was noted that that this property had been appraised with and without the building. Mr. Thurman was instructed to draft a set of bidding documents and bring back to the Board.

(5.) Public Utilities Report.

Mr. Benton noted the attached Utilities Project Update from Mr. Mack and said Mr. Mack is present to answer any questions. Mr. Tate mentioned that he wished he had been involved in setting up the public meetings regarding the Columbia-Union Water & Sewer District Bond Referendum and said he could have helped. Mr. Mack said these meetings are not "nailed down" yet – he wanted to get the Board's input.

The Board referred back to Item Number (1.) and said they will revisit it at budget time.

ITEMS FROM THE COUNTY COMMISSIONERS

Mr. Williams mentioned an article from the *Wilmington Star News* with respect to a judge saying that North Carolina owes its public schools nearly \$748 million and the General Assembly will apparently just take from other K-12 education programs rather than working out a repayment schedule.

Mr. Parker said he wished to give a public apology (which he said he had already done in private) to Mr. Blanchard and Mr. Rivenbark for false accusations which he said had caused embarrassment to them and to the Board. He said it was something personal between Mr. Blanchard and Mr. Rivenbark and himself and he made false accusations. Mr. Parker said he made the comments to a reporter and another commissioner and said he hopes Mr. Blanchard and Mr. Rivenbark both accept his apology. Mr. Williams asked Mr. Parker if he may have simply misinterpreted previous comments made by Mr. Blanchard and Mr. Rivenbark and Mr. Parker replied "I made false accusations against Mr. Blanchard and Mr. Rivenbark." Both Mr. Blanchard and Mr. Rivenbark said they accepted the apology.

ITEMS FROM THE COUNTY ATTORNEY

Mr. Thurman said he has items for closed session with respect to #3 and #5 of NCGS 143-318.11.

PUBLIC COMMENT

There was no public comment.

CLOSED SESSION

At 5:45 p.m. Mr. Rivenbark made a motion to enter into closed session pursuant to NCGS 143-318.11: (3) to consult an attorney employed or retained by the public body in order to preserve the attorney-client privilege; (4) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the (public body); and (5) to establish, or instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price or other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract. Mr. Brown seconded the motion and the Board unanimously approved going into Closed Session.

At 7:00 p.m. Chairman Williams called the meeting back to order and said there were no official announcements from closed session except that the County soon hopes to rent some office space in Hampstead.

PUBLIC HEARINGS: RESOLUTIONS/ZONING AMENDMENTS/SPECIAL USE PERMIT REQUEST

15. Public Hearing and Adoption of Bond Order Authorizing the Issuance of General Obligation Water Bonds of the Columbia-Union Water and Sewer District in the Maximum Amount of \$50,000,000.

Utilities Director Michael Mack explained that in 2006, the voters of the Columbia-Union Water and Sewer District narrowly defeated the \$44,000,000 Bond Referendum that would have provided the general obligation bonds to use for collateral for the loan to construct a "backbone" water distribution system in the District; that the Board of Commissioners has instructed staff to take steps to place this bond referendum on the ballot for the November 4, 2008 election; that since the \$44,000,000 cost estimate was based on 2006 numbers, staff requested the Engineer to update the estimate and McKim & Creed now estimates the figure to be closer to \$50,000,000; that Bond Counsel has indicated that this sets the "maximum" amount of bonding authority and in no way prevents the County from borrowing and bonding for less; and that if today's action is approved, it will authorize the Bond Order for the issuance of general obligation water bonds of the Columbia-Union Water and Sewer District in the maximum amount of \$50,000,000, subject to voter approval on November 4, 2008. The public hearing opened at 7:05 p.m. Mr. Tate said he had traveled throughout the District and he had heard nothing but good comments from citizens. The public hearing closed at 7:06 p.m. Mr. Tate made a motion to approve the resolution, Mr. Rivenbark seconded the motion and it was unanimously approved.

16. Resolution Establishing Details for Water Bond Referendum of the Columbia-Union Water and Sewer District.

Mr. Mack said this item is in conjunction with the public hearing and adoption of Bond Order that was just held; that it will establish the details of the water bond referendum and authorize the Clerk to publish a notice of the bond referendum and submit a certified copy of the resolution to the Board of Elections within three days after approval; and that the ballot question shall be in the following form:

Columbia-Union Water and Sewer District – Water Bonds

Shall the order authorizing up to \$50,000,000 of general obligation bonds of Columbia-Union Water and Sewer District to pay capital costs of providing water systems and related costs, as adopted by the District's governing board on August 18, 2008, be approved?

Mr. Tate made a motion to approve the resolution, Mr. Rivenbark seconded the motion and it was unanimously approved.

17. Public Hearing: Town of Burgaw: Request to Expand Extra Territorial Jurisdiction.

Town of Burgaw Planner Chad McEwen explained that at their May 19, 2008 meeting, the Pender County Board of Commissioners voted to table a decision regarding a public hearing to consider the Town of Burgaw's request to expand its Extraterritorial Jurisdiction (ETJ) until after the passage of the county budget for FY2008-009; that the Town held a public informational hearing on March 18, 2008, held public hearings to receive public comment on March 20, 2008 and April 8, 2008; that this information will go to the General Assembly if approved by both the Town of Burgaw and the Pender County Board of Commissioners; and stressed that the ETJ extension is NOT ANNEXATION and that properties located in the ETJ will not be taxed by the Town of Burgaw. Mr. McEwen gave a Power Point Presentation which included, among other things: 1) what is an ETJ? – a buffer that helps insure cohesion; 2) why is it important? – currently the Town's ETJ is not in compliance with the North Carolina General Statutes (GS 160A-360 (b)); 3) why requested? – it has not been expanded since the original in 1974; 4) what ETJ is – transfer of zoning, subdivision and building inspection authority; 5) what it is not – ANNEXATION; and 6) the process included three public hearings held by the Town and one by Pender County. Mr. McEwen demonstrated the map of the proposed ETJ and pointed out that if Pender County approved the requested expansion, local legislation would need to be passed by the North Carolina General Assembly to allow the Town to expand the ETJ to up to two miles. The public hearing opened at 7:16 p.m. Mr. Tate said he had gotten some calls originally, but after the public meetings, the concerned citizens said they were taken out of the proposed ETJ. Mr. Tate thanked the Town for holding the public meetings. The public hearing closed at 7:17 p.m. Mr. Tate made a motion to approve the Town of Burgaw's request to expand its Extra Territorial Jurisdiction, Mr. Rivenbark seconded the motion and it was unanimously approved.

25. Request for the Board of Commissioners to Hear Appeal of Planned Development Master Plan and Preliminary Plat for Olde Point Village, Hampstead.

Mr. Williams said that this item had come before the Board before and said that at this time the County Attorney is recommending the item be sent back to the Planning Board, due to the introduction of new information.

18. Public Hearing & Zoning Map Amendment: Thomas H. Johnson, Jr., Applicant: Request to Rezone 3.58 Acres from RT, Rural Transitional District to B-1, Business District, (Neighborhood) Located on the East Side of US Hwy 17, between Hardison Drive and Demps Road, Hampstead.

Planner Kyle Breuer explained that the purpose of this district shall be to provide convenient shopping facilities primarily of necessity goods and personal services required to serve a neighborhood; that it is a general use rezoning; that the properties to the north and south along US Hwy 17 are zoned RT, Rural Transitional District, the property abutting the rear is zoned R-20, Residential District and the property directly across the US Hwy 17 right-of-way is Holly Shelter Game Preserve; that the rezoning request is consistent with the 2005 Land Use Plan; and that the amendment request was unanimously approved by the Pender County Planning Board on July 1, 2008. The public hearing opened at 7:20 p.m. It was noted that Mr. Johnson was available to answer any questions. There were no questions and no comments. The public hearing closed at 7:21 p.m. Mr. Blanchard made a motion to approve the Zoning Map Amendment, Mr. Tate seconded the motion and it was unanimously approved.

19. Public Hearing & Zoning Map Amendment: Thomas H. Johnson, Jr., Applicant: Request to Rezone 8.7 Acres from RT, Rural Transitional District to B-2, Business District (Highway), Located on the Northeast Corner US Hwy 17 and Buccaneer Blvd. Hampstead.

Mr. Breuer explained that the purpose of the B-2 zoning district is to provide for the proper grouping and development of roadside business uses which will best accommodate the needs of the motoring public and businesses demanding high volume traffic; that it is a general use rezoning; that the property along the US Highway 17 corridor in this area is all zoned RT, Rural Transition, there is R-20, Residential District zoning along the rear and across Buccaneer Blvd., adjacent to the western corner of the tract and the rear of the property abuts single-family residences; that the rezoning request is consistent with the 2005 Land Use Plan; and that the amendment request was unanimously approved by the Pender County Planning Board on July 1, 2008. Mr. Williams clarified with Mr. Breuer that the tract does not consist of contiguous pieces of property. Mr. Johnson was again available to answer any questions. As there were no questions or comments, the public hearing opened and closed at 7:22 p.m. Mr. Blanchard made a motion to approve the Zoning Map Amendment, Mr. Brown seconded the motion and it was unanimously approved.

20. Public Hearing & Zoning Map Amendment: Michael Nadeau, Applicant: Request to Rezone 1.78 Acres from R-20, Residential District, to B-2, Business District (Highway) Located on Avery Rd. Near the Intersection of US Hwy 17, Hampstead.

Planner Ashley Frank explained that the total acreage of the tract is 2.91 acres and is currently split zoned between R-20 and B-2; that the rezoning will eliminate the split zoning of the parcel and make it entirely zoned B-2; that the property was previously used as part of the Carolina Peanuts production facility and a silo, small office and truck scales are still located there; that the property to the northwest is zoned R-20 and all the properties fronting along US Highway 17 are zoned B-2; that the property to the northwest, across Avery's Road exists a mobile home park, to the north of the property is the Topsail Presbyterian Church and cemetery and located in front of the property to the east, fronting along US 17 is a law firm, a single family home and a vacant lot; that the rezoning request is consistent with the 2005 CAMA Land Use Plan; and that the amendment request was unanimously approved by the Pender County Planning Board on July 1, 2008. The public hearing opened at 7:26 p.m. Mr. Nadeau said that the total acreage is 6.1, not 2.91 acres as previously stated; that the tract should have been recognized as an established commercial site when the new zoning map was developed several years ago, and the owners are asking the Board to rezone this highway frontage land back to business use; and that Attorneys Biberstein & Nunalee bought some of this property back when it was zoned B-2. The public hearing closed at 7:27 p.m. Mr. Blanchard made a motion to approve the Zoning Map Amendment, Mr. Brown seconded the motion and it was unanimously approved.

21. Public Hearing & Zoning Map Amendment: Charles Henry Clark, III, Applicant: Request to Rezone 3.09 Acres from RT, Rural Transitional District, to I-1, Industrial District (Light), Located between NC Hwy 210 W and NC Hwy 133, Rocky Point.

Ms. Frank explained that the property is currently split zoned between RT and I-1, with another area of I-1 approximately 700 feet to the southeast and the surrounding area is RT; that the surrounding area consists of low density residential to the south and west, and moderate to intense agricultural use to the north and east; that the request is in compliance with the 2005 CAMA Land Use Plan and the Pender County Zoning Ordinance; and that the amendment request was approved by a five-to-one vote by the Pender County Planning Board on July 1, 2008. The public hearing opened at 7:30 p.m. Attorney Robert Kenan said that the property is located where Clark's Sausage is; that Mr. Clark is looking to consolidate the property into one zoning district – I-1, Industrial District (Light); that Mr. Clark lives right around the corner; and that Pender Packing Company is located down the road from this property, and it is also zoned I-1. The public hearing closed at 7:31 p.m. Mr. Brown made a motion to approve the Zoning Map Amendment, Mr. Tate seconded the motion and it was unanimously approved.

22. Public Hearing & Zoning Map Amendment: Vaughn King, Applicant: Request to Rezone Tract Totalling 36.26 Acres to be Rezoned from FA, Flood Hazard Area District and R-20, Residential District to PD, Planned Development District, Located on NC Highway 210 Approximately 2 Miles East of the I-40 Interchange.

Ms. Frank explained that the applicant is making this request on behalf of the owner, Vaughn King; that the property is currently surrounded by FA to the south and west, a small portion of RA, Residential Agricultural District is located to the northwest, and there is PD approximately 1000 feet to the west across the Northeast Cape Fear River (Lanes Ferry Development); that the Pender County 2005 CAMA Land Use Plan classifies this area into four land use classifications: Rural Clusters, Rural Areas, Conservation I and Conservation II; that the Rural Clusters classification recognizes the small concentrations of distinct residential communities that may be associated with a church or other institutional or non-residential uses in the Rural Areas, and the primary purpose of this classification is to implement the County's policy of "preserving existing viable residential neighborhoods"; that this is a general use rezoning; that the property is located within a Floodway; and that the amendment request was denied by a six-to-zero vote by the Pender County Planning Board on July 1, 2008. The public hearing opened at 7:40 p.m. Mr. Blanchard asked for clarification of where the property is located and Ms. Frank pointed it out to him on a large map. Mr. Brown asked what would be affected by the rezoning and Ms. Frank said it is in a floodway and would have to be governed by the state. Mr. Brown asked even if it is rezoned, will they be limited to what they can do and Ms. Frank responded affirmatively. Mr. Brown asked why the Planning Board was against the rezoning and Ms. Frank said because the residents complained that the area is "under water" and is continuously wet. Mr. Thurman added that the Planning Board said the area was too wet and had too much flooding to be rezoned. Mr. King said there are five acres of the land that are truly usable asked if he could describe what he wants to do with the property. Mr. Williams said Mr. King can't describe what he wants to do with the property because the Board of Commissioners must consider the request based on general rezoning; he said it is nothing personal but that is the rule. Ms. Dianne Moore said they had been here before on this item and that their concern was what was going to be done on the property. She said that they had since talked to the applicant and it would be ok if he does what he says they're going to do. Mr. Tate asked Ms. Moore if she was more comfortable now that they have talked to the applicant and asked if they were opposed at first and Ms. Moore responded "yes" to both questions. Ms. Christine Jarvis said their main concern is flooding; that the water backs up when there's a regular rain; that during Hurricane Floyd the whole area was under water for two weeks; that she doesn't have any other problem except with the setbacks; that the owner said if he doesn't get what he wants, he'll log the property and then there won't be anything to soak up the water; that she can't say if she's for or against it and she wants more information; and that if he really does what he says he's going to do, she probably won't have a problem with it. Mr. Williams said logging is not the Board's jurisdiction. Ms. Jarvis asked how you can rezone something if you don't know what's going there and Mr. Williams said if it's rezoned, they can build anything that's allowed under that rezoning. Mr. Tate mentioned that the Board had asked former Planning Director Joey Raczkowski to review the Zoning Ordinances to see if revisions need to be made; Planning Director Patrick Davenport said Conditional Use Zoning would be included in the Unified Development Ordinance. He said it will take about a year for these documents to be produced. Mr. Brown said he is "uncomfortable" making this motion but he will make a motion to deny the Zoning Map Amendment. Mr. Tate seconded the motion and it was approved by a four-to-one vote, with Mr. Rivenbark casting the dissenting vote. After the vote was taken, Mr. Blanchard said not enough is known about the project.

23. Public Hearing & Special Use Permit: Stroud Engineering, PA, Applicant: Request for the Operation of a Wastewater Treatment Plant.

Mr. Williams said this is a quasi judicial hearing by the Board of Commissioners; that witnesses have to be sworn in; that the Board bases its decision strictly on facts, not opinions; and that several criteria have to be met to approve a special use permit. Mr. Thurman swore in the witnesses. Mr. Breuer explained that the applicant is requesting a special use permit to construct and operate a wastewater treatment plant on 250 acres of a 355.2 acre tract that will provide wastewater service to accommodate future growth in the area; that the facility will be located on the western border of the tract along Shaw Highway; that the project will consist of a 400,000 gallon per day treatment plant, a 2 million gallon 5-day upset pond, and a 12 acre infiltration basin; that the proposed waste water disposal method will have a state classification as a High Rate Infiltration System and will treat the water to a quality exceeding that required for consideration as clean groundwater; that all mechanical equipment associated with the operation of a waste water treatment plant will be located within an enclosed building to minimize any noise associated with the project and catalytic air scrubbers will be utilized to neutralize any associated odors; that a maximum of two feet of tank will be visible above ground and the installation of appropriate buffers and landscaping will be consistent with Pender County's Zoning Ordinance and commercial site plan review; and that in addition to a commercial site plan review by County Planning staff, all applicable local, state, and federal permits must be obtained prior to operation of the facility. Mr. Williams asked for clarification that the regulatory side is not County and Mr. Breuer said yes, that it's handled at the state level and the state sends the county their recommendation. Mr. Brown asked how close the project is to the flood zone and Mr. Breuer said it is out of the 100-year flood zone. Mr. Brown asked, excepting Hurricane Floyd, is the area prone to flooding? Mr. Breuer said yes, there are areas prone to flooding. The public hearing opened at 9:25 p.m. Darryl Mills, Attorney for the project, spoke on behalf of the project. Mr. Mills said you have to make certain findings to approve a special use permit and said the applicant does meet all the criteria for this project. Mr. Mills called on Jimmy Fentress, Project Engineer, to speak. Mr. Fentress said that the plant is being built to enable future development of adjoining property; that it is a long process and they have to get permitted by the state; that the plant has to be out of the 100-year flood elevation area; that it will be a package wastewater treatment plant, not large scale; that it will have odor control; and that it is similar to projects at Avendale, Hampstead Pines and Castle Bay. Mr. Blanchard asked how many houses a plant this size will serve and Mr. Fentress said 1,100. Mr. Brown asked about the 2 million gallon pond and Mr. Fentress said the pond is empty and is reserved for problems with the plant; he added that in his experience, there had never been any problems with this type of treatment plant. Mr. Brown asked what happens if a flood comes and Mr. Fentress said the pond is elevated above the 100-year flood elevation. Bill Batuyios, a Certified Real Estate Appraiser, said he was asked to determine what, if any, adverse effects this project would have on the surrounding property values. He said he looked at other areas, such as Belvedere, and they had no adverse effects such as bad odors like in the old days. Mr. Thurman asked if he looked at any areas that had treatment plants and Mr. Batuyios said "yes", and said he talked to people that live within 100' of the plants and they had no problems with them. Mr. Batuyios distributed a photograph that had just been taken to demonstrate a house next to a wastewater treatment plant. Mr. Mills summarized the eight findings he said was needed to approve the special use permit and said the applicant meets all the requirements. Mr. Thurman asked if they want to enter the photo as an exhibit and Mr. Mills said yes. The following spoke against the special use permit and aired their concerns:

Thurman Casey – Adkinson Creek flooding, property values decreasing, nothing in the permit to show how water gets to the pond; application has no seal of certified engineer; who is responsible if the plant malfunctions; the driveway would be under water if it floods; the property backs up to crystalline Holly Shelter Creek; filtration pond within 100' of right-of-way of Shaw Highway; and filtration pond illegal by distance.

Keys McGee – Environmental and Zoning rationales; safety hazard; potential for spills; show no alternatives to problems; set too close on too small site to other property owners; flood insurance map rates; lacks seal of professional engineer; Environmental Justice issue; evidence in literature that wastewater treatment plants often located close to minority communities; this is not a private utility and may not meet all the requirements – in some instances, the County could be forced to take over; and it does not meet the eight criteria for approving a special use permit. Mr. McGee gave a PowerPoint presentation on zones and areas that could be flooded.

Janet Day, 139 Worley Place – Worley Place not listed as adjoining property owners; what is the impact on animals; sewer coming from New Hanover County; when she tried to get sewer for her property, she was told sewer was not available and that the land would not perk; and these people would be making money at the expense of surrounding property owners.

Keith Lankford – If project will not meet several of criteria, County could be forced to take over; contradiction to Land Use Plan; and Rural Cluster Area.

Joel Rouse – A new resident of Pender County – he has a 63' well, other neighbors within 60' to 70' and they get sulfur and have other problems – if they get wastewater treatment plant of this size, will make their problems worse; the area is a “boon” and is growing – they were fine with a housing development but not this; New Hanover County will be contributing sewer to this; and this company has defaulted before. Mr. Mills said some of this testimony is “downright lies” and asked Mr. Rouse to explain about the default. Mr. Rouse said he doesn't have the paperwork with him. Mr. Mills said this is a new company and their first project so they couldn't have defaulted.

Others who spoke against the project and aired concerns were:

Charles Wright – If this is the company's first project as Mr. Mills said, then they're wide open for mistakes; will devalue property; and all you need to do is go down 23rd St. in Wilmington and smell the odor.

Kirby Wright – Owns property right in front of the pond and there are seven other houses in front of it – everything is below the road – any drainage would come in their yards; the company needs to do more research and make changes.

Joseph Littleton, Sandy Bend Road – Doesn't take much to bring river up; Board members were saying earlier to not worry about Floyd, but it doesn't take Floyd to bring the river up; during the dry spell the river was low, but since the recent rains, the river is up; the river rises quicker now since Hurricanes Fran and Floyd – it doesn't take much rain; and with all the new houses being built, the creeks are going to come right across and dump water on his property.

Doug Springer, Cape Fear River Watch Director – Sincerely thanked the Board of Commissioners and said it's a matter of leadership; agreed with Mr. McGee that it's a safety hazard; Holly Shelter is pristine and shouldn't be contaminated; asked the Board to say “no” and tell the company to go back to the drawing board.

Mr. Mills rebutted and said none of the speakers are qualified to speak on land value; questioned Mr. Casey's and Mr. McGee's statements; said state agencies will make the decisions; objected to some of the speakers' statements – said the odor of this facility will be totally different from the 23rd Street facility by ILM Airport in Wilmington; said they were not involved in what was told to the lady who said she was told what she could or could not do; said this is the first project for this company but all members involved have experience; and said it is a blatant lie that this company had ever defaulted.

Mr. Fentress said he developed the plans and there is no requirement for him to seal the plans at this time, but he will; that flood issues will be addressed; that water quality is already addressed; that there will be piping; that what they're looking at tonight is the Special Use Permit and they will develop over time; that no 400,000 gallons will ever come down at one time; that a private utility will be formed and will be regulated by the Utilities Commission; that individual septic tanks are already putting waste into the ground and this is a state-of-the-art facility; that some of the highest valued neighborhoods in the County have package plants, such as Belvedere; and that any future action will come at least before the Planning Board.

Mr. Brown said folks were concerned with setback issues and Mr. Fentress said the pond is set back 100'; Mr. Breuer distributed a response to an e-mail from a citizen. Mr. Fentress said they have an amendment to set backs from the Department of Environment and Natural Resources; Mr. Tate asked if it is current and Mr. Fentress said yes. Mr. Tate asked if they had made any efforts to address the community about their concerns prior to tonight. Mr. Fentress said the only complaint they had was the e-mail. Mr. Fentress asked Planning staff if they had any complaints and the response was no. Mr. Tate said he is still “stunned” about the evidence that wastewater treatment plants often located close to minority communities. He asked if Mr. Fentress had experienced this in minority areas in our state and Mr. Fentress responded “no.”

The public hearing closed at 8:10 p.m. Mr. Brown made a motion to deny the Special Use Permit, citing the Basis for Granting Special Use Permit, 15.3 Procedures for Reviewing Applications: (B) The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property; (C) The proposed use shall not

constitute a nuisance or hazard; (D) The requested use will be in conformity with the Pender County Land Use Plan and other official plans or policies adopted by the Board of County Commissioners; and (H) The proposed use shall not adversely affect surrounding uses and shall be placed on a lot of sufficient size to satisfy the space requirements of said use. Mr. Rivenbark seconded the motion and it was unanimously approved.

It was noted that Mr. Thurman will later provide findings of fact for Board consideration and approval.

24. Public Hearing & Special Use Permit: Katrina Roberson, Applicant: Request for an Outdoor Recreation Establishment, Privately Operated, Located at 480 John Henry Store Road, off Point Caswell Road, South of Atkinson.

Ms. Frank said one of the heirs of the property had contacted them at 4:50 this afternoon saying she lives out of town and had just found out about this. The lady asked if the Board would table this item until she can find out what's going on. Mr. Thurman said all heirs have to sign off on the property, but the board decided to go ahead and hear the case. Mr. Thurman swore in Ms. Roberson. Ms. Roberson said that Bernard Henry (overseer of the property) and his wife Pamela had been paying the taxes on the property for 30 years and they gave her permission to use it for a recreational facility for the youth of the community; that our kids need something to do besides going to Jail; and that the activities would include horseback riding and taking care of the horses, which would give the children something to do to take their minds away from getting into trouble. The agenda packet included letters from Mr. and Mrs. Henry giving Ms. Roberson permission to use the property. Ms. Roberson also showed before and after pictures of the building she would be using and how she had made major repairs to it. Mr. Tate asked if Ms. Roberson is saying horseback riding is a deterrent to getting into trouble and Ms. Roberson responded "yes." Mr. Williams asked if it something that if the children get in trouble, they can lose their privileges and Ms. Roberson responded "yes." Mr. Williams said they had a prior case like this, in which heirs were involved, and asked if they can approve the Special Use Permit tonight and the parties involved can clear up the heir problem later, possibly through court. Mr. Thurman said they can do that. Mr. Tate asked if Ms. Roberson knows this new lady that contacted the Planning Department and Ms. Roberson said she had never heard of her. Mr. Tate said he's glad Ms. Roberson took the initiative to get something together for the youth. Mr. Thurman said the applicant needs to work out the details, get people to sign off on the property and verify the heirs. Ms. Frank said the request needs to be amended to include horseback riding because it wasn't in the original request. Mr. Tate made a motion to approve the Special Use Permit as amended, to include horseback riding in the activities, and to add Condition #8, that the applicant will work out the details of the heirs and get all heirs to sign. Mr. Blanchard seconded the motion and it was unanimously approved.

ADJOURNMENT

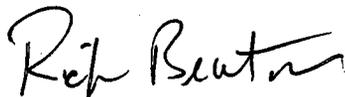
There being no further business, Mr. Blanchard made a motion and the meeting adjourned at 9:40 p.m.

Respectfully Submitted,



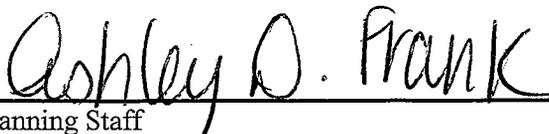
Glenda Pridgen, Deputy Clerk to the Board

Reviewed By:



Rick Benton, County Manager

Review of Planning Items:



Planning Staff