

## MONDAY, MARCH 18, 2013

The Pender County Board of Commissioners met in regular session on Monday, March 18, 2013 at the Public Assembly Room, 805 S. Walker St., Burgaw, NC 28425.

**MEMBERS PRESENT:** Chairman George Brown, presiding; Vice Chairman Fred McCoy; and Commissioners Jimmy Tate, Chester Ward, and David Williams.

**MEMBERS ABSENT:** None.

**OTHERS PRESENT:** Dr. Mickey Duvall, County Manager and Clerk to the Board; Trey Thurman, County Attorney; Glenda Pridgen, Deputy Clerk to the Board; other staff and members of the Press and public.

### CALL TO ORDER

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

### INVOCATION

Commissioner Williams offered the Invocation.

### PLEDGE OF ALLEGIANCE

Commissioner McCoy led the Pledge of Allegiance.

Mr. Brown noted Item No. 14 would be tabled to the April 2 meeting, and Item No. 22 was being pulled from the agenda at the request of the applicant.

### PUBLIC HEARING

1. **Public Hearing and Resolution to Consider Program Amendment to the Current FY 2011 CDBG-Scattered Site Program.**

Housing Director Judy Herring and Holland Consultant Planners' representative Chip Bartlett were present for the public hearing. The public hearing opened at 4:04 p.m. and closed at 4:05 p.m. Mr. Bartlett explained: The original project proposed to accomplish four clearances and four reconstructions; at this time, one of the approved households located at 16303 NC Hwy 53, Atkinson cannot be assisted with on-site reconstruction due to road access and easement issues; in order to assist the household with suitable housing, Holland intends to clear the existing home and relocate them off-site into a decent safe and sanitary dwelling; a program amendment is required by the Division of Community Assistance (DCA) in order to add a Clearance and Relocation Activity and Budget Line item to the current project; and a public hearing is required for citizen comments prior to submittal of the amendment to DCA. Mr. Williams made a motion to approve the resolution, Mr. Tate seconded the motion and it was unanimously approved.

### PUBLIC INFORMATION

**This item was presented later during the public comment section due to Mr. Faison and Mr. David's court schedules.**

2. **Judge James Faison/District Attorney Ben David: New Anti-Bullying Policy Efforts.**

Mr. Brown thanked Judge Faison and Mr. David for coming and said he is glad they could make it. Judge Faison explained: He and Mr. David are here today to make folks aware of the bullying

problem; bullying can affect the quality of life of students, including their home life; they want to work with New Hanover Board of Education, Pender County Board of Education and civic groups with on this matter; and they are asking for the Board of Commissioners' support. Judge Faison introduced Mr. David. Mr. David explained: He is encountering this area not as a DA, but as a dad; he has children attending school; bullying affects children's learning environment; they will go into every school in Pender and New Hanover Counties to talk to students; cyber stalking is becoming an issue; anti-bullying effort is a non-partisan issue; he was privileged last Tuesday to have Mr. Brown, Sheriff Smith, and Dr. Cobb at the summit on bullying, which was held in New Hanover County; the summit was proactive rather than reactive; the various school shootings in the country started out with warning signs; with reference to the Columbine shootings, it was later found out that one of the gun men had been bullied; if left unchecked, these things become more aggressive; and he would like a member of the Pender County Board of Commissioners to sit on the Threat Assessment Team with other area leaders. Mr. Brown commended Mr. David on the summit, saying listening to the (actual 911) tapes really brought it home, and thanked Mr. David for his direction. Judge Faison then read the resolution entitled "Pender County Board of Commissioners Resolution Against Bullying." Mr. Tate made a motion to add the resolution to the agenda, Mr. Williams seconded the motion and it was unanimously approved. Mr. Tate made a motion to approve the resolution, Mr. Williams seconded the motion and it was unanimously approved. Mr. Tate said as he reminded staff at the last meeting, he wants them to make sure things are put on the agenda in the proper place. Judge Faison thanked the Board for already expressing interest in a proactive way.

**3. Surf City Volunteer Fire Department Chief Demetrius Batts: NC State Matching Grant to Purchase a Mini Rescue Pumper.**

Chief Batts could not attend the meeting. Deputy Chief William Moody explained: Surf City Volunteer Fire Department is currently looking into purchasing a Rescue Mini Pumper for the department; this unit will respond to all calls except structure fires; response will include vehicle accidents, medical calls and brush fires; this will help with fuel costs and wear and tear on the department's larger vehicles; the department has applied for the NC State matching grant fund in the amount of \$30,000; the total asking price of the vehicle is \$87,500; the department is looking to finance the remaining \$57,500; they are here today just to give the Board information and ask for approval to move forward with seeking the grant; and the department will be coming back to the Board at a later date asking for approval of this venture. Mr. Brown asked if they will still fall below the 25% threshold and Mr. Moody responded affirmatively, saying they are at 23% now. Mr. McCoy asked how long the grant process would take and Mr. Moody responded two to three weeks.

**PUBLIC COMMENT**

The following citizens all spoke concerning the Pender County Animal Shelter and Shelter Manager, Darlene Clewis:

Bill Joyner, Burgaw: He is hearing that people at the Shelter are saying his group is providing a lot of misinformation; there is no transparency at the Shelter; he sent three e-mails concerning the Shelter to Board members and no one answered; the volunteers that attended orientation were told they would be called and no one called; there are problems with the Shelter Manager; the Shelter Manager is telling people the wrong euthanasia rate; the Commissioners need to get involved; there are management problems at the Shelter; they were told if you don't attend orientation, you can't volunteer; and where are the volunteers out there now coming from – they didn't attend orientation. Mr. Ward was concerned about people volunteering that didn't attend orientation. Mr. Tate asked if everyone that is volunteering now attended orientation and Dr. Duvall said the last word he was told was "yes."

Billie Whittenton, Burgaw: She is a former Animal Shelter Attendant; she was let go when the Sheriff stopped running the Shelter and she doesn't know why she was let go; she told Ms. Clewis she may give her two-week notice because her hours were being cut, but they let her go right then; they had an adoption event at the Shelter last Saturday and she had volunteered but she wasn't called. Dr. Duvall said Ms. Whittenton resigned from the job.

Greg Campbell, Hampstead: He was one of the ones who brought the Shelter problems to light; when the Sheriff Department was running the Shelter, the volunteers knew exactly where they stood; when the Sheriff was running the Shelter, they were all about Animal Control and the Shelter was not their priority; Lieutenant Ramsey was rarely at the Shelter and he told them Ms. Clewis had everything under control; there is a problem with the way it is being run; the same staff is running it and they have no oversight; dogs and cats are not being adopted because they are being advertised only on Face Book; there were forty-four dogs on the premises when the inspector came and failed the Shelter; and advertising is the key to adopting animals out. Mr. Williams noted how much time we are spending on this issue, said we need to move on, and the issue is not on the agenda. Mr. Tate said he and Mr. Brown met with Mr. Campbell, they did what they were asked to do, and he (Mr. Tate) wants resolution with this issue.

There was discussion of the Animal Shelter Advisory Committee. Dr. Duvall said he and Ms. Pridgen had reviewed this today and will put it on the next agenda. The Committee will consist of a Commissioner, the Health Director, a Veterinarian, a Citizen-Animal Rights Advocate; and a Citizen-At-Large. Mr. Brown announced that Mr. McCoy has volunteered to serve in the Commissioner position. One of the criteria to be considered is you must be a Pender County resident.

Item No. 2 was presented at this time.

Following Item No. 2, the Animal Shelter discussion continued. The following spoke:

Jonnie Barnitz, Wilmington: She got involved because her son has been collecting food, blankets, towels and other items for the Pender County Animal Shelter for years; last Christmas he collected enough supplies to last a whole year; he decided to stop collecting items for the Shelter because the employees were taking them home; it is sad that the animals are not getting what is being donated for them; the employees' family members have keys to the Shelter and she has seen them go in and take medicine that cost \$80 and take it home to their own dogs; at a volunteer orientation in February, she has a tape of her asking Ms. Clewis what she planned to do about the employees stealing now that the Sheriff Office is not in charge; Ms. Clewis said she told them to quit it; there is animal abuse at the Shelter; the thefts and claims of animal abuse are not just accusations and she has proof; those making donations to the Shelter in the form of a check were told by the people at the Shelter to make the checks out to Alice Butts in Rocky Point, so the money would not have to go through the County; where is that money? She said that none of her group has been asked to volunteer, even though they attended orientation.

Mr. Tate said Ms. Barnitz is making strong statements in public, wherein employees' characters are being tarnished, and if these accusations are true, the County needs to investigate it. He said in the six years he has been a Commissioner, he has never heard the Shelter being discussed at such a negative level. Ms. Barnitz said that is because everyone is afraid to say anything, the Shelter Manager has been there for fifteen years, the other girl there does what she wants and has been stealing since day one. She said they are also stealing time from the County. Mr. Ward asked how her son feels about

the situation and Ms. Barnitz said he is very upset. Ms. Barnitz said her son is Ari Garsh and he has been featured in the newspaper for collecting items for shelters. Mr. Williams said he is concerned with the statements she is making and this is not a Court of Law.

Ms. Barnitz continued: The IT person that was hired is dating the daughter of another Shelter employee, it's all intertwined, it's a den of thieves; she has pictures of Shelter employees loading up donated dog food in their personal trucks; they can sue her because she has proof, and this goes deep; as for the checks, the Board can ask the people who wrote the checks and she can provide some of their names; and they say the Shelter Manager told them to make the checks out to Alice Butts. When asked who Ms. Butts is, Ms. Barnitz said she had a rescue in Rocky Point that was just shut down for hoarding, but Ms. Clewis just began letting her get more animals and Ms. Barnitz is afraid she will be shut down again.

Corey Garsh, Wilmington: He is Ms. Barnitz's husband and he backs her claims; Shelter employees are feeding chickens and turkeys dog food his family donated; they collected enough money one time to buy a washer and dryer and a refrigerator for the Shelter, and after new ones were purchased, the ones they donated disappeared; they purchased tarps for the shelter which were never used and disappeared; \$3,000 worth of beds and \$1,000 worth of dog chews disappeared; employees are stealing time also; one Sunday the employee didn't come in until almost 12:00 p.m. and the animals were sitting around in feces and hadn't been fed since Saturday night. Mr. Ward asked how his son got involved with Pender County. Mr. Garsh said he used to collect for New Hanover, but when New Hanover started doing ok he started helping Pender County. Mr. Ward asked who the first person was they interacted with when they first came and Mr. Garsh said Ms. Clewis and then Lieutenant Ramsey. He said he had a problem with Lieutenant Ramsey trying to put a dog down that they had found a home for.

Mr. Tate asked if the County has inventory control to keep track of items that come into the County. Dr. Duvall said we do tag items we get, such as electronics. Mr. Ward said he reiterates Mr. Tate's question, if we have inventory control County-wide. Mr. Williams said it is unlikely there is a policy previously established for accepting any donations at the Shelter because it was under the Health Department and they let us know they did their own thing. There was more discussion and questions concerning donations, including monetary donations, and the need for having inventory control. Mr. Thurman explained if someone cashes a check that is made out to a third party and not the County, it is not criminal. If it is made out to the County and someone else signs it, it is criminal.

Jane Hampton, Hampstead: A laboratory bought 660 cats from the Shelter at \$4 a piece – where did the money go? She personally collected \$600 – where did the money go? The money should have been used for the cats. It was noted the money went into the Shelter fund.

Cindy Stout, Hampstead: Board members are shocked at what they are hearing, because it has been put on the back burner for fifteen years; Board members should make surprise visits to the Shelter; there needs to be some type of spay-neuter program in Pender County; and every animal should be spayed before they leave the Shelter. Mr. McCoy said he went to the Shelter last week, he was impressed, it was clean and there was no smell. He said he talked with the inspector, Pat Sholar who she said there was a problem with cats but overall, it was pretty good. Mr. Williams said an overwhelming majority of citizens are not going to want to pay extra taxes for a spay-neuter program. He said budget-wise, this is not on the top ten priority list, and the Board has other priorities to look at.

Roy Sullivan, Hampstead: He wants to reiterate what the others said; some kind of investigation needs to be conducted.

Chairman Brown: He has heard from people for a long time. He said the County has done the following: Put policies and procedures in place; put a new IT person at the Shelter; started orientations; visited Brunswick County's Animal Shelter to see how it is run; and did some other things hoping we were getting a fresh start.

Jeannie Mintz of the nonprofit organization Saving Animals During Disaster, Carolina Beach: The Board has a cancer and just keeps tweaking it when they should get rid of it; Kathy Lewis of the Topsail Humane Society embezzled 75% of the donations she received; Ms. Lewis went to Australia and they claim she is dead but a body never showed up; money Pender County could have had every year from Mr. Lewis' estate went to Onslow County; animal abuse and child abuse are closely related; she is sending tons of supplies up here that are not going to the animals; people attended orientation and Ms. Clewis never turned over anything to anybody; and the 1% kill rate they are saying the Shelter has is not true. Mr. Williams said the percentage is based on adoptable animals. Ms. Mintz said she talked to Lt. Ramsey about animals in hot cages and asked him to check on some fans. His answer was he couldn't find anything but big fans that cost \$3,000. Ms. Mintz asked why, after all these years, Ms. Clewis had to be told by Ms. Sholar to make sure cats' hearts are not beating before they are incinerated. She said it would be a whole lot smarter to spay and neuter than waste taxpayers' dollars.

Mr. Tate said he has concerns, we need to address these issues and we need to start doing something. Mr. Tate asked where we go from here. He said matters are getting worse out there. He said either the County Manager's Office can manage the Shelter or it can't. Dr. Duvall said when it was put under him, he advised the Board it was temporary and would have to be moved somewhere else. Dr. Duvall said we have the policies and procedures in place for the Shelter and will be getting security cameras out there. Mr. Williams said we appreciate folks for coming out and talking but the Board will not be chastised. Mr. Campbell said we need to keep the line of communication open. IT Director Erik Harvey came forward and explained Dr. Duvall had approached him about putting a security system in at the Shelter and he had submitted a resolution today for consideration at the April 2 meeting. Mr. Ward asked why we are putting cameras out there and Mr. Harvey said it is about time, attendance, and employee accountability. Mr. Ward said he is concerned about putting cameras out there. Mr. Williams said the County Manager has only had the Animal Shelter for a couple of months and now he is being "thrown under the bus." He said he didn't want to move the Shelter from under the Sheriff in the first place, but now that it is, we should try to make it work. Mr. Ward said he reiterates what Mr. Tate said – can the Manager handle it or not. Mr. Brown said throwing each other under the bus is not going to help matters. Mr. Ward said the Shelter ran fine when it was under the Sheriff, now all of a sudden he's getting all kinds of e-mails. Mr. Brown said the allegations by everyone who spoke was over the course of years, which included the time the Shelter was under the Sheriff, and the problems didn't just start. Mr. Ward asked if it was going on before, why is it just coming up now. Mr. Campbell said he had been sending e-mails for six months. Mr. Ward asked Mr. Thurman how they could move forward to investigate these claims and Mr. Thurman said the Sheriff is the Chief Law Enforcement Officer. Sheriff Smith came to the podium. He said he will look into the allegations, but doubts he can produce any answers good or bad that would be satisfactory to those making the claims. He said he could contact the SBI, but given their work load and the monetary amounts being discussed, they may or may not look into it. He said he would be willing to bring in another agency to investigate the claims, and if there is anything concrete, he will call in another agency. The bottom line was Sheriff Smith will be looking into the matter.

Mr. Ward said he wants to thank the lady from Carolina Beach and New Hanover County for taking their time to support Pender. Mr. Tate thanked them also.

### CONSENT AGENDA

Mr. Brown presented the eight items on the Consent Agenda and asked for any discussion or questions. There being none, Mr. Tate made a motion to approve the consent agenda, Mr. Williams seconded the motion and the Consent Agenda was unanimously approved as follows:

4. Approval of Minutes: Budget Workshop of February 4 and 5, 2013; Regular and Closed Session of February 19, 2013.
5. Resolution Approving Releases and Refunds to the Individuals Listed Herein.
6. Resolution Accepting Petition to Add Clayton Lane in Rocky Point and Wintercress Lane in Watha to the State Maintained System, and Authorizing the County Manager to Submit the Petitions to N.C. Department of Transportation.
7. Resolution Authorizing a Purchase Order to Interior Systems, Inc., for the Purchase of Furniture for the JROTC Building at Heide Trask High School: \$8,919.17.
8. Resolution Authorizing Cancellation of NC DENR Grant Contract No. 4157.
9. Resolution Authorizing Contract and Purchase Order to Carolina Furnishings + Design for York House: \$20,396.65.
10. Resolution Authorizing Budget Amendment to Approve Increase in Health Department Revenues and Expenditures for Fiscal Year 2012-2013: \$2,199.
11. Resolution Authorizing Acceptance of EDA Grant for Rail Feasibility Study at the Commerce Park on US Highway 421.

### RESOLUTIONS

12. **Resolution Approving the Award of the Base Bid Plus the Add Alternate Bid for the Construction of a 3,200 Square Foot Maintenance Building for the Surface Water Treatment Plant Project and Authorization of a Purchase Order to Construction Systems, Inc. in the Amount of \$546,474.**

Public Utilities Director Michael Mack explained: When Utilities bid for the construction of the 2 MGD Surface Water Treatment Plant, a maintenance building for equipment storage and repair was included as an Add Alternate in the bid; at the time, staff did not elect to award the Add Alternate for the building in order to stay within the original project budget; as a result of outstanding construction management by Utilities staff, the Water Treatment Plant project was completed 4% under budget; staff now desires to construct the building and is requesting permission to build the building from the savings; approximately \$100,000 of the total cost will be reimbursed by the balance of USDA-RD grant; and building this building would have been their priority #2. Mr. Williams asked Mr. Mack to give an overview of what we are doing so there won't be any misconception that he is just spending the money because it is there. Mr. Mack reiterated that constructing the building was in the original scope of the project but they didn't want to do it in case the budget came in tight. Mr. Mack said the building will be used to protect the assets that are at the site, to store and maintain equipment, to make repairs and to keep inventory out of the weather. Mr. Tate asked if this is 100% necessary and Mr. Mack responded "if you define necessity as protecting County assets, then yes, it is necessary." Mr. Tate said he wants to know if the funds are being spent necessarily because whether it is water money or not, it is still Taxpayers' money. Mr. McCoy asked if Mr. Mack is sure he is going to get the \$100,000. Mr. Mack responded the USDA-RD's books show there is about \$94,000 left in grant money, and if any is left, this would be eligible so we are taking benefit of remaining grant money. Mr. Mack said loan and County funds were used up front and this is the reimbursement. After more

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

Mr. Ward informed David Smith of the Schools that he received a request from a parent at Heide Trask School to put Heide Trask's logo on the water tower in Rocky Point, the same as Topsail High School. Mr. Mack explained they pay a company to maintain the tanks. He said the same company would be the one to paint any logo on the tank and it could cost an additional \$10,000 to \$12,000. Mr. Ward said the parents are willing to take care of the costs. Mr. Mack agreed to work with Mr. Smith on this. Mr. Tate asked if they can look into putting the Pender Patriots' logo on the tank on US 421. Note: It was later clarified that there is no tank on US 421 at this time. There was also discussion of Penderlea School's logo and the possibility of using the Holt Hosiery tank. Mr. Williams stated that private funds were raised for the Topsail Pirate Project.

**13. Resolution Authorizing Approval of New Construction Contract Award Recommendations for FY 11 CDBG-SS Program.**

Mr. Bartlett explained: The County has received an FY 11 CDBG-SS grant from the Division of Community Investment and Assistance in the amount of \$400,000; the original project proposes to accomplish four replacement homes (new construction) and four dilapidated unit clearances; all project beneficiaries are low income owner-occupants; and a vote to approve the contract award to the low bidder is requested for three units that were included in the bid opening held on February 5, 2012. The low bidders are: 631 Timberly Lane, Burgaw-Holland Construction at \$86,730; 3379 Pt. Caswell Rd, Atkinson-Oral's Construction at \$72,979; and 7890 Slocum Trail, Atkinson-Oral's Construction at \$81,572. Mr. Tate made a motion to approve the resolution, Mr. Williams seconded the motion and it was unanimously approved.

## **DISCUSSIONS**

**14. Discussion Regarding the Biggert-Waters Flood Insurance Program Reform Act of 2012 and Its Effect on Flood Insurance Policies within Pender County.**

Due to time constraints this item was tabled to the April 2, 2013 meeting. Mr. Breuer informed the Board that there will be a contractors' meeting tomorrow and he will be presenting this item at the meeting.

**15. Discussion of County Grassroots Advocacy Meetings with Pender County's Legislators to Discuss NCACC Priority Goals and Hot Topic Issues for the 2013 Long Session.**

Dr. Duvall distributed additional information and explained: The NCACC is asking each county to schedule a meeting with its legislative delegation before the NCACC district meetings in April to discuss critical county issues and concerns, and to gather feedback from legislators; the meeting for this district will be in New Hanover County on April 4 so he tried to arrange for Senator Rabon and Representative Millis to meet with this Board on April 2 before the regular meeting; Senator Rabon and Representative Millis will be in session at that time and won't be able to come; and NCACC staff suggested we can send the information to them and get feedback. The Board was ok with this approach.

## **APPOINTMENTS**

**16. Resolution Approving Appointment of Commissioner to the CoastalCare Area Board (formerly Southeastern Center for Mental Health).**

Mr. Brown explained: Former Commissioner F.D. Rivenbark had served in this capacity for many years; CoastalCare Board member Don Hall had contacted him about replacing Mr. Rivenbark; and

Mr. Hall said he would like for Mr. Ward to serve because of his law enforcement background. Mr. Ward agreed that he would talk to Mr. Hall and work it out.

**17. Resolution Approving Appointment to the Wilmington Metropolitan Planning Organization (WMPO) Bicycle and Pedestrian Advisory Committee (BikePed).**

Mr. Williams explained Todd Brohaugh previously served on this committee representing Pender County but had to resign because of his work, and Mr. Brohaugh recommended appointing Terrance Benjey to replace him. Mr. Williams made a motion to approve the appointment of Terrance Benjey to the Wilmington Metropolitan Planning Organization BikePed Committee representing Pender County. Mr. Ward seconded the motion and it was unanimously approved.

**18. Resolution Approving Appointments to the 2013 Pender County Board of Equalization and Review (BOER).**

Mr. Brown explained the applicants are the same people that served on the 2012 BOER. Mr. Brown verified with Ms. Pridgen that the positions had been properly advertised and that no one else had applied. Mr. Tate asked about the term limits on Boards and said there is one of these applicants he would like to see changed. Mr. Thurman said there is no formal policy on terms, but there is Board policy that no one serves longer than ten years on a board or committee. Mr. Brown said we can pull the person Mr. Tate wants changed, but Mr. Tate declined that offer. Mr. Williams made a motion to approve the appointment of Walter Baker, Robert Dennis, Leslie Green, Kenneth Just and Bryant Shephard to the 2013 Board of Equalization and Review, including appointing Mr. Shephard as Chairman. Mr. McCoy seconded the motion and it was unanimously approved. The terms will expire March 17, 2014.

**ITEMS FROM THE COUNTY ATTORNEY**

Mr. Thurman said there are several items for closed session.

**ITEMS FROM THE COUNTY MANAGER**

There were no items from the County Manager.

**ITEMS FROM THE COUNTY COMMISSIONERS**

There were no items from the County Commissioners.

**CLOSED SESSION**

At 6:40 p.m., Mr. Williams made a motion to enter into closed session, pursuant to NCGS 143-318.11: 3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit a public body to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The public body may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, mediation, arbitration, or administrative procedure. If the public body has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital, in closed session, the terms of that settlement shall be reported to the public body and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded; 5) to establish, or to 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 and 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; and 6) to consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee. General personnel policy matters may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body or another body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting. Mr. Ward seconded the motion and it was unanimously approved. Board members agreed they would come out of closed session at 7:00 p.m. and go back into closed session after the 7:00 public hearings.

#### **PUBLIC HEARINGS: SPECIAL USE PERMITS/REZONINGS/RESOLUTIONS**

##### **19. Public Hearing and Resolution Requesting Approval of a Revision to a Special Use Permit (SUP) for the Expansion of an Existing Marina, More Specifically, the Addition of Dry Dock Boat Storage Located at 2570 Scotts Hill Loop Road, Scotts Hill.**

The public hearing opened at 7:05 p.m. and closed at 7:10 p.m. Mr. Thurman swore in the witnesses. Planner Ashley Frank delivered a presentation and said the original SUP was issued April 17, 2000 and was reviewed and approved under the 1988-2010 Pender County Zoning Ordinance. Ms. Frank explained: The Land Use Proposed; Property Record Number and Location; Zoning District of Property; Project History; Project Description; Evaluation; and Technical Review Committee Responses. Evaluation included: Public Notification, Basis for Granting SUP, Zoning Ordinance Compliance, 2010 Comprehensive Land Use Plan Compliance, Existing Land Use in Area; Site Access Conditions, and Conditions to Consider in Issuing a Revision of the Special Use Permit. Ms. Frank said the applicant just received notice of Stormwater Permit Exclusion (SW8 100920) for Redevelopment was issued on March 7, 2013. In response to question, Ms. Frank said the maximum height we currently have is 45' under the UDO. Dean Sholar of Inlet Dr. said he is here in support of the revision and it is a good opportunity. Jeb Bradshaw, the applicant, was also present but didn't wish to speak. Mr. Williams made a motion to approve the Special Use Permit, Mr. McCoy seconded the motion and it was unanimously approved.

##### **20. Public Hearing and Resolution Requesting Approval of a Special Use Permit (SUP) for the Operation of a Trade and Technical School, School and Instruction Facility, and Shooting Range, Located at 33637 NC Highway 210, Currie.**

The public hearing opened at 7:10 p.m. and closed at 9:45 p.m. Mr. Thurman swore in the witnesses. Planner Ashley Moncado delivered a presentation and explained: The Land Use Proposed; Property Record Number and Location; Zoning District of Property; Project Description; Evaluation; and Technical Review Committee Responses. Attorney Grady Richardson said he is here representing adjacent property owner Ms. Squires and others. Mr. Richardson made opening remarks including: The applicants have the burden of proving they have a right to the permit; they must satisfy specifically required purposes; they must meet all sections of the UDO; and they would have to use Ms. Squires' easement, which does not have a place for utilities. Mr. Richardson cited negative aspects of the project which included: Each participant can shoot up to 400 rounds of ammunition; they will operate seven days a week from dawn to dusk; there are many safety risks; the dirt road being used by the Squires' business is used for logging and pine straw operation; no traffic study has been done; the applicants have made no attempt to reach out to adjacent property owners and get comments from the community; ten to twelve cars a day will be a burden on the easement; the project will create

nuisances and noise; will create damage to personal property; there is no detail to shooting; Ms. Squires' employees will be within shooting range of thousands of rounds of live ammunition per day; we don't know how many people per day will be visiting the facility; it is not allowed in the Table of Permitted Uses; and the application is in violation of the UDO. Mr. Richardson introduced Exhibit 1 – a letter from Rosa Green Baptist Church. Mr. Thurman cautioned the Board that unless there is testimony to support exhibits, they are no good. Mr. Thurman cautioned witnesses that if they are going to testify, they have to have some basis and can't just say what they think will happen. Mr. Richards said his clients are adjacent property owners Audrey Mizrahi, Roger Pike and Barbara Squires and her Land Manager Ronnie Henry. He called his clients to testify:

Audrey Mizrahi: She is not anti-gun; her concerns are noise and public safety; the site is bordered by homes and churches; the area contains livestock, chickens, etc.; and no one in the community wants their peaceful neighborhood shattered by gun fire.

Roger Pike: He has a petition with 173 signatures against the SUP; it is appalling to him that no one in Planning contacted anyone in the community; and there will be noise and environmental concerns if this project is approved. Mr. Brown said Planning staff did their job and if they hadn't, all these folks would not be here tonight. He said staff can't go door-to-door polling everyone. Mr. Ward noted that some of the names on the petition have addresses outside of Pender County. Mr. Tate asked what the reason for opposition is if they are not in the immediate area. Mr. Thurman said that is why petitions are useless – they don't tell the reason for the opposition.

Barbara Squires: Her property is a pine plantation with a farm on it and logging operation; loggers go back and forth; the plantation produces major income; her employees fear being hit by a bullet; and the well-being of people should outweigh having a shooting range.

Ronnie Henry: Raking the pine straw is income for approximately 35 people; one match would destroy the pine plantation; their workers are upset about the proposed gun range; people cutting timber won't want to come in anymore; and his family lives ½ mile through the woods from the shooting range.

Mary Bordeaux spoke and said she just moved back from Oklahoma; she lived adjacent to a shooting range in Oklahoma; the property can't sell now; gunfire was constant – 24 hours, seven days a week; wildlife was run out of the forest; and property values are down.

Anthony Cowden, Ron Holmes and Robert Ward co-owners of Alastar, the applicant, were present. They distributed a handout entitled "Factors on Diminishing Sound Pressure" and Mr. Cowden explained the handout in detail. Mr. Richardson objected to the document, saying the person that performed the sound test is not here. Mr. Cowden's handout and explanation included Diminishing Effects of Distance on Sound Pressure Level; Further Diminishing Effects on Sound Pressure (dB) by Environmental & Atmospheric Factors; Solid Barrier Diminishing Effects on Sound Pressure; and Common Environmental Sound Levels. When asked if he has a background on this subject, Mr. Cowden responded "no." Mr. Cowden said he knows the two major concerns by folks are noise and safety, but they did meet all the County's requirements on the permit. He said he and his partners had gone out and performed some shooting tests and no one complained because the shots were audible, but only barely. He said they went and asked Mr. Pike if he heard anything and Mr. Pike responded "no, but he had just arrived." They then went back and fired again but got no complaints. Mr. Cowden's other remarks included: They are basing their reason to move ahead on the fact that there is

minimum noise; they will turn the range around and have it face toward the west where the woods are more dense and away from any homes; with respect to safety, the range will be constructed to US Navy standards and will exceed NRA standards; the workers that were out there when they were doing the test shooting didn't seem disturbed; he has never known bullets to cause a fire; they will respect the churches and their hours; nothing they intend to do will affect agriculture; electric and septic are already there; and their biggest focus is to provide training. Board members questioned the location of churches in proximity to the site and staff distributed additional maps and demonstrated where the churches and homes are located. Mr. Richardson's cross examination and Mr. Cowden's answers included: Any delineation?-no; topography?-topography not required; professional engineer?-no, professional engineer not required; any noise training or education or traffic study impact analysis- no; calculated what maximum number of folks will be present on any given day?-no; calculated how many vehicles will be present on any given day?-no.

A break was taken from 8:50 p.m. to 8:55 p.m.

Mr. Richardson's cross examination continued: Lead poisoning evaluation?-exceeds US & NC EPA; what type of background check will they do-they use a company out of Wilmington that does complete background checks; does hearing constant round of shooting constitute a nuisance?-no, because it can't be heard. Mr. Richardson's other concerns included: Odors; impacts of dust from easement; land use; self imposed firearm limits; number of shooting ranges; church hours; private persons to use the facility; any law enforcement agency; and private parties using the facilities.

Other residents of the area who all spoke against the SUP included: Jonathan Bruno, James Rowell, Steve Coleman, Ted Brown, Kenneth Keith, Nancy Keith, Anna Devone, and Kathy Becker. Speakers were concerned with, among other things: Safety issues; constant noise; changing the character of the neighborhood; they moved here for the peace and quiet; the effect on churches in the neighborhood; safety of children in the neighborhood; how fast bullets travel; contamination caused by shooting ranges; effect on nature, wildlife and endangered species; to put a facility of this type in a community is wrong; and misleading information given about being a school. Mr. Tate asked if any kind of certificate or diploma will be awarded to the students and if they can operate without being licensed by the Office of Proprietary School. Mr. Cowden said he doesn't know the correct answer at this time. Mr. Tate asked if they had met the approval of the Office of Proprietary School and Mr. Cowden responded "no." Mr. Thurman verified they would have to meet some specific procedures to be able to give out law enforcement certificates.

Mr. Richardson thanked the Board for its time and patience. His closing statements included: Unequivocal testimony had been given to show the permit should not be approved; the facility is not a recreational facility or an amusement so it cannot be approved under the Table of Permitted Uses; there is zero support to any of staff's conclusions; and he is asking the Board to decline and reject the application.

Mr. Tate said anytime jobs are coming to the area it is important to him, but when he sees all these folks around him that are so proud of their community, and are so united when they come together for a cause, he has to recommend denial. Mr. Brown said he is a true believer of the 2<sup>nd</sup> Amendment and a believer of people and their property rights. Mr. Tate made a motion to deny the Special Use Permit, citing 3.10.3 G2 of the Pender County Unified Development Ordinance: Procedures for Reviewing Applications: "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.” Mr. Williams seconded the motion and the Special Use Permit request was unanimously denied.

**21. Public Hearing and Resolution Requesting Approval of a Zoning Map Amendment for a General Use Rezoning of One Tract Totaling 87 Acres from GB, General Business Zoning District, to RA, Rural Agricultural Zoning District, Located at 301 Murray Town Road, Burgaw.**

The public hearing opened at 10:00 p.m. and closed at 10:10 p.m. Planner Ben Andrea delivered a presentation and explained: Charles and Barbara Murray, applicants and owners, are requesting approval of the rezoning; currently the entire 87 acre tract is zoned GB; currently, the single family residential use is considered the primary use, but because of the existing zoning of the property, the primary use is considered nonconforming; staff research has revealed that zoning of the property changed from RA to B-2 upon approval of a county-wide zoning map amendment at the October 20, 2003 Board meeting, and again in 2010, the County undertook a county-wide zoning map amendment initiative that affected the subject property; and the Planning Board unanimously approved this rezoning request at its March 5 meeting. Mr. Louis Saunders of Murray Town Road demonstrated where his property is located in conjunction with the Murrays’ property; said he is 100% for this rezoning going back to agriculture; and he doesn’t know how the property got turned to business. Mr. Williams explained: Some years back, the whole County got rezoned; in his opinion the rezoning was a mistake; if we had been waiting for the perfect document, we would still be waiting; and you can’t look at every property. Ms. JoAnn Lanier of Murray Town Road said her property is adjacent to the Murrays’ and she supports the rezoning. Mr. Andrea said Murray Town Road is one that is problematic in the County, and they are addressing these problems with the Planning Board. Charles Murray said he is asking that his property gets rezoned back to RA; he is asking the Board to reimburse their permit fees; they were not notified the property was changed to business; it will cost them \$1,330 to get it back to RA; he doesn’t think a rezoning should cause that hardship; and the ground work has been laid and Planning needs to go back and revisit the issue because this could happen in other areas. Mr. Thurman said the Board has no authority to waive fees. He said when an error occurs, Planning staff normally initiates rezoning but this time, it is not the case. There was more discussion on why the property got rezoned to GB. Mr. Brown said there was speculation that that area had potential for water and sewer growth. Mr. McCoy made a motion to approve the Zoning Map Amendment, Mr. Williams seconded the motion and it was unanimously approved.

**22. Public Hearing and Resolution Requesting Approval of a Zoning Map Amendment for a General Use Rezoning of 1.6 Acres of a 2.64 Acre Tract from GB, General Business Zoning District, to RA, Rural Agricultural Zoning District, Located at 7761 US Highway 117, Rocky Point.**

At the request of the applicant, this item had been pulled from the agenda at the beginning of the meeting.

**23. Public Hearing and Resolution Requesting Approval of a Zoning Map Amendment for a General Use Rezoning of One Tract Totaling 6.96 Acres from PD, Planned Development Zoning District, to GB, General Business Zoning District, Located at 20062 US Highway 17, Along the South Side of US Highway 17 Between Amanda Lane and Edens Lane, Hampstead.**

The public hearing opened at 10:10 p.m. and closed at 10:14 p.m. Ms. Frank delivered a presentation and explained: The Rezoning Proposal; Property Record Numbers, Acreage, and Location; Planning Board Recommendation; Staff Recommendation; History; Description and Evaluation. Evaluation

included Public Notifications, Existing Zoning in Area, Existing Land Use in Area, 2010 Comprehensive Land Use Plan Compliance, Unified Development Ordinance Compliance; Summary & Staff Recommendations; and Technical Review Committee Responses. No one wished to speak on this item. Mr. Williams made a motion to approve the Zoning Map Amendment, Mr. Tate seconded the motion and it was unanimously approved.

The Board went back into closed session at 10:14 p.m. and exited it at approximately 12:30 a.m. There were no announcements made upon exiting the closed session.

**ADJOURNMENT**

There being no further business, the meeting adjourned at approximately 12:30 a.m.

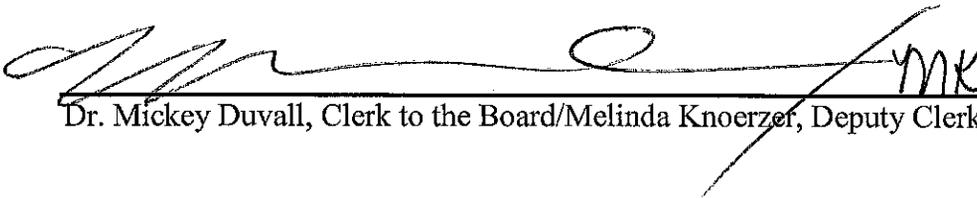
Respectfully Submitted,



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Glenda Pridgen, Deputy Clerk to the Board

Reviewed By:



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Dr. Mickey Duvall, Clerk to the Board/Melinda Knoerzer, Deputy Clerk to the Board