

Pender County Planning and Community Development

Planning Division

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MINUTES

**Pender County Planning Board Meeting
Wednesday November 4, 2015 7:00 p.m.
Pender County Public Meeting Room
805 S. Walker Street, Burgaw, North Carolina**

Call to Order: Chairman Williams called the meeting to order at 7:04 pm

Roll Call: Chairman Williams

Pender County Planning Board Members:

Williams: McClammy: Baker: Edens: Fullerton: Marshburn: Nalee:

- 1. Adoption of the Agenda:** Board member Marshburn made the motion to adopt the agenda as presented; seconded by Board member Edens. The vote was unanimous.
- 2. Adoption of the Minutes: (October 13, 2015)** Board member Nalee made the motion to adopt the minutes; seconded by Board member Edens. The vote was four (4) in favor with Vice-Chairman McClammy abstaining from voting due to his absence from the October meeting.
- 3. Public Comment:** No sign-ups for public comment.

(Public Hearings Open)

4. Master Development Plan and Major Site Plan:

Norris and Tunstall Engineering, applicant, on behalf of PH Lanco, Inc., owner, requested approval of a Master Development Plan and Major Site Development Plan approval for Phase One (1) of a mixed use commercial retail (NAICS 453 Miscellaneous Store Retailers) and office development. The subject property is zoned PD, Planned Development zoning district. The proposed project is located to the west of US HWY 17 on the corner of Pinnacle Parkway (private) and US HWY 17 in the Topsail Township and may be further identified by Pender County PIN 4204-65-8579-0000. Planner Pat O'Mahony presented and gave background information for agenda item four (4). Board member Edens asked if the request for approval was for Phase I or the entire plan; Planner O'Mahony answered the request was for the entire plan. Board member Nalee stated that there was not a lot of square footage, was that due to the requirements of the Planned Development (PD) zone; Planner O'Mahony stated that he would defer the question to the applicant. Jody Bland, Norris and Tunstall Engineering, stated that his client dictated the square footage after reviewing the requirements of the Planned Development (PD) zone. Board member Nalee asked what would be located in the other space; Mr. Bland answered that the other space would just be shell space until it was leased. Board member Nalee asked staff if there were an overall percentage of residential or commercial required in a Master Development plan for the Planned Development (PD) zone; Senior Planner O'Hare answered no, the applicant was just required to have the mixed uses. Jody Bland, Norris and Tunstall Engineering, stated that staff had covered most of the request, but he would like to point out a few items. Mr. Bland commented that only half of the property was being developed and pointed out the areas of the property that would be cleared, that there would be two (2) acres of natural buffers in

the rear of the property, the development was considered a low density project by NCDENR, have worked with NCDOT to modify the entrance, trying to be the best neighbor they can be. Chairman Williams asked if the access to the property was a legal access according to the state, Mr. Bland answered yes to his knowledge, but the seller and their representative was present to address that issue. Chairman Williams opened the floor for those who signed up to speak. Elizabeth Giles, 438 Scrub Oaks Drive, Hampstead, stated that she had signatures from every resident in Pinnacle Ridge subdivision stating that they did not want the development at the entrance of their neighborhood, using their private road, and that the intersection was very dangerous. Ms. Giles stated the following questions and concerns of the residents; Pinnacle Parkway is the only access to the neighborhood, will there be a stop sign at the end of the parking lot exiting the retail store, will there be a stop light installed at the intersection of Pinnacle Parkway and US HWY 17, if so, who will pay for it and when would it be installed, has the future traffic use of Pinnacle Parkway been accounted for, why is the driveway for the project not directly off of US HWY 17, elaboration needed on the road maintenance of Pinnacle Parkway, Chairman Williams stated that the County does not enforce agreements between private land owners. Ms. Giles continued by stating that the HOA states the roads are not built to NCDOT standards, so who would be responsible for bringing the road up to the standards, the road is dangerous and that is a safety issue for the residents. Ms. Giles gave a series of traffic scenarios that could potentially be dangerous to show the cause of concern the residents had regarding safety if the request was approved. Chairman Williams stated to Ms. Giles that the Pender County Planning Board has no control over most of the issues brought forward, that the responsibility of the Planning Board is to assure the requirements of the Pender County Unified Development Ordinance are being met. Ms. Giles stated that she didn't understand since the Board would be approving or denying the request which the driveway was a part of the plan, Chairman Williams again stated that the Board would approve or deny the plan based on the Pender County Unified Development Ordinance. Ms. Giles asked if the Board had no say regarding the driveway then why was it being presented to them, Chairman Williams stated that the applicant had to show in their plans presented to the Board that there was a legal ingress and egress to the development. Attorney Thurman explained the right of access, defined the terms public and private in regards to roads, and the responsibility of the Pender County Planning Board making their decisions based on the Pender County Unified Development Ordinance. Ms. Giles stated that they were aware and understood all of what was stated by the Attorney, however, they did not feel that the presented plan was safe in regards to traffic so they presented information to back up their concern. Attorney Thurman stated that access from a state road was solely under the jurisdiction of the NCDOT as well as any stop lights. Ms. Giles stated that she had spoken with a roadway engineer that told her due to site distance the driveway of the development should not be located in the location stated on the site plan; Ms. Giles read information regarding driveway locations; Chairman Williams stopped Ms. Giles and stated that she was not a traffic engineer and it was not fair to the Board for a non-authority to present such information, that if the group would like to have a traffic engineer present, the Board would listen. Ms. Giles stated the reason for presenting the information was to show the Board that the location of the driveway on the presented plan was not safe and should not be approved and asked if she could submit her findings to the Board; Attorney Thurman advised the Board that since Ms. Giles had stated that she was not an engineer the Board could accept the information for review. Chairman Williams allowed the information to be submitted. Tom Newman, 345 Pinnacle Parkway, Hampstead, stated his concern was flooding and runoff to the wetlands; Chairman Williams stated that the applicant would have to get a storm water permit and that process would address his concern. Mr. Newman asked for further understanding of the mentioned tree survey, that the lot is heavily wooded and provides a sound barrier, just wondering if trees would be removed only to plant new ones; Mr. Newman commented that one of the policies used for recommending approval of the development was the Growth Management policy section 1A.1.5, and he believed the proposed development doesn't contribute that it does the opposite. Mr. Newman noted his concern for the traffic impact that the requested development and previously approve developments will cause, noted the location in the area of current similar retail stores like the one being requested, and stated that there was no need for the development. Kathleen Dello-Russo, 551 Pinnacle Parkway,

Hampstead, described the road known as Pinnacle Parkway, believed that having the proposed development at the entrance of their neighborhood would decrease their property values, there are concerns of what other type of business would come, and is confused on how someone could present something like this, but the Board doesn't get involved, there are other access points for the proposed development that would not be a detriment to the residents. Discussion ensued on the different types of business that could lease the empty space. Ms. Dello-Russo asked if the Board could wait to make a decision to allow folks time to present further information to the Board; Chairman Williams stated that notice was given, Ms. Dello-Russo asked when; Senior Planner O'Hare explained the notice process which included the timeframe and location of notices. Chairman Williams stated that traditionally the case is presented and the Board makes a decision. Jaime Asay, 40 Scrub Oaks Drive, Hampstead, asked the Chairman if he would consider giving her more time to speak since her property was adjacent to the proposed development, Chairman Williams replied that someone who signed up to speak would have to give her their time. Ms. Asay stated that her concern was the buffer and asked if someone could elaborate on what type of buffer would be required and who determined the buffer type, Senior Planner O'Hare read the definition and requirements of a B4 Buffer from the Pender County Unified Development Ordinance and stated that the ordinance determines buffer types. Ms. Asay asked if the Board could consider requiring the applicant to install a more intense buffer than what the ordinance requires. Ms. Asay stated that she didn't feel like she had enough time after receiving the notification letter to gather information to present to the Board or applicant. Ms. Asay commented that homeowners were never told about the public access easement and would like to see the original plans for Pinnacle Ridge and doesn't understand why they are proposing a sidewalk; Chairman Williams responded that the ordinance requires new developments to build sidewalks. Ms. Asay asked the Board to consider speaking to the NCDOT about the proposed driveway prior to making a decision; Attorney Thurman stated that the applicant had complied with NCDOT driveway requirements, that the NCDOT has no jurisdiction of Pinnacle Parkway. Ms. Asay asked since no one knew what was happening, would the Board please allow more time and not make a decision tonight. Jason Gannon, 65 Baron Oaks Court, Hampstead, asked why a TIA was not needed; Senior Planner O'Hare explained that the Coastal Pender Collector Street plan has a threshold of one hundred (100) trips at peak hours in the am or pm and the applicant did not meet that threshold. Mr. Gannon asked if the trip generation information submitted was for the whole development or just for the Dollar General; Senior Planner O'Hare answered that it was for the whole development. Mr. Gannon asked if the materials given to the Board were available online; Senior Planner O'Hare answered yes and explained where the materials were located on the Pender County website. Mr. Gannon asked if an endangered species survey be required; Senior Planner O'Hare stated that there is not currently an endangered species survey requirement in the Pender County Unified Development Ordinance. Mr. Gannon asked if the development complied with sections 7.5.1, 7.5.2, and 7.5.3 of the Pender County Unified Development Ordinance; Senior Planner O'Hare read the sections; Mr. Gannon asked if the Board approved the development would it be based on any of the requirements in those sections; Senior Planner O'Hare stated that staff insured that all applicants were in compliance with the ordinance. Mr. Gannon asked that the decision be tabled until further research could be done. Carson Wood, 1680, Pinnacle Parkway, Hampstead, Biologist, representing the Coastal Plain Conservation Group, stated that it was his duty and responsibility to let the Board know, that the proposed development falls within the foraging partition of two active Red-cockaded woodpecker clusters, which means a cavity and tree search would have to be done on the site to determine usage or habitation by the birds. Laurie Boyd, 527 Scrub Oaks Drive, Hampstead, stated that she was confused by the use of the word "private", Dave Hoover gave the property owners forty (40) feet on each side of Pinnacle Parkway and it is dedicated private, what does private mean, it is being used for the development and without anyone's permission the development has a sidewalk planned for the private area; who would be involved in a personal private agreement. Ms. Boyd concluded by saying that her main concern was safety. Jon Balbuena, 356 Scrub Oakes Drive, Hampstead, stated that his concern was property values, what was in it for the current residents, what benefit would come to Pender County or the Hampstead community by approving the development; Chairman Williams committed that it

would bring in property and sales tax for the County. Mr. Balbuena asked if anyone had considered what it would do to current property tax payers' property values, if that was really the best development to put in at that location, and could they request that the developer provide a gate at the entrance of their neighborhood. Sandy Wood, 1680 Pinnacle Parkway, Hampstead, commented on her concerns of the traffic on such a dangerous area of the road, the ratio of taxes the county receives from the current property owners verses what would be received from the new development, trash that consumers entering and leaving the retail store would leave on the side of the road, and consumers trespassing into the neighborhood. Ms. Wood gave information regarding research she had done on Dollar General Stores, which yielded nothing, but negativity. Ms. Wood concluded by stating that the homeowners of Pinnacle Ridge were the easement holders of Pinnacle Parkway and if approved the new development would interfere with their use of the easement. Andy Wood, 1680 Pinnacle Parkway, Hampstead, stated that he had a difference of opinion regarding the Growth Management Policy; that in his opinion the proposed plan does conflict with the goals of the policy. Elizabeth Giles, 438 Scrub Oaks Drive, Hampstead, commented that if the Board was bound to the ordinance, sections 7.5.1, 7.5.2, and 7.5.3 of the Pender County Unified Development Ordinance requires roads to be built to the NCDOT standards; Senior Planner O'Hare stated that the applicant was not proposing any roads in their submitted plan; Chairman Williams commented that the applicant had proposed a driveway not a road, which were two different things. Senior Planner O'Hare stated that the applicant had met all of NCDOT requirements for their proposed driveway. Issac Moore, 43 Baron Oaks Court, Hampstead, asked why the entrance had to be built off of a private road; Chairman Williams stated that the applicant could address that question during their presentation. Justin Ellis, 361 Scrub Oaks Drive, Hampstead, stated that he moved into Pender County because of the great schools, low taxes, and the bang for your buck for property, all of those reasons have gone down and feels that if the development is approved his property value will decrease, so therefore he is against the development. Rick Biberstein, Attorney, Attorney Biberstein stated that he was representing PH Lanco, Inc., sellers of the property. Attorney Biberstein commented that it was important for everyone to understand that this was not a situation where the Planning Board had a lot of digression; the Board has to review submittals to insure that they meet the Pender County Unified Development Ordinance, which sets the standards. Attorney Biberstein stated that in regards to the access issue, PH Lanco, Inc. sold the land to Pinnacle Development in 1999, at that time an easement was given back by the Developer to PH Lanco, Inc., the easement states that the developer (Pinnacle Development) would maintain the property until completion of development and at that point the lot owners would be responsible on a per lot basis, which typically means it is the responsibility of the homeowners, who usually are represented by a homeowner's association. Attorney Biberstein stated that the easement is established and the applicant has rights to access it. Attorney Thurman asked Attorney Biberstein to explain who owned Pinnacle Parkway, Attorney Biberstein stated that the homeowner's association owned Pinnacle Parkway, but there is a dedicated easement that crosses Pinnacle Parkway. Board member Nalee asked for clarification that the easement was granted prior to any homes in Pinnacle Ridge being sold; Attorney Biberstein answered yes, that was correct and explained that when PH Lanco, Inc., sold the property they retained two (2) parcels in the front along with an easement to access those parcels and to use Pinnacle Parkway along the length of the two (2) parcels, with the maintenance of Pinnacle Parkway being the responsibility of the private homeowners. Jody Bland, Norris and Tunstall Engineering, made the following comments and responses to questions that were asked during the comment session; the request before the Board tonight was for approval of Master Development Plan, that showed a preliminary layout and approved uses, a detailed site development plan would have to be submitted for approval; yes, a stop sign would be at the exit of the development that lead out to Pinnacle Parkway and directional arrows in the parking lot to direct traffic; the reason for using Pinnacle Parkway as the access to the development is because NCDOT wants to limit access from US HWY 17 to reduce accidents; explained the distances on the site required by the NCDOT; explained the process of the traffic count; would maintain as much wooded area in the back of the property as possible, willing to meet the request of a more intense buffer along the side of the adjacent property; regarding the woodpecker, if the plan is approved, the information will be relayed to an

Environmental Consultant and they will do the research for endangered species; the applicant would prefer not to be required to build a sidewalk, it is shown on the plan because it is a requirement of the Pender County Unified Development Ordinance; explained the drainage plan. Mr. Bland stated that he could not speak on the request for a gate to be installed that would have to be discussed between the seller and property owners. Conversation ensued between the applicant and the audience regarding signage and access to the development. Board member Nalee encouraged the developer to be a good neighbor and do like other developers have done and hold a community meeting with the homeowners with the hopes to address some of the issues and concerns; Mr. Bland commented that the plan was drafted based on the county's ordinance, the property was marketed to his client as a developable property with access, and that the access issue is not with his client, it is between the homeowners and seller of the property. Board member Edens asked if the entire property had the same zoning; staff confirmed it did; Attorney Thurman stated that the original plan in 1999 for the property was to have residential and commercial uses and the two (2) parcels in the front were reserved for commercial uses. Board member Edens commented that the Board was approving a Master Development Plan with mixed uses that if approved any retail use allowed in the ordinance would be allowed, they were not approving the said store, but the retail use; Attorney Thurman replied that she was correct. Chairman Williams closed the public hearing and opened the floor for the Board's discussion. Board member Edens asked if the Board could request that the requirement of building a sidewalk be removed; Attorney Thurman replied that if the Board could determine that the sidewalk would not be compatible with the area, Board member Edens commented that she did not believe it was a good fit. Board member Nalee commented that there could be reason to table the item since there was a possibility of outstanding items in regards to possible endangered species; it was the consensus of the other Board members that the determination of any endangered species on the property would be the responsibility of the developer. Vice-Chairman McClammy asked staff in their opinion what type of buffer would be more intense; Senior Planner O'Hare answered that a C type buffer would be more intensive and provided the Board with the information regarding the various types of buffers and what they consisted and also described the buffer type that was submitted by the applicant. Vice-Chairman McClammy asked for Mr. Wood's background and credentials; Mr. Wood approached the podium, described his background and gave his credentials.

Vice-Chairman made a motion to approve the requested Master Development Plan and Major Site Plan with the following conditions 1.) The applicant must receive a report from a consultant or the US Fish and Wildlife service that indicates their development would not violate the Endangered Species Act in regards to the Red-cockaded woodpecker's foraging area and submit the report prior to a Building permit being issued 2.) The applicant shall remove the planned sidewalk along Pinnacle Parkway 3.) The applicant shall install a C3 buffer along the side of the adjacent property owner's property in the rear of the property; seconded by Board member Edens. The vote was four (4) in favor of the motion and one (1) opposed.

Chairman Williams called for a ten (10) minute recess; Chairman Williams called the meeting back to order at 10:00 pm.

5. Preliminary Plat Revision:

Signature Top Sail NC, LTD, applicant, and owner, requested the approval of a Preliminary Plat revision for Phase II of the mixed-use development proposal known as Wyndwater. Specifically, the request for Phase II approval includes the addition of twenty-seven (27) single-family lots to the previously recorded fifty-six (56) single-family lots. The subject properties are zoned PD, Planned Development zoning district. The properties are located to the north of Doral Drive (SR 1693), northwest of Sloop Point Loop Road (SR 1563), south of the conditionally approved Master Development Plan known as Cardinal Pointe and east of US HWY 17 in the Topsail Township and may be further identified by Pender County PINs; 4214-31-1640-0000 and 4214-22-2361. Planner Meredith, presented and gave background information for agenda item five (5). Board member

Edens asked if the proposal only included seven (7) new lots; Senior Planner O'Hare answered yes and pointed out on the provided map where the lots would be located. Mike Pollak, applicant, gave an update to the Board on his development and explained the reason for his request. There were no sign ups or questions from the Board.

Board member Edens made a motion to approve the Preliminary Plat Revision as presented; seconded by Vice-Chairman. The vote was unanimous.

6. Zoning Map Amendment:

Michael Pollak, applicant, on behalf of Capstone Ventures and Ruth C. Kalmar Lewis, owners, requested approval of a Zoning Map Amendment of two (2) tracts totaling approximately 45.4 acres from RP, Residential Performance zoning district to PD, Planned Development zoning district. The subject properties are located to the west of Sloop Point Loop Road (SR 1563) to the north and west of Friendly Lane (private) in the Topsail Township and may be further identified by Pender County PINs; 4214-22-7567-0000 and a portion of 4214-50-8387-0000. Senior Planner O'Hare presented and gave background information for agenda item six (6). Mike Pollak, applicant, explained the reason for his request and stated that if his request was approved it would allow for further development of the development known as Wyndwater which was always a part of the long range development plan. There were no sign ups or questions from the Board.

Board member Marshburn made a motion to approve the requested Zoning Map Amendment as presented; seconded by Vice-Chairman McClammy. The vote was unanimous.

7. Zoning Text Amendment:

Dallas Harris, applicant, requested the approval of a Zoning Text Amendment to the Pender County Unified Development Ordinance. The request is to amend Section 5.2.3 to add Other Nonhazardous Waste Treatment and Disposal as a permitted use in the RA, Rural Agricultural zoning district. Senior Planner O'Hare presented and gave background information for agenda item seven (7). Senior Planner stated this amendment specifically addresses the addition of NAICS 562219 "Other Nonhazardous Waste Treatment and Disposal" as a permitted right in the RA, Rural Agricultural zoning district and that Planning Staff's recommends that it be added to the zoning districts as follows; RA, Rural Agricultural zoning district permitted via Special Use Permit rather than permitted by-right, and add in the IT, Industrial Transitional zoning district permitted via Special Use Permit. Dallas Harris, applicant, explained the reason for his request and stated that he would amend his request to include staff's recommendation. There were no sign ups. The Board asked if materials would be processed on site; Mr. Harris answered no.

Vice-Chairman McClammy made a motion to approve the requested Zoning Text Amendment as discussed with staff's recommendations; seconded by Board member Edens. The vote was unanimous.

(Public Hearings Closed)

8. Discussion Items:

a. Planning Staff Items:

- i. Collector Street and Comprehensive Land Use Plans Update: Senior Planner O'Hare gave the Board a brief update on the timeline for the plans, stated that the next Collector Street Steering Committee meeting would be held on December 3, 2015 at 3:00pm in the second floor conference room of the Hampstead Annex,

b. Planning Board Members Items: Board members requested to hold the December Planning Board work session at the Hampstead Annex.

9. Next Meeting: December 1, 2015, No cases, Work session to be held at the Hampstead Annex at 6:30 pm.

10. Adjournment: 11:00 pm

The entire recording of the Planning Board Meeting is on file with the permanent records in the Planning Department office.